



## Juvenile Justice Act - An Overview

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### ABSTRACT

This article provides a detailed understanding of the current scenario of the juvenile justice system in India. Adding to that is contrasting with the past amendments and their effects. The authors begin by defining the juvenile justice act. This act provides a broader view at juveniles. The authors attempt to explain who juveniles are from the view point of law, as the law consists of legal jargons. A horrific incident that was the Delhi gang rape which included a minor as one of the perpetrators caused an outrage in India forcing the legislators to amend the pre existing juvenile justice act of 2000. The authors then proceed to explain the amended act and how heinousness is the determining factor in deciding the age of the juvenile. The authors then examine the reasons behind juvenile delinquency and the reason behind committing the crime, it includes various factors which have been discussed by the authors in this article. The article then dwells into the establishment of juvenile justice board. This is followed by case laws of the Supreme Court of India. The Supreme Court has had a major part in interpreting the law regarding the juveniles. The authors then discuss about the child welfare committee, which is a part of the juvenile justice act and plays a significant role in protecting the children who face various abuses and harassment. This is followed by a brief on rehabilitation, which provides an idea to the readers on various types of rehabilitation available to the juvenile delinquent after he has served his sentence. The article then cross examines the various problems associated with juvenile rehabilitation.

**KEYWORD:** *juvenile justice, delinquents, justice board, heinousness, child welfare committee, amendment, care and protection act*

### INTRODUCTION

To gain a clear perspective of law it is imperative for us to understand who a juvenile is: **Section 2(K)** of the Act defines a ‘juvenile’ or a ‘child’ as a person who has not completed 18 years of age while **Section 2(I)** says a “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence. Why has this act been hotly debated in the recent times? A horrific incident which was the gang rape of a Delhi girl, the perpetrators of whom a minor was involved has brought this act to light. In the past few decades, crimes committed by children under 16 years of age have increased. There may be a lot of contributing factors like the child’s upbringing, peer group’s pressure and the style of care that is expected from the parents which may not be provided, leading to disastrous consequences as a result. Some juveniles on the other hand, demonstrate a level of maturity as an adult does. Therefore it can be argued that these delinquents, have to be tried as adults and not as children. There is some truth to this fact. Just as not all people are the same, maturity (which can be in this case, simply the ability to foresee the consequences of an act, and how it affects not only the victim but also the perpetrator) is not the same for all people at a given particular age. Therefore the law must take this inequality into account and provide for it the best as it may. It becomes more interesting to delve into how the law has defined the act regarding Juveniles.

### JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2015

As per sub- section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a “child” means a person who has not completed eighteen years of age. The Act classifies the term “child” into two categories: –

- “Child in conflict with law” [1], and
- “Child in need of care and protection” [2].

A 'child in conflict with the law', is basically a child who has committed an act which the law does not permit. It is also imperative for an observer of the law to understand what the UN has defined 'Child' as. The UN Convention on the Rights of Child, 1989 defines that "child" means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier. [3] With the definition of child being so clear, it comes into conflict with the amendment which was passed by the parliament of India. The Juvenile Justice (Care and Protection of Children) Amendment Bill 2015, has been passed. In it are various provisions that come into contrast with the original reason for the Juvenile Justice Act to be passed. The bill allows for juveniles 16 years or older to be tried as adults for heinous offences like rape and murder. Basically, the offence is rated based on the intensity and 'heinousness.' Heinous offences are those which are punishable with imprisonment of seven years or more. Anything punishable with more than or equal to seven years of imprisonment should not be taken lightly, as the offence concerned is a grave one. The Juvenile Justice Act, was passed in 2000. The aim of the was to protect the children. There were a lot of loopholes in the act that was passed in 2000. Therefore amendments have been made in the year 2006 and 2011. The aim of these amendments obviously was to address these loopholes. It becomes more understandable to know some of the reasons of why juvenile delinquency actually takes place.

**Adolescence:** This is often described as one of the most unstable periods of a persons life. The 'teen' is concerned a lot about his/her social appearances, status, and most importantly of all the subsequent pressure that follows. They primarily want freedom but sometimes they take a rebellious attitude to achieve the freedom. They want to fit in with the group of their friends. Another major change they go through is a biological one. Transitioning from a child to an adult is a tough task in itself. A great many changes in the body is observable. All of these factors can be said to be contributing to juvenile delinquency.

**Wealth Condition:** Another important factor contributing to juvenile delinquency is the economic condition. As mentioned in the above paragraph, teens would want to have what others have. A teen belonging to a less affluent background has a strong chance of wanting a material possession that a richer person of the same age might have.

