



NATIONAL LAW UNIVERSITY ODISHA

CENTRE FOR CHILD RIGHTS

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Children comprise a strange paradox in society. On the one hand, they represent the future of humankind. And on the other, because they rank among the most vulnerable sections of society, they are routinely subjected to the most appalling of atrocities. Some are perpetrated by depraved individuals, predators who target children precisely because of their vulnerability. Yet others, including depriving them of quality healthcare and education, are caused by larger socio-economic forces. We should not underplay the significance of the second: the fact that they are perpetrated by faceless, anonymous entities does not make them any the less heinous than the first. As society develops and grows more complex, the downside of these developments, including their effects on children, must command adequate attention from us. Certainly much is needed by way of research and other forms of intervention. CCR and its activities comprises a humble contribution towards eradicating such scourges from society.

In this endeavor the second biannual Newsletter of the CCR has been brought out to inform and update our readers about the journey of the centre to promote and strengthen child rights practice and the recent development of law and policy in our country in the field of child rights. Centre for Child Rights is engaged in several activities, including empirical research on various issues of child rights; documenting case laws on children's rights; preparing a database of juvenile justice institutions; conducting capacity building exercises, and so on. Many of these activities are being undertaken under the aegis of the "Effective Implementation of Children's Rights" Project conducted in conjunction with UNICEF, a collaboration we are particularly proud of. We hope CCR will scale remarkable heights in conducting meaningful research and other activities for the benefit of society, particularly its most marginalized sections. To this end we solicit cooperation from readers of this newsletter. Please help us in our efforts to make our dream, and our children's dream, come true!

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NEWSLETTER

The **CENTRE FOR CHILD RIGHTS (CCR)** was established by NLUO in the year 2015 as a specialized unit to strengthen child rights practice by supporting and initiating policy discourse, research, evidence-based advocacy and community action on the issues relating to children. The centre from its inception has been persistently engaged to strengthen juvenile justice institutions and the child protection structure in the State of Odisha by rendering need based training to all important stakeholders, promoting evidence based advocacy for policy reforms and involving higher judiciary to monitor and guide children's related programme. With the profound support of the United Nations Children's Fund (UNICEF), the centre plays a pivotal role to bring the institutions of judiciary, administration and academic institutions together to ensure effective implementation of children's law in Odisha. The CCR has brought out this bi-annual newsletter to disseminate its activities with wider audience and to update our readers with case studies and recent development in children related law and policy.



Activities of the Centre

During this period, the focus of the CCR was on the training, research, teaching and advocacy in the field of child rights.

Training

Training and Capacity Building of the personnel of juvenile justice mechanisms and child protection structure is a key agenda of the centre. In this extent, CCR has undertaken series of training and orientation programmes for different stakeholders

involving in the implementation of children's laws and the Integrated Child Protection Scheme.

Orientation for the Members of Juvenile Justice Boards (31st July & 1st August 2015):

CCR organized an orientation programme for the social worker members of the Juvenile Justice Boards of Odisha State on 31 July and 01 August 2015 in collaboration with the Department of Women and Child Development, Government of Odisha and the State Child



Protection Society (OSCPS). The programme was held at the campus of the National Law University Odisha, Cuttack in two batches with members of the Juvenile Justice Boards of fifteen districts in each day. As many as forty-seven members from 30 JJ Boards participated in the programme. The key objective of the programme was to critically sensitize the members of the JJ Board about juvenile justice law and its interrelationship with other legislations and their roles thereto with a view to develop their functional competencies to discharge their judicial responsibilities effectively and efficiently. The technical session on 'Understanding Justice Mechanism' provided participants the essential of juvenile justice system and the responsibilities of social worker members in rendering accesses to justice to children, Rights of the juveniles and accountabilities of members, Processing of initial hearing, bail and recording of finding and observations, and Time bound disposition and legal supports. The session on 'Enhancing professional competency to perform judicial function' provided insight on the recording of statements, report examination, disposition of inquiry, processing bail applications, writing orders, and appeal and revision. The programme helped the members to further strengthen inquiring, order writing, and case disposition skills.



