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Importance of Child Centric Jurisprudence in context of Children in need of care and protection

By

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Facets of Child Centric Jurisprudence



- The focus is on the well-being of the child: physical, mental and social
- **Appel (2009)**: The child centric jurisprudence addresses legalistic or **individualizing approaches to rights, agency, and representation**. It acknowledges and responds to **children's development, dependency, agency, and vulnerability of children**.
- The principles of child protection against the abuses and vulnerability and privacy need urgent attention.
- **Sandberg (2015)**: Children must not only be seen as vulnerable, but as capable as well – capable actors in their own lives.
- **Ferguson (2013)** highlighted the absence of child-centred theory of children's rights that **improves, or increases the likelihood of improved outcome** in legal practice for children.



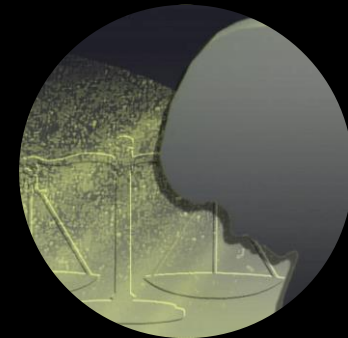
Aspects of Child Centric Jurisprudence



Right based
Approach



Victim Centric Approach



Adolescent Justice

FUNDAMENTAL PRINCIPLES OF JUVENILE JUSTICE

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- Non-discrimination
- Best interests of child
- Right to life, survival and development
- Right to be heard
- Recognition of dignity and worth of child
- Age and criminal responsibility; upper age limit (mental age?)
- No death penalty, life in prison without parole, torture, cruel, inhuman, degrading treatment, punishment
- Separation from adults
- Early release, detention as last resort/for shortest possible time,
- Privacy of proceedings
- Avoidance of unnecessary delay
- Proportionality/ variety of available dispositions
- Procedural safeguards / Guarantees for fair trial
- Alternatives at every stage/ Diversion
-

GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM: Aims of Guidelines

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- Framework to implement CRC , pursue its goals with regard to children in the administration of juvenile justice;
- Use and apply UN standards and norms in juvenile justice and other related instruments and ensure they are fully reflected in laws, policy, practice;
- Facilitate the provision of assistance to States for effective implementation of the CRC and related instruments
- Ensure contents of international instruments widely known to children, information given them on their rights and their obligation to obey the law;
- The Guidelines emphasize recognition of need for comprehensive and consistent approach;
- Public and media understanding of spirit, aims, principles of child-centred justice in accordance with CRC and UN standards and norms in juvenile justice.
- Guidelines contain safeguards for child victims/ witnesses.

Umbrella Principles of the CRC

- **Non-discrimination (article 2)**
- Ensure equal treatment of children;
- Avoid de facto discrimination;
- Train all juvenile justice personnel;
- Establish rules, regulations, protocols;
- Give support, assistance for reintegration;
- Abolish status offences- both sexes;
- Implement child protective measures.

Umbrella Principles of the CRC

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Best interests of the child (article 3)

- Primary consideration in all decisions affecting children;
- Children different from adults-basis for their lesser culpability;
- Require separate juvenile justice system;
- Discard retributive principle, embrace restorative justice;
- Maintain concern for public safety.

Umbrella Principles of the CRC

Right to life, survival and development (art 6)

- an inherent right;
- Delinquency - very negative impact on a child's development;
- Policies must support child development;
- No death penalty;
- No life sentence without parole;
- Detention- as measure of **last resort** and for **shortest possible time**.

Umbrella Principles of the CRC

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RIGHT TO BE HEARD (article 12)

- Fundamental to a fair trial.
- Respect child's right to express views freely.
- Right to be heard in all matters affecting him/her.
- Implement **at every stage** of juvenile justice process.

