



Overcoming Pitfalls in Juvenile Justice Administration: Independence to JJBs and CWCs, Impetus to Role of CCI-NGOs and for CSR

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ABSTRACT

Social Responsibility is greater in prevention of crime. JUSTICE, social, economic and political as solemnly resolved by WE THE PEOPLE to make nation Sovereign, Socialist, Democratic Republic. Currently 40% of the national population is of Children, they are the persons, and citizens without voting right, and part of this nation. Child abuse is rampant and it is at alarming rate, most of the children are dragged into delinquent behavioural incidences without their faults, but of faults of society around them. Juvenile Justice (Care and Protection of Children) Act, 2015, with comprehensive objectives to consolidate and amend the law relating to Children in Conflict with Law (CCL) and Children in Need of Care and Protection (CNCP) caters to their basic needs by proper care, protection, development, treatment, social re-integration by adopting child friendly approach. Yet the performance, results and achievements of whole system are abysmally low, because the official machinations of Women and Child Development Department, in the hands of executives, who lack the requisite knowledge, skills, qualifications and professional expertise and ethics derail the process of justice. Factors of derailment are many, as such there is more scope for 'Judicial Independence' and Social Responsibility Interventions (SRIs) through the Child Care Institutions (CCIs) the actual Non-Governmental Organisation registered and initiatives of Corporate Social Responsibility (CSRs). For all these stake holders, learning the principles of Administrative Law (AL), sensitising and positively integrating into juvenile justice is the need of the hour.

Keywords: Child abuse, Crime, Law

I. UNIVERSILY EMPOWERED JUVENILE JUSTICE

Articles 15(3), 39(e) & (f), 45 and 47 of the Indian Constitution empower and impose duties on the State to ensure that all the needs of children are met and their basic Human Rights are fully protected. Not only that, since 11/12/1992 Government of India acceded to Convention on the Rights of the Child of General Assembly of United Nations, prescribing a set of standards to be adhered to by all States in securing the 'Best Interest of the Child', further acceding to United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), The Hague Conventions on Protection of Children and Co-operation in Respect of Inter country Adoption (1993) and such other international instruments have magnified the role of State, Society, Family, CCI-NGOs and CSR initiatives..

II. ADMINISTER THE JUSTICE: ADHERE TO PRINCIPLES

All the stake holding agencies in their administration at all the time ought to adhere to the universally acclaimed sixteen principles of: (i) **Presumption of Innocence:** any child up to the age of completed 18 years ought to be presumed innocent of any mala fide or criminal intention- this prevents the child from not being stigmatised as criminal before his adulthood and protects the future. (ii) **Dignity and Worth:** all human beings shall be treated with equal dignity and rights- the tendency of the Indian Culture, of elders and of teachers that of shunning the children's voice, snubbing their legitimate questions, ignoring them as delinquent class is repugnant to the development of democracy and republic. Leaning by questioning and even by mistakes are the young's right. (iii) **Participation:** every child ought to be heard, allowed to participate in processes and decision affecting them- because every child is unique, has its own rationale and inclusion of their voice makes the best decision, with due regard to the age and maturity levels. (iv) **Best Interest:** all decisions regarding the child shall be considering primarily 'in the best interest of child' and 'to help the child to develop full potential'- children's behaviour can be utmost unpredictable, yet to know their potential, ample opportunity be given, Einstein was taken to be autistic child yet propounded 'Theory of Relativity'. Patience, Perseverance, Persistence are the requisite skills needed. (v) **Family Responsibility:** primary responsibility of care, nurture and protection of the child shall be of the Biological family or Adoptive or Foster Parents- the withering joint family system, nucleus family, parental in-fights, increased divorces, scattered and broken families, impoverish living conditions in the country are causing much pains to the children, it is called to stake holding actors to possess greater knowledge in discharging

