

# NATIONAL JUDICIAL ACADEMY



## WORKSHOP ON JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015 [P-1194]

21<sup>ST</sup> – 22<sup>ND</sup> DECEMBER, 2019

### PROGRAMME REPORT

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## LIST OF RESOURCE PERSONS

<b>S. No.</b>	<b>Name</b>	<b>Designation</b>
1.	Dr. Justice Shalini S. Phansalkar Joshi	Former Judge, Bombay High Court
2.	Justice Ved Prakash Sharma	Former Judge, Madhya Pradesh High Court
3.	Dr. Shekhar Seshadri	Professor and Dean, Department of Child and Adolescent Psychiatry NIMHANS
4.	Ms. Sheila Ramaswamy	Department of Child and Adolescent Psychiatry, NIMHANS

## REPORT

The National Judicial Academy organized a two-day workshop on Juvenile Justice (Care and Protection of Children Act, 2015). The workshop aimed to provide a forum for deliberations on recent changes in the laws; interpretation and treatment of juveniles in conflict with the law; appropriate processes and strategies for care and protection of juveniles; measures to accrete efficiency of JJB and other duty holders; concerns regarding and modalities for robust monitoring and co-ordination of institutions associated in dealing with juveniles in conflict with law; and psycho-social and mental health considerations in juvenile justice system.

In the introductory session, the history of the Juvenile Justice System as a part of the Criminal Justice System was briefly touched upon. It was pointed out that there has been a paradigm shift in the treatment of juveniles and that recent changes in the 2015 Act must be discussed in line with the other International Conventions particularly UDHR, ICCPR and UN Convention on the Rights of the Child. The session reflected on the need to recognize the childhood of every child including CCL. This was followed by a visualization exercise where the participants were asked to close their eyes and think of their childhood memories after which the participants were asked to share what they visualized. Most of the participants shared their memories which included 'open spaces' like school ground, garden, NCC training, the farmhouse where they are plucking fruits, etc. They also remembered their fights with siblings, fear of going to school, stealing petty things, etc. This highlighted the significance of geographical and psychological space for children. The participants were also asked to visualize a difficult memory of childhood. Participants shared how their life trajectory completely changed when their aspirations and desired were not fulfilled. The speaker recited a line from a famous book that "*there is no emotion powerful than a child's emotion who has been treated unfairly.*" When one of the participants shared her experience that how some events that happened in her childhood impacted her future decision, the Speaker emphasized that something that happens when you are too young affects in making future decisions. Speakers tell the participants to think about what memories we are creating for a CCL who comes to the Juvenile Justice Board which might have a deep impact on his life. It was further asserted that there is need to recognize that the children who come before the Board are vulnerable and have faced multiples injustices.

## **DAY 1**

### **Session 1 - Critical Examination of the Juvenile Justice System & its responses to Children in Conflict with the Law**

**Speakers – Dr. Shekhar Seshadri and Ms. Sheila Ramaswamy**

**Chair – Dr. Justice Shalini S. Phansalkar Joshi**

The session highlighted the importance of providing psychological assistance to Child in Conflict with Law (CCL) as children have the potential for behavioral transformation. Such transformation can occur only if children receive appropriate opportunities for process-oriented reflection/ life skill acquisition and training/ other requisite treatment and interventions. In the session, the participants shared their experiences as a Judge in the Juvenile Justice Board (JJB). Most of the participants agreed that poverty, broken families and the feeling of being an unwanted child are some of the major issues for coming in conflict with the law. It was emphasized that Observation Homes should not be treated as place of detention. There is need to have a sensitive approach to adolescent sexuality. The speaker pointed various vulnerabilities such as neglect from family, law-breaking parents, the existence of a child not being valued, lack of love and care from parents, impulsivity due to adolescence, etc. The speaker also highlighted various injustices that the CCL has to go through which creates hindrance in their reformation and often leads to more depressing situations.

