**CASE COMMENT ON**

**SAMPURNA BEHRUA V. UNION OF INDIA,** [**2018 SCC OnLine SC 106**](http://www.scconline.com/DocumentLink/2A14gZy9)

**INTRODUCTION :** As believed by Nelson Mandela,- “Our children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation.” In India, Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 are implemented with the aim of achieving the objectives as mentioned in United Nations Convention on the Rights of Children as ratified by India on December 11, 1992. These statutes deal with juvenile in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this law. JJ Act, 2000 was overruled by the Juvenile Justice (Care and Protection of Children) Act, 2015 which allows for juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, to be tried as adults. It also specifies procedural safeguards and address challenges such as delays in adoption processes, high pendency of cases, accountability of institutions, etc.

The present case which is a Public Interest Litigation looks into the matter that how the laws enacted for children are not being implemented in the desired manner. Children of today are future of tomorrow. If the rights that have been provided to the children by the constitution and the other statutes are not being obliged, then what is the State’s accomplishment. The tardy implementation of the statutes for many years became the catalyst for the court to give this judgement, a warning to the decision-makers to start taking active steps and strongly enforcing the rights rather than leaving the rights of the disadvantaged, voiceless children unaddressed and unheard. Thus, making this case a medium for the constructive effort of the judiciary and the decision-makers to work for the benefit of the children and secure them justice that has been the foundation of all the laws existing in the country.

**BACKGROUND :** With the law made in 2000, but the fact that little or no progress has been made for fulfilling the statutory obligations concerned the judiciary. Thus, Chief Justice Conferences were held in 2006, 2009, 2013, 2015 and 2016 for better understanding of child rights and strengthening the juvenile justice system with establishment of Child Welfare Committees, visits to Observation and Shelter Homes and disposal of pending cases, especially cases of adoption. These conferences also looked into the training of the Judicial Officers and vacancies at the institutions and the role of State Legal Services Authority. They also accomplished the setting up of Juvenile Justice Committees by each High Court which has improved the conditions of Shelter Homes and the living standards of the children. With the decade gone with zilch of progress made in compliance with the law made leaves the present picture gloomy apart from Ministry of Women and Child Development which undertook bold steps regarding recognition and realization of child rights. When constitutional obligations against these children are realized and steps are taken not by the government but by the judiciary, it becomes a warning for governments to take more seriousness in the issues being addressed and their role in nation-building.

**FACTS :** Concerned with the plight of the children in the country, in 2005, PIL was filed by HRLN on the behalf of Sampurna Behrua, a social activist, under Art 32. The PIL filed prayed for the implementation of provisions of the Act of 2000 including establishment of Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, establishment of appropriate Homes for children in need of care and protection, improving the living conditions of juveniles in conflict with law, medical facilities for children in the custody of the State and several other human rights issues. The prayer also included the respondent States to provide basic amenities like nutritious food, proper and hygienic accommodation, educational facilities, recreational facilities and rehabilitation centers for juveniles in various Homes and to direct the Collectors of each district to involve reputed NGOs in implementing the orders of this Court. Lastly, that the Chief Secretaries and the Directors General of Police and Superintendents of Police of all the States should forthwith implement the laws made. Interestingly, JJ Act, 2000 even though repealed did not affect the reliefs prayed for in the present petition as the issues raised were of contemplative nature which are even alive today and need to be addressed at the earliest.

**PROCEEDINGS IN BRIEF :**  Beginning from 2005 to the date of 20th November,2017 where the court reserved the judgement and announced it on 9th February,2018. During its 12 year course,  the court admitted numerous affidavits and reports from the petitioner, the respondent states, the Ministry of Women and Child Development (MWCD), NALSA and the Additional Solicitor General representing the Union of India to ascertain the scope of the work that remained to be done to defend the rights of children in India and addressing the issues highlighted in the P.I.L filed.

**JUDGEMENT :** In its 62-page long judgement, the bench highlighted the following 8 issues -

**(i) National and State Commissions for Protection of Child Rights -** Parliament provides for establishment of National and State Commissions for Protection of Child Rights (NCPCR and SCPCR) to look into policy and decision-making for child rights at the national and state level under Section 3 and Section 17 of the Commissions for Protection of Child Rights Act, 2005 respectively. NCPCR and SCPCR have wide range of functions and responsibilities to perform varying from examining safeguards, spreading child literacy to undertaking research, studying international treaties and many more. The NCPCR and the SCPCRs should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. These bodies have a very significant and proactive role to play in improving the lives of children across the country. But only if these commissions are given due importance by the national and state governments that the policies and laws formulated will no longer remain sketchy and be implemented. It is a call for governments to not only recognize the roles and responsibilities of these institutions but also allow them to practice what they preach and ensure that all the positions in the NCPCR and the SCPRs are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children. Instances where the NCPCR was compelled to file a writ petition in the Punjab and Haryana HC to the State Governments of Punjab and Haryana and the Union Territory of Chandigarh to fill up the vacancies of members of the SCPCR should not become frequent.[[1]](#footnote-1)