professional duties with socio-national responsibility. (vi) **Safety**: all measures should ensure that child is safe and not subjected to any harm, abuse or maltreatment in the care and protection systems of Observation Home, CCIs. Compliance to the Statutory Guidelines, Forms, Norms, Amenities, putting up of equipment, coordinating with each departments of the State are essential functions of Social Work Professionals. (vii) **Positive Measures**: all resources under the JJ Act, including that of family and community to be pooled to promote the wellbeing development of the children, to reduce vulnerability of children and interventions in case of need. (viii) **Non-Stigmatising Semantics**: no child shall be subjected to adversarial or accusatory words in the process, as such words 'arrest, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, custody, jail, or even HIV+, blind, orphan, dumb are to be left out in addressing the children. Keeping each child as unique and special. (ix) **Non-waiver of Rights**: no any right of any child by child itself or by anybody acting on behalf, be it Juvenile Justice Board, Child Welfare Committee or any other agency can waive, give of any right. (x) **Equality and Non-discrimination**: no child shall be discriminated on grounds of sex, caste, ethnicity, place of birth, disability. And equality of access, opportunity and treatment shall be provided to every child. (xi) **Right to Privacy and Confidentiality**: throughout official and judicial process 'protection to privacy and confidentiality' of every child shall be maintained- these rights are part of right to life, liberty and of freedom of speech and expression. (xii) **Institutionalisation as a Measure of Last Resort**: a child shall be put in CCI only after due and reasonable inquiry, as a step of last resort as CNCPC. (xiii) **Repatriation and Restoration**: every juvenile has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile enjoyed before coming within the preview of Act. (xiv) **Fresh Start**: this principle promotes the new beginning for the juvenile by ensuring erasure of his past records. (xv) **Diversion**: measures in dealing with CCLs without resorting to judicial proceedings unless in the best interest of child or the society as a whole- this new principle directs that looking to the circumstances and reasonability no need to cause FIR against the delinquent child. (xvi) **Natural Justice**: Fair hearing, rule against bias, right to review by all persons in judicial capacity under this Act- that means distancing from adversarial methods to prevent a child delinquent from being branded as criminal.

Stringent adherence to above principles by all actors of Executives of Women and Child Development, District Child Protection Unit (DCPU) Staff, CCIs, Members of JJB, and CWCs with a greater Social Responsibility in administration can prevent and protect many more children from entering into crime world.

III. INDEPENDENCE TO JJBs & CWCs: INTERPRETATIVE CRITERIONS

Juvenis (Latin) meaning 'young' whose delinquency and youth in abnormal situations are not amenable to resolution within the traditional process of criminal law, as such different approach with different set up is made to prevent the further hazards of criminality. Those children who have offended (known as delinquent) are addressed as CCLs dealt by JJBs and those categorised as 'neglected' as CNCPC dealt by CWCs in each district. Preponderance of Probability or Proving beyond Reasonable Doubt or Strict Liability theories are not adhered to, but justice by Good Conscience and Foresight are the inquisitive interpretations to be made on facts and circumstances of each case. Centrally sponsored Integrated Child Protection Scheme (ICPS) in the XII plan has established the DCPU which shall function under the overall administrative control and supervision of the District Magistrate (DM), who shall be responsible for effective implementation of ICPS and all other child protection policies and programs at the district level. He/She shall also be co-chairperson of District Child Protection Committee (DCPC). Here is the bane, in reality and in practice DM has no time to meet the needs and ends of Quasi-judicial JJBs & CWCs, simply quarterly reports on pending and disposal of cases are sent to DM's office. And staff of DCPU acting on victims of POCSO, Child Marriage, Child Labor, Beggar, Rag picking, Run-away, Orphans, Single Parents, Dropouts, Adolescent delinquency CCLs exert their own control in cases and try to overpower the Members of JJBs and CWCs thereby curbing their 'Judicial Independence' in determining the right course of justice. Another pitfall is that, many of the DCPU staff are from outsourced agencies for stipulated term, either asking for renewal after the period, no fixed tenure. Again as outsourced, they lack the requisite qualifications, knowledge and skills.