Training for District Level Officials on Child Rights and Juvenile Justice (August- December 2015):

Considering the fact effective implementation of juvenile justice law demands shared understanding, strategic coordination, and accountability among the multi-level functionaries, Centre for Child Rights organized two-day orientation programme on Child Rights and Juvenile Justice for district level officials involving with children's programme. In each programme three districts were clustered and accordingly 10 nos. of programme were held between August and December 2015. The aim of the programme was to bring together all district level functionaries to dialogue on children's issues and effective reinforcement of children's related laws and policies. The objectives of the programme were to empower the district officials on the Juvenile Justice mechanisms and its interconnectivity with other children related laws; ensure their level of understanding on obligations, accountabilities and responsibilities towards child protection; and to evolve strategic cooperation and networking amongst district officials to address the core issues of child development and child protection in an integrated manner.

The programme was attended by the functionaries and key officers of Juvenile Justice Institutions and allied system including District Child Protection





Unit, District Social Welfare Officers, Child Marriage Prohibition Officers, Child Welfare Committees, Special Juvenile Police Unit, District Legal Services Authorities, and District Education Officers etc. A total of 408 persons participated in the programme.

Orientation on Protection of Children from Sexual Offences Act, 2012 (19-21 December 2015): The Protection of Child from Sexual Offences Act, 2012 is one of the progressive legislation enacted for the protection of children from sexual violence. Though the law has come into force from November 14, 2012, lots of gaps are noticed towards the implementation of the legislation. Stakeholders' understanding about the spirit behind the legislation and approaching the issues in an integrated manner is the important ingredient. Though various measures have been taken to implement the law effectively, there were issues which required intensive discussions. Working out of a multidisciplinary approach to address the issues of prevention, prosecution, victim assistance and social reintegration was also required. In order to generate critical sensitization among the key stakeholders, the Centre for Child Rights organized one day orientation programme on POCSO Act in three batches on 19, 20 and 21 December 2015 at NLUO, Cuttack. The programme was attended by the officials from SJPU, DCPU, Medical Services and Special Public Prosecutors from 30 district of Odisha.

Research

Centre undertook research to study the implementation of juvenile justice law in Odisha. In this attempt, the centre has brought out a Brief Position Paper on the Working of Juvenile Justice System in Odisha. It is emanated from the research that the juvenile justice mechanisms and related

child protection structures in the State of Odisha are contended with infrastructural, personnel, monetary, administrative and technical issues to cause serious challenge to the effective implementation of Juvenile Justice (Care and Protection of Children) Act, 2000. Absence of accountability and coordination gaps among the child protection structures are seen as cause and consequence of the poor management of juvenile justice system. As new trend is likely evolved in the sphere of child protection on the onset of Juvenile Justice (Care and Protection of Children) Act, 2015, the research recommended for separate office and other infrastructure exclusively for Juvenile Justice Boards; improved physical infrastructure at the CWCs, SJPU and Child Care Institutions; timely allocation of financial grants to all the institutions of juvenile justice system; contingency funds for CWC and SJPU to meet their expenses incurred towards inspection, enquiry or any follow up monitoring; ensure complete manpower at the DCPUs; institutionalize mechanisms to ensure that dialogue, interface and information dissemination among juvenile justice system, the child protection structure; developing Standard Operating Procedures with clear delineation of the role and accountability of each institutions of JJ System; develop a complete data base of children (children in different situation such as child labour, street children, homelessness children, children without parental care, children in institutional care etc

Indian Council for Social Science Research (ICSSR) extended support to the Centre for Child Rights for a research Exploring Changing Dynamics of Children's Laws in India in Post-1990. This research would attempt to unravel impact and influence of new legal and policy regime in the real changes of the life situation of the children of our country. The study is under progress.

Teaching

NLUO introduced a clinical course titled “Legal Aid and Public Interest Litigation” for the third year students consisting of four groups viz. Prison rights, Juvenile Justice, Community Advocacy, Labour rights and Land rights. Juvenile Justice Group consisting of twenty students formed into three different teams based on the research in Juvenile Justice Board, Child Welfare Committee and Child Care institution. The students have visited all the three statutory institutions and had submitted both group as well as individual report on the basis of their field visit and interactions with the officials. Moreover, a hand book on the basis of child rights and the new JJA, 2015 has also been submitted. It is a compulsory paper in the every academic session.



