

Report on the webinar on

Child's Rights: Role Of Law As An Enforcement Tool

Date: 8th November, 2020

Time:4:00 P.M-6:30 P.M



PREPARED BY: *SHAH FAISAL, ADVOCATE*

Time	Speaker
4:00-4:16	Advocate Shah Faisal
4:17-4:27	Advocate Syed Musaib
4:29-5:02	Mr.Musab Omar
5:03-5:13	Ms.SafinaNabi
5:14-5:25	Asst. Professor Javaid Ahmed
5:27-5:43	Advocate Eliza Rumthao
5:43-5:57	Sr. Advocate Colin Gonsalves
5:57-6:02	Ms.KawalpreetKaur
6:02-6:14	Advocate Kabir
6:16-6:18	Ms.ShiekhYamina
6:18-6:20	Ms.OindrilaSen
6:20-6:29	Group Discussions

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5.	Childhood in conflict zone	Mr.Javaid Ahmed
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Introduction: children's in conflict areas have always been the worst affected part in the society, be it psychological or otherwise. Kashmir is no different than other parts of the world so far as the political turbulence is concerned. Since 1988, Kashmir has remained engulfed in series of violence and children's continue to face state repression with impunity. Be it crackdown, encounters, curfews, pellet guns so on and so forth. The democratic institutions in Kashmir have never flourished over the period of three decades and continue to remain in doldrums. The child rights have remained a constant dream for a Kashmiri due to the political slugfest.

The aim and objective of this webinar is to educate and train young lawyers and activists so that they can use law in protecting child rights.

Advocate Shah Faisal (Moderator).

Started the webinar with introduction on child rights in Kashmir and HRLN's role in promoting and fighting for it over the years through PILs (Public Interest Litigation).

Establishment of Juvenile Justice System:-

HRLN in 2015 filed a PIL and it was through this PIL that court issued nearly 60 directions in past over the period of 5 years. The High Court interms of various orders directed the state authorities to constitute Juvenile Justice Boards, child welfare committees and observation homes in the erstwhile state of J&K.

Earlier when any minor was arrested by the police he was straightway taken to the police station and kept in regular jail with hardened criminals but after the court issued the directions, all the cases pertaining to the minors were transferred to the Juvenile boards from trial courts. The state government was also directed not to keep any minor in jail irrespective of any offence. As a result of court orders in PIL, hundreds of minors who were lodged in jails were released.

The efforts of HRLN Kashmir through court orders led previous governments to issue hundreds of crores of rupees to finance different approaches of dealing with juveniles involved in criminal activities by holding them in observation homes rather than in regular jails with regular criminals, as was the practice earlier on.

He explained that eight to ten bail orders were passed this year only as a result of their efforts on the account of stone pelting and other cyber bullying cases.

Reservation for students belonging to below poverty line category:-

PIL was filed in 2016 for 25% reservation in private schools to the students belonging to below poverty line category. The Court directed to all the private schools to provide 25% reservation to the students belonging to below poverty line. All the private schools were directed to frame the policies so as to provide 25% reservation to BPL students.

PIL regarding exponential increase of infant mortality rate in kashmir:-

Hrln Srinagar unit had filed a PIL in 2013, regarding exponential increase of infant mortality rate in Kashmir. There were around 1200-1250 deaths of infants per month in the sole tertiary care hospital for children's in Kashmir known as G.B.Panth Hospital Srinagar. Earlier there were around 100-150 deaths per month but due to the non-supply of essential drugs and paucity of ventilators resulted in high mortality rate. The court directed the state administration to supply medicines without any interruption to the hospital notwithstanding the financial instability and court also directed the government to purchase ventilators so that the lives of infants are being saved. Doctors and paramedic staff like nurses were also appointed on the directions of court since the hospital was functioning understaffed. Ambulances with ventilator facilities were purchased by the hospital administration. Due to the timely intervention and by the orders of court, infant mortality came down heavily from 1200 to 80-90 permonth.

Advocate Syed Musaib:

Spoke about minors held under the law of 'Preventive Detention'. Gave brief account of many minors picked up under PSA last year during the abrogation of Article 35-A and 370. He emphasized local Administration's meddling with the law, which also lead to disinterest in these issues from Courts. He also quoted the news reported by live law which stated that 99% of the habeas corpus petitions (detention matters) which were filed at the high court remained undecided. Executives are meddling with laws by fudging with date of birth of minors and they are deliberately shown to be majors so that they are kept with hardened criminals. Normally detained persons are illiterate so they don't have the documents available which could show that they are minors, in such circumstances it becomes extremely difficult to show to the courts

that detained ones are minors. The other problem is that when minor commits any act, he is not immediately booked under PSA but when he attains the age of majority, he is slapped with PSA.

Allegations in detentions as per law cannot be reviewed as per the law laid down by the courts. We also put in some of our cases we put CWC's as party respondents so that they can also help us in some ways.

PSA are being used extensively against the minors and the end result is that when the minors who are booked under PSA comes out of jail, he becomes hardened criminal.

Musaib further quoted the report of amnesty international which stated that as of march 2020, 34 minors were still languishing in jails.