CRC articles on juvenile justice:

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- **Treatment in detention (article 37)**
- No torture, cruel, inhuman, or degrading treatment or punishment;
- No capital punishment, life imprisonment;
- Arrest, detention, imprisonment-lawful;
- Treat with humanity, respect, regard age;
- Separate from adults, unless not in best interests;
- Allow family communication;
- Provide legal/other assistance;
- Give right to challenge detention, prompt decision.

CRC articles on juvenile justice

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Child in conflict with law (article 40.1)

Treatment must be consistent with child's sense of dignity and worth;

- Reinforce child's respect for human rights and freedoms of others;
- Take account of child's age;
- Promote reintegration, child's assuming a constructive role in society.

CRC articles on juvenile justice

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- **Guarantees of a fair trial (article 40. 2)**
- No retroactive juvenile justice;
- Presumption of innocence;
- Inform promptly and directly of charge;
- Legal/other appropriate assistance;
- Decision: prompt, by competent, impartial body;
- Right: silence, examine/call witnesses,
- to appeal, to have interpreter;
- Right: privacy at every stage of process.

CRC articles on juvenile justice

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Juvenile justice system (Article 40.3)

Establish a comprehensive juvenile justice system with–

- laws, procedures, authorities and institutions specifically applicable to children in conflict with the law;
- a minimum age of criminal responsibility;
- alternative pretrial measures.

CRC articles on juvenile justice

Dispositions by juvenile court (art.40.4)

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Variety of dispositions: for proportionality

- Care;
- Guidance;
- Supervision orders;
- Counselling;
- Probation;
- Foster care;
- Education and vocational training;
- Other alternatives to institutional care.

Other relevant CRC articles

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Promote physical/ psychological recovery
social reintegration of child victim of abuse,
torture, cruel, inhuman, degrading
treatment or punishment. **(article 39)**

States must undertake appropriate
legislative, administrative, other measures
to implement child rights.

Implement economic, social and cultural
rights– within maximum resources of State.
(article 4)

INTERNATIONAL STANDARDS AND NORMS IN JUVENILE JUSTICE

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- UN Guidelines for the Prevention of Juvenile Delinquency (**Riyadh Guidelines**)
- UN Standard Minimum Rules for the Administration of Juvenile Justice (**Beijing Rules**)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (**Havana Rules**)

N.B. (1) Child Rights Committee's General Comment

No.10: Children's rights in juvenile justice.

(2) Vienna Guidelines for Action on Children in the Criminal Justice system.

The Kidsrights Index, 2021

- The KidsRights Index is an initiative of the KidsRights Foundation, in cooperation with Erasmus University Rotterdam: Erasmus School of Economics and the International Institute of Social Studies.
- **Pobjoy (2015):** The **best interests principle under Article 3** of UNCRC is by design a flexible and dynamic concept; **it is not possible to prescribe how a child's interests will be best served** in any given situation at any given point.
- 5 Domains covered: i) Right to life, ii) Right to health, iii) Right to education, iv) Right to protection; and v) enabling environment for Child Rights.
- India ranks 112 out of 182. Table shows ranks of other South Asian countries:

Country	Rank (out of 182)
Bhutan	93
Bangladesh	110
India	112
Maldives	119
Nepal	129
Sri Lanka	144
Pakistan	148
Afghanistan	181

Committee on the Rights of the Child, 'General comment No. 17¹ on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Art (17 April 2013) un Doc. crc/C/gc/17



- Described the “**Children in institutions**” such as residential homes and schools, hospitals, detention centres, remand homes and refugee centres, where opportunities for play, recreation and participation in cultural and artistic life may be limited or denied. (**General Comment no. 17**)
- Availability of time, appropriate space, adequate resources and equipment, trained and motivated staff and provision of dedicated budgets are needed to create the necessary environments to ensure
- Stressed upon **deinstitutionalization** of such children.

Link of child rights with Indian Constitution

Article 15 (3) : special provisions

Article 21-A: Right to education

Article 39(e) and (f)

Article 46

Article 47

In India, Child Rights revolve around: the Protection of Children from Sexual Offences (POCSO) Act, Prohibition of Child Marriage Act, Immoral Traffic (Prevention) Act, Child Labour (Prohibition and Regulation) Act, etc.

