

PROGRAMME REPORT (P-1112)

# NATIONAL JUDICIAL ACADEMY



## WORKSHOP FOR MAGISTRATES ON JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

21<sup>st</sup> to 23<sup>rd</sup> September, 2018

At the National Judicial Academy, Bhopal

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The National Judicial Academy (NJA) organized a three day “Workshop for Magistrate on Juvenile Justice (Care and Protection of Children) Act, 2015 (P-1112) from **21 – 23 September, 2018** at the National Judicial Academy, Bhopal.

The workshop provided a forum for deliberations on recent changes in the laws; interpretation and treatment of juveniles in conflict with law; psycho-social aspects of juvenile justice administration; role of judges; appropriate processes and strategies for care and protection of juveniles; audit and measures to accrete the efficiency of Juvenile Justice Boards and other duty holders.

About 39 judicial officers nominated by different High Courts participated in the workshop. The workshop was divided into eight sessions over the duration of 3 days on *following themes*.

<b>Session 1</b>	<b>Juvenile Justice in India: Understanding Non- Adversarial Nature of the System from Human Rights and Constitutional Perspectives</b>
<b>Session 2</b>	<b>Changes Brought by the 2015 Act and the 2016 Rules: An Overview</b>
<b>Session 3</b>	<b>General Principles of Care and Protection of Children under the Act</b>

<b>Session 4</b>	<b>Presumption and Determination of Age under the Act and Rules</b>
<b>Session 5</b>	<b>Juvenile Justice beyond court rooms, monitoring shelters: Role of Judges</b>
<b>Session 6</b>	<b>Psycho-social aspects of Juvenile Justice Administration</b>
<b>Session 7</b>	<b>Role of Duty-holders at various Stages of Inquiry/Trial of Juvenile</b>
<b>Session 8</b>	<b>Individualized Care Plan for Comprehensive Development of Children under the Act</b>

## SESSION 1

### **Juvenile Justice in India: Understanding Non- Adversarial Nature of the System from Human Rights and Constitutional Perspectives**

**Speakers:** Ms. Geeta Ramaseshan & Ms. Bharti Ali

- The session began with discussion on International Law and National Policy & Legal framework in India with respect to rights of children. The speaker highlighted and discussed following conventions, rules and guidelines under International law for the protection of child rights.

#### *Conventions*

International Covenant on Civil and Political Rights (ICCPR)

Convention on the Rights of the Child (CRC)

Convention against Torture (CAT)

#### *Rules and Guidelines*

UN Standard Minimum Rules for the Treatment of Prisoners, 1955

UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985

UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990

UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990

UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), 1990

Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines), 1997

- The constitutional provisions for children under constitution of India and national policy for children were also discussed during the session. Constitutional principles under the

Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter as the JJ Act), Concept of adversarial system in light of Supreme Court judgements and History of Juvenile Justice in India right from the apprentices Act, 1850 to the passing of JJ Act were briefly explained and discussed with the participants. The concept whether Juvenile Justice is criminal justice or social justice was also part of discussion in the session.

## SESSION 2

### Changes Brought by the 2015 Act and the 2016 Rules: An Overview

**Speakers:** Ms. Arlene Manoharan & Ms. Bharti Ali

**Chair:** Ms. Geeta Ramaseshan

- Session began with a discussion on the question, why was the JJ Act 2000 repealed and re-enacted? It was pointed out that JJ Act repealed to plug gaps in law and implementation including:
  - abuse of children in institutions,
  - high pendency,
  - quality of care & rehabilitation measures,
  - delays in adoption,
  - accountability of institutions,
  - role confusion
  - Inadequate provisions to address offences against children.
  - To address increasing crimes being committed by children between 16 and 18 years as the JJ Act, 2000 was “ill equipped to tackle child offenders in this age group.”
- Thereafter, attention was drawn to the following key highlights of the JJ Act, 2015:
  - Builds on progressive framework of JJ Act, 2000
  - Fundamental Principles now in parent statute
  - Rights framework strengthened
  - Greater emphasis on accountability
  - Child Protective framework strengthened

- Rehabilitative framework strengthened
  - Definition and Classification of offences
  - Inclusion of Transfer System for children alleged to have committed a heinous offence for trial & sentencing as an adult
  - Recognition that CICL can also be CNCP
  - Procedures- age determination
  - Legal framework on Adoption strengthened
  - List of functionaries expanded.
  - Enables greater involvement of civil society in implementation
- Objective of the JJ Act, its applicability, coverage, composition of JJB and its functions along with some important provisions with respect to social investigation report, individual care plan, institutional & non institutional care, duty of different stakeholders under the Act were discussed with the participants in the session. The session concluded by highlighting various challenges with respect to implementing of the Act.

