

## **From Struggle to Law Reform: Eliminating Incarceration of Children as adults in Jails in India**

India's juvenile Justice Law started its journey in 1919-20 with Indian Jail Committee's recommendation that children be removed from Jails. This mandate remains unfulfilled till date. One will still find children in huge numbers incarcerated in Jails as adults.

Several efforts were made in Independent India to put this evil to an end by the Supreme Court of India. Situation improved a little but such improvement was short lived each time.

In 2009, Co-Director of HAQ Centre for Child Rights, Bharti Ali was nominated in a Judicial Committee constituted by the Delhi High Court with a mandate to supervise functioning of Observation Homes in Delhi and it was during work of this Committee that it was found that large scale violence in Observation Homes has its roots in the practice of sending children to jails. Matter was taken up with the Commissioner of Police who responded positively, but the situation did not improve.

Then HAQ decided to take up this matter and used the Right to Information Act to find out how many children in various observation homes have been transferred from Tihar Jail. Initially this effort did not bring results as authorities gave evasive responses but when HAQ directed its application to Tihar Jail in Delhi, a response was received confirming that 114 persons lodged in Tihar Jail in a span of ten months only had been declared to be children by various Courts and were transferred to Observation Homes.

This shocking evidence led to a Public Interest Litigation (PIL) in 2011. During the pendency of this PIL, HAQ suggested to the High Court that National Commission for Protection of Child Rights (NCPCR) be involved in the task of scrutiny of all jails in Delhi to find out if there are more children incarcerated in jails of Delhi as adults. NCPCR with great enthusiasm carried out inspections of all jails in Delhi and found innumerable children lodged in jails, suffering due to falsification of age or ignorance. Based on this, High Court passed a detailed judgment in the year 2012, setting out responsibilities of each duty holder to ensure that children do not land up in jail, which initiated a system of regular inspection of all jails in Delhi by joint teams of NCPCR and the Delhi State Legal Services Authority, who also process identified cases for age determination. Innumerable children continue to benefit from such system. This case was not only listed by Delhi High Court as one of the cases which contributed in growth of jurisprudence but also brought up the issue of incarceration of children in national attention.

When in 2012, Government of India started contemplating enactment of a new Juvenile Justice Act, NCPCR, which, due to its involvement with this PIL, had acquired sufficient know how on the scale and extent of incarceration of children in jails in India, recommended a specific provision mandating Juvenile Justice Boards to inspect jails to find out if children are lodged in jails and if found, to take immediate steps to transfer them from jails. This is for the first time in history that such a provision found place in any children's statute in India.

HAQ continues its efforts to ensure that children do not go to jail. For those who are interested in obtaining more details on this intervention of HAQ, we will be happy to share more details. Please write to us at <[info@haqrc.org](mailto:info@haqrc.org)>