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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **ROLE OF MADRAS HIGH COURT ON PROTECTING THE CHILD RIGHTS ISSUES**

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## **ROLE OF MADRAS HIGH COURT ON PROTECTING CHILD RIGHTS ISSUES**

Childs are Considered to be the Gems of the World. A Familiar Tamil Poet Tiruvalluvar speaks about the essentiality of Child in the Family Life. Child Rights is an Inclusive concept which contains Child parental Care, Child Nutrition, Child Education, Child Health Care, Child against Exploitation, Child Trafficking in any Form, Rights of Disabled Child, Rights of abandoned Child, Rights against Sexual Exploitation. Right to have Education in healthy Environment, Rights against Child Marriage, Rights in Armed Conflicts, Rights of girl Child, Rights of Physically disabled and mentally disabled Childs, adoption and maintenance of Children and Several related Rights. Some of these rights are Constitutionally and Statutory Recognized.

Judiciary Being the pillar of the Indian Constitution plays an Vital Role in Protecting, guaranteeing and Confirming the Child Rights. Indian Judiciary by Giving the Broad Interpretation for Child Rights expanding the Scope of the Child Rights in Several Sense. This paper going to discuss about the Role of Madras High Court on Protecting the Child Rights Issues. The High Court of Judicature at Madras being the Chartered High Court in India plays an Vital Role in Confirming the Child Rights and gave Wider interpretation and Curbed Child Rights Violations in State of Tamil Nadu. The Madras High Court gives several Recommendations to the Union Government and Tamil Nadu Government with regarding the Child Rights issues to make Appropriate Legislations and Appropriate actions.

My Research Article discuss about the Compendium of Judicial responses of Madras High Court on the Issues involving the Child Rights and its interpretation and implementations level.

## **OBJECT OF THE RESEARCH ARTICLE**

1. This Research Article describe about the Role of Madras High Court on Upholding and protecting the Child Rights.
2. This Research Article describe about the recommendations made by Madras High Court to the Union Government and State Government with regard to Child Rights Issues.
3. This Research Article describe about the recent Land mark judgment given by the Madras High Court on Child Rights protection and its implementation.

## **MADRAS HIGH COURT ON CHILD LABOUR ISSUES**

In W.P. No. 15882 of 2010 (Taken up as PIL) on basis of report by NLSU – Union of India, rep. by Secretary to Government, Ministry of Social Welfare, New Delhi and Others, <sup>1</sup>. The Hon'ble Madras High Court considered the provisions of "Child Labour and Regulations Act" and the need for proper implementation of the National Child Labour Scheme and the funds provided to be used for the welfare of the children. This Court further called upon the District Legal Services Authorities to monitor the implementation of the schemes and submit periodical report to the State Legal Services Authority. This Judgment, thus, indicates the active role that the Court plays in building a strong nation and the care that we need to show in the wellbeing of the children who are the future of this country.\_

In Sivasankar Babu Vs State of Tamil Nadu and 9 others, <sup>2</sup>,the petitioner approached the Hon'ble Madras High Court to release the minor Child Labour detenues from the Spinning yarn mill in Tiruppur in.Covid-19 situation. It is really pathetic to hear the stories of children who, for the sake of their family, have come to work even without going to school. Parents should take care of their children and owing to their helplessness, they cannot send their children to work when the Government is providing education free of cost and also, free food apart from scholarships. Parents

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<sup>1</sup> (2011) 7 MLJ 1

<sup>2</sup> H.C.P.No.1299 of 2020



should make utmost use of the incentives and facilities provided by the Government instead of sending their wards to work at such a tender age depriving them of their right to education and a bright future.

The incident which is said to be happening in the 8 th respondent company is only a tip of an iceberg as hundreds of such companies are located in Tiruppur, Coimbatore and Erode Districts and it is being said that child labour is rampant in these Districts and the circumstances and the living conditions in which the children are made to work are not appreciable. Therefore, the Police Authorities, Labour Department and Child Welfare Committees of these Districts should be very vigilant and conduct raids regularly to eradicate child labour. Unless, the authorities are vigilant and cautious, this kind of problem cannot be prevented. In any event, this is a social menace affecting the entire society and this issue also has to be addressed simultaneous.