## SESSION 3

### **General Principles of Care and Protection of Children and issues concerning Placement or Bail under the Act**

**Speakers:** Ms. Arlene Manoharan & Ms. Bharti Ali

**Chair:** Ms. Geeta Ramaseshan

- Following general principals under section 3 along with other provisions under the Act and under international conventions were discussed in detail with the participants:
  - Principle of presumption of innocence
  - Principle of dignity and worth
  - Principle of participation
  - Principle of best interest
  - Principle of family responsibility
  - Principle of safety
  - Positive measures
  - Principle of non-stigmatizing semantics
  - Principle of non-waiver of rights
  - Principle of equality and non-discrimination
  - Principle of right to privacy and confidentiality
  - Principle of institutionalization as a measure of last resort
  - Principle of repatriation and restoration
  - Principle of fresh start
  - Principle of diversion
  - Principles of natural justice



- While explaining the historical evolution of the general principle under the Act, attention was drawn to the following landmark judgements of the Supreme Court and High Court:
  - Bholu Bhagat v. State of Bihar (1997) 8 SCC 236
  - Salil Balil v. Union of India (2013) 7 SCC 705
  - Krishna Bhagwan v. State of Bihar AIR 1989 Pat 217
  - Imityaz Hussain Mumtiyaz Sheikh (2008) 116 BomLR 1645

## **SESSION 4**

### **Presumption and Determination of Age under the Act and Rules**

**Speakers:** Prof. B.B. Pande, Prof. S.P. Srivastava and Justice Manju Goel

**Chair:** Justice Kurian Joseph

- The session began with a fundamental question, who is child in conflict with law under the Act? Attention was drawn to definitions part of the Act and provisions under Code of Criminal procedure to understand the role of a principal magistrate, JJB under the Act.
- The concept of Gender Justice and Tender/Kinder Justice in light of juvenile justice in India was explained to the participants followed by highlighting diverse purposes for age determination such as for arrest/apprehension as an aspect of custodial justice, the Judgement of the SC in Sanjay Suri vs. Delhi Administration 1988 Suppl. SCC 160 was pointed out wherein Court observed that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age not necessarily by ‘trial’ and every warrant must specify the age of the person to be detained.
- Categories of children in conflict with law and procedure for age determination such as presumption in support of executive action in mater of age determination, Date of birth certificate from school or matriculation or equivalent certificate and Birth certificate from Corporation, Municipal authorities etc under the Act were also explained to the participants.
- Following landmark judgements of the Supreme Court on juvenility were discussed and explained to the participants
  - Brij Mohan Vs Priyabrat AIR 1965 SC 282

- Umesh Chandra Vs Rajasthan AIR1982 SC 1057
- Bhoopram Vs State Of UP (1989) 3 SCC 1
- Daya Chand Vs Sahib Singh (1991) 2 SCC 438
- Ram Deo Chauhan Vs Assam AIR 2001 SC 2231
- Vishnu Vs Maharashtra (2006) 1 SCC 283
- Babloo Pasi Vs Jharkhand 2008(13)SCALE 137
- Pawan Vs Uttaranchal (2009)15 SCC 259
- Hariram Vs Rajasthan (2009)13 SCC211
- Raju Vs Haryana (2010)3 SCC 235
- Shah Nawaz Vs UP AIR 2011 SC 3107
- Om Prakesh Vs Rajasthan 2012 (4) SCALE 348
- Aswani Kumar Saxena Vs MP (2012)9SCC 750
- State Of MP Vs Anoop Singh (2015) 7 SCC 773
- State Of MP Vs Munna@Shambhoo (2016) 1SCC 696
- Parag Bhati Vs State Of UP (2016)12 SCC 744
- Mukarrab Vs State Of UP 2016 SCC ONLINE SC 1413
- Sri Ganesh Vs State Of Tamil Nadu (2017) 3 SCC 280

## SESSION 5

### **Juvenile Justice beyond court rooms, monitoring shelters: Role of Judges**

**Speakers:** Dr. Justice S. Phansalkar Joshi, Prof. B.B. Pande and Justice Manju Goel

**Chair:** Justice Kurian Joseph

- The session began with a brief discussion on role of Judges in monitoring child care institutions wherein sources of the power of monitoring in light of judgement of the SC in Bhanu Das AIR 1977 SC 102 and Giasuddin Vs. State AIR 1977 SC 1936 were discussed in the session. Speaker also discussed diverse strategies of monitoring and directions relating to setting up Child Care Institutions.
- Speakers also stressed on unscheduled visit at child care home to know the real conditions and systemic lapses and suggested participants that they should visit shelter home at least once in a month. It was further emphasized that child must be in heart than in mind of the judges for greater justice and greater services to the children. It was pointed out that Judges must ensure whether right amount of care is rendered by the person who has been assigned to take care of child.
- Speaker also highlighted the importance of interaction with children to build confidence so that they could speak out their problems openly.
- Participants were suggested to come out with innovative solutions for rehabilitation of the children.
- Provisions under the Act with respect to reformation and rehabilitation of juvenile by establishing Child welfare committee, its role and responsibility, provisions regarding skill development, individual care plan were also discussed in the session.

- It was further stressed that the child in conflict with law should not be sent to jail or lock, nor should be handcuffed.

