

**NATIONAL CONFERENCE OF PRINCIPAL MAGISTRATES AND MEMBERS OF
JUVENILE JUSTICE BOARD**

(21th – 23rd November, 2014) P- 869

(Programme Coordinator--Dr. Amit Mehrotra, Assistant Professor, National Judicial Academy)

The National Judicial Academy organized the “National Conference of Principal Magistrates and members of Juvenile Justice Board” during 21th – 23rd November, 2014. This conference provided a forum to the judicial officers to share views and express their problems with their counterparts. The main focus of the Conference is to discuss the vital issues confronting the Juvenile Justice System in India and to enhance the capacity of the functionaries of the Juvenile Justice Boards in India in this regard. Total 29 judicial officers have participated in the conference. Hon'ble Justice R. Basant, Hon'ble Justice S. Vimala Mr. Asheem Srivastav, Dr. Aruna Broota, Advocate Ms. Geeta Ramaseshan, Prof (Dr.) Ved Kumari, Ms. Santosh Snehi Mann and Prof. S.P. Srivastava were the eminent resource persons in this conference.

DAY 1

Session 1 Prof (Dr.) Geeta Oberoi; Director- in – Charge gave brief introduction on all the sessions and deliberated on the objective of the conference. She stressed that there is a need to discuss the problems and unique needs of JJBs in conducting its proceedings. This three day conference provides platform to the judicial officers to express their problems that they have encountered and seek solutions in consultation with co participants and the experts in the area who will be presiding as eminent resource persons in this conference.

The theme of the session one was on **Status of Children in India: Need for special measures**. Mr. Assem Srivastav is the resource person of the session. He stressed that child is the real asset of any nation. The resource person quoted the definition of child from various Statues which includes The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Factories Act, 1948, The Minimum Wages Act, 1948, The Plantation Labour Act, 1951, The Right of Children To Free And Compulsory Education Act, 2009, The Juvenile Justice (Care and Protection of Children) Act, 2000, The Protection of Children from Sexual offences Act, 2012, The Child Labour (Prohibition

And Regulation) Act, 1986, etc. and explained the different aspects of the definition from the different enactments, however he emphasized that there should be uniformity as far as the definition of the child is concern and there may not be any confrontation with regard to the interpretation of the child. He emphasized that health and proper care of the child is of paramount consideration. Proper nurturing and care of the child is very important otherwise they may indulge into the criminal activities or become drug addicts. So, it is the responsibility of the family and also the society to see that the child should grow up in a proper and healthy environment. It has been further discussed during the discourse that Poor Sanitation, Pollution and Malnourishment take a heavy toll on young lives. He stated that more than 1 Lakh children below 1 years die every year because of Pneumonia and Diarrhea. He deliberated that high initial enrolment does not guarantee free and compulsory education. He further stressed that education to child is a very important tool for development of any nation and utmost priority has to be provided for free and compulsory education to every child. The resource people also delineated on child abuse and raise a concern on the increase of child abuse by stating that there is 336% jump in child rape cases between 2001 and 2011. The resource person further discussed the consequences of child abuse which includes: Cognitive Impairment, Depression and anxiety, Eating and sleep disorder, Feeling of shame and guilt, Violent and other risk taking behavior, Poor interpersonal relationship, Poor self esteem and Self harm and suicidal behavior. He delineated that to ensure the overall development of child, the parents should ensure healthy food, sports and physical training and education which are the three basic needs of a child.

He took the discussion forward by putting some suggestions before the judicial officers to curb the child abuse and to safeguard the development of children. The speaker suggested that all Children must have birth registration certificate and Aadhar card to protect their identity. He further delineated that homeless and unaccompanied children living on and off the streets (or anywhere) should be enrolled in schools. He further suggested that as far as possible, children should be reintegrated with their families and if the families refused to accept the child or the family is not found, the children should be sent to CCI (Child Care Institutions) for their safety and rehabilitation. To carry out the suggestions, identification and engagement of credible NGOs may be used for the rescue and

rehabilitation of the children. The resource person stressed that after rescuing and rehabilitation of the children, they should be gradually inducted into the formal education system. He emphasized on ensuring the regular monitoring of such children. He elaborated his suggestions by stating to raise awareness on the issues and concerns of street children. Street plays could be one way to raise the awareness among the masses.

