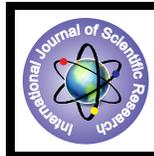


Juvenile Justice and International Concern



LAW

KEYWORDS : Guidelines, Justice, Juvenile, Rules,

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ABSTRACT

The juvenile justice system is a special type of legal justice specifically designed to protect and promote the interest of the children. Since a juvenile is incapable of having any criminal intent, a special procedure should therefore be followed for his trial and punishment should be given with a view to transforming him into responsible citizen. Therefore in international level also, various attempts have been made in this regard to develop some rules, guidelines etc. which is reflected in this article in a nutshell.

INTRODUCTION

In last few years there have been several developments in the administration of juvenile justice throughout the world. After the International Covenant on Civil and Political Rights, 1966, when different States began to develop their separate juvenile systems, a complete framework in this regard became necessary, by which all the States could utilize it in establishing and operating their own national juvenile justice systems. In the year 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders called for the preparation of minimum rules regulating the administration of juvenile justice.¹ Further, in 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as Beijing Rules, which provide a complete framework within which a national juvenile justice system should operate. For the prevention of juvenile delinquency, the United Nations Guidelines were adopted in the year 1990, which is known as Riyadh Guidelines. There are also some other instruments like UN Rules for Juveniles Deprived of Their Liberty, Vienna Guidelines, etc. The present paper mainly intends to highlight all these rules and guidelines in a nutshell.

THE BEIJING RULES ²

The Beijing Rules are divided into six parts and cover the whole range of juvenile justice processes. These six parts are :

1. General Principles (Rules 1 to 9);
2. Investigation and Prosecution (Rules 10 to 13);
3. Adjudication and Disposition (Rules 14 to 22);
4. Non-Institutional Treatment (Rules 23 to 25);
5. Institutional Treatment (Rules 26 to 29); and
6. Research, Planning, Policy Formulation and Evaluation (Rule 30).

The main aim of juvenile justice, as provided under Rule 5, is that, this system shall emphasize the well being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. The Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community.³

Further, it was stated that, juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society,⁴ and these Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.⁵

Rule 7 speaks about the rights of juveniles. According to it, basic procedural safeguards such as the presumption of innocence, the right to be notified of charges, the right to remain silent, the

right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witness and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings. In addition to these rights, the juvenile's right to privacy shall be respected at all stages.

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 ⁶ and shall also be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.⁷ While in custody, juveniles shall receive care, protection and all necessary individual assistance --- social, educational vocational, psychological, medical and physical --- that they may require in view of their age, sex and personality.⁸

Further, regarding guiding principles in adjudication and disposition, Rule 17.1(a) provides that, the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the juvenile as well as to the needs of the society and 'the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.'⁹

According to Rule 24, efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

The objectives of institutional treatment, as enshrined in Rule 26, is to provide care, protection, education, vocational skills and all other necessary assistance which are required because of their age, sex and personality and in the interest of their wholesome development.

THE RIYADH GUIDELINES

The United Nations Guidelines for the Prevention of Juvenile Delinquency, otherwise known as 'Riyadh Guidelines' were adopted in 1990¹⁰ which mainly focus on early protection and preventive intervention paying particular attention in situation of 'social risk'. The term 'social risk' denotes children who are demonstrably endangered and in need of non-punitive measures because of the effects of their circumstances and situations on health, safety, and education as determined by a competent authority.¹¹

The Riyadh Guidelines mainly intend to help, socialize and integrate children through the family and through the active involvement and support of the community. At the same time, it also recommends that the children should use schools as resource and referral centers for the provision of counseling, particularly for children with special needs and for the dissemination of information on the prevention of drug, alcohol, and

substance abuse.¹²

UN RULES FOR JUVENILES DEPRIVED OF THEIR LIBERTY

This Rule sets out certain standards applicable when a child (under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed 'at risk') by order of any judicial, administrative or other public authority. In addition, it includes the principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases.