## **MADRAS HIGH COURT ON MUSLIM CHILD** **MARRIAGE PRACTICES**

In the Case of filed by M.Mohamed Abbas against the Tamil Nadu Government<sup>3</sup> before the Madurai Bench of Madras High Court to direct the authorities to not interfere in the Muslim Child marriage occurs as per personal Law.

The Hon'ble Division bench comprised of Justices S. Tamilvanan and VS Ravi determined question regarding the overruling of Child Marriage Prohibition Act, 2006 on the Muslim Customary Marriage practices. The Madras High Court held that the provisions of Prohibition of Child Marriage Act, 2006 are in no way against the religious rights guaranteed under Articles 25 and 29 of the Constitution of India. In fact, the same is in favour of all the girl children in getting proper education and empowerment and equal status as that of men in the Society, as guaranteed under Articles 14, 15, 16 and 21 of the Constitution and dismissed Writ petition as legally not sustainable.

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<sup>3</sup> Writ Petition (MD)No.3133 of 2015

## **MADRAS HIGH COURT ON CHILD PORNOGRAPHY**

In recent order P.G. Sam Infant Jones v. State,<sup>4</sup> passed by Madras High Court, in Anticipatory Bail Petition filed by the accused who browsed, downloaded and transmitted child pornographic material by using Airtel sim through his e-mail and Facebook Account.

The Court Held that the Child Pornography is a serious issue warranting a firm approach, that it would make a distinction between a one time consumer and those who transmit or propagate or display or distribute in the digital domain.

Additionally the Court warrants that the system also may not be able to prosecute every offender. Therefore, it is only through moral education, there can be a way out. It is only the Bharatiya culture that can act as a bulwark. The Court held that the public awareness or "Big Brother" watching not enough to stop child pornography in India. Moral Education is mandatory to Curb the issues.

## **MADRAS HIGH COURT ON CHILD IN CYBER SPHERE**

In the Case filed by One Advocate Muthukumar Against TRAI<sup>5</sup> Requesting The Hon'ble Court to ban Tik Tok App it ruin the life of Children and life. In this Case the Madras High Court Direct the

- i. Central Government to prohibit downloading of Tik Tok Mobile App.
- ii. The Medias are prohibited from telecasting the videos made using Tik Tok Mobile App.; and
- iii. The Government has to answer whether the Union of India will enact a statute, like Children's Online Privacy Protection Act, enacted by the United States, to prevent the children becoming cyber/online victims.

In E. Martin Jayakumar v. Government of India,<sup>6</sup> The Honble Madras High Court while addressing a matter with respect to menace being caused due to online games expressed its opinion whether the Court can ban the same or not. Petitioner in the instant matter complained of online business enterprises preying on children and young adults by offering divers online games that are addictive. Court elaborated stating that, There is no doubt that when there is some illegal action or something

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<sup>4</sup> 2021 SCC OnLine Mad 2241

<sup>5</sup> W.P.(MD)No.7855 of 2019

<sup>6</sup> 2021 SCC OnLine Mad 2335

which is detrimental to larger public interest, constitutional courts intervene; but in the matters of the present kind, especially when elected governments are in place, such matters of policy should be left to the wisdom of those representing the people and having their mandate instead of the Court issuing a diktat.

## **MADRAS HIGH COURT ON OPEN BOREWELL AND CHILD RIGHTS ISSUES**

The Hon'ble Madras High Court in V.Ponraj Vs State of Tamil Nadu <sup>7</sup>, PIL filed due to death of 2 yrs old boy Sujith Wilson on the abandoned borewell in the year of 2019. The Hon'ble High court issues several direction to the Government authorities to effective implement the Tamil Nadu Panchayats (Regulations of Sinking of wells and Safety Measures) Rules 2015 and stringent provisions for Digging Bore-wells.

