

Justice for All: Tailoring Laws for Disabled Youth in Legal Battles

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ABSTRACT

Disabled children are considered as the most vulnerable individuals. Because of their physical and/or mental disability they are also considered as the most vulnerable victims. Such children may also face challenges as “children in conflict with law”. Disabled children may be used for several criminal offences While such children may be used for theft etc, voices of such children may also be used without their knowledge or consent for committing several kinds of cybercrimes. Such children may also be engaged in sexual offences. Protection of Children from Sexual Offences Act (POCSO), 2013 mentions about engagement of special educator /translator for assisting disabled child victims. Even though The Juvenile Justice (Care and Protection of children) Amendment Act, 2021 also mentions about engaging such translator etc for helping disabled children, the Act however does not provide much information about the tools and the process of assisting disabled children in conflict with law with the translators and special educators. It is hence to argue that the rights of the disabled children in conflict with law may not be properly acknowledged and executed due to absence of legal guidance regarding usage of specific forensic tools, legal lacunae concerning the assistance of the special interpreters/translators, proper interpretation of their behavior/ communication of such children and their guardians /care givers. As children in conflict with law they may need to arrange for their defense lawyers and interpreters. But in majority of cases such children may not access free legal aid and proper interpreters due to their socio-economic conditions and due to lack of awareness of their parents or caregivers. This paper suggests that better forensic tools for assisting such children, assessing their behavior, their testimony and evidences in trials are needed on the basis of the types of disability. This paper also suggests that the qualification of the interpreters and translators may be revised considering the need of contemporary digital era and misuse of disabled children for commission of crimes.

Keywords: Disabled children, children in conflict with law, special interpreters/translators, tools, judicial discretion, criminology

VANTAGE PERSPECTIVE

The globe called Earth is a propitious planet where 8 billion of mortals pump blood through their hearts every day to survive in all conditions whether affirmative or not. Every individual in this charismatic world has a message to deliver, a mission to accomplish and a destiny to reach. Amongst these inhabitants not every DNA carries wealth, not every DNA carries intelligence and most eminently not every DNA is naturally embodied with equal caliber and ability to effectuate the life in all social, economical and political spheres. As per World Health Organization, 1.3 billion human beings are

estimated to experience significant disability which is nearly 16% of the definite population of the world.ⁱ Amongst these approximately 0.24 billion are children as per the report of United Nations Children's Fund.ⁱⁱ In 2021, a total of 31,170 cases involving juveniles were recorded nationwide, indicating a 4.7% increase from the 2020 figure of 29,768 cases. The majority, precisely 76.2% or 28,539 cases belonged to the 16 to 18 age group. The juvenile crime rate also saw an uptick from 6.7% to 7.0%. According to the 2011 Population Census, the country's child population was 4,441.5 lakhs. Consequently, the latest National Crime Records Bureau (NCRB) report reveals that seven out of every 100 juveniles in the country were engaged in criminal activities. A total of 37,444 juveniles were apprehended, with 32,654 falling under the purview of the Indian Penal Code, and 4,790 under state and local laws.ⁱⁱⁱ Moreover, NCBR produces no specific demarcation for the number of juvenile offenders from the above who were disabled.

Article 21 of the supreme law of the land^{iv} functions on 'due process of law' but what if there is absence of stringent law to abstract justice, the answer goes beyond feasibility. A thorough literature review on disabled children in conflict with the law and the associated legal provisions is notably lacking. The current body of literature falls short in addressing the specific challenges and rights of disabled juvenile offenders within the legal framework. A focused examination of existing research is crucial to identify gaps and advocate for inclusive legal measures that protect their rights and ensure equitable access to justice. The amendments to the existing legislations or the emergence of specific law are need of the hour to address the issue pertaining to the most vulnerable groups of the society.

EXISTING FRAMEWORK AND COMPREHENSION

A "Child in Conflict with Law" refers to a minor accused of committing an offense, thereby bringing them within the purview of the criminal justice system. On the other hand, a "Disabled Child" signifies a youth grappling with physical and/or mental disabilities, rendering them particularly susceptible within the legal context. When these two identities intersect, a critical juncture emerges, automatically designating the disabled child as a "Child in Need of Care and Protection." This intersection emphasizes the compelling need for specialized forensic tools and the revision of legal provisions. Such tools and legal reforms are indispensable for guaranteeing not only a fair trial but also the protection of the legal rights of these children, whose rights may be inadequately addressed within existing frameworks.