LAW AND POLICY UPDATES

The Juvenile Justice (Care and Protection of Children) Act 2015 is enacted to replace and repeal JJ Act 2000. This law is intended to strengthen provisions for both children in conflict with law and children in need of care and protection. For the first time, offences have been clearly defined and classified as petty, serious and heinous based on provisions of IPC. Juveniles between 16 and 18 years of age, who are found guilty of committing heinous offences through a

Advocacy and Policy Dialogue

Centre uses advocacy as the key strategy to inform and influence child rights practice by initiating dialogue and evidence-based knowledge for law and policy reforms. In this endeavor, NLUO invited Shri Kailash Satyarthi, Nobel Peace Prize Laureate and Founder of Bachapan Bachao Andolan to deliver a public lecture on Child Rights Policy and Practice on the Foundation Day of the University on 7th November 2015. Other dignitaries on the occasion included Hon'ble Justice Shri Dipak Misra, Judge, Supreme Court of India, and Hon'ble Justice Shri D.H Waghela, Chief Justice of Orissa High Court. The programme was attended by the Judges of Orissa High Court, Director, State Judicial Academy, District Judges, Judicial Officer, government officers, State Bar Council, Senior Advocates, Academia, and Students of the NLUO.



preliminary inquiry by the Juvenile Justice Board, will be sent to a children's court that can pronounce the child guilty. Such juveniles can be detained in a 'place of safety' until they reach the age of 21.

The Juvenile Justice Board has been given the option to transfer cases of heinous offences by such children to a Children's Court (Court of Session) after conducting preliminary assessment. The provisions provide for placing children in a 'place of safety' both during and after the trial till they attain



the age of 21 years after which an evaluation of the child shall be conducted by the Children's Court. After the evaluation, the child is either released on probation and if the child is not reformed then the child will be sent to a jail for remaining term.

To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively. There is a separate chapter on Adoption which provides detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

Several rehabilitation and social reintegration measures have been provided for institutionalization and non-institutionalization of children. Under the institutional care, children are to be provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counseling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children.

Several new offences committed against children, which are so far not adequately covered under any other law, have also been made part of this law. These include: sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by

militant groups, offences against disabled children and, kidnapping and abduction of children.

National Plan of Action for Children

2016: Government of India in its Ministry of Women and Child Development formulated the National Plan of Action for Children-2016 in correspondence to the National Policy for Children adopted on 26th April 2013. The National Plan of Action for Children (NPAC) is meant to practical expression to the declaration of NPC, 2013 which recognizes that:

- A child is any person below the age of eighteen years;
- Childhood is an integral part of life with a value of its own;
- Children are not a homogeneous group and their different needs need different responses, especially the multi-dimensional vulnerabilities experienced by children in different circumstances;
- A long-term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for overall and harmonious development and protection of children.

The NPAC has been adopted to reinforce government commitments to further strengthen and activate the implementation and monitoring of national constitutional and policy commitments and United Nations Convention on the Rights of the Child. The focus of NPAC is to reach and serve to the 'Last Child First'. This reflects the prioritization to the last and least served children who are most vulnerable due to gender, socio-cultural and economic or geographic exclusion including other vulnerable children, i.e. street children, children of migrant workers, sex workers and those suffering from HIV/AIDS or other diseases.

The NPAC in alignment with NPC, 2013 pledges to



equitable access of children to the health care of highest standard; secure the right of every child to learning, knowledge, education and development opportunity; create a caring, protective and safe environment for children; and enable children to be actively involved in their own development and in all matters concerning and affecting them. The NPAC has set the targets to be achieved by the year 2021 on the Survival, health and nutrition, Education and development, Protection and Participation of the child. Some of the targets are highlighted hereunder.

