

Justice Gita Mittal protects innocent minors : *The Times of India* 27.08.2014



Ms Justice Gita Mittal

HC: Should Not Be Tried Under Immoral Trafficking Act

At a time when the Centre wants to reduce the age of juvenility , the Delhi high court has extended protection under the Juvenile Justice Act to minors rescued during anti-trafficking raids.

The court has ruled that minors are victims, not offenders to be prosecuted under Immoral Trafficking (IT) Act. They should be governed by the welfare provisions of JJ Act and treated as "child" defined under it, instead of being punished for being "juveniles in conflict with law". In essence, the court held that JJ Act will prevail over the IT Act as the former is a special law.

"The only answer to the second question formulated earlier in this judgment is that a person under 18 years of age, who is recovered in police action under Sections 15 and 16 of the IT Act, has to be treated as a child in need of care and protection within the meaning of the expression under JJ Act 2000," **Justice Gita Mittal** held in a recent judgment.

The ruling has far reaching implications since HC has interpreted provisions of two central acts to reach its conclusion, which will be binding for police and trial courts, at least in Delhi.

Even nationwide, in the absence of any contrary judgment by state high courts, Justice Mittal's verdict *lays down guiding principles to be followed by police in case of arrests/raids.*

Interestingly , the petitioner wasn't an affected family or an NGO but the Delhi High Court Legal Services Committee took up the case .

Through advocate V Madhukar, the committee challenged an order passed in 2009 by a Metropolitan Magistrate on custody of two minors recovered by police and dealt with by the court under IT Act. But, HC appointed senior advocate Sandip Sethi as amicus and took into account the plea made by advocate Amit Chadha for welfare of the minors.

After exhaustive research of statutory provisions and international conventions, it formulated guidelines. It pointed out that a child is incapable of giving consent and any sexual behavior or activity involving a child renders the participating adult open to . stringent penal action under several enactments. But "no penal liability vests on the child for the same".

Such a child, HC clarified, (i.e. a child found begging, a working child or a child likely , to be abused or exploited for the purpose of sexual abuse or illegal acts or a child vulnerable to drug abuse or trafficking) "is not to be treated as an offender" but "as a victim within the meaning of the expression under the JJ Act."

Lastly, it ruled that if a person rescued by police under the IT Act, and produced before a magistrate, appears to be under 18 years of age, such person will be immediately transferred to the Child Welfare Committee.