## **SESSION 6**

### **Psycho-social aspects of Juvenile Justice Administration**

**Speakers:** Dr. M. Anuradha, Dr. Justice S. Phansalkar Joshi and Prof B.B. Pande

**Chair:** Justice Kurian Joseph

- This session began with conducting of a role play between a child and therapist to demonstrate participants about the mindset of a juvenile who is alleged to have committed an offence and how judges should interact with them.
- Speakers highlighted different stages of development and characteristics of a juvenile right from puberty to adolescence. It was emphasized that development follows a definite pattern unless environment prevents. It was also stressed that every phase of development must consist of three A's i.e. acceptance, achievement and affection for better development of juvenile.
- Speaker also indicated common conditions contributing to deterioration in family relationships such as attitude of parents, parental expectations, authoritarians and permissive disciplinary practices, low socio economic status, comparison of parents with their friends parents, sibling friction etc.
- Speaker discussed psychological hazards leading to maladjustment, common causes of family friction during adolescence and theories of personality with participants in the session.
- The treatment which can be imparted to the juveniles are – social skill training, problem solving training, methods to attain self control, anger management, improvement of interpersonal behavior etc.

## **SESSION 7**

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

**Speakers:** Justice Manju Goel, Dr. Justice S. Phansalkar Joshi and Prof. B.B. Pande

- Session began with discussion of various theories of punishment such as retributive, reformative and deterrent in context of child in conflict with law. It was pointed out that when it comes to the question of dealing with a child in conflict with law, the reformative aspect of punishment comes to the fore. It was further stressed that the concept of reformation has to be widened by including therein rehabilitation and welfare. Welfare or best of interest of the child is the paramount interest to be kept in mind.
- Thereafter, attention was drawn to the social background report in form 1 and social investigation report in form 6 of the Act. Participants were asked what is social investigation report and how it is prepared. Speaker discussed column in form 1 & 6 in detail and stressed on the importance of information furnished in the social investigation report in form 6 for the purpose of trial of a juvenile.
- Role and duty of various stakeholders such as probation officer, police, psychologist, JJB, CWC etc under the Act were explained to the participants during the session. Participants were also asked to indicate different stakeholder and their duties under the JJ Act.

## SESSION 8

### **Individualized Care Plan for Comprehensive Development of Children under the Act**

**Speakers:** Dr. Justice S. Phansalkar Joshi and Justice Manju Goel

- The session began with explaining what individual care plan under the Act is. The importance of section 39 of the Act was discussed stating that S 39 of the Act directs states that the process of rehabilitation and social integration of children be undertaken based on an individual care plan of the child and the process ought to be initiated as soon as the child comes before the JJB. Speaker also discussed on monitoring of individual care plan.
- Speaker indicated following special needs of a child alleged to be in conflict with law.
  - Legal
  - Psychological
  - Social
  - Emotional
  - Protection
  - Educational
  - Familial
  - Physical
  - Health
  - Re-integration
- Thereafter, a role play consisting of two different cases was assigned to the participants wherein they were divided into group of three members and asked to prepare an



individual care plan for a child. 20 minute time was given to prepare the same. Speakers then requested each group to discuss their care plan and were also asked to bring out five facts which are not mentioned in the case.

- The last session of the workshop concluded with vote of thanks to the resource persons.

## **Cases for Role Play**

### **Case Vignette 1**

“J” is a 14-year-old boy. He is the youngest of 3 siblings. He lives with his parents and his two older sisters in a shack near a construction site. J’s father works as a security guard at the construction site. J’s father has alcohol dependence syndrome and would often suspect the mother of infidelity. During the father’s drunken rages, he would beat up the mother and all the children. The child had difficulty staying at one place and was quite hyperactive. He would often throw and break things at home if his demands were not met. As he was the only boy child, parents were often indulgent with him. As the family did not stay at one place for very long all the siblings did not go to school regularly. “J” stopped going to school since 2 years and would work at the construction site doing odd jobs. He would hang out with the older boys working in the construction site and started smoking at the age of 12 years. He had started using alcohol along with the other workers in the construction site. “J” did not have a good relationship with his mother. He felt that she was constantly fighting with his father, which was why his father would drink and beat them all. Both parents did not know what “J” did all day. He was close to the older sister. She ran away with one of the masons working in the construction site. The boy was very upset that his sister eloped. He felt his family’s honour was at stake and his older friends at the site would not respect him anymore. One day, the older boys with “J” hatched a plan and decided to beat up the man who had run away with his sister. All the boys were intoxicated. They ganged up and beat up the man and were charged with attempt to murder.

## **Case Vignette 2**

“T” is a 15-year-old girl who was sent to the OH after having been charged with theft. “T” was from a very poor family. Her mother committed suicide when T was around 3-4 years of age. T’s father had alcohol dependence syndrome and lived with his brother’s family. T’s uncle used to physically and sexually abuse T and her sister from early childhood. T never attended school regularly as her aunt would want her to finish all the household chores. T ran away from her home and was trafficked for sex work. She started using alcohol and sleeping pills after getting involved in sex work. She stole an expensive watch and a ring and was apprehended by the police. In the OH she was aggressive with the other children, was angry, irritable, would slit her wrists and couldn’t sleep at night.