

## JUVENILE JUSTICE LAW IN INDIA

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The Juvenile Justice System in India is structured around the Constitutional mandate prescribed in the language of Articles 15(3), 39 (e) & (f), 45 and 47, as well as several international covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

In India, a person below the age of 18 years is considered a '*child*'. The Juvenile Justice system contemplates the legal response with respect to two categories of children, namely those who are '*in conflict with law*' (an individual under the age of 18 years who is accused of committing an offence); and those '*in need of care and protection*' (children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities).

The Legislation that deals with all the matters concerning 'Children in need of care and protection' and 'Children in Conflict with Law' is **Juvenile Justice (Care and Protection of Children) Act, 2015**.<sup>1</sup>

The said Act came into force from 15<sup>th</sup> January, 2016. It replaced the juvenile delinquency law and the Juvenile Justice (Care and Protection of Children) Act, 2000/2006. The provisions of the Act, 2015 apply to all the matters concerning Children.

### **Aim and Object of Juvenile Justice (Care and Protection of Children) Act, 2015:**

The provisions of this Act apply to all the matters concerning 'Children in need of Care and Protection' and 'Children in Conflict with Law', including,

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<sup>1</sup> The Bare Act, *Juvenile Justice (Care and Protection of Children) Act, 2015*, Ed. 2016, Taxmann.

1. Procedures and decisions or orders relating to rehabilitation, adoption, reintegration, and restoration of children in need of care and protection;
2. Apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social integration of children in conflict with law; in a child friendly manner.

The Act aims at adjudicating and disposing cases dealing with juveniles/children keeping in mind "*the best interest of the children and their rehabilitation.*"

The Act highlights the two main bodies that deal with these children, to be set up in each district, i.e, Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs).

**Juvenile Justice Board (JJB)** is constituted in each district for exercising the powers and discharging its functions relating to juveniles/children in conflict with law. The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. Similarly, **Child Welfare Committee (CWC)**, deal with those children who are 'in need of care and protection' i.e. children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities and aims at determining institutional care for children in need of care and protection and their rehabilitation, reintegration, and restoration.<sup>2</sup>

#### **Composition, powers and functions of CWC's and JJB's:**

- (i) Each CWC shall consist of a Chairperson and four other members, of whom at least one member of the Committee should be a woman and another, an expert on the matters concerning children. The Committee shall function as a Bench of Magistrates and has the same powers as a Metropolitan Magistrate or a Judicial Magistrate of the first class. On the other hand, each JJB shall consist of a

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<sup>2</sup> Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act 2015 - Critical Analysis*, 2017, Universal Law Publishers, Lexis Nexis.

‘Principal Magistrate’ and two social workers, of whom at least one member shall be a woman. The Board is conferred with the powers bestowed upon a Metropolitan Magistrate or a Judicial Magistrate of the first class.

- (ii) CWC’s deal with children who are deprived and belong to marginalized sections of society as well as those with different needs and vulnerabilities, whereas JJB’s deal with those who are accused of committing an offence.
- (iii) The Committee has the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of their human rights. Also, committee has the power to deal exclusively with all proceedings relating to children in need of care and protection. Whereas, The JJ Board constituted for any district shall have the power to deal exclusively with all the proceedings under the Act, relating to children in conflict with law, in the area of jurisdiction of such Board.<sup>3</sup>

### **Reasons for enacting Juvenile Justice (Care and Protection of Children) Act, 2015:**

The reason behind amending the law was the incident of 2012, Delhi Gang Rape Case, probably known as Nirbhaya case.<sup>4</sup> In this case, one of the accused was a juvenile (just few months away from being 18 years old) and he was tried in the juvenile court.

In July, 2013, Mr. Subramaniam Swami, a BJP politician filed a Public Interest Litigation in the Supreme Court of India seeking permission that the juvenile be tried in an ordinary court of law as an adult.

The three Judge Bench of the Supreme Court comprising Chief Justice P Sathasivam and Justices Ranjan Gogoi and Shiva Kirti Singh refused to

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<sup>3</sup> Ibid

<sup>4</sup> Aniket Sharma, “Juvenile Justice Care and Protection of Children Act, 2015”, Retrieved from <http://www.legalservicesindia.com/article/1972/Juvenile-Justice-Care-and-Protection-of-Children-Act,-2015.html>. Site visited on 01.02.2019.

interfere with the age of juvenility in cases where juveniles are found guilty of heinous crimes. It was held by the Court that the provisions of the Act are in compliance with the Constitutional directives and international conventions.<sup>5</sup> The Supreme Court directed the Juvenile Justice Board to take the decision in the best interest of the child as per law. Thereafter, the board sentenced the said juvenile to stay in a Reform Home for 3 years.

The said verdict of Supreme Court was criticised by the public including the mother of the victim, saying that by not punishing the juvenile as an adult, the court is encouraging other teenagers to commit such similar crimes without any fear. Due to this dissatisfaction towards the court verdict, the Ministry of Women and Child Development prepared a new draft, allowing children between 16-18 age group to be tried as an adult if committed any heinous offence such as rape, robbery, murder, burglary, etc so that it creates a deterrent effect for others.

