



IMPLEMENTATION OF THE JUVENILE JUSTICE ACT, 2015: A STUDY OF OBSERVATION HOME IN FARIDABAD

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Abstract

The law relating to juveniles has undergone a lot of changes lately. Our legislation confirms to international standards, however, the implementation leaves a lot to be desired. Observation homes are meant to provide a holistic approach towards reform and rehabilitation of juveniles who come in conflict with the laws. The paper is an attempt to critically examine the organisational setup and institutional life within these homes.

I. INTRODUCTION

The substantive law applicable to crimes committed by juveniles in conflict with the law is the same as that of adult offenders but the treatment prescribed for juveniles is different, as the juvenile justice system focuses more on reform and rehabilitation of the juveniles rather than taking punitive actions. Progressive criminology advocates the use of non-institutional treatment for treatment of delinquency in juveniles. No juvenile should be sent to prison on account of default in payment of fine or default in furnishing of security. A large variety of disposition measures should be made available to the competent authority allowing for flexibility so as to avoid institutionalisation to the greatest extent possible.

The objective of juvenile justice is to take precautionary steps to prevent juveniles from coming into conflict with law¹ and if need arises then to treat every accused in a manner consistent with the promotion of child's sense of dignity and worth and the goal of complete rehabilitation of the juvenile by the time they leave the juvenile justice system. Thus, the objective of the Juvenile Justice System is both the protection as well as the preservation of the well-being of juveniles caught in unfortunate situations making them come in conflict with law. According to rule 1.3 of the Beijing Rules, all States should give proper attention to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with juveniles in conflict with the law. The United Nations Convention on the Rights of the Child obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's viewpoint be heard in such cases. In its General Comment 8 (2000), the Committee on the Rights of the Child stated that there was an "obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children.

II. APPREHENSION AND DETENTION OF JUVENILES-IN-CONFLICT WITH THE LAW

As soon as a juvenile is apprehended by the police, he has to be placed under the charge of the special juvenile police unit and his matter is to be immediately reported to a member of the Juvenile Justice Board. Under no circumstances is a juvenile to be kept in a police lock-up or jail. The police officers who frequently or exclusively deal with juveniles are to be specially instructed or trained so that they act in an appropriate and informed manner.² Immediately upon apprehension, the juvenile has a right to have his parent or guardian informed of his arrest and the Board before which he will be produced for examination and the juvenile has to be produced before the Juvenile Justice Board within 24 hours of his apprehension.³ Information of the arrest also has to be given to the Probation Officer so that he may take steps to obtain information regarding the

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¹ UN Guidelines for the Prevention of Juvenile Delinquency, Dec 14, 1990 popularly referred to as Riyadh Guidelines.

² Beijing Rules, r. 12.

³ Juvenile Justice (Care and Protection of Children) Act, 2000, s.13(1).

antecedents and family background of the juvenile in addition to collecting material facts and evidences which could be of assistance to the board while making inquiry into the case.⁴ This social investigation report is to be submitted by the Probation Officer as early as possible. Although the report has only a recommendatory value, nonetheless the Board has to consider it while arriving at any decision regarding the juvenile.

Detention pending trial should be used only as a measure of last resort and that too for the shortest possible period of time.⁵ During pendency of inquiry before the Juvenile Justice Board, every juvenile who is not placed under the charge of parent or guardian will then have to be lodged in an observation home which is an institution for temporary reception of juveniles in conflict with law during their trial period if bail is not granted to them. Such juvenile is to be initially kept in the reception unit of the observation home for preliminary inquiries and thereafter having due considerations regarding his physical and mental status along with degree of offence committed by him, he is further inducted in the observation home.⁶ Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations as well as the International Covenant of Civil and Political Rights.⁷ As per the Beijing Rules while in custody, juveniles shall receive care, protection and all necessary individual assistance, *i.e.*, social, educational, vocational, psychological, medical and physical that they may require in view of the age, sex and personality.⁸ The danger of criminal contamination of the juveniles while in detention pending trial must not be underestimated. On account of the varying physical and psychological characteristics of the young detainees, some classification measures are to be devised such as on basis of age, sex, crime committed, addition to drugs, alcohol etc., so as to minimise chances of bullying, abuse, victimization as well as exposure to negative influences. Such categorization would also help in rendering need based assistance to such juveniles in a more appropriate manner. Children should not be handcuffed like ordinary prisoners and they are also not to be herded with the adult prisoners in police lockups or jails. On conviction by special boards, they are not to be sent to jails, on the contrary they are to be housed in institutions such as children's homes or special homes where they are to be given vocational training which might be of use to them later in life.⁹ In *Master Salim Ikramuddin Ansari v. Officer in Charge, Borivali*,¹⁰ a fifteen years old boy had to remain behind the bars for almost three years because of the sheer negligence, indifference and inhuman attitude adopted by the officials. Even after the Sessions Court declared him to be a juvenile, he was not sent to the observation home. The court directed that the boy be paid a compensation of one lakh rupees.