The resource person carried forward the discussion by recommending some methods to ensure good quality of food supply to the children. He delineated that with the help of private sector, large and credible NGOs which have good financial turnover should be used to ensure the availability of the food supply. He further recommended on centralizing the food preparation and distribution mechanism. He stressed that such centralized food preparation and distribution mechanism could be linked with Indian Dietary Association and also with the State, District and Block hospital dietician. He further elaborated the advantages of preferring locally available material for the procurement of healthy food which comprises of: Requirement of minimum space and time, freshness and quality, easy procurement and transfer from the local markets and cost effectiveness. He further delineated that the School Management Committee should monitor the availability of quality food to the children.

The resource person suggested the regular check up of the children in the school such as; Hemoglobin test, Urine test, Stool test for ova and cyst, Vision test, Weight, Height, Physical check up and Immunization schedule.

The resource person continued the discussion by elaborating on the need of the identification of the children according to their potential. He stressed that every child has hidden potential and that there is currently no system of identifying hidden potential. He deliberated that the schools and teachers are ill equipped to identify the children according to their hidden potential. He observed that current education system at elementary level does not support capacity building and skill enhancement because of which, parents withdraw their child as they are not sure of child's future. He delineated that many children were leaving the school voluntarily to support their family income because of the economic problems which is the main cause of child labor. To curb the menace of child labor and to ensure that children don't drop out of schools without

finishing their education, the resource person suggested few measures to identify hidden potential of the children in a scientific way. He recommended segregating them early according to the potentials. He further stated there is a need to start capacity building and skill development in the schools. He also recommended the need to start the sports and physical training from class 1 itself and suggested to include the compulsory scouts and NCC training for all the children. He also suggested to create web based replicas of Khan Academy (khanacademy.org) in local language to impart the education among the children. He concluded by stating that, "It is easier to build a child than to repair an adult."

The topic of the **second session** was on **Social Deviance In Children: Psychological Approaches**: In order to sensitize the participants towards juveniles in conflict with law, the participants were addressed by a clinical psychologist, Prof. Dr. Aruna Broota who expanded on the meaning of simple yet important terms like infant, child, adolescent and adult. She explained the various ways in which the legal system in India is dealing with the issues relating to deviant behavior amongst children. The resource person deliberated on the psychological approaches of children. She remarked that deviance can be by birth or can be genetic or can also be learnt and acquired i.e. environmental. She further delineated that deviance has a moral and a social reference. Family conditions and the societal factors that contribute to the formation of a child's personality which results in the delinquent behavior by the child were also discussed. The resource person stressed that there are many forms of deviance like Stealing, Ragging, Beating and Bullying. She also discussed about Physical Maturity/ Bone Age, Emotional Maturity, IQ/EQ and Co-morbidity. Psychopathic Personality was also been discussed which includes social Morons/ poor ethical standards/ impulse control disorder, artificial pleasing, Impulsive, very impressive to talk to and shallow interpersonal relations. The resource person concluded the session by stating the difference between Psychopath and Criminal as well as explained the Therapeutic Process: A Holistic Approach.

The **Third session** was on **Impact of International Conventions on Child Rights in India**. Advocate Ms. Geeta Ramaseshan discussed the international law relating to the rights of children and emphasized on the broad provisions of the Convention on the Rights of Children and stressed on the principles evolved in international law relating to