Though the law envisages constitution of all the stake holding bodies to be based on specialized professionals of Child Psychology, Education, Law, Social Work and Child Development and Probationers, but same are in dearth. Thus the supportive staff's inefficiency leads to dilution, erosion of ethics, bringing in corrupt practices, Statutory Forms of Social Investigation Reports (SIR), Medical Intervention Report (MIR), First Information Reports (FIR), and Foster Care Guidelines etc. are falsified or manipulated under family, public or political pressures. CCLs and CNCPCs when inquired and cross verified on those reports, their responses are in total negativity to any sense of justice implementation. When those reported staff is called and countered to accountability with reasons, quarrelsome scene and menace is created to ad-hoc quasi-judicial bodies, causing systemic failure of justice. It is significant to note that, all those statutory reports, orders of JJBs and CWCs, other collected documents about families of children have legal and evidentiary value before Children Courts, DMs grievance redressal proceedings, Reviews before Sessions court and Courts of Appeals. Alas! Both the regular and outsourced staff of DCPU least bother about. If the data of pendency of different cases before CWC, Belagavi between 2018-19 are considered as an example, the heightened need for Judicial Independence by support of Social Responsibility of CCI-NGO professionals and for CSR initiatives is emphasized, among 426 cases pending: child marriage-44, sexual abuse-39, run away from home-71, HIV related-4, Beggary-22, children of convicted parents-1, single parent-66, orphan-9, handicaps-1, child labour-23, others-146, abused by parents, narcotics, abused in schools, mentally retarded all showing zero. Thus it can be said that, child marriage, sexual abuse, beggary, child labor, being the cognizable cases are not properly dealt by the socially responsible stake holders. Whereas 66 cases of single parents indicate at the problems of divorces, separation, deaths, drug addictions of parents, victimizing the children. Among 426; boys-159, girls-267, so the negligence of girls is more. State Commission for Protection of Child Rights also monitors the implementation of JJ Act with allied laws, but same is not inculcating the judicial independence into its operations. District Legal Services Authorities, District Courts and High Court Monitoring over JJ Act also being the equal stake holding authorities are the hopes to bring the required judicial independence to the quasi-judicial bodies.

IV ADMINISTRATION: RULE-DECISION ACTION

Administrative law, though un-codified is separate, independent branch of legal discipline, at times overlapping with constitutional law. It has concepts of Rule of Law, Rule against Bias and Arbitrariness, Principles of Natural Justice, Audi Alteram Partem or Rule of Fair Hearing. The term 'quasi-judicial' is used to denote administrative, adjudicatory or decision making process, there cannot be precise definition because, the bulk of the decisions which affect an individual- juvenile come not from courts but from the administrative agencies exercising adjudicatory powers, like

the staff of DCPU and registered CCI-NGOs. The administrative decision making is also intensive form of governance, the traditional system of judiciary cannot give to the people that quantity and quality of justice which is required in a welfare State of 40% children. Therefore it may be said that, Administrative decision making is a power to perform acts administrative in character, requiring incidentally some characters of judicial traditions, and under JJ Act, following functions of administration can be held as quasi-judicial functions; (i) All proceedings of JJBs and CWCs, (ii) Disciplinary proceeding against the erring staff for misconduct in reporting, complying of the Statutory Forms and duties, (iii) Assessment of those reports, (iv) Producing of needy children before the JJBs and CWCs, (v) Cancellation, suspension, revocation or refusal to renew license or permit to CCI-NGOs by authority. (vi) Determination of case course of CCLs and CNCPs. (vii) Determination of applicability of statutory provisions of various laws on children.

A true judicial decision presupposes a litigation between two or more parties involving (1) Presentation of the case, (2) Ascertainment of question of facts by means of evidence (3) Ascertainment of question of law, based on legal arguments, (4) A decision on law and facts, which disposes whole matter. Proceedings of JJB may have all these four determinants, whereas the case proceedings of CWC may not have all four, and administrative decisions of the reporting-supporting staff involve first two-three determinants only. And legal arguments shall not be there.

Thus a circular direction is required in delineations concerning the dispensation of these bodies, with points for Case File Management techniques of; Notes on circumstances child found, lost, unaccompanied etc. information about person producing the child before committee, collections of documents of child identity related and relationship related, report on child produced before any other Forums, opening and closure of file proceedings, fact sheet, case notes, record of dissents of Members as act of bench of Magistrates, connectivity between the two consecutive orders, pronouncement of orders to child in the language it understands, reasons for orders, and final order summarizing everything, signatures of Chairperson, and members majority/minority, follow-up actions, reasons for inaction, presence of child, assessments of; Individual Care Plans (ICP), SIRs, school admissions, medical interventions, child's legal necessities, compliance logistics, and advocating for advanced operational researches in decisional services, application of analytics, statistical inferences, time series analysis, forecasting, quantitative and qualitative techniques to improve the administration of justice to juveniles and in the whole making for, system modelling and supporting of right decisions.