## **MADRAS HIGH COURT ON SCHOOL ENVIRONMENT**

In Reference to Kumbakonam Fire Accident case<sup>8</sup>, Sri Krishna Aided Primary School is the school in which the fire accident occurred on 16.7.2004, charring to death 94 children. The Madras High Court on this case directed the authorities to ensure safety of students in the School places and direct the authorities cancel the recognition of Cancel if unfill prescribed rules.

## **MADRAS HIGH COURT ON POCSO ACT**

In Venkatachalam Vs Inspector of Police<sup>9</sup> While Convicting the accused/appellant under POCSO ACT, Madras High Court out pointed out that, It is pertinent to mention here that the trial Judge has failed to appreciate the age of the victim girl and not understood the relevant provisions of POCSO Act. In many cases, this Court observed that the Special Judges who deal with cases under POCSO Act, not properly understood the scope and object of the POCSO Act. Before posting any Sessions Judge to the Special Court which deals with the cases under POCSO Act, have to necessarily sensitize and impart training to them through Tamil Nadu State Judicial Academy. The Registrar General and

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<sup>7</sup> WP.No.30795/2019

<sup>8</sup> Indian Kannon

<sup>9</sup> CRL.A.No.113 of 2021

Director of State Judicial Academy have to necessarily take steps for the same after getting necessary approval from My Lord The Honourable Chief Justice as Patron-in-Chief and Board of Governors of the State Judicial Academy.

In *Vijayalakshmi v. State, of Tamil Nadu*<sup>10</sup> decided on 27-01-2021, the Hon'ble Madras High Court pointed out that **“What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.”** The scheme of the POCSO Act clearly shows that it did not intend to bring within its scope or ambit, cases of nature where adolescents or teenagers involved in romantic relationships are concerned.” and the Court further added that therefore, it is high time that the legislature takes into consideration cases of the present nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The Madras High Court in view of the above opined that the legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

In *Maruthupandi Vs State*<sup>11</sup>, the Hon'ble Madras High Court held that on the compromise memo filed against accused by Victim minor girl, Even assuming that victim girl had fall in love with the appellant and admitted that they are living for four years, even on the date of Commission of offence, provisions of POCSO Act attract. It is not a compoundable offence. Subsequently, she cannot turn it to compound the offence. Once the victim girl gave complaint that the appellant has committed the offence and the case has been registered, it is offence against State. Therefore subsequent compromise will not take away the offence.

In *S. Jayaseelan v. State*,<sup>12</sup> The Madras High Court on the case on child abused in Educational Institution directs Schools to keep a complaint box to make the victims complain about the sexual assault freely and keys of the same to be kept under the control of Secretary District Legal Services Authority.

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<sup>10</sup> [2021 SCC OnLine Mad 317](#)

<sup>11</sup> CRL.A.No.258 of 2019

<sup>12</sup> Crl. A. No. 321 of 2019

Further, the *High Court's recommendation* that expressed that normally female students would get fear in lodging complaints against Teacher or Management of School regarding sexual offences, considering their future, hence Government of Tamil Nadu shall form a committee at every school, consisting of the Social Welfare Officer, the Secretary of District Legal Services Authorities, female Police Official not below the rank of District Superintendent of Police, District Educational Officer, female Psychiatrist and Physician from the Government Hospital.

The District Educational Officer may inspect the School once in a month to get grievance of the Female students with regard to sexual assault and give confidence to the female children to come forward to make complaints against the sexual offenders, who may be a teaching or non-teaching staff and also the members of the Management of the School.

## **MADRAS HIGH COURT ON CORPORAL PUNISHMENT**

In *S.Jai Singh vs State*<sup>13</sup>, the Madras High Court Felt that there is no specific legislation had been set in motion to prohibit and eradicate corporal punishment on children, so far. The Court also further added that This Court took pains to do a little research on the issue of corporal punishment of children and importance of knowing the effects of certain physical workouts, since it may result in adverse consequences for a child. This has to be kept in mind by all those who are involved in providing education for children and more particularly the parents who play a major roll in moulding the character of the child. The Court held that Even though Animals having protection against Cruelty practices but Children has no laws against Corporeal practices.

