

and subsequent sections should be taken away from Executive Magistrates and conferred on Judicial Magistrates. Second, whenever the arrest by the police of any person under Section 151 or the action taken against him under Sections 107 to 116 are found to be baseless and unjustified, the law should provide that the police concerned will be liable to be prosecuted for unlawful confinement and will be adequately punished.

Though the abuse of powers is found in all the wings of the Government, one of the major reasons for abuse of power by police is the enormous power they wield over life and liberty. Power corrupts, particularly as there is considerable scope for exercise of discretion at various stages in the discharge of police functions. Even the lowest functionary in the police hierarchy exercises enormous powers against the life and liberty. Whether or not to make preventive arrests, whether or not to arrest a person during investigation, whether or not to pursue minor infractions of law like traffic rules or regulations depend on his discretion. To prevent whimsical and arbitrary or even vindictive decisions in such matters, power has to be circumscribed by with strict accountability, close and multiple levels of supervision, corrections by non-police authorities and immediate redressal for abuse of power. It is the poor who are often the victims of

such arbitrary police action.<sup>7</sup>

The most commonly endorsed method for controlling unrestrained police discretion in the area of arrest is through departmental policy established by high ranking administrations in the department. Law enforcement policy should consist of clear, realistic, and useful departmental guidelines that police officers can rely on in deciding what action to take in the field of arrest, search or seizure. In particular, policy statements should identify the factors and circumstances that justify or require invoking the criminal sanction, as opposed to those whose selective law enforcement is more appropriate. The areas that need to police control include the power of arrest, the use of force to overcome resistance, the use of firearms in appropriate cases to apprehend fleeing felons, crowd control during civil disturbances, and making mass arrests. The unfortunate position in our country is that only few police departments have meaningful policies, standards and criteria for controlling police power of arrest. Guidelines not only would facilitate police discretion making under difficult circumstances and reduce role conflict by adding list on the grey areas, but also help the people to know in advance of what action will criminate them and what involve the police.

7. S. R. Sankaran, Police Reforms : Need to Review Power of Arrest, *Supra* f.n. 1 at 4083.

### **"THE JUVENILE JUSTICE**

### **(CARE AND PROTECTION OF CHILDREN) ACT-2000 : AN OVERVIEW"**

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As it is said that the criminal is not born but is made. The Crimes, like lands, cannot be inherited, but forced by circumstances like poverty, population, illiteracy, bad company, broken family, cultural conflicts, modernization, etc. That is the reason the children are treated as innocent, as they cannot understand the nature and consequences of the act they do.

Today's children are tomorrow's citizens. A single incident may turn the life of child to destruction, violence, instability and danger to the society, if he has not been treated

with care and caution. At the same time the same person may become a good, obedient, loyal citizen, contributing to nation building, if proper care, attention, training is given to him. They are to be treated and turned in the bud so that they will be rescued from becoming hardened ones. This necessitates the education-moral, religious and secular, training, treatment, correction and rehabilitation of the child. They cannot be equated with adults in matters of treatment and adjudication. Therefore there is need to have some independent machinery for adjudica-

tion and disposal of matters relating to child and for training, education and rehabilitation of children having committed offences or having neglected towards.

The General Assembly of United Nations has taken care of by adopting a convention on Rights of the Child, in 1989. The said convention was ratified by India in 1992.

In accordance with International Convention on Rights of the Child, the Parliament of India has enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 (which hereinafter referred as The Act) repeals the Juvenile Justice Act, 1986. The present paper is an endeavour to assess the provisions of the said Act.

Among the major changes brought by The Act, the first and the foremost is in the definition of "Juvenile", which provides that Juvenile or child means a person who has not completed eighteenth year of age. Among the cosmetic changes the terminologies "Juvenile Delinquency" and "Neglected child" has been substituted by "Child in conflict with Law" and "Child in need of care and protection" respectively.