the rights and interests of children. The resource person delineated the four main human rights conventions of which India is a party which include: The International Covenant on Civil and Political rights (ICCPR); The International Covenant on Economic, Social and Cultural Rights (ICESCR), The Convention on the elimination of all forms of discrimination against women. (CEDAW), The Convention on the rights of the child (CRC). She stated that conventions, covenants or treaties are the agreements between states defining their mandate for the protection of human rights and stressed that the United Nations and its specialised agencies (such as WHO, ILO, FAO, UNESCO etc) provide the forum for drafting the same and sometimes expert bodies are drawn into the process. She further explained that Human right treaties are like a statute in which they set standards for the State. She further delineated that every treaty has a monitoring body i.e. a committee drawn from experts in the field to which the member states have to submit a periodic report in every three or four years. The report should contain the details of the measures that the State took with reference to each provision of the treaty. The country report should state how the provisions of the treaty are put in practice. The purpose of the report is to provide an update on the implementation of the treaty. She further delineated that International concepts in child rights found in our laws which include Best interests theory which evolves through judicial interpretation in family law and Juvenile Justice Act. During the discourse Constitutional rights of the child in conflict with law and CRC was highlighted. The points which were discussed during the deliberations are:

1. Principle of non discrimination (Article 14 of the Constitution of India and Article 2 of CRC)
2. Best interests of the child (Article 21 of the Constitution of India and Article 3 of CRC)
3. Under the Juvenile Justice System best interests of the child means, the traditional objectives of criminal justice, such as repression/retribution must give way to rehabilitation and restorative justice objectives in dealing with child offenders.
4. Right to be heard (Basic principle in Indian laws, Article 21 CRC) relevance of the charge and 313 Crpc
5. The guarantee of a fair trial (Article 20, 21 and Article 40 (2) CRC) which include: No retroactive juvenile justice (Article 40 (2) a of CRC), Presumption of innocence, (40 (2)

(b) (i) of CRC), Right to be heard (Article 12 CRC), Right to effective participation in proceedings (Article 40 (2) (b) (iv)).

6. Prompt and direct information of the charge (Article 40 2 (b) (ii) CRC)
7. Proceedings in Language known to the child.
8. Legal or appropriate assistance.
9. Decisions without delay
10. Freedom from compulsory self incrimination (Article 40 CRC and Article 20, 21 and 22 of the Constitution of India that guarantees a fair process)

The resource person concluded the session by emphasizing the impact of international laws on the Indian statutes and highlighted the application of international law principles in the Indian scenario.

In **fourth session** documentary “Ek Tha Bachpan” was screened for the participants to sensitize the judicial officer about the injustice of the juvenile justice system in India. The Documentary portrays the atrocities that children face when caught by the police officials for no reason. The documentary depicts the atmosphere of the observation homes and attitude of the police and social workers towards the children who are in conflict with law. Documentary highlighted the issues and concerns relating to the juvenile justice system in India. The resource persons’ who shared valuable inputs with the participants were: Asheem Srivastav, Dr. Aruna Broota, Advocate Ms. Geeta Ramaseshan. After the screening, the participants shared their impressions of the documentary and discussed the concerns put forth by the documentary. It was suggested that in order to ensure that rehabilitation of the juveniles in observation homes, the juveniles should be grouped according to age and should be insulated from negative influences.

DAY 2

The Theme of the **session 5** was on **The Juvenile Justice (Care and Protection of Children) Bill, 2014: Pre and Post Amendment Situation of the Juvenile Justice System.** Prof (Dr.) Ved Kumari and Justice R. Basant were the resource persons of the session. It was deliberated that following changes has been proposed by Juvenile Justice Bill: Drops use of ‘Juvenile’ except in title, permits transfer of 16-18 years old committing heinous offences to Children’s Court, POSCO Court and Sessions Court having jurisdiction, establishment of place of safety, Deadlines for various processes. An

