



5th Mangilal Pagaria Memorial National Moot Court Competition **2018**

Moot Problem

State of Indiana is a constitutional republic consisting of 29 states, each with a substantial degree of control over its own affairs;. The constitution of Indiana and all the laws are same as the constitution and laws of India. The state of Indiana has the same approach towards its international obligation as that of India.

Indiana remains one of the most ethnically diverse countries in the world. Indiana has a mix culture of a varied castes and linguistic groups whether major or minor. It has a blend of cultures and population from different religions Including Hinduism, Islamic, Sikhism and Christianity. They are the significantly residing population in Indiana.

The state of Indiana carries all the attributes of becoming an international Personality as a state but is not recognized by several other countries as a state under the obligations of International Law.

The constitution of Indiana has several provisions regarding the protection of women and children and the government of Indiana has enacted several laws on the same lines to give a better protection to the children and women of the state.

Focusing the increase in crime done by youths and the better protection of youths, the state of Indiana has enacted the most logical legislation with the purpose of dealing the children in need of care and the children in conflict with the law.

Rahul, Manish, and Suresh are three children who have been grown up in adverse situations as Rahul and Manish were the abandoned children and were not known to their parentage while Suresh was an orphan and was living his life by roaming on the streets and fighting for food each day with the passage of his life. He had been kept in several orphanages at several occasions till he attained the age of 11 years. With the passage of time all the three boys met each other and developed a deep friendship. They started living together without any guardianship and started taking independent decisions. They developed a sense of brotherhood amongst themselves and became the partners in their usual day to day activities. They started consuming alcohol, taking drugs together. They were collective responsible for many petty offences for the sake of their livelihood and enjoyment and gradually formed a notorious gang named "*Devils Party*". They were caught by the police at several occasions but were made free on the grounds of their age.

In 2014 the Devils party raised its arm and included another guy named “Kamlesh” of 13 years age. Kamlesh belonged to an affluent family and used to fulfill all the monetary demands of the Devils Party. Kamlesh then was fully involved in the gang and used to share his contribution in every offences committed by “Devils Party”. Kamlesh used to be always on his toes on the demands of the other colleagues of Devils Party, however after sometime he started realizing his involvement in the gang as a wrong step taken by him. Gradually Kamlesh started maintaining distance from the gang and hardly involved in any further activities. With the reason of ignorance of kamlesh to the gang activities, the other gang members were not happy with Kamlesh and talked to him amicably several times regarding his ignorance of the gang and persuaded him to involve actively. Kamlesh ultimately finished every connections with the gang.

The other members of Devils party now decided to make Kamlesh learn a lesson for his non involvement and called him for a cordial chat on a tea stall on July 5, 2017. Kamlesh came to meet the gang members on Mahmood tea stall and then never returned his place. At that time Rahul was 16 years 8 days, Manish was 16 years 4 months and Suresh was of 17 years 2 months.

After an extensive search for Kamlesh for two days, when the whereabouts of Kamlesh were not discovered, the parents of Kamlesh came to Ramnagar Police station on the next day on 08th July 2017 for registering an FIR for his disappearance. Ramnagar is a district under the province of Jamnagar and of the state of Indiana which is infamous for its prevailing anti social happenings like honour killing, force lifting of young girls and boys for marriage, etc. Kamlesh used to live with his parents in Ramnagar. After two days, Ramnagar Police started a manhunt for the search of Kamlesh and found a dead body with a disfigured face from the bank of river “*Somti*”, which was later recognized as the body of Kamlesh by the forensic reports of his blood and tissue which was found near his dead body. The Autopsy also showed the signs of struggle, footmarks, and brain haemorrhage. The media made a hue and cry over this murder which put a lot of pressure on the administration to put the culprits behind bar, but no evidence was recovered neither any suspects were there.

On 11 August 2017 Suresh was arrested on the charge of theft. On a search of the house of Suresh, conducted by the Ramnagar Police, a diary written by Kamlesh was recovered. On strict questions round with Kamlesh, the police came to know that the Devils party was last to meet Kamlesh before his disappearance and they went together with kamlesh at the Bank of river *Somti*. After that, all the three colleagues of Devils party was arrested for murder, by following all the procedures of criminal law of the state of Indiana.

The State of Indiana enacted Juvenile Justice (care and Protection for Children) Act 2012 passed by Parliament of Indiana amidst intense controversy, debate and protest on many of its provisions by Child Rights fraternity, on the same lines of the Juvenile Justice (Care and Protection of Children) Act 2015 of India. According to which :

¹“In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences

¹ Sec 15 of THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2012 (Indiana)

of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.”

All the sections of the Juvenile Justice (Care and Protection of Children) Act 2015 of India is same and on same place as that of the Juvenile Justice (Care and Protection of Children) Act 2012 of Indiana.

The boys denied any involvement in, and knowledge of Kamlesh’s murder, but the board with the help of expert psychologists came to a conclusion that the boys were well versed with the murder of Kamlesh and can be tried as adults. Consequently the case was committed to the sessions court of Ramnagar as there was no special courts in Ramnagar. With the help of available evidence before it, the sessions court found the boys guilty of murder and awarded the sentence of life imprisonment.

Immediately, a public interest litigation was filed in the High Court of Jamnagar (The state of which Ramnagar was a District) under Article 226 and 227 of The Constitution of Indiana by Indiana Union for Child Rights (IUCR) an organization working for protection of child rights in the state of Jamnagar, alleging that sec 15 of the Juvenile Justice (care and protection of children) Act 2012 is unconstitutional and violative of Article 14, 15 of the Constitution of Indiana and the Act itself violated Article 20 (1) of the constitution. IUCR also condemned that the definition of the act itself says that anyone who is below the age of 18 is a child and on the other hand treating these children between 16 to 18 years age under trial as adults, is baseless. IURC also alleged that the decision of board for treating these three children as adults is due to the governmental pressure and public rage.

Now the High Court of Jamnagar will hear the matter. The precedents of the High courts of India and the Supreme Court of India will have persuasive value. All the Acts (legislations) of the State of Indiana is same as the Indian Laws (Similar laws).