The Act provides for establishment of Juvenile Justice Boards for disposing the matters of Juvenile in conflict with Law. The Juvenile Justice Board is authorized, after enquiry, to allow the Juvenile to go home after advice or admonitions<sup>1</sup>, direct the Juvenile to participate in group counselling or perform community Service<sup>2</sup>, order to pay fine by parents or by Juvenile, if he is over 14 years of age and earns money<sup>3</sup>, direct the juvenile to be released on probation of good conduct and place under care or make an order directing the juvenile to be sent to a special home<sup>4</sup>. At the same time the Juvenile Justice Board is authorized, having regard to the nature of the offence and the circumstances of the case, to reduce the period of stay in special Home<sup>5</sup>.

The Act also provides for establishment of child welfare committee for disposing the matters of child in need of care and protection for care, protection, treatment, devel-

opment and rehabilitation of the children as well as to provide for their basic needs and protection of human rights<sup>6</sup>. The act authorizes to establish observation homes for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry, and special homes for reception and rehabilitation of juvenile in conflict with Law<sup>7</sup>. It also provides for establishment of children's homes for reception of child in need of care and protection during pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation, and shelter homes for the children in need of urgent support who have been brought to such homes<sup>8</sup>.

The Act bars the infliction of Death sentence, Life imprisonment and also prohibits prison in default of payment of Fine or in furnishing security.

The most important aspect of the Act is the removal of disqualification attracting to a conviction of an offence he has dealt with under the provisions of the Act<sup>9</sup>. Section 21 prohibits the publication of names, addresses etc. of juveniles in any newspaper, magazines, etc.

Under Section 7 of the Act, the Magistrate not empowered to exercise the powers of Juvenile Justice Board is of the opinion that the person brought before him is a juvenile or the child, is bound to record his findings and forward such juvenile or the child and record of the proceeding to the competent authority.

The Act also provides for punishment for cruelty to juvenile or child by person having actual charge or control over juvenile under Section 23, and employment or use of any juvenile or the child for the purpose or causes any juvenile to beg and its abetment is punishable offence<sup>10</sup>. Section 26 of the Act provides for punishment for procuring a juvenile or the child for the purposes of any hazardous employment, keeps him in bond-

1) See Section 15(1)(a)

2) See Section 15(1)(b) and (c)

3) See Section 15(1)(d)

4) See section 15(1)(e), (f) and (g)

5) See proviso to section 15(1)

6) See Section 31(1)

7) See section 8 and 9.

8) See sections 34 and 37.

9) See Section 19.

10) See Section 24.

age and withholds his earnings or uses such earning for his own purposes. All these offences are made cognizable<sup>11</sup>.

The Act provides for juvenile or the child welfare officer in every police station with aptitude and appropriate training and orientation, to handle the juvenile or child in co-ordination with the police, and creation of special Juvenile Police Unit in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children<sup>12</sup>.

Then the question comes, whether the Juvenile Justice Act (Care and Protection of Children) Act 2000 has achieved the desired goal? Whether machinery under the Act is working properly? Whether the Act is sufficiently able to give justice to the juveniles? Whether the changes brought by the New Act are proper and adequate?

Even after having such Law, the number of street children and beggars has not reduced. The child exploitation, abuse, torture is increasing day-by-day. The criminal tendency in the children is increasing, the parents and others exploiting the children by compelling and encouraging them to beg or to involve in criminal or illegal activities. The Bus stations, Railway stations, trains are full of such children. The reports of crimes by the children and against the children are coming frequently. Therefore it cannot be said that the Act has achieved the intended results.

After detailed study, one can easily identify the grey areas in the Act, which needs some discussion.

The first is with reference to the efficacy of Juvenile or Child Welfare Officer in police station and the special police unit created in district and city for handling the juveniles and to co-ordinate and to upgrade the police treatment of the juveniles. The said police officer and unit, already busy in criminal investigation and administration, either find no time or not interested in such matters. They are not taking any step towards the eradication of injustice to juveniles. They are authorized under the Act to produce the child in need of care and protection, before the child welfare committee<sup>13</sup>

11) See Section 27.

12) See Section 63.