incident was narrated where it was delineated that as per the version of the police officers while walking home from school three classmates of class X had an altercation over a girl. One of the accused stabbed the victim in eye with a compass. As blood oozed of his eyes, the victim has goaded to wash his eyes by the two accused. They went to the pond on campus, were the two accused allegedly drowned the victim. The resource person discussed the psychology of the child and posed the question to ponder upon that whether such children should be treated as an adult and the aspects that are need to be reconsidered in reviewing the decision of the JJB to transfer them to the Children's Court was discussed. In this light the Nirbhaya case was also been delineated and discussed. Some cases of the Supreme Court of America was also been delineated which include *Roper v. Simmons*, 543 U.S. 551 (2005) whereby death penalty was declared unconstitutional. The discussion on the pace of safety for the children in conflict with law was also discussed. The General comment of CRC committee was highlighted whereby the Committee recommended that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals should change their laws. Article 14 and Article 20 was also discussed in the light of Juvenile Justice System in India. The juvenile jurisprudence was discussed which include different treatment of the children based on the welfare and rights of the child. The concept of observation homes and use of prison as an exception was discussed. Prof (Dr.) Ved Kumari elaborated the concept of Adolescent Brain Science. She stressed that incontrovertible evidence is that adolescence is a period of significant changes in brain structure and function. The concept of Adolescence to Early Adulthood was discussed. She stressed that heightened sensitivity to anticipated rewards motivates adolescents to engage in acts, even risky acts, when the potential for pleasure is high, such as with unprotected sex, fast driving, or experimentation with drugs. She further deliberated that this hypersensitivity to reward is particularly pronounced when adolescents are with their friends and thus adolescent risk-taking so often occurs in groups. The resource person deliberated that the consensus to emerge from recent research on the adolescent brain is that teenagers are not as mature in either brain structure or function as adults. Judicial burden to determine which child gets to be tried as adult was also discussed. Points in support of the bill and against the bill were deliberated by the judicial officers.

The theme of the **Session 6 was Understanding Non Adversarial Nature of Juvenile Justice System: Bail and Inquiry:** Justice R. Basant and Prof (Dr.) Ved Kumari were the resource person of the session. The issues and concerns with regard to granting of bail and conducting an inquiry with respect to the juvenile in conflict with law was discussed. It was deliberated that bail should normally be granted if the parents or guardians are willing to take the juvenile home and promise to bring before the board when required. The nature of the crime should not be the factor to determine the grant or refusal of bail to the juvenile. It was delineated that bail can only be refused if it is not in the interests of the juvenile to be released or if he would be exposed to danger or if it defeat the interests of justice to release the juvenile on bail. It was stressed that bail is a discretionary power and should be used very judiciously. With regard to the inquiry it was expressed by the judicial officers that Principal magistrate should not be entrusted with any other work of the criminal court except JJB as board is required to complete the inquiry within stipulated period. It was also deliberated that while holding an inquiry it was the primary duty of the court to ensure that whether the applicants are covered under the Act or not. It was also suggested that the inquiry should also include independent and private inquires with the juvenile to ascertain whether he/she was abused, sexually or otherwise by anyone or is suffering from any disease and if so the juvenile be sent to government hospital for checking and proper treatment. The session was concluded with an understanding that summary procedure prescribed should be adopted during enquiry and juvenile should not be put into pressure.

Session 7 was focused on **Understanding Non Adversarial Nature of Juvenile Justice System: Court Room Conduct & Court Procedure.** The resource person of the session includes Justice R. Basant and Prof (Dr.) Ved Kumari were the resource person of the session. It was delineated that cordial and amicable approach should be adopted by the courts while dealing with children in the courtroom. The judicial officer has to be very sensitive while adjudicating the cases with regard to juvenile. It was stressed that judicial magistrates who are dealing with accused under normal circumstances in the regular court, do not have a different mindset to treat the juveniles with love and affection, but to treat them like any other normal accused in a crime. It was delineated that the presiding

officers of the Juvenile Justice Board should be provided with special training in child psychology in order to sensitize them in an inter-disciplinary approach deal with the juvenile justice system. During the discourse the judicial officers expressed their concerns regarding the non-attendance of the other members of the JJB in Juvenile Justice Board proceedings which hampers the smooth functioning of the proceedings. The session was concluded with a view that there is a necessity to create a child friendly atmosphere in the court in order to ensure that the child does not suffer the shame and scars of a criminal trial which in further hamper his positive personality. The main aim of the juvenile justice system is to recoup to the child to normal common healthy living.