- Reduce Maternal Mortality Rate to less than 100, Neo-natal Mortality Rate to 21, Infant Mortality Rate to 25 and Child Mortality Rate to 25 by the year 2021.
- Increase institutional delivery to 90%.
- Improve Child Sex Ratio to 950 from 918 in 2011 census.
- Net Enrolment Ratio at primary to be increased to 100% from 87.4 in 2015.
- Net Enrolment Ratio at Upper Primary to 100% from 72.4 in 2015.
- Net Enrolment at Secondary to 90% from 48.4 in 2015.
- Net Enrolment Ratio at Higher Secondary to 75% from 32.6 in 2015.
- Improve birth registration to 100% from 85.6 in 2013.
- Improve birth certification to 90% from 37.2 in 2013
- Reduce early marriage among 20-24 years girls married before attaining 18 years to 15% from 30.3% in 2013-14.

Model Guidelines for Foster Care 2015:

The Union Ministry of Women and Child Development has issued Model Guidelines for Foster Care in October 2015. The guidelines have been formulated in correspondence to section 42 of the Juvenile Justice (Care and Protection of

Children) Act, 2000 and in alignment with Integrated Child Protection Scheme and UN Convention on the Rights of the Child.

The Model Guidelines on Foster Care details the categories of children eligible for foster care, rights of the under foster care, rights and responsibilities of foster parents, criteria for selection of foster parents, procedures related to placement of children in foster care, and roles and responsibilities of stakeholders to the implementation of the foster care programme in the districts. The guidelines is made to reinforce the declaration of the National Policy for Children of 2013 which recognizes that all children have right to grow in a family environment, in an atmosphere of happiness, love and understanding.

The District Child Protection Unit (DCPU) constituted under Integrated Child Protection Scheme (ICPS) is the nodal authority for implementing the foster care programme, while all decisions related to placement of a child in foster care are to be taken by the Child Welfare Committee (CWC) of the district. Children from the Child Care Institution (CCIs) would be identified on the basis of their Individual Care Plan. Children without parental support in the community would be placed under foster care. Based on the Home study Report, the recommendation of the DCPU and the compatibility report of interaction between the child and prospective foster carer/parent during the matching process, the CWC shall make a final order for placing a child under foster care.

Guidelines Governing Adoption of Children, 2015

formulated Ministry of Women and Child Development has come into effect from 1.8.2015 to replace the Adoption Guidelines-2011 issued by the Central Adoption Resource Agency (CARA). The 2015 guidelines is intended to provide more effective regulations for adoption of orphan,

abandoned and surrendered children and to bring more transparency and efficiency in the adoption system. The highlighted features of the guidelines are:

- Clear and transparent procedure for registration of resident Indians and provision for uploading required documents online.
- Prospective Adoptive Parents (PAPs) have an option to select an adoption agency of their choice for conducting Home Study Report (HSR) and preferred State also.
- Home study Report of PAPs can be prepared by SARA/DCPU empanelled social worker.
- Seniority of PAPs would be maintained from the date of registration.
- The maximum combined age for married couple has been increased from 105 years to 110 years to encourage adoption of older children.
- Minimum 25 years age gap between the child and adoptive parents has been prescribed.
- More clarity in adoption of special needs children, older children and siblings. Older children and siblings would no more be considered as special needs children.
- All Specialised Adoption Agencies (SAAs) would be authorised to do In-country & Inter-country adoption.
- Inter-state adoptions made simpler to boost adoptions within the country; No permission of State Adoption Resource Agency (SARA) is required for domestic adoption from another State.
- NRIs would be treated at par with resident Indians in terms of priority regarding referral of a child.
- Greater clarity in the process and documentation for OCI and Foreign PAPs living in India.
- Adoption expenses for different category of PAPs prescribed.
- Authorised Foreign Adoption Agency (AFAA) would have a provision of renewal after a period of five years.
- All adoptions (in-country or inter-country) to proceed on the Central Adoption Resource Information Guidance System (CARINGS), adoption outside CARINGS are strictly prohibited.