13) See Section 32(1)(i)

for further orders of care, training, protection and rehabilitation. But the police and designated police officer and the special police unit are reluctant towards their powers and duties. There is no other superior authority to control and supervise these officers and units. They are not accountable to any agency under this Act. The employment of child for begging, procuring of child or juvenile for hazardous employment and keeping him in bondage and withholding his earnings or use of such earning for his own purpose are made cognizable offences<sup>14</sup>. The police can investigate the matter without Magistrate's order, but police fail to take proper steps.

The second aspect, that is the powers of Juvenile Justice Board, wherein after enquiry it is satisfied that the juvenile has committed an offence, the Board has very wide and blanket powers to release the juvenile to home after advice or admonition or to participate in group counselling, community service, order to pay fine, order to release on probation of good conduct and lastly to send him to special home. Such vast and vague powers conferred on the Board without limitations is unreasonable and arbitrary.

After the whole enquiry, the Board may set him free, which itself is against the policy of this law, as training, education, reformation is base of this law. With what objective the said provision is included, is unknown. If the ultimate result of the inquiry proceedings is 'release', the goal of correction and reformation remains unachieved. The other problem is increase in the anger and vengeance tendency may be perpetrated in the minds of the aggrieved party and chances of increase in criminal act cannot be overlooked. This provision fails to make the child realize his own responsibilities towards the society.

Even if the Board decides to send him in special homes as per Section 15(1)(g), this provision is subject to proviso, under which the whole period of stay may be reduced. This provision results into release of maximum number of children in conflict with law without treatment, education and correction and a very negligible number of children are being sent in the special homes, that is the reason, most of such homes and institutions

14) See Sections 24 and 26.

are either empty or have very few children in it.

The next aspect is of age, which is changed to 18 years from 16 years in case of male child. As per the Criminal Law of Land<sup>15</sup>, the child below 7 years of age is considered as doli-Incapex and above 7 years is doli-capex, but child between 7 years to 12 years is subject only to limited liability and above 12 years is subject to absolute liability. That means the child above 12 years of age is sufficiently matured to understand the nature and consequences of the act and therefore he is absolutely liable. The age of human being is reduced as compared to old era and ultimately the age of maturity (physical as well as mental) is reduced. In Indian circumstances the age of puberty is reduced to 13 years. The male child above 13 years of age is capable of committing sexual offences as well as other offences. The sexual offence cannot be committed without sufficient mental as well as physical capability. That means he is sufficiently mature at the age of 13 years. But the provisions under the Act are inserted without considering this fact and the age of child is increased to 18 years. Not only that, if the sufficient age proof is not available, the Board has to inquire and determine the age, and such determination of age is final, even if it is found to be wrong, by subsequent proof. And in cases the age is to be determined by radiological examination and if the medical practitioner gives an opinion that the age is 20 years, the 2 years will be considered margin of error in age determination by radiological examination as per the Supreme Court in *Jay Mala V. Home Secretary* (AIR 1982 SC 1297 : 1982 Cri LJ 1777).

15) See Sections 81 and 82 of IPC.

In this way the person of 20 years age having committed the offence, may definitely be able to manage his release under The Act.

Lastly, the Act bars the appeal from acquittal or from order of child welfare committee in respect of finding that the child is not neglected<sup>16</sup>. If any person is aggrieved of the decision of Board or Committee, he has no right to appeal and the wrongdoer will be freed without reconsideration of matter. This provision takes away the right to appeal and the justice is denied.

After this detailed discussion, it is strongly suggested that the Juvenile Justice (Care and Protection of Children) Act 2000 may be amended to the following effect :

(1) The definition of "Juvenile" may be amended in consonance with the analogy under Indian Penal Code.

(2) The vast powers of the Juvenile Justice Board may be amended to the effect that the child will be in the correction home for a specific minimum period for the purposes of training and rehabilitation.

(3) The offences shall be classified into 'sexual offences' and 'other offences' for the purposes of minimum sentence to be awarded.

(4) An independent Police Machinery may be established for supervising and handling the matters of juveniles under the Act.

(5) The designated police officer and Special juvenile police unit may be made accountable.

With these, it may be concluded that Juvenile Justice (Care and Protection of Children) Act, 2000 has failed to achieve the desired effect, and hence needs reconsideration to the above effect.

16) See Section 52(2)