THE VIENNA GUIDELINES

The UN Resolution on Administration of Juvenile justice (also known as the Vienna Guidelines) contains as an annex Guidelines for Action on Children in the Criminal Justice System. And provides a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration according to the Convention on the Rights of the Child, Riyadh Guidelines, Beijing Rules etc.

BASIC PRINCIPLES IN THE BEST INTEREST OF THE CHILD AND INTERNATIONAL LAW

The International law have also incorporated a number of basic principles in the best interest of the child, upon which a juvenile justice system should be based. They are based on different covenants, conventions and guidelines. These are as follows :

- (a) The well-being of the child in the administration of justice needs to be maintained.¹³
- (b) Criminal responsibility should be related to age at which the children are able to understand the consequences of their action.¹⁴
- (c) Diverting children from formal trial procedures.¹⁵
- (d) Juveniles to be brought 'as speedily as possible' to adjudication.¹⁶
- (e) The arrest, detention, or imprisonment should only be imposed on children as a measure of last resort.¹⁷
- (f) The rights of children prior to the determination of charge es include the duty to inform parents or guardians¹⁸ and all children should be presumed innocent until proven guilty according to law.¹⁹
- (g) The Convention on the Rights of the child, the International Covenant on Civil and Political Rights, the regional human rights treaties and the Beijing Rules provide the rights of children during the determination of criminal charges. They provide that, the principles of natural justice are equally applicable to children. Right to counsel is important for children.²⁰
- (h) Specific forms of punishment like corporeal punishment and imposition of death penalty are prohibited for children.²¹The children should be provided with alternatives to institutional care.²²

CONCLUSION

From the foregoing discussions, it may be said that UN's efforts on juvenile justice as well as elimination of juvenile delinquency are really good steps. But, after introspecting the present scenario, it is felt that the development of a sound public policy regarding all aspects of juvenile justice, delinquency prevention and control requires both planning and evaluation by rigorous research methods. This requires coordination between the government agencies, universities, police, judiciary and social workers²³as well.

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4. Rule 1.4 (Fundamental Perspectives), as enshrined in Part I of General Principles of Beijing Rules.
5. Rule 1.5 (Fundamental Perspectives), as enshrined in Part I of General Principles of Beijing Rules.
6. Rule 13.3 (Detention Pending Trial), as enshrined in Part II of Investigation and Prosecution of Beijing Rules.
7. Rule 13.4 (Detention Pending Trial), as enshrined in Part II of Investigation and Prosecution of Beijing Rules.
8. Rule 13.5 (Detention Pending Trial), as enshrined in Part II of Investigation and Prosecution of Beijing Rules.
9. Rule 19 (Least possible use of Institutionalisation), as enshrined in Part III of Adjudication and Disposition of Beijing Rules.
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12. Guidelines 25 and 26.
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14. Article 40 (3) (b) of the UNCRC and Rule 4 of Beijing Rules.
15. Article 40 (3) (b) of the UNCRC and Rule 11.1 of the Beijing Rules.
16. Article 10 (2) (b) of the International Covenant on Civil and Political Rights and Rule 20 of the Beijing Rules.
17. See Rule 30 of the 'Rules for the Protection of Juveniles Deprived of their Liberty'. See also United Nations Standard Minimum Rules for Non-Custodial Measures, Tokyo Rules adopted by GA/RES/45/110 on 14th December 1990,17 (1) (c) of the Beijing Rules, 37 (b) of UNCRC, and Rules for the Protection of Juveniles Deprived of their Liberty.].
18. Article 9 (4) and 15(1) of the International Covenant on Civil and Political Rights.
19. Article 40 (2) (b) (1) of the UNCRC and Article 14(2) of the International Covenant on Civil and Political Rights.
20. A Un study found that the right to counsel can become more important because of the informality of juvenile proceedings.
21. Article 37 (a) of the UNCRC, Article 7 of the International Covenant on Civil and Political Rights, and Rule 17.2 and 17.3 of the Beijing Rules.
22. Article 40 (4) of the UNCRC.
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