## **MADRAS HIGH COURT AND NOON MEAL SCHEME**

### **IN TAMILNADU**

In Noon Meal Scheme Case in Tamil Nadu, <sup>14</sup> “It would serve the children well if the State has a road-map ready so that the lack of adequate food and nourishment that children have suffered over the last 15 months or so, particularly among the more vulnerable sections, maybe remedied without delay.”. The Court further added that “While it may be easier for the State, whether through the

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<sup>13</sup> CrI.O.P.No.23120 of 2019

<sup>14</sup> W.P.13642 of 2019

Corporations or the Municipalities, to organize adequate food and nourishment for children in the urban or semi-urban areas, the difficulties may come up in the rural areas. The court indicating its consciousness on the difficulties that might be faced in the rural areas. In this regard, the Bench opined that the Panchayat system and NGOs may be roped in for the purpose of providing adequate food and nourishment to the children in the rural area.

## **MADRAS HIGH COURT ON DISABLED CHILD RIGHTS IN EXAMINATION DURING COVID-19**

In the case of Joseph Sahayarajan Vs State of Tamil Nadu,<sup>15</sup> a parent of disabled child filed case against examination pattern decided by Government.. The Madras High Court ordered that all children with disability cannot be treated alike and that the state government would have to frame individual solutions. It has ordered the state government to compile a list of candidates with disabilities appearing for the board exams, ensure availability of scribes, and to ensure the children and scribes are tested for Covid-19 two days before the start of the exams.

## **MADRAS HIGH COURT ON JUVENILE JUSTICE ACT**

On Suo Motto proceedings of Madras High Court<sup>16</sup> for effective implementation on Juvenile Justice Act. The Madras High Court added that “It is made clear that if this court in future comes across any infraction or lack of performance of the statutory obligation and duties in the implementation of the act on the part of officials concerned, stringent action would be suggested which may include the criminal prosecution as well as disciplinary proceedings against such erring officials. Since the involvement of the State machinery is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and its Juvenile Justice Committee continues its proactive role in welfare of children.

The Madras High Court recommend the Chief Justice of each High Court to consider establishing child-friendly courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012 and the

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<sup>15</sup>Newshook- Web Journal of Disabled persons

<sup>16</sup> Live Law.in

Prohibition of Child Marriage Act, 2006, trials for sexual offences under the IPC and other similar laws should be conducted with a high degree of sensitivity

## **MADRAS HIGH COURT ON CHILD ABUSE**

### **IN SHELTER HOMES**

In *Change India Vs State*<sup>17</sup>, writ petition filed by NGO, Central Bureau of Investigation to investigate into the trafficking and illegal confinement of 89 girl children by the Mose Ministries Complex and consequently to direct the Tamil Nadu Government to restore the children living in the custody of Mose Ministries Complex to their respective parents. As seen from the other parts of the Report, the institution is guilty of serious violations of certain statutory prescriptions, which are not condonable by any Court.

The Court Further added in this case that, The object and purpose of the Orphanages Act, Juvenile Justice Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000 are to ensure that these neglected juveniles are rehabilitated and reintegrated into the Society, either by reunion with their parents or by other methods. This primary object and purpose of the three enactments have been completely defeated by the institution by just picking up infants without even trying to find out the parentage of these children.

## **MADRAS HIGH COURT ON CHILD SEXUAL RAPE**

In *Mookan @ Murugan v. State*<sup>18</sup>, The Madras High court recently expressed its anguish over the increasing instances of cases where children are sexually mistreated by persons known to them, despite rigorous laws.

The Court observations whereas confirming the conviction and sentence awarded to man for raping his 11-year-old relative. The rights of feminine youngsters area unit continuously staked in peril.

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<sup>17</sup> W.P.(MD)No.20895 of 2015

<sup>18</sup> CRL.A(MD).No. 17 of 2016

## **MADRAS HIGH COURT ON CHILD SEXUAL ABUSE IN EDUCATIONAL INSTITUTION**

In S.Jayaseelan v. State,<sup>19</sup> The Madras High Court directed to keep a Complaint Box at every School to make the victims to complain about the sexual assault freely and keys of the same should be under the control of the Secretary District Legal Services Authority. The Secretary, District Legal Services Authorities are directed to inspect the complaint box along with the district Social Welfare Officer once in a week and enquire into the same, if prima facie reveals any sexual offence, forward the same to the Station House Officers concerned to proceed further.