The Juvenile Justice (Care & protection of Children) Act,2015 deals with two basic categories of children:

- (1) juveniles in conflict with law, and
- (2) destitute, neglected or orphaned children in need of care and protection.



Laws framed for child protection

❖ LEGISLATIONS-

- Prohibition of Child Marriage Act, 2006
- The Commissions for Protection of Child Rights Act, 2005
- The Juvenile Justice (Care and Protection of Children) Act, 2015
- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- The Pre-Conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- The Immoral Traffic (Prevention) Act, 1986
- The Child Labour (Prohibition and Regulation) Act, 1986

Others to be watched:

- ❑ The Guardian and Wards Act, 1890
- ❑ The Young Persons (Harmful Publications) Act, 1956

Who is a child in need of care and protection (Sec. 2(14))

- ❖ Who is at imminent risk of marriage before attaining the age of marriage.
- ❖ Homeless, Abandoned.
- ❖ Street child, Forced labour, Beggar.
- ❖ Abused, tortured, neglected, exploited.
- ❖ Mentally or physically challenged/mentally or physically ill.
- ❖ Having incapacitated parents or no parent.
- ❖ Missing or run away child, whose parents are not traceable.
- ❖ Abused, tortured or exploited for the purpose of sexual abuse or illegal act.
- ❖ Vulnerable and is likely to be inducted into drug abuse or trafficking.
- ❖ Abused for unconscionable gains.
- ❖ Victim of natural or man-made calamity.

Fundamental Principles that shall be guided while implementing J.J.Act 2015 (Sec. 3)

- 1) Principle of Presumption of innocence.
- 2) Principle of dignity and work.
- 3) Principle of Participation.
- 4) Principle of best interest.
- 5) Principle of family responsibility.
- 6) Principle of safety.
- 7) Positive measure.
- 8) Principle of non-stigmatising semantics.
- 9) Principle of non-waiver of rights.
- 10) Principle of equality and non-discrimination.
- 11) Principle of right to privacy and confidentiality.
- 12) Principle of institutionalisation as a measure of last resort.
- 13) Principle of repatriation and restoration.
- 14) Principle of fresh start.
- 15) Principle of diversion.
- 16) Principle of natural justice.

Imp: 112 sections, X parts

(CWC, JJ Board, CCI district child protection units and special juvenile police units: under DM in 2020 amendment)

Protection

- ❖ Handling by special Juvenile Police (Sec. 10(1))
- ❖ Handcuffing of Juvenile/child prohibited (1995)3 SCC 743
- ❖ Police should not be in uniform and all procedure should be child-friendly (Sec. 7)
- ❖ Child/Juvenile cannot be kept in jail or lock-up (sec. 10(1))
- ❖ No death penalty or life imprisonment without the possibility of release.(Sec. 21)
- ❖ Proceedings are informal, participatory and private. (sec. 14(5) & Sec. 99)
- ❖ Parents to be involved in juvenile processes (sec. 13 & Sec 90)
- ❖ Right to free legal aid (Sec. 8(3)(c))
- ❖ No joint trial of a juvenile with an adult (Sec. 23)
- ❖ Information about a juvenile cannot be released to media. (Sec. 74)
- ❖ Inquiry under this section shall be completed within a period of four months and preliminary assessment under section 15 shall have to be completed within three months from the date of first production. (Sec. 14)
- ❖ If inquiry by the Board for petty offences remains inconclusive after six months the proceedings shall stand terminated. (Sec. 14(4))
- ❖ Facility of interpreter or translator, where the child fails to understand the language used in a proceeding.(Sec. 8 (3)(d))

The Report of the Committee For Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care & protection of Children) Act, 2015 and Other Homes (Ministry of Women and child Development,2018)