CASE LAWS

UPENDRA PRADHAN V. STATE OF ORISSA: The question that arose in the present case was whether presence of view favouring Appellant could be considered and whether he was entitled to benefit of Juvenile Justice Act, 2000. The Supreme Court laid down that in case there are two views which can be culled out from perusal of evidence and application of law, the view which favours Accused should be taken. Further, the court found that the Sessions Judge was right in granting Appellant benefit of doubt and that the High Court was wrong in interfering with order of acquittal of Appellant. The grounds of the Appellant's contention Appellant's that testimonies of Prosecution Witnesses should not have been considered as they were interested witnesses were dismissed by the court. The court also proceeded to remark that the Appellant was a juvenile at the time of commissioning the offence and that the Appellant was entitled to benefit of doubt. Therefore the conviction order passed by the High Court was found to be unsustainable according to law and therefore the impugned order of the set aside and the appeal before the Supreme Court was allowed.

ABDUL RAZZAQ V. STATE OF U.P.: There was an application filed before the Supreme Court seeking release of the petitioner who had been found to be a juvenile. The question before the court was that the law having changed with retrospective effect, whether the petitioner was entitled to benefit of provisions of the Juvenile Justice Act. The court upon much deliberations held that any person below 18 years

at time of incident could claim benefit of the Act at any time. The court pointed out that the provisions of the Act and Rules clearly show that even if person was not entitled to benefit of juvenilities prior to amendment, such benefit is available to person undergoing sentence if he was below 18 on date of occurrence. Such relief could be claimed even if matter had been finally decided, as in present case. Though conviction was left undisturbed, sentence was set aside. The Supreme Court allowed the present application.

DR. SUBRAMANIAN SWAMY V. RAJU: One of the most sensitive cases receiving high media attention, the issue that was before the court was "whether a juvenile in conflict with law, who is found to have committed an offence and sent to Special Home by Juvenile Justice Board, can be released on expiry of the period of stay ordered without ascertaining the factum of reformation that is necessary for his social reintegration". The petition was filed in the form of a Public Interest Litigation.

The Delhi High Court directed that the Juvenile Justice Board-II, Delhi shall interact with the respondent No. 1 (the juvenile in the present case), his parents/guardians as well as the concerned officials of the Department of Women and Child Development and the government of NCT of Delhi regarding the post-release rehabilitation and social mainstreaming of the respondent No. 1 and pass appropriate orders in accordance with the provisions of the Act and Rules.

STATE OF MADHYA PRADESH V ANOOP SINGH:

The fact in the case before the Supreme Court was that the prosecutrix was abducted by the Respondent and raped. An FIR was lodged, and in the course of investigation, the birth certificate and Middle School Examination certificate of the prosecutrix were taken. Based on the evidence, the trial court convicted the Respondent. The High Court, on appeal, found a discrepancy of two days between the dates on the birth certificate and the Middle School Examination certificate. Relying on the ossification test it came to the conclusion that the prosecutrix was more than 18 years of age, and that she was a consenting party. The High Court set aside the conviction by the trial court and acquitted the accused. The Ossification test, however, suggested the age to be between 15 and 18 years. The question that arose before the Supreme Court was that whether the High Court was correct in the determination of age of the prosecutrix and whether the acquittal of the Respondent can be upheld. The Supreme Court, held while allowing the appeal that a difference of two days in the dates is immaterial and just on this minor discrepancy, the evidence in the form of Birth and Middle School Certificate cannot be discarded. Further the court also said that the ossification test is not the sole criteria for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed. The court noted that keeping in view the medical examination reports, statements of the prosecution witnesses and the certificates proving

the age of the prosecutrix, the impugned judgment passed by the High Court was set aside.

RAM NARAIN V. STATE OF U.P: The Petitioner, in the present case, was convicted by trial court and sentenced to life imprisonment for his crime. The petitioner had pleaded juvenility before the trial court, however, he could not produce the transfer certificate during the prosecution. Subsequently, the petitioner served the sentence for more than 10 years. Later, the Juvenile Justice Board arrived at the conclusion that the age of the Petitioner on the date of the incident was 15 years 11 months 26 days, and that he was below 18 years at the time of the incident, on the basis of the transfer certificate produced before it. In the light of the new developments in the case, the Board declared the Petitioner a juvenile offender. The question that arose before the Supreme Court was whether the Petitioner should be given exemption under the provisions of the Juvenile Justice Act, 2000. The Supreme Court allowed the petition and while referring to the to the judgment in *Ajay Kumar v. State of M.P* stated that as the maximum period of detention as provided for under Section 15 of the Juvenile Justice Act was met with by the Petitioner, the court allowed him to be released as he was a juvenile at the time of commissioning the offence.