In the procedural framework outlined by the Juvenile Justice Act, the initial phase involves the apprehension of a juvenile in conflict with the law. When considering the unique circumstances of a disabled child within this context, it becomes imperative to tailor the apprehension process to address their specific needs comprehensively. The apprehension of a disabled child requires a specialized approach, encompassing the provision of a special interpreter to facilitate effective communication. Recognizing potential communication barriers and accommodating them with appropriate support becomes crucial during this phase. Additionally, ensuring accessibility and understanding the unique challenges faced by disabled children is essential for a just and equitable juvenile justice system. This tailored approach aligns with the overarching goal of the Juvenile Justice Act, aiming to provide fair treatment and rehabilitation to all juveniles, including those with disabilities.

Disabled children fall into categories such as Physical and Sensory Disabilities, Intellectual and Communication Disabilities, and Behavioral and Emotional Disabilities. Each category demands distinct forensic techniques in legal processes. Adaptations for communication, specialized approaches for cognitive differences, and tailored methods for behavioral and emotional nuances are crucial.

Recognizing and employing these specific techniques is essential for ensuring a fair legal process that considers the diverse needs of disabled children. Amendments to the Juvenile Justice Act with incorporating provisions for disabled children, forensic tools, and forensic justice are necessary in order to have a due process of law dealing with disabled child in crimes.

INTERNATIONAL SAFEGUARDS

The endeavor to secure the rights and well-being of disabled children even if they are in conflict with law finds resonance beyond national borders, finding its manifestation in various international instruments and conventions. These global frameworks, established to safeguard the dignity and rights of all individuals, have played a pivotal role in addressing the concerns of disabled children, ensuring their inclusion, protection, and holistic development on a global scale. Rooted in these legislations is a shared commitment to creating a world that respects and acknowledges the inherent rights of disabled children, empowering them to flourish in an environment that values their potential and uniqueness. The *United Nations Convention on the Rights of the Child*, stands as a fundamental cornerstone for the protection of children's rights, encompassing those of disabled children as well. While not exclusively devoted to disability, the UNCRC embodies essential principles such as non-discrimination (*Article 2*) and the best interests of the child (*Article 3*), which hold profound significance for the rights of disabled children. Additionally, *Article 23* underscores the rights of disabled children to lead a fulfilling and decent life, ensuring that they receive the necessary care and support to enable them to reach their full potential^v. Furthermore, the *United Nations Convention on the Rights of Persons with Disabilities* emerges as a pivotal international framework specifically dedicated to advancing the rights of disabled individuals, including children. The statute recognizes and reinforces the right to equality before the law (*Article 12*) and emphasizes the right to inclusive education (*Article 24*). This underscores that disabled children have an unequivocal right to participate in the education system without facing discrimination. The principles encapsulated within the said statute extend beyond education, encapsulating a broader notion of inclusion across all facets of society^{vi}. Notably, collaborative endeavors such as the *World Programme of Action Concerning Disabled Persons* have laid the bedrock for a more inclusive global landscape. This program emphasizes the importance of equal opportunities, full participation, and equalization of opportunities for disabled individuals. This resonates with the broader notion that the rights of disabled children are intertwined with the broader human rights tapestry, underscoring a collective commitment to nurturing a world where every child, irrespective of their abilities, can flourish and contribute to a truly egalitarian society^{vii}. All these rights impliedly suggest that child even in conflict with law is to handle with care and protection reason being legislations based on the abovementioned instruments are there for rehabilitation and social re-integration.

ANALYSING THE INDIAN LEGISLATION

The Juvenile Justice (Care and Protection of Children) Act, 2015

Section 2(1) (ix) - This section defines a "child in need of care and protection" to include a child with disabilities or a child suffering from a life-threatening illness. It is a significant inclusion, as it recognizes disabled children as a vulnerable group requiring special protection and care.

Section 2 (14) - The Act defines a "child with disability" as a child who is suffering from a disability as defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995. This definition establishes a clear link between the Juvenile Justice Act and

disability-related legislation, ensuring that the rights of disabled children are addressed comprehensively.

Section 21(2) (h) - Under this provision, the Juvenile Justice Board is tasked with ensuring the placement of children with disabilities in suitable institutions or facilities where their specific needs can be addressed effectively. This ensures that disabled children are not subjected to inappropriate or harmful environments.

Section 29(2) (f) - It emphasizes the need to provide children with disabilities with appropriate facilities and services, including special education and skill development programs, to ensure their overall development and rehabilitation.