Session 8 was an open discussion of the judicial officers on **Challenges in Effective Implementation of Laws under Juvenile Justice System.** Justice R. Basant, Justice S. Vimala and Prof (Dr.) Ved Kumari the resource persons invited the judicial officers to discuss and come out with the constructive suggestions so as to administer the Juvenile Justice System in more effective and efficient manner. Judicial officers in an open discussion stated that the rules of evidence should not be diluted and that stricter requirements of evidence need to be followed by the Juvenile Justice Board. It was also emphasised that in observation homes, the juveniles should not get influenced by the elder children in observation homes. The atmosphere of the observation home should be peaceful and healthy. Regular inspection of the observation home and special home is necessary by the appropriate authority. It was further deliberated in the discussion that a separate cadre of juvenile justice officials is the need of the hour and separate panel of advocate should get constituted for the case of juveniles. It was stressed that there is also a need for separate trained police officials who should deal with delicate juvenile matters effectively. It was also suggested that for smooth functioning and for better and effective implementation of laws under Juvenile Justice System, monthly group meeting should be organised for all the departments which are engaged in the welfare of the child i.e. District Judge, members of Juvenile Justice Board, welfare officer and superintendent of the observation home etc. for discussing the programme for welfare and betterment of the children.

DAY 3

Session 9 was on the **Understanding Non adversarial Nature of Juvenile Justice System:**

Determination of Age: The resource person of the session was Ms. Santosh Snehi Mann and Prof. S.P. Srivastava chaired by Justice S. Vimala. During this session a very important topic of determination of age and was discussed in detail. The resource person expressed the ambiguity in the law and procedure relating to the determination of age under the Act. The judicial officers expressed the challenges faced by them in determining the age of juvenile and the application of the rules of evidence with respect to the proof of age. The judicial officers also shared their experiences in determining the age in absence of the requisite documents. In this regard the resource person discussed the judicious approach and delineated the latest judicial decisions governing this issue. It was suggested that when there is a borderline case with regard to the age of the juvenile, approach which benefit the juvenile should be adopted.

The theme of Session 10 was on **Dealing with deviance- Role of Juvenile Justice Board.**

The session was focused on the challenges with respect to the legal and other issues faced by the judicial officers in their day-to-day functioning and the areas for improvement were discussed. The resource person for the session was Ms. Santosh Snehi Mann chaired by Justice S. Vimala. It was deliberated that the procedure prescribed under law must be followed and basic rule of evidence should not be ignored. It was emphatically emphasized that where the board holds enquiry, it should be child friendly. Wearing of black coats, using raised platforms or dais etc should be avoided. Practice for making the juvenile stand in front of the Board should be stopped. The child must be made comfortable and feel free from fear of any person. It was also delineated that sittings of JJBs can also be held at observation homes. It was further stressed that JJB should conduct awareness programmes about offences against children in every school situated in their jurisdiction. The judicial officers expressed their concerns that Juvenile Justice Board face problems in keeping the juvenile having attained the age of majority with the younger ones as it becomes very difficult for them to identify the fit institution. In case of no fit institution or place of safety available they are bond to release them on bail. It was also expressed by the judicial officers that due to the variations in the rules from state to state, there is an ambiguity regarding proper implementation of the provisions of the Act. Therefore, it was suggested that common rules

should be followed throughout the country in all Juvenile Justice Boards. The judicial officers expressed their concerns regarding the shortage of staff that is devoted to the JJBs and requested that basic infrastructure like computer; stenographer, sufficient furniture and separate building should be provided to the board for smooth discharge of their duties. The session was concluded by suggesting that role and authority of the Principal Magistrate of the JJB should get enhanced so that the Juvenile Justice Boards may function efficiently without disruption due to absence of the other members of the JJB.

The Conference was concluded with the vote of thanks by Dr. Amit Mehrotra who expressed his heartfelt thanks and gratitude to the judicial officers and to the resource persons for giving their great insights and suggestions with respect to strengthening of juvenile justice system in India and emphasized that such conferences will definitely change the attitude and perception towards the juvenile rights and will lead to a positive momentum.

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