COMMENTARIES

Critique of Juvenile Justice Act of 2015

(Meghmala Mukherjee 3rd Year, B.B.A.LL.B, NLUO and Priyanka Murali, 4th Year, B.B.A.LL.B, NLUO)

The Juvenile Justice (Care and Protection of Children) Act, 2015 was given the Presidential assent on 31st December 2015 and replaces the Juvenile Justice Act, 2000. The justification for the introduction of the new law was an increase in the crimes committed by juveniles in the age group of 16-18 and that there was improper implementation of the earlier law.

Table. 1- Crimes committed by Juveniles in the age group of 16-18 in 2003 v. 2013 (The data has been obtained from the National Crime Records Bureau and PRS Legislative.)

Crime	2003	2013
Burglary	1160	2117
Rape	293	1388
Kidnapping / Abduction	156	933
Robbery	165	880
Murder	328	845
Other offences (Other offences include rioting, cheating, etc.)	11839	19641
Total	13941	25804

The Act has introduced three types of offences:

- An offence, petty in nature, attracting a punishment of three years or less.
- An offence, serious in nature, attracting a punishment within 3-7 years.
- An offence, heinous in nature, attracting a punishment of 7 years or more.

One of the most salient features of the Act is that any child between the age of 16-18, who commits a heinous crime may be tried as an adult in a court of law. This is a departure from the earlier law which treated all children below the age of 18 as equal. Furthermore, the new law states that if a person committed a lesser offence and was caught after attaining the age of 21, then he/she will also be tried as an adult only.

The 2015 Act is also in contravention to UN Convention on the Rights of the Child, to which India is a signatory, which stipulates that all children have to be treated equally. However, it is to be noted that other signatory countries to the Convention like Germany, United Kingdom, France, Canada, etc. The USA is not a signatory to the Convention and has provisions in its law to try children as adults in certain cases. (The minimum age however varies from State to State. The Federal law states that a child of 13 years and above can be tried as an adult in case of assault, murder, robbery, aggravated sexual abuse, firearm offences and drug offences. The punishment however cannot be death penalty or life imprisonment in these cases.)

As per the provisions of the 2000 Act, any child committing any crime would be given committal of maximum of 3 years and would not be taken to jail and would rather be sent to a special home which provides institutional care. However, the new Act states that for children between the age of 16-18, committing heinous offences, the Juvenile Justice Board (JJB) will assess the mental and physical capabilities and pass an order that there is a need for the trial of the child as an adult, then the Board may submit a report to the Children's Court. On the basis of this report, it is the Children's Court which will decide if the child is to be considered trial as an adult and tried as an adult by the Children's Court having the appropriate jurisdiction. However, it is to be noted that a child convicted as an adult will not be

sent to jail as soon his sentence is awarded. Such children will be kept in an institutional home till they attain the age of 21 and then they will be transferred to an adult jail.

The Act also addresses issues relating to the care of children. In cases where children are abandoned, orphaned or surrendered, the Act has given detail guidelines on how the Child Welfare Committee has to be involved and also details the process for adoption of these children and the eligibility criteria of the parents who wish to adopt such children. The Act also provides for penalties in cases of offences or atrocities committed against children including giving children narcotic substances, giving them intoxicating substances or buying or selling of child. (The penalty for giving intoxicating or narcotic substance to a child is jail upto 7 years and fine upto 1 lakh while the penalty in case of buying or selling of children is upto 5 years of imprisonment and fine upto 1 lakh rupees.) The provisions regarding the buying and selling of children are in addition to the law against trafficking provided by many central legislations including Section 370 of the Indian Penal Code, the Immoral Traffic (Prevention) Act, 1986 and the Bonded

Labour System (Abolition) Act, 1976 amongst other laws focusing on the menace of trafficking for various purposes including commercial sexual exploitation, illegal organ trade and forced labour.