Colin Gonsalves intervened and said that we must break the cycle of ineffectiveness, the moment any case which is to be filed before the supreme court, should be filed "injustice has not been cured since long" we can also prepare a short documentary about the injustice being done to the minors in Kashmir.

Mr. Musaib Omar: Victim of child sexual abuse.

Musaib : works in Stockholm as fundraising operations for Oxfam. Before moving to Stockholm, musaib was working as an activist against child sexual abuse.

He spoke in detail about 'Sexual Assault on minors in Kashmir' and recounted his personal experience with sexual assault and rape about two decades ago by a faith healer. Who, according to his estimates has raped around 5000 young boys over the period of twenty five years.

Musaib stated that, he was working in Afghanistan where he decided to come back to Kashmir and raise voice against this fake faith healer who is a mass child rapist. In Afghanistan, there were incidents where the children's are asked to dance and at the end of party, the children's are raped, Years later I decided to take action against him and got the help from HRLN in 2015 and they told me about a law called POCSO and subsequently, police involved in the issue by registering a case.

He pointed out many loop holes in the legal system and modus operandi of police in dealing with such sensitive issue and disinterest on part of police and media to cover the issue. He also rightly pointed out public disinterest in Kashmir in identifying and addressing the issues which have no political angle.

In 2015, Musaib said that he spoke to senior superintendent of police and narrated him the whole story. SSP called Public prosecutor and public prosecutor stated that this case won't stand in court for a days since there is delay of 14 years, also, there are no other victims would speak up.

Mr Rifat Abdullah a journalist helped me alongside HRLN, we raided the premissis of fake faith healer and got him arrested. Though he was arrested but he was released later on bail granted by the court.

In Kashmir, it's a vicious cycle of victimization, once you are victim of child sexual abuse, if you dare to speak, you are then re-victimised by police, judiciary and other parties.

Ms.Safina Nabi:

She spoke about rise of sexual abuse against children in Kashmir. As per her estimates there was considerable number of reports registered with the authorities regarding child abuse from the years 2014-2020 but she observed a decline in the number of cases reported from the years 2015-2018. As per her understanding, she attributes the increase in the number of child abuse and decline in the number of reports to two things; firstly, the inability on part of the authority to address the issue and secondly, the perspective of our society regarding the discussion of sexual abuse, due to the taboo associated with the topic, these things are pushed under the carpet.

Mr.Javaid Ahmad, (Asst. Professor, Kashmir University): Gave a perspective on "Childhood in conflict situation'. He propounds that stake holders of the State should realize that childrens are active beings and future of our society. He believes in the combine efforts of all major and minor segments of society to come forward and play an active part in addressing the issues encountered by children. He stressed that children should be listened to and there should be a change in the approach of dealing with the issues related. The people involved in dealing with children in

various official capacities should have considerable know how and experience in child psychology.

Ms. Eliza:

Spoke about "Child abuse and POSCO (Protection of Children from Sexual Offences). She drew attention to the fact of growing demand of child pornography in India after the lockdown prompted by the on-going pandemic. She insisted that all the cases of child sexual abuse must be seen with different lenses, as the subject is seen as taboo in our society and psychologically traumatizes the victims, even causing suicidal thoughts. She also elucidated that 30% of child sex abuse cases are incestuous, i.e. committed by close family members of the victims. She pointed out many loopholes in the laws related to child sex abuse in place. She suggested the following things that must be put in place while dealing with the victims of child sex abuse i.e. Firstly, the police must listen to the children and allow them to explain in their own way and not be harsh with them. Secondly, the doctors must record the emotions of these minor victims in writing while taking physical examination of their bodies. And thirdly, in case of female victim, there must be a female magistrate to take the statement of the victim.

Sr. Advocate Colin Gonsalves:

Suggested a major revamp in HRLN Kashmir division by recruiting fresh lawyers and training them in Human Rights laws. He also insisted that they be given free hand in Courts in dealing with these issues with proper procedure and discipline and they be given full support by the leadership. He admitted flaws in the judicial system in terms of dealing with general human rights issues in Kashmir and other similar states. He also encouraged the team by citing different cases where landmark decisions were made by the Courts which prompted new, stronger laws.

Ms.KawalpreetKaur:

Gave her observation of the subject in Kashmir, as per her comprehension children especially the ones being victim of child abuse are deprived of the basic support system by schools being shut off every now and then due to the political instability

and otherwise. She also suggested that there are many newly law graduates who wish to work in Kashmir for the purpose of Human rights.

Advocate Kabir Ali Zia:

Presented a bird's eye perspective of child rights abuse in Kashmir. As per his understanding, child sexual abuse is very common in our society than we would like to discuss about. He made few suggestions in this behalf. That, there should be total separation of political situation from the issues like child sex abuse and not undermine such issues in Kashmir. In addition to that he suggested that lawyers fighting on behalf of Human Rights must make use of every law in place to advance their case. Secondly, gathering of facts and evidence and making case there from.

Conclusion:- It was unanimously, deliberated and decided that Mr. Musab Umer's case will be taken up quickly and application for cancellation of bail which has been granted to the fake healer will be taken up in quickest possible time.

There needs to be strong coordination between Srinagar and Delhi office so that the case are being filed in supreme court in shortest possible time.