Profiles of Children

1	Total number of Children (as per records)**	3,77,649	
2	Children of Single Parent	1,20,118	31.81
3	Orphan	41730	11.0
4	Abandoned	7677	2.0
5	Surrendered	6791	1.8
6	Sexually Abused	1575	0.4
7	Victim of Child Pornography	189	0.1
8	Children Trafficked for Domestic Work	857	0.2
9	Children Trafficked for Labour/Rescued from Labour	1827	0.5
10	Children Trafficked for Commercial Sexual Exploitation	489	0.1
11	Victim of Child Marriage	469	0.1
12	Homeless Children	8573	2.3
13	Runaway/Missing Children	3780	1.0
14	Mentally Challenged Children	10794	2.9
15	Physically Challenged Children	9040	2.4

Issues Highlighted

- 9589 CCIs/Homes were studied and not even a single childcare institution was 100% compliant of provisions laid down in the 2015 Act.
- Inappropriate Child-caregiver Ratio.
- Lack of written Child Protection Policy in CCIs/Homes.
- Non-establishment of grievance redressal mechanism for children.
- Prevalence of harsher methods to deal with indiscipline.



Contagion of COVID-19 Virus in Children Protection Homes, In re, (2020) 15 SCC 280



- Vulnerability of children kept in or children in conflict with law who are kept in various types of homes and foster and kinship care were highlighted.
- Protection of children falling within ambit of Juvenile Justice (Care and Protection of Children) Act, 2015.
- The bench of L. Nageswara Rao and Deepak Gupta, JJ., issued detailed directions (Paras 1 to 13) for:
 - (i) Measures to be taken by Child Welfare Committees;
 - (ii) Measures to be taken by Juvenile Justice Boards and Children Courts;
 - (iii) Measures to be taken by Governments;
 - (iv) Directions to Child Care Institutions (CCIs);
 - (v) Preventive measures for Child Care Institutions (CCIs);
 - (vi) Responsive measures for Child Care Institutions (CCIs);
 - (vii) Measures for children under foster and kinship care; and
 - (viii) Guidance on measures to ensure well-being of children in need of care and protection (CNCP), and children in conflict with the law

Adolescent Justice



- **Sacks (2011):** Scientific research prove that children and adolescents are indeed **different creatures than adults and in need of protection from negative influences and harsh penalties** resulting from developmentally predictable poor choices.
- Need for gender inclusive policies that view adolescent justice in consonance with the juvenile justice and reproductive justice.
- More emphasis is to be added on menstrual health and availability of menstrual hygiene products for adolescents under the care of Juvenile Justice Boards and Child Welfare Committees.
- A recent 2020 study (**Suresh, et. al. {2020}**) in the US reveals that the participating systems provided **different forms of contraceptive counselling to the adolescents in custody**. It reflected upon the need for standardization of reproductive care for adolescents present in the juvenile justice systems.



“Treatment of children, who are victims of the conditions in which they are living and children who have violated the law, is a reflection of a society's culture and value system”.

Josine Junger-Tas, *Trends in International Juvenile Justice: What Conclusions Can be Drawn ?*, in International Handbook Of Juvenile Justice 505-532 (J. Junger-Tas and S.H. Decker eds., 2006)



Conclusions

- Hopes of transformative role to be played by courts.
- **Justice Misra (2012):** Judges to develop understanding towards response of child to emotions. In juvenile courts, the judges need to acquire the skill of receiving emotional message and study the body language along with cultivated empathy.
- Children remain subject to mercies of their caregivers until achieving the age of majority, to bridge the transition from childhood to adulthood, a child requires support and resources.
- The protection of rights of children must be viewed from the angle of right-based approach rather than charity.
- Need for providing alternative family based care to children.
- Emphasis on ensuring a *normal* childhood to these children.

Let us discuss

- How is the situation in your own context
- What is the impact of this learning and its potential to change your approach
- What are the challenges and opportunities
- Any experience?

Thank you



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Thank
you