Section 37 - This section of the Act pertains to the adoption of children, encompassing those with disabilities. It delineates the adoption procedures, with a paramount emphasis on prioritizing the child's best interests. This aligns seamlessly with the overarching principles of inclusivity and the protection of the rights of disabled children, underscoring the Act's commitment to ensuring their well-being and holistic development.

Section 64(2) (j) - This provision in the Act confers upon the State Government the authority to formulate regulations pertaining to the establishment and continuous upkeep of facilities designed specifically for children with disabilities or enduring illnesses. This crucial clause underscores the government's duty to establish specialized institutions dedicated to the welfare of disabled children, with a primary focus on their care, protection, and holistic development.

The "Juvenile Justice (Care and Protection of Children) Act, 2015" aptly recognizes both the vulnerability and unique needs of disabled children. It goes a step further by enshrining specific provisions aimed at safeguarding their fundamental rights and overall well-being. This inclusion is a pivotal aspect of the Act, as it not only defines but also effectively addresses the intricate requirements of disabled children within the ambit of the juvenile justice system. Consequently, the Act significantly contributes to the overarching framework dedicated to upholding the rights of disabled children in India, a central theme underscored in this paper. Nevertheless, it's crucial to acknowledge that prevailing societal prejudices and biases persist, particularly when a disabled child is found entangled in legal issues or requires protective intervention. These deeply ingrained stigmas highlight the pressing need for a more reformative and empathetic approach to address these complex intersections effectively. The most vulnerable sector to atrocities in this world is children. It is the group that needs most attention in case of correctional administration.

The nature of law should be dynamic in order to settle in the shape of clean justice. The existing law could be strengthened by inflicting the amendments addressing the atrocities faced in the present era. A negligible research is done in the field of law specifically concerning the disabled children in conflict with law. The child is considered to be the member of most vulnerable group of the society who needs a greater degree of care and protection so that he or she could form a strong individual after growing. Moreover, if that child is disabled and is in conflict with law, a threefold protection is to be created which is responsibility of the State to do so under Article 15 (3), Article 39 (f) and such constitutional understandings. The beauty of the supreme law of the land is that it also works for those who do not believe in it. The antecedent law is already there, the only need is to develop the remedial law either by amending the existing one or bringing up the new legislation in consonance with the other laws which are in force for the time being. In the pursuit of a more inclusive and equitable society, it is imperative that all stakeholders in our democratic system recognize their collective responsibility in uplifting

disabled children. The legislative branch holds a pivotal role in this endeavor, as it should advocate for and enact a separate law dedicated to disabled children. The enactment and enforcement of this dedicated law lay the foundations of a more just society. The executive branch must contribute to this collective responsibility by establishing monitoring committees and implementing special schemes exclusively focused on disabled children. The judiciary, as the custodian of justice, should drive various reforms aimed at facilitating justice for disabled children.

CLINCHING RECOMMENDATIONS

(A) Amendments to the Juvenile Justice Act (Incorporating Provisions for Disabled Children, Forensic Tools, and Forensic Justice)

Identification and Apprehension (Section 2, Section 10):

- a. Law enforcement agencies shall employ specialized forensic tools during the identification and apprehension of disabled children. This ensures that evidence is collected and handled appropriately.
- b. It should be mandatory for all police officers to undergo specialized training in the use of forensic tools, particularly when dealing with cases involving disabled children. This training equips them to gather evidence effectively while respecting the rights and needs of disabled children.

Inquiry and Proceedings before the Juvenile Justice Board (JJB) (Sections 13-20):

- a. The Juvenile Justice Board (JJB) should be empowered to order forensic assessments or evaluations when necessary to gather evidence related to a case involving a disabled child. These assessments should consider the child's disability and communication needs.
- b. Forensic experts with expertise in assessing disabled children shall be readily available to provide inputs during JJB inquiries. Their expertise ensures that the unique aspects of the case are properly considered.

Access to Forensic Support (Section 19):

- a. Disabled children shall have guaranteed access to specialized forensic support during the inquiry process before the Juvenile Justice Board. This includes forensic interviewers, interpreters, therapists, or any other specialized professionals necessary for a comprehensive inquiry.
- b. The Juvenile Justice Board must consider the specific forensic needs of disabled children when making disposal orders, ensuring that the child's best interests and rehabilitation are at the forefront of their decisions.

Forensic Evidence and Child-Friendly Procedures (Section 40):

- a. The Juvenile Justice Act promotes the use of child-friendly forensic interview techniques designed to accommodate the communication needs of disabled children. These techniques aim to create a comfortable and supportive environment for the child.
- b. All forensic evidence obtained from disabled children must be collected, handled, and preserved in a manner that respects their rights and unique needs. Privacy and dignity shall be maintained throughout the process.