The Madras High Court further opinion that normally female students would get fear in lodging complaint against the Teacher or Management of the School regarding sexual offences, considering their future of their studies. They will not reveal easily anything about the sexual assault to anyone in the Management of the School.

Hence, the Court recommends the Government of Tamil Nadu to form a committee at every School, consisting of the Social Welfare Officer, the Secretary of District Legal Services Authorities, female Police Official not below the rank of District Superintendent of Police, District Educational Officer, female Psychiatrist and Physician from the Government Hospital. The District Educational Officer may inspect the School once in a month to get grievance of the female students with regard to sexual assault and give confidence to the female children to come forward to make complaint against the sexual offenders, who may be a teaching or non teaching staff and also the members of the Management of the School.

### **CONCLUSION**

The Madras High Court has Strike out the Child Rights Issues and Child Rights Violations in Digital Spaces through its Landmark Judgment. The Madras High Court also discuss with issues regard to the rehabilitation of Childs in Conflicts with Law and to prevents Crimes Committed by the Children. The Madras High Courts issues several directions to the Government to protect Child Marriage issues. On the eve of technological growing and advancement in the Society the Rights of the Children has

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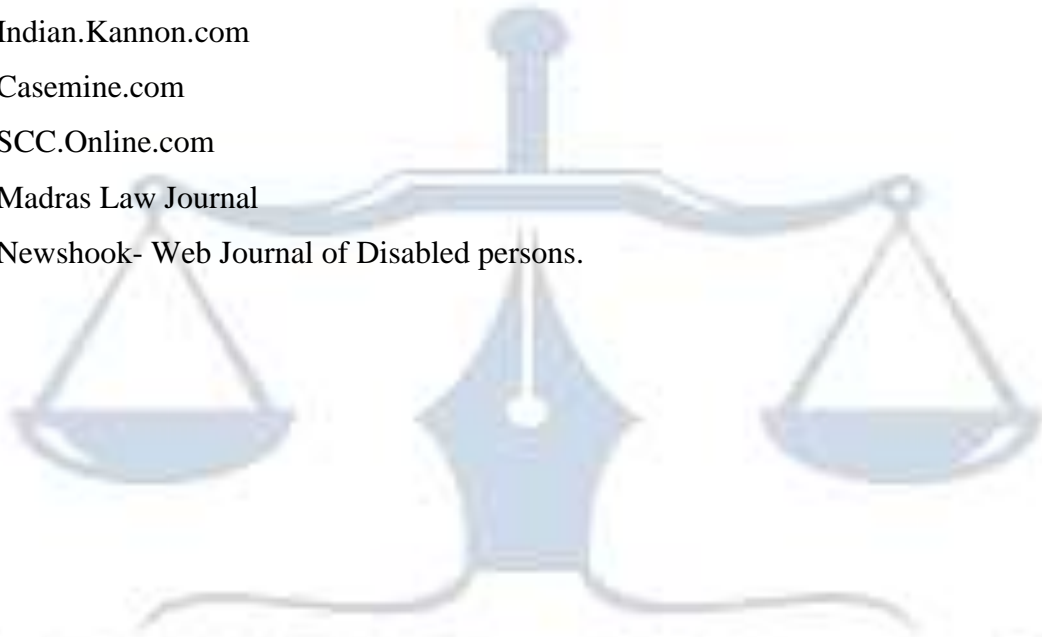
<sup>19</sup> CrI.A.No.321 of 2019



been expanded and new dimensions of Child Rights has been evolved. There is new form of Child Exploitation through technological booming and here Judiciary plays an Vital role in preventing Such Child Abuses. Judiciary is only the entity which plays an important role in interpreting the Scope of rights of Children in Public sphere and in their domestic Sphere.

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