**(ii) State Child Protection Society and the District Child Protection Unit -** For the effective implementation of the JJ Act and the policies laid down by the NCPCR and the SCPCRs, Section 106 of the JJ Act provides for the constitution of a State-level Child Protection Society and a District-level Child Protection Unit. If these two bodies perform their duties, responsibilities and functions in the manner expected of them, the implementation of the JJ Act would no longer be an issue. Thus, for better disposal of functions detailed in Rule 84 and Rule 85 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 framed by the Government of India, the court suggests these bodies to coordinate with Government officials as well as NGOs to discharge their wide-ranging functions in a manner that is conducive to the wellbeing of children in all respects including nutrition, education, medical benefits, skill development and general living conditions.

**(iii) Juvenile Justice Boards and Child Welfare Committees (JJB’S and CWC’S)** - Having a Juvenile Justice Board and having a functioning Juvenile Justice Board are two different things. The court demands for every district to have a JJB, or in places where few enquiries are made then a circuit bench of JJB needs to be established. The composition of JJB includes a judicial magistrate and at least two social workers with proper experience as mentioned under Section 4 of the JJ act along with Rule 88 read with Rule 87 of the Model Rules. In ***Naisul Khatun v. State of Assam and Ors [[2]](#footnote-2)*** the court was disturbed on seeing that all the orders including that of refusal of bail was only passed by the principal magistrate without the involvement of the social workers. The court felt unfortunate that the application of mind must be by the Juvenile Justice Board and not only by the Principal Magistrate which was not the case here.

The lack of curriculum and effective training can have a vital impact on the ultimate disposition of an enquiry as also on the rehabilitation and reintegration of a juvenile in conflict with law who is before the JJB. Poor functioning leads to more pending enquiries. The list is topped by UP with 34,569 inquiries pending. The court suggests if not daily but frequent sittings of JJB is needed as to ensure that the enquiries do not remain pending for a long time. The other glaring issue regarding JJB is its administrative duties which it should fulfill to ensure effective coordination of JJB with the officials of the Observation Home, the police, the juvenile in conflict with the law and the parents of that juvenile and lawyers representing the juvenile. The court calls for quality legal aid lawyers for juveniles, in response to which the NALSA has made some guidelines which is expected by the state governments to adopt and start giving training.

An enquiry is conducted by a Probation Officer who later submits a Social Investigation Report. As mentioned in Rule 64 of the Model Rules the officer has a very important role to play in ensuring that a juvenile in conflict with law is given adequate representation and a fair hearing before the JJB and the enquiry is conducted in a manner that is conducive to the rehabilitation. In this regard, the preparation of an individual care plan and post release plan gains immense significance and it is the Probation Officer who looks after this. Thus, their training becomes even more significant. The State Governments as well as MWCD must ensure that training is given to Probation Officers on the lines suggested by NALSA with improvements being made in adult learning techniques, training methodology.

Child Welfare Committees are sometimes treated as second class bodies‘ and that payment of honorarium is not made to them on a regular basis. They are compelled to hold their sittings in buildings with very poor infrastructure facilities. State governments shall investigate the matter and ensure Committee’s welfare who can further work for Child Welfare.

**(iv) Use of technology** - Affidavit submitted by MCWD suggests an acute shortage of computers and peripherals with the JJBs and CWCs. Country being a technological power house needs to start using technology for the tracing and tracking of missing children, the rescue of children working in hazardous industries, trafficked children, children who leave the Child Care Institutions, victims of child sexual abuse and follow-up action which would help in further formulation of policies. Even though MCWD brought an online Central Level Monitoring System but there does not seem to be much active cooperation extended by the State Governments in updating the information and without any updates in the information even the technology is of no benefit.

**(v) Role of Police-**  Section 107 of the JJ Act mandates the appointment of a Child Welfare Police Officer and a Special Juvenile Police Unit (SJPU) in each district. The SJPU must also include two social workers having experience of work in the field of child welfare, one of them being a woman. The responsibility for appointment lies on the State Government. Not only appointment even a system of effective training for CWPOs and SJPUs has not evolved and many of them exist only symbolically because the law requires them to exist. Poor training of officers has been highlighted in ***Sanat Kumar Sinha (Chief Co-Ordinator), Bal Sakha v. State of Bihar through the Chief Secretary, Govt. of Bihar and Ors [[3]](#footnote-3)*** where the child was handcuffed during his transit from police station to the court and his identity was also disclosed. To curb this, NALSA has prepared Guidelines for training of Juvenile/Child Welfare Officers attached to every police station and members of the SJPU’s. Perhaps this could be a starting point for their training through the Bureau of Police Research & Development and the Police Academies. The Government is required to involve Railway Police for dealing with children because many runaway children are found at railway stations.