The government thereafter introduced the Juvenile Justice Bill in August 2014 in Lok Sabha citing various reasons to justify the need for a new law. Besides the reason stated above, the Ministry said that the existing Juvenile Justice Act, 2000/2006 was also facing implementation issues, procedural delays with regard to adoption, increasing number of abuses against children in institutions, inadequate facilities, quality of care and rehabilitation measures in homes and that there are inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc which highlighted the need to review the existing law.

Additionally, the government cited National Crime Records Bureau (NCRB) data stating that there has been an increase in crimes committed by juveniles, especially by those in the 16-18 years age group. NCRB data shows that the percentage of juvenile crimes, when seen in proportion to total crimes, has increased from 1% in 2003 to 1.2% in 2013.<sup>6</sup> During the same

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<sup>5</sup> Dr. Subramaniam Swami & Ors vs Raju, (2014) 8 SCC 390.

<sup>6</sup> Apoorva, "The Juvenile Justice Bill, 2015: All you need to know", retrieved from <http://www.prsindia.org/theprsblog/juvenile-justice-bill-2015-all-you-need-know>. Site visited on 01.02.2019.

period, a percentage of all juveniles accused of crimes increased from 54% to 66%.<sup>7</sup>

**Major amendments introduced in Juvenile Justice (Care and Protection of Children) Act, 2015:**

The Act of 2015 provides that the children between 16 to 18 age group be *tried as adults* for heinous crimes. The three types of offences defined by the new Act are:

- **heinous offence**- an offence that attracts a minimum penalty of seven years imprisonment under any existing law,
- **serious offence**- an offence that attracts imprisonment between three to seven years and,
- **petty offence**- that attracts imprisonment with up to three years.

Under the JJ Act, 2000 any child in conflict with law, regardless of the type of offence committed, may spend a maximum of three years in institutional care (special home, etc.) The child cannot be given any penalty higher than three years, nor be tried as an adult and be sent to an adult jail. But the new Act, 2015 treats all children under the age of 18 years in a similar way, except for one departure. **Section 15** of the Act, 2015 states that any child who is 16-18 year old and commits a heinous offence may be tried as an adult. But for this, the JJB shall conduct a *preliminary assessment* to assess the child's mental and physical capacity, ability to understand consequences of the offence, etc. and the circumstances in which the alleged offence has taken place.<sup>8</sup> Then on the basis of this assessment, the Board shall determine whether the child is fit to be tried as a child or there is a need for trial of the said child as an adult by the Children's Court having jurisdiction to try such offences.

The Act while addressing the children in need of care and protection has stipulated that, when a child is found to be an orphan, abandoned or surrendered or in any other vulnerable state he shall be brought before a

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<sup>7</sup> Ibid

<sup>8</sup> See Supra Note 2.

Child Welfare Committee within 24 hours, excluding the time necessary for the journey. Such child can be produced by any of the following persons, namely:

- any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- any public servant;
- Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;
- Child Welfare Officer or probation officer;
- Any social worker or a public spirited citizen;
- By the child himself; or
- Any nurse, doctor or management of a nursing home, hospital or maternity home:

A Social Investigation Report is prepared for the child, and the Committee decides to either send the child to a Child Care Institution or any other facility it deems fit, or to declare the child legally free for adoption or foster care. The Act also outlines the eligibility criteria for prospective parents. It also details the procedures for adoption, and introduces a provision for inter-country adoption, so that prospective parents living outside the country can adopt a child in India. Model Guidelines for Foster Care, 2016<sup>9</sup> have also been released by the Ministry of Women and Child Development.

**Penalties for committing offences against children;** Various penalties for committing offences against children have been laid down in the JJ Act, 2015. These include penalty for giving a child an intoxicating substance, selling or buying of a child, cruelty against a child, employment of a child for begging, etc.

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<sup>9</sup> Model Guidelines for Foster Care, Ministry of Women and Child Development, November, 2016. Retrieved from <http://www.wcd.nic.in/sites/default/files/November2016-FC.pdf>. Site visited on 30.01.2019.

Sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by militant groups, offences against disabled children and, kidnapping and abduction of children. Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed.

Any official, who does not report an abandoned or orphaned child within 24 hours, is liable to imprisonment up to six months or fine of Rs 10,000 or both. The penalty for non-registration of child care institutions is imprisonment up to one year or fine of one lakh rupees, or both. The penalty for giving a child intoxicating liquor, narcotic or psychotropic substances is imprisonment up to seven years or fine of one lakh rupees, or both.

For the effective implementation of these provisions, JJ Model Rules, 2016 provides for child friendly procedures for reporting, recording and trial.

**Mandatory registration of Child Care Institutions;** All child care institutions, whether run by State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially for housing children, regardless of whether they receive grants from the Government, are to be mandatorily registered under the Act within 6 months from the date of commencement of the Act. Stringent penalty is provided in the law in case of non-compliance.

**Several rehabilitation and social reintegration measures** have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children.

**Conclusion:**

There was never any doubt that the progressive juvenile law enacted in 2000 was not being implemented properly and that there was a need to revisit its provisions. In many ways, the Juvenile Justice (Care and Protection of Children) Bill, 2015, passed by the Lok Sabha, is a forward-looking and comprehensive enactment that provides for dealing with children in conflict with the law and those requiring care and protection. However, its laudable features have been overshadowed by one provision that states that children in the 16-18 age group will henceforth be tried as adults if they are accused of committing 'heinous offences'. The government believes that the provision will help address public disquiet over the perception that young offenders are getting away with light punishment after committing crimes such as murder and rape.