In terms of the composition of the Juvenile Justice Boards, they are to be constituted in each district, and shall comprise of the metropolitan or judicial magistrate of the first class along with two social workers, and one amongst them must be a woman. In case of Child Welfare Committees, they are also to be constituted in each district and have the duty to report abandoned, orphaned, or surrendered children within 24 hours.

One of the most grave concerns or drawbacks of the Act is that it does not address the question of what constitutes a heinous crime. Although it has been defined in a broad manner that any crime having the minimum punishment of 7 years can be considered to be a heinous crime, much is left wanting from this definition and there are chances of this definition being misused.





ARTICLES

EXPERIENCING AT THE OBSERVATION HOME (Sampada Nayak, Student of NLUO)

An opportunity to experience things practically and not just from a theoretical perspective comes quite rarely and I was glad when one such opportunity came to me in the form of an internship with the Centre for Child Rights, National Law University Odisha to assess the working of juvenile justice system in the state of Odisha. The internship gave an opportunity to visit various districts in the state of Odisha and monitor the working of the juvenile justice system in the state. My field of study was in the district of Ganjam. Ganjam is the only district in the state of Odisha where there are separate observation and special homes for boys and girls. The district is situated near the border of Andhra Pradesh and Odisha which brings in many cultural, social and ideological differences in the district as compared to other districts of the state and due to confluence of people from surrounding districts as well as states, the place has a diverse population which is directly proportional to the increasing rates of criminal activities which even includes crimes by juveniles or minors. During the course of the planned and chalked out internship with extensive questionnaires for various stakeholders of the juvenile justice system I visited the District Child Protection Unit, Juvenile Justice Board, Ganjam, Central Home for Women-Cum-Govt. Observation Home & Special Home (combine) for girls and Government Observation & Special Home (Combine) for boys. In this article, I would be discussing in detail, the experience I had in the juvenile justice homes and with the children in contact as well as in conflict with law.

Central Home for Women-Cum-Govt. Observation Home & Special Home (combine) for girls is

situated in Berhampur, Ganjam within defined premises. At the time of my visit the institution had 15 residents, with one resident released the day before and one scheduled to be released the day after. Since it is central home for women, observation home and special home combined so not all the residents were juvenile, which is an issue actually. The residents of all age groups were given required and suitable academic education, they were also being given computer education, vocational training in art and craft etc. I met all the 15 residents and they talked about their life in the observation home, their education and recreational activities. After interaction with the girls, the superintendent also made me aware of the individual cases of many of the residents, most of who were in contact with law i.e. victims of crime. I was also made aware of the individual care plan and the after care plan that the superintendent made for the residents. The superintendent also takes the responsibility of counselling the parents of the residents about future course of action and better care of their child. The place is well run, but the central home for women needs to be separated from the observation & special homes as residents of all age groups including majors is putting adverse impact on the minors of the home.

The Government Observation & Special Home (Combine) for boys home is situated some 1.5 kilometres from the session's court where the JJB holds sessions. The day I visited the home, it housed 64 residents between the age group of 10-18. The home was started in 1986 and is the centre for children in conflict with law from 12 districts of Odisha. The residents were being given vocational education then and with the help of the vocational training the boys have learned to make terracotta



pots and other craft items with clay and terracotta. The home also conducts an annual function in which there volleyball and badminton competitions among the residents as well a feast accompanied with dancing programs by the residents. They are also distributed prizes for the various competitions. I interacted with few of the residents at the home and were later explained their cases by the superintendent. The superintendent has after care plans for most of the children. There is one teacher, a pharmacist who looks after the medical care and 4 other staff members. The current observation home is being run in the premises of an old jail and the new observation and special home is being constructed for the boys near to the girls' home because running an observation home in the jail premises adversely affects the general environment.

JUVENILE JUSTICE: HOW FAR THEY HAVE BEEN REHABILITATED AND SOCIALLY REINTEGRATED?