### **Session 2 - Understanding & Analyzing Vulnerabilities of Children in Conflict with the Law**

**Speakers – Dr. Shekhar Seshadri and Ms. Sheila Ramaswamy**

**Chair – Dr. Justice Shalini S. Phansalkar Joshi**

The Session was aimed at identifying pathways to the offences. The Session included an exercise for all the participants where they were asked to mention the name of any child and write the alleged offence for which the child has come to JJB at the bottom of the page. In this exercise, all the participants had to write various information they had about that CCL such as (i) information about child's family, i.e details of parents, their occupation, illness/ disability, socio- economic background, parent's relationship with each other and child, etc; (ii) institutions where the CCL had stayed other than parental home if any; (iii) educational background including school, if dropout or any other learning difficulties or any other problem he faced in his education due to financial constraints; (iv) information related to peers, friends,

activities CCL is involved in with his/her friends and decisions that are influenced by friends; (v) information regarding any type of trauma or abuse which the child faced including humiliation/ rejection/ sexual abuse/ physical abuse/ losing a caregiver, accident, etc.; (vi) if the child has any experience as child labour, if yes then what kind of treatment, remuneration, experience of other co- workers, etc. (vii) information regarding substance use of the child – at what age did he/ she start taking substances and what was the reason behind it; and (viii) description of the alleged offence. The participants were asked to examine the details of their story and pick key factors which according to them are critical events that brought the child in conflict with the law. The speakers discussed different factors that are the basis of child's behaviour which includes, economic factor, educational issues, life skill deficits, peer influence, substance abuse, child labour, and mental health problems. All these factors were discussed in great detail by the speakers. The session further emphasized upon the importance of sex education and sexuality education in schools as the curriculum does not focus on the concept of consent, privacy, health, safety, etc. In another activity aimed to analyse the vulnerability framework, the participants were divided into 8 groups with 5 members each and every group was given a case study. The participants were asked to identify the vulnerability area, psychosocial issues, mental health issues, system issues and specific areas in which counselling should be given. Each group highlighted the underlying problems and its impact on the CCL and the order which they would like to pass to rehabilitate that child, such as sponsorship of child's education, institutional placement, life skills training, counselling to child and parents, vocational training, community service, etc.

### **Session 3 - Assessment of Children in Conflict with the Law**

**Speakers – Dr. Shekhar Seshadri and Ms. Sheila Ramaswamy**

**Chair – Dr. Justice Shalini S. Phansalkar Joshi**

The Session aimed at deeply understanding the purpose and role of Assessment of a child under the Act. In this session, Section 15 and 18 of the Juvenile Justice Act was discussed in detail. The speaker explained the purpose and object of the preliminary assessment. According to the speaker judges have 3 options i.e. no transfer, in any case; may transfer depending upon the circumstances of the case; and must transfer in all cases if the child is between 16 to 18 years. It was also emphasized that preliminary assessment is not a trial. The speakers were of the firm opinion that no child should be transferred as every child has scope for reformation. The legal paradigm underpinning preliminary assessment was discussed in great detail. It was suggested

that the order passed by a judge should be proportional to the seriousness of an alleged offence as well as the seriousness of vulnerability of CCL. It was advised that various circumstances must be taken into account for preliminary assessment such as family, school, peer groups, child labour, substance abuse, etc. Further, it was discussed that there are four parameters to assess the child. It was emphasized that the observations in the preliminary assessment should be true and honest. One of the participants raised a concern regarding self-incrimination. The speaker asserted that there are certain complex situations where mental health comes in conflict with legal issues however, if we appreciate the difference between Juvenile Court and Adult Court then the issue of self-incrimination would not arise since the purpose and object of the Juvenile Justice Act is not to punish but reform the child.

#### **Session 4 - Judicial Decisions**

**Speakers – Dr. Shekhar Seshadri and Ms. Sheila Ramaswamy**

**Chair – Dr. Justice Shalini S. Phansalkar Joshi**

In this session, the judgment of Bombay High Court in the case of *Mumtaz Ahmed Nasir Khan and v. The State of Maharashtra and Anr<sup>1</sup>* was discussed at length. The speaker discussed the facts of the case and chronology of events. The case emphasized upon four aspects i.e physical capacity, mental ability, understanding and circumstances and it was iterated that all the four aspects are very crucial to determine the case under Section 15 of the Juvenile Justice Act and these are indispensable. They must all be present for they are not in the alternative. The speaker also highlighted an observation made by the court that the explanation to Section 15 of the Act clarifies that the preliminary assessment is not a trial; it is an exercise to assess the child's capacity to commit and understand the consequences of the alleged offence. It was further emphasized that the whole endeavor of the Juvenile Justice Act is to save the child in conflict with the law from the path of self-destruction and being a menace to society. The Act is reformative and not retributive. Therefore, the discretion given to a judge under Section 15 must be used to further the object of the Act. Lastly, it was asserted that every child in conflict with the law is also a child in need of care and protection. We need to look at every child from a larger perspective.