III. BAIL TO JUVENILE

Grant of bail to juvenile has been made mandatory to avoid disruption of his life, except in cases where it would be detrimental to the welfare of the juvenile himself. Upon apprehension of a juvenile, a judge or other competent body should without delay consider the issue of the release of the juvenile.¹¹ Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for bail to be granted in all the cases regardless of the nature of the offence and that too as frequently as possible except where the child's release is likely to

- a) bring him into association with any known criminal; or
- b) expose him to moral, physical or psychological danger; or
- c) whether his release would defeat the ends of justice.

Except the above prescribed three grounds bail cannot be denied on the grounds of seriousness of offence¹² or *prima facie* proof of guilt.¹³ Juveniles who are denied bail on any of the above mentioned grounds are, then instead of being committed to prison, to be lodged in the

⁴ *Id.*, s. 13(2).

⁵ *Supra* note 2 at r. 13(1).

⁶ *Supra* note 3 at 47(4).

⁷ International Covenant of Civil and Political Rights, art. 9 & art.10.

⁸ *Supra* note 2 at r. 13(5).

⁹ V.G. Kanetkar, *Future Crimes* 34 (Jaico Publishing House, Bombay, 1988).

¹⁰ 2005 Cr. LJ 799(Bom).

¹¹ *Supra* note 2 at r. 10(2).

¹² *Vijendra Kumar Mali v. State of U.P.*, 2003 Cr. LJ 4619 (All.)

¹³ *Rahul Mishra v. State of Madhya Pradesh*, 2001 CrL. L.J. 214 (MP).

observation homes provided for under section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for such period during the pendency of the proceedings as may be specified in the order. Sometimes in case of orphans or children or migrant labour or those having no residential address, bail may be denied with a view to ensure the presence of such child at the next sitting of the board, but in all such cases reasons have to be recorded by the Board for refusal of bail. In order to ensure grant of bail to children having no family or organizational support, there is provision for the juvenile to be placed under the supervision of a Probation Officer or fit institution or person.¹⁴ It is submitted that in such cases the Boards, should be proactive and should *suo moto* take steps for grant of bail to such juveniles pending their inquiry, so that they do not have to languish in the Observation Homes unnecessarily. Detention pending trial should be used only as a measure of last resort and for the shortest possible period of time¹⁵ and whenever possible, detention pending trial shall be replaced by alternative measures such as close supervision, intensive care or placement with family or in an educational setting or home.¹⁶

Upon being lodged in a children's home or special home, the juvenile may also be granted leave of absence by the competent authority. Under this the juvenile may be permitted to go on leave under supervision to attend special occasions such as examinations, marriage of relatives, death of kith or kin or the accident or serious illness of parent or in case on any other emergency of like nature. The period of such leave shall be maximum seven days, excluding the time taken in journey.¹⁷

IV. OBJECTIVES OF THIS STUDY

The reformatory institutions, *i.e.*, observation homes and special homes and have been assigned the most important and complicated task to reform and rehabilitate the juvenile in conflict with the law. In the absence of proper functioning of these reformatory institutions, the juvenile justice system cannot become successful.

The improper and in effective organizational set up is more responsible than other factors for the defective working of administrative for juveniles. The insincere and inhuman attitude of administrative authorities, has impacted the impressionable minds of juveniles.

It also appears that there is lack of suitable conditions in the reformatory institutions for juveniles due to which juveniles suffer a lot. There is also a lack of awareness about the facilities provided by the State Government in reformatory institutions due to which changes are not happening. Reformatory institutions have failed in safeguarding fundamental right and establishing measure for social reintegration of young people once deprived of their liberty in prisons or in other institutions.

The various objectives of the present study are:

- i. To study the establishment and working of observation homes and special homes, the extent of their compliance with legal provisions;
- ii. To study the institutional life within Reformatory Institutions for juveniles;
- iii. To examine and evaluate the problems being faced by juveniles in these homes; and
- iv. Suggest remedial measures on the basis of findings.

With the aforesaid objectives the researcher has conducted this study in Faridabad.

V. METHODOLOGY

The methodology of present research work was carried out in reformatory institutions established at Faridabad. The primary data was collected from these institutions on the basis of the information obtained from the officials, management as well as inmates of these institutions. The primary data was collected with the help of both structured/unstructured interview schedules. Then this secondary data was collected and analysed in reference to the relevant provisions of the Beijing Rules, Indian Constitution, Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection), Rules, 2016.

¹⁴ *Supra* note 3 at s. 12(1).

¹⁵ *Supra* note 2 at r. 13(1).

¹⁶ *Id.*, r. 13(2).

¹⁷ *Supra* note 3 at s. 98(1).