**(vi) Child Care Institutions-** State Governments must appreciate that they are not doing any charity by putting up children in Child Care Institutions and are merely performing their statutory and constitutional obligations. There is, therefore, an urgent need to make an evaluation and assessment of all the Child Care Institutions in every State to ascertain their condition, the infrastructure requirements and staffing requirements. Children live in these institutions, not because they want to but because they have no other option. The obligation of society is to provide solace and comfort to these children and adherence to the minimum standards of care. In Court on its own motion v. State of Punjab[[4]](#footnote-4) , the court held that The Observation Home was found to be worse than a prison. MWCD has made considerable efforts in ensuring that Child Care Institutions run and managed by individuals and NGOs. All such institutions should be advised to provide vocational or continuing education with a view to re-settling children in conflict with law and children in need of care and protection by reintegrating and mainstreaming them in society

**(vii) Juvenile Justice Fund-** To carry out any function, it is important to have some funds. But the State Governments have not even set-up juvenile justice funds, and states who have set funds have given just a few thousand rupees. This shows the seriousness of the states to work for children and their duty towards them.

**(viii) Evaluation and Assessment-** Lack of implementation of act must be monitored by social audits carried in every 6 months to ensure that the mistake happened for so many years is not repeated and the benefits are availed by the children for whom the act is made who shall not be asked to wait for the next 15 years.

**ANALYSIS :** The petitioner needs to be applauded for bringing these issues to light and the court for sincerely looking into the matter and discussing the same with providing recommendations to improve the same. Law provides for everything be it the establishment of NCPCR OR SCPCR or Child Protection Society and the District Child Protection Unit or Juvenile Justice Boards and Child Welfare Committees. The law is very well-made but like in all other sectors it lacks in implementation, regarding the JJ Act, to an extent which is not acceptable. The legislature has done its role by formulating a law and the judiciary has also done its role by enforcing the same but where is the role of executive, to execute the same with effectiveness? The court also referred to the case of ***Sheela Barse v. Union of India [[5]](#footnote-5)*** where it noted that child is a national asset and it is the duty of the State to look after the child with a view to ensuring full development of the personality. Being dynamic in nature, the judiciary moves with time and suggests the use of technology which the MCWD is taking in use, but the data must be provided and thus, again there is lack of support by the concerned authorities. Well, the police system also has a big role to play. It is not their fault if they don’t do their functions, because they have not been proper training. It is the call of the hour for the respective National and State Governments to provide funds, to ensure there are no vacancies, to undertake regular evaluations and assessment and to provide for a reasonable standard of living conditions and nutrition for the children. Also, calling up for the involvement of the social workers and NGO'S is a great step for involvement of the society of which children are a part of. Thus, the present judgement not only shows the reality of the way the children and their rights are considered even after decades of formulation of law, but also it pleads the State Governments and the Central Government to work for children together with NALSA and MWCD, they can do wonders and actually do justice to the JJ Act and the policies made.

**CONCLUSION :** The Judiciary has given an important and an eye-opener judgement at pinpointing the lacunas which if not worked upon is a big question mark on the efficiency on the system of the country.  Thus, it is hoped that with the passing of this judgement, the gap created would be bridged and the situation would improve. This will take time as it’s not an overnight task, but with the co-operation and resources, the process can at least begin which remained stagnant for substantial amount of time. Leaving no more scope of consideration in the following scenario, it needs action now!

1. *Court on its own motion v. State of Punjab and The National Commission for the Protection of Child*

   *Rights (NCPCR) v. The State of Haryana and Others,* MANU/PH/0599/2013 [↑](#footnote-ref-1)
2. *Naisul Khatun v. State of Assam and Ors,* 2011 Cri LJ 326, 2010 SCC Online Gau 225 [↑](#footnote-ref-2)
3. *Sanat Kumar Sinha (Chief Co-Ordinator), Bal Sakha v. State of Bihar through the Chief Secretary, Govt. of Bihar and Ors ,*MANU/BH/0384/2008 [↑](#footnote-ref-3)
4. *Court on its own motion v. State of Punjab and The National Commission for the Protection of Child*

   *Rights (NCPCR) v. The State of Haryana and Others,* MANU/PH/0599/2013 [↑](#footnote-ref-4)
5. *Sheela Barse v. Union of India,* (1986) 3 SCC 632 [↑](#footnote-ref-5)