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<sup>1</sup> CA No 1153 of 2018 (Bombay High Court)

## DAY 2

### **Session 5 - Changes Brought by the Act, 2015 and Rules, 2016: An Overview**

#### **Speakers - Dr. Justice Shalini S. Phansalkar Joshi and Justice Ved Prakash Sharma**

The session began with the discussion about the 'Best Interest of the Child' and how different stakeholders are responsible for it. Further, the speaker gave a brief background of the 2015 Act and discussed some of the provisions of the Act, such as:

- No use of the word '*juvenile*' in the new Act. The word has been replaced with '*Child in Conflict with law*' and '*Child in need of care and protection*'
- General Principles under Section 3 added in parent statute
- The Act divides the crimes into three different categories i.e. petty offences, serious offences and heinous offences.
- Exception has been created for children in between 16 to 18 years of age
- Inclusion of transfer system for children alleged to have committed a heinous offence for trial and sentencing as an adult
- Juvenile Justice Board to be constituted in every district to deal with children in conflict with the law. The board comprises of a metropolitan judge and judicial magistrate with two social workers
- *A new clause on fair trial is added under which the assessment will look into the special needs of the child ensuring fair trial in a child-friendly atmosphere*
- Margin of error in age has been increased from 1 year to 2 years
- Establishment of Children's court for trial of juvenile as an adult
- Scope of final order under section 18 widened
- Right to Appeal under Section 101 of the Act

The Panelists recommended all the participant Judges to write detailed reasons in their judgments as to why the case before them is fit/unfit for transfer under Section 15 of the Act. There was also discussion on the need for conducting cross-examination of the counsellor who has prepared the psychological report vis-vis summary trial under Section 15 of the Act. The speaker observed that the scope of Section 15 is very limited since it applies only in the limited number of offences and its scope should be further limited by the judiciary so as to ensure that best interest of the child is restored. The speaker further highlighted the importance of Section 3 under the Act which reflects the development of child jurisprudence in our country and

focuses on reformation and restoration. The different stages involved in the preliminary assessment were also discussed in this Session.

### **Session 6 - Role of Duty-holders at various Stages of Inquiry/Trial of Juvenile**

**Speakers - Dr. Justice Shalini S. Phansalkar Joshi and Justice Ved Prakash Sharma**

The object of the session was to understand the role of different duty holders under the Juvenile Justice System. The roles of Magistrates, Juvenile Police Unit, Probation Officer, Observation Home and its In-charge Officers, Counsellor and Specialists, Children's Court, Civil Societies, NGO, etc. were discussed in great detail. Further, some basic principles under the juvenile justice jurisprudence was also discussed which included, Principle of Dignity and Worth, Principle of Best Interest, Principle of Safety Measures, Principle of Stigmatization Semantics, Principle of Confidentiality, and Principle of Fresh Start. It was reiterated in this session that the objective of the Juvenile Justice Act is to provide the child with an environment that helps in his growth and development and makes him a responsible member of the society. It was highlighted by the Panelist that the participants are adjudicating in adult courts along with Juvenile Justice Board have to be very conscious about their duties and the different roles they are playing at two different places. It was emphasized that the use of words like 'juvenile' should be refrained. The session also included discussion on basic issues, attitude and mindset, skills and expertise of duty holders wherein it was opined that the JJB must assess the performance of other duty holders and if they find any deficiency they must take corrective measures. It was suggested that JJB must keep a close vigil on all the functionaries of the system to provide complete justice to the CCL. The speaker reiterated that the Individual Care Plan (ICP) should be used effectively and should be dynamic encompassing the health, psychological, educational, protection and other needs of CCL. The Session was concluded by Panelist reiterating the words of Justice Krishna Iyer:

*"Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority. Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice. Human rights regime leaves a wide gap between normative claims and implementation capabilities. The result is that large-scale breaches of civil and political rights, as well as economic, social and cultural rights, mark the scenario".*

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