(Sanskriti Tiwari, Student of NLUO)

In India, Juvenile Justice (Care & protection) Act, 2000 is still its way behind when it comes to implementation for the rehabilitation schemes in Juvenile protection homes across the country. Under Section 2(19), "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organization, and is registered. The act has been repealed starting from 1986, moving on to 2000, 2013 & 2015. Taking the case of Madhya Pradesh, where a couple of visits to one of the protection home gives the real situation of these homes. Starting with children, there is no segregation between the different age group beginnings from 6-18 years. Children in need of care & protection, children in conflict with law, disabled,

mentally ill are living together.

Coming to the maintenance of Juvenile protection homes, there is lack of coordination among the administration. Requisite no. of posts was not filled. One of the issues which need main consideration is hygiene. There is lack of management when it comes to hygiene habits including clean clothes, toilets, food habits etc. Since children from every category were living under the same roof, there were girls who were pregnant aged 14-18 years and come in the category "child in conflict with law". They were deprived of hygienic environment habits to maintain themselves and their infant. Lack of emotional maturity is one of the main reasons which lead them to commission of offence.

The fundamental reason which needs to be highlighted is to understand the "psychological hunger" of a child. That's where the whole picture starts. What a child says and in the way it has been conveyed to authorities are quite different. Many a times, a child is unable to curb the emotional insecurity which he/she has been going through. Also, there is lack of efficient counselors when it comes to address the issue. A counselor has a significant role to play in the basic understanding of a child when it comes to analyze the nature of surroundings in which he/she lives. Our system talks about rehabilitation but doesn't properly address it. Infrastructure, basic facilities, and behavior of the staff in protection homes everything plays an important role in the fundamental understanding.

These are issues which we need to reconsider again. Are we turning these children into cynical perpetrators towards the system and its policies? We need to understand the lacunae which hinder the effective implementation of Juvenile Justice Act. Under Section 39(1), the process of social integration and rehabilitation of a child shall be

undertaken, based on the individual care plan of the child, preferable through care based on family such as restoration to guardian or family with or without supervision, or adoption, or foster care. For children coming under different categories, there were different homes like children homes, observation homes etc. for each one. But, when it comes for implementing the process, there is less action. Also, there was a rehabilitation home (Vidisha) which was clean, managed and children has given examples of their creative potential by putting their crafts on the wall as part of their rehabilitation process which is one of the point which need to be emphasized and taken as an example.

Recommendations are based on the experiences in relation with the implementation of the Act. First and foremost, appointments need to be made like accountant, counselor. Most of the times, teachers were found clearing the backlogs which was not their work. Work needs to be allotted to respective authorities and a periodical check should be there to keep track of their work. Expert's needs to be involved from every field such as need for an efficient counselor should be the primary

responsibility of the system. There should be panel especially for their rehabilitation involving counselor, lawyer, doctor, engineer, to have a variety of opinion in its effective implementation of the act. Technology plays an important role in channelizing the behavior of a child. Children should be introduced to technology which makes a positive and creative impact on them helping in diverting their minds. They should be made aware of the mobile applications which fosters creativity and build a command over language.

Law is the tool through which they will be aware of their rights and know how to protect themselves. A lawyer details about the basic laws, defenses in order to make them vigilant towards their surroundings. Let's make our children to be socially sound human beings and help them in differentiating between the good and bad which exists in the society. We need to soundly reconsider the policies which have been made and keep a track in their successful implementation, how far they have been successful and the scope for making it more effective and socially reintegrated.





The National Law University Odisha (NLUO) was established under Orissa National Law University Act of 2008. It is situated in a sprawling and scenic campus between the rivers Mahanadi and Kathajodi near Naraj in the historic city of Cuttack. The University has flagship programmes of B.A LL.B and B.B.A LL.B Honors. It also offers one year LL.M programme in Corporate & Commercial Law and Constitutional Law and also research degrees in M.Phil and Ph.D. In a short span of time, NLUO has experienced rapid growth in quality legal education and earned good reputation for its exceptional achievements be it in mootings, debating and other literary activities, publishing of quality journals and research papers. The University also strives to contribute to society by way of focusing on positive social impact through affirmative action. The Chief Justice of Orissa High Court is the Chancellor of NLUO. The Visitor of the University is the Chief Justice of India or his nominee judge of the Supreme Court.

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