V. IMPETUS TO ROLE OF CCI-NGOs

Running an NGO for social work is a fascination, but moving a CCI is not. Because the JJ Act prescribes voluminously categorized, classified compliances. Utmost practically cautious social responsibility is required for children's care and protection, because behavior of the children are unpredictable. For any mistake or maladministration may bring the allegations of offences under the same Act or of IPC and other laws. The alarms of CCIs maladministration in Bihar, Uttar Pradesh, deaths of boys in hostels of Karnataka sufficient to note.

The burdens of CCIs are; i) Funding and Finance, ii) Housing and House Keeping, iii) Networking with the society at large to identify child abuses, iv) Qualified staff, v) Salary and Regularization of staff services. vi) Records and file management of CCI, and of children, vii) Non-Cooperation of DCPU staff, viii) Irrational coordination of Special Juvenile Police Unit is causing FIRs, investigations. ix) Arranging the facilities of food, room space, equipment amenities to the needs of different children, x) Maintaining privacy, confidentiality of children, yet keeping surveillance, vigil and CC TVs. xi) Vehicle necessity, xii) Rapport with DM staff, xiii) delay of grants, dissidences., taxes, seeking tax exemptions etc. And before all these, creation of CCI as legal entity either as partnership firm, society, trust or company.

However the JJ Act has its own Registration Certificate and Rules and Regulations for managing the CCIs, it is advisable to CCIs to keep an in-house accountant clerk, impart book keeping methods, and adopt to above said Case File Management techniques. The better would be to have online downloading and uploading of filled in Forms and complying with online entries of Forms making ease for documentations, and for that, consortium of State level CCLs may be formed and a web-app may be developed in co-ordination with Women and Child Welfare Department, as Karnataka has 81 registered Child Care Institutions (now number may be more) The Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2010 provide for detailed standards of care institutions recognised under the JJ Act including education, vocational training, recreational facilities, healthcare, nutritional diet, clothing and hygiene to be provided to the juveniles/children in the Homes, whereas new Rules on 2015 Central Model are yet to be framed and passed by State. Necessity is the mother of all innovations and in order to prevent crimes on children or prevent them in indulging into delinquency, innovative professional approach by social responsibility is called for.

VI CORPORATE SOCIAL RESPONSIBILITY: LEAST KNOWN

In an incident, a well-known time-watch making company had sent some wrist watches to the boys of Government CCI at Belagavi, to inculcate time sense discipline to the destitute boys of the hostel and as a measure of CSR. The consignment was addressed to the Superintendent of the CCI office, the kind hearted superintendent called all the boys and other officials and distributed those watches to the needy boys, who were about to write their school exams, children felt happy, photographs of distribution were taken instantly and sent to the head of the then DCPU through Whatsapp, seeing those pictures on mobile, the DCPU away from the district quarters felt annoyed because watches were given in her absence, and showmanship was taken by somebody else. Head weight of the DCPU started trembling, and at the same time 'election code of conduct' was announced, the ever opportunistic stealer DCPU immediately rang back to superintendent and asked to take back all watches given to boys, because of the announcement of election code of conducted, she had greater responsibility and that there will be inquiry on her because of giving watches, frightened superintendent collected back the given watches. Boys felt ashamed in embarrassment. Nobody understood and dared to tell that DCPU that, boys were children below eighteen and were not voting in that election, further nor that watch making company was candidate for any seat of election, imposing of code of conduct was not apprehensible, nor actionable. This is how things of just implementations get manipulated, by whims and fancies of executives. Their tendency to control all ought to be curbed, for that all stake holding agencies operating in social responsibility sectors like juvenile justice systems ought to come together and know the dynamism of principles of administrative law, its spirits, and concepts of every citizen becoming Pro-Bono Republico, because any person having concern about welfare of any child can set the JJ act in motion. Until then every approach, especially in the area of juvenile, crime prevention is running to be in doldrums.

Therefore it is suggested, to Rule is to Educate (John Rawls), if justice to juveniles is to be made, then educate masses, coordinate with inter-disciplinary understanding mechanisms in spirits of republic, harness the social harmony and shun the crime occurrence, for that bring forth sense of positive development of children.

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