VI. FINDINGS OF THE STUDY

Institutional capacity

In Faridabad, an observation home was established in the year 2007, by the Department of Women and Children under the juvenile Justice Act. The Observation home has a capacity of housing 25 inmates, whereas at present there are a total on 87 juveniles residing there. This has led to severe overcrowding. They are given adequate beddings and weather appropriate clothing's and instructed to keep their surroundings clean at all times. However due to overcrowding and space constraints, some children are required to share beddings.

The inmates are segregated on the basis of the crimes committed by them.

Offences charged with	Total number of inmates
Culpable homicide, Murder, Attempt to murder	34
Rape, Unnatural offence, POCSO, Kidnapping	36
Theft and Robbery	15
Hurt, Grievous Hurt, Criminal Intimidation etc.	02

Staff

Before 1926, there used to be the post of assistant jailors. However, on the recommendations of Punjab Jails Enquiry Committee, 1925, these posts were replaced in 1926 by the deputy superintendent and assistant superintends respectively. Deputy superintendent which is applicable to the state of Haryana performs the functions of security, custody and discipline, care and welfare of juveniles. Head warder is required to be on duty for six hours daily and warder is assigned a particular duty by the order of either a superintendent or a deputy superintendent which may include charge of a ward. On the other hand, the head female warder (matron) as regards female juvenile performs the functions similar to those performed by male warders. They provide proper medical facilities for juveniles in homes. Medical staff is deputed by the director general, health services, Haryana, from its cadre of medical officers and para-medical staff.

Educational Facilities

The government provides education facilities in reformatory homes at Faridabad for the juveniles kept in homes. A special teacher is appointed for juveniles in homes. Students are encouraged to complete their schooling via open schools and they are granted temporary leave during examinations. Presently more than 50 percent of inmates are enrolled in school. They are provided study material, books, magazines and newspapers (one in Hindi and other in English) and guidance is provided to them from time to time.

The government also provides some professional training for the juveniles in homes. They learn spinning, niwar knitting and canning from the homes. Some juveniles opined that they are given less facility and are dissatisfied with these facilities.

Health, nutrition and Sanitation

They provide routine facilities like daily three times meals, *i.e.*, breakfast, lunch and dinner. In case of illness, a special diet is given to them. They provide good Medical staff and experience holder to care for juveniles. Daily checkup of juveniles is arranged in homes. The medical staff provides special medical facilities for juveniles in general hospital as well as in government dispensary.

There is a full time sweeper and person entrusted with responsibility of cleaning toilets. There are washing facilities available and every juvenile is provided with soaps to maintain

personal hygiene.

Surveillance

Inmates are kept under a close scrutiny to prevent any instances of physical or sexual abuse or mental torture. They are always under the watchful eye of officials. CCTV cameras have been installed at all places and there is 24 x 7 monitoring of their activities.

Miscellaneous

The government provides library, canteen, games, education and health facilities in reformatory homes established at Faridabad. Some juveniles were dissatisfied by these facilities. The government has also sanctioned some policy, programmes and schemes for them i.e. rehabilitation and employment post their release from reformatory homes. The government has also provided entertainment facilities for juveniles in the reformatory homes for example, T.V., cable and Dish etc.

The real problem of juveniles is that there is no healthy relationship with the official staff in the homes. No doubt, the officers use to solve the problems of juveniles, but some juveniles are of the view that there are problems, which are totally ignored by the official staff in home. According to the juveniles, meeting with their relatives and parents is insufficient, short and bounded.

The official staff also organizes cultural programmes for juveniles in reformatory homes. Juveniles have shown keen interest in the cultural programmes in homes. The official staff said that the juveniles are doing their work as per instructions of government and follow the rules and regulation accordingly.

VII. SUGGESTIONS

After an analysis of the existing laws and the findings of this study, the following recommendations are given

- i. Special educational programmes should be introduced in rural areas in order to protect the children from deviant behavior.
- ii. There is a need to spread moral education among the children at the primary level of schooling by making the teaching of moral education compulsory.
- iii. The government must provide facilities to the delinquents for their rehabilitation and they may be provided facilities of financial assistance for self-employment in the society so that so that they can be settled in a meaningful life in society.
- iv. The medical examination should be made compulsory for every juvenile at the time of entry to reformatory homes. Any one suffering from any serious disease should not be allowed to mix-up with other juveniles.
- v. Proper outdoor and indoor games facilities should be provided to the juveniles in homes. They should be in position to avail these facilities during leisure time. The games should be made compulsory by framing a time table, since, it can improve their physical outlook and attitude. This will also help to channelize their energies.
- vi. Vocational training is more relevant for the long term convicts as economic stress was found to be one of the major factors leading to criminal behaviors. The vocational training should be such that it makes the offender self-reliant that ensures economic facilitating and rehabilitation eventually.