Forensic Training for Stakeholders (Section 68):

- a. Comprehensive training programs shall be incorporated into Section 68, covering the use of forensic tools and the handling of forensic evidence related to disabled children. These programs are designed for police officers, lawyers, judges, and other professionals involved in the juvenile justice system.

Protection of Privacy (Section 74):

- a. Provisions related to the protection of privacy and confidentiality of forensic evidence obtained from

- b. disabled children shall be strengthened. It is imperative that such evidence is securely handled and ethically managed, safeguarding the rights and dignity of the child.

Monitoring and Reporting (Section 94):

- a. Robust mechanisms for monitoring and reporting on the implementation of forensic tools and forensic justice provisions concerning disabled children shall be established. These mechanisms ensure that the provisions are effectively applied and that the rights of disabled children are protected within the juvenile justice system.

Composition of Juvenile Justice Board (Section 7):

- a. The Juvenile Justice Board shall be composed to ensure inclusivity and accessibility. It must include the following members- A forensic interpreter with expertise in assisting disabled children and a sign language interpreter proficient in communicating with deaf or hearing-impaired children.

Special Juvenile Police Unit (Section 63):

- a. Establish a dedicated Special Juvenile Police Unit responsible for handling cases involving disabled children. Ensure that officers in this unit receive specialized training in interacting with and apprehending disabled children.

Medical Reports and Consent (Section 32):

- a. In Section 32, outline procedures for obtaining medical reports of disabled children, especially addressing situations where the child is unable to give consent or provide a signature due to their disability.

Facilities in Correctional Homes (Section 46):

- a. Add provisions in Section 46 to ensure that correctional homes housing disabled children are equipped with the necessary facilities, including forensic interpreters, sign language interpreters, and other accommodations.

(B) Draft of Model Law in Consonance to Disabled Child in Conflict with Law- The Child with Disabilities (Rights, Support and Protection) Bill, 2023

Justice process for child in need of care and protection:

- a. Disabled children shall have equal access to the child in need of care and protection process and legal protection, with specific considerations for their unique needs and circumstances.
- b. In any legal proceeding involving a disabled child in need of care and protection, the District Committee shall be consulted to ensure the child's rights and best interests are safeguarded. The District Committee may recommend necessary accommodations, including accessible facilities, sign language interpreters, and the presence of a guardian or support person, to facilitate the child's participation in the legal process. The court shall also call upon an expert in sign language and a psychologist when necessary to understand and communicate with the child effectively.
- c. The Child Welfare Committees and other relevant authorities shall work in coordination with the District Committee to ensure that disabled children receive fair and equitable treatment throughout the child in need of care and protection process, including access to education and rehabilitation services as required. All of these actions are to be in accordance with the Juvenile Justice (Care and Protection) Act, 2015.

Rehabilitation and support for disabled children in conflict with the law:

- a. Disabled children in conflict with the law shall receive specialized rehabilitation and support services that consider their individual disabilities and unique needs.

- b. The District Committee, in consultation with relevant experts, shall assess the rehabilitation needs of disabled children in conflict with the law. Based on this assessment, a tailored rehabilitation plan shall be developed to address their educational, vocational, and psychosocial needs. The court shall also call upon an expert in sign language and a psychologist when necessary to understand and communicate with the child effectively.
- c. Disabled children in conflict with the law shall have access to appropriate legal representation and support during legal proceedings. The District Committee shall ensure that their legal rights are upheld, and they are provided with accessible information about their legal situation.
- d. Rehabilitation programs shall be designed to promote the reintegration of disabled children into society, including the provision of education, vocational training, and psychological support. The District Committee shall monitor the progress and outcomes of rehabilitation programs to ensure their effectiveness.

Notes

1. WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/factsheets/detail/disability-andhealth> (last visited December. 15, 2023)
2. UNITED NATIONS CHILDREN'S FUND, <https://www.unicef.org/disabilities> (last visited December. 10, 2023)
3. Vijaya Pushkarna, *Juvenile crime in national capital a major cause of concern*, CITIZENS MATTER (December. 15, 2023, 6:00 PM), <https://citizenmatters.in/ncrb-juvenile-crime-records-delhi-policing-police-policy-31663>
4. Constitution of India, 1949
5. United Nations Convention on the Rights of Child, 1989
6. United Nations Convention on the Rights of Persons with Disabilities, 2006
7. World Programme of Action Concerning Disabled Persons, 1982