**Mental state:** Teens who suffer through undiagnosed and untreated mental illnesses have a greater chance of doing an act that the law does not permit. During the period of mental illness, the teen is unable to reason like a reasonable man. This may lead to actions which are outside the ambit of law, basically it becomes juvenile delinquency.

**Level of education:** It is no surprise that a persons behaviour is influenced by his/her level of education. Higher education entails higher level of thought processes which decide how a teen perceives the world around them. It also substantially reduces the delinquency done by the teen. Taking into account these factors, it becomes a little easy to unravel the mystery that dictates how juvenile delinquents behave. It cannot however, be concluded that these factors solely contribute to the crime-committing tendency of a teen.

This list is exhaustive and there are many more subtle factors at play.

### JUVENILE JUSTICE BOARD

It has been stated in the Juvenile Justice (Care and Protection of Children) Act that

**Section1.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

**Section2.** A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

Taking a closer look at the above mentioned sections, it is clear that there are adequate provisions for dealing with children who are in conflict with the law. It is also advantageous for the magistrate to have the requirement of being experienced as it indicates that any decision made will have been made by a magistrate with considerable amount of experience. Another welcoming aspect of the section is the

requirement of at least one woman being included in the board. In a way it is assuring to the world which has confidence in a woman to understand the child. Establishing a juvenile justice board is a very important milestone in the whole system of juvenile law. It ensures that a fair decision is made with considerations from all qualified personnel as the matter requires delicate attention to details.

Some case laws regarding the Juvenile Justice Act.

A 3 decide Bench call of Supreme Court just in case of Umesh Chandra Vs State of Rajasthan, control that: - "As regards the final relevancy of the Act, we tend to be clearly of the read that the relevant date for the relevancy of the Act is that the date on that the offence takes place. Juveniles Act was enacted to shield young kids from the implications of their criminal acts on the footing that their mind at that age couldn't be aforementioned to be mature for imputing men's space as within the case of associate adult. This being the intendment of the Act, a transparent finding has got to be recorded that the relevant date for relevancy of the Act is that the date on that the offence takes place...We are clearly of the read that the relevant date for relevancy of the Act up to now as age of the defendant, United Nations agency claims to be a toddler, worries, is that the date of the prevalence and not the date of the trial." [4]

It can be inferred from this case that the Supreme Court has clearly explained what Juvenile Justice Act is. It is an act which has been enacted to shield young kids from the acts that they have committed by using the defence that they couldn't have probably understood the implication of their acts and therefore they are not fit to be tried as adults. This is a very important observation that clearly explains the intrinsic meaning of the act. Acts like these are the cornerstone of the Indian Legal system. It is imperative for the reader to understand the very basis of the juvenile justice act in order to uncover the reality of what's happening in the present scenario.

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The striking distinction between the 1986 Act and 2000 Act is that under the 1986 Act a juvenile means a male juvenile who has not attained the age of 16 years and a female juvenile who has not attained the age of 18 years. In the 2000 Act no distinction has been drawn between the male and female juvenile.

The limit of 16 years in 1986 Act has been raised to 18 years in 2000 Act. In the 2000 Act wherever the word "juvenile" appears the same will now have to be taken to mean a person who has not completed 18 years of age. Inquiry continuation with respect of juvenile who has finally ceased to be a juvenile.- Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child. [5]

### **CHILD WELFARE COMMITTEE**

The Child Welfare Committee (CWC) was set up under Section 27 of the Juvenile Justice Act 2015 (the Act) by the State as is required by the Act. The Act explicitly mentions that the State Governments are required to set up CWCs or two in the districts and each CWC should consist of

- a Chairperson and
- Four Members.

The Chairperson must be well versed about child welfare issues and that there must be at least one woman as a member of the committee. The powers of the CWC are same as that of a first class Metropolitan Magistrate or a first class Judicial Magistrate.

The child shall be brought in by a police officer of any rank, any member of the child line, a public servant or any of the public-spirited citizen who works towards the perfection of the society. During the inquiry period the child welfare committee usually sends the child to a children's home for his/her protection, these homes are funded by the State Governments. The child welfare homes provide food and shelter on a temporary basis to those children who are sent by the child welfare committee. The child line rescues those children who are harassed, abused, mentally tortured or employed at a very young age or in any hazardous occupation as mentioned in the ASIAD project worker's case. The Child line also helps those children who are denied education, shelter and protection and hands them over to the child welfare committee. The main purpose of this committee is to take action against the offenders of this law by either making them pay the fine or by getting them arrested. Special attention is given by the

Juvenile Justice Board to those children who have been sexually abused and their case is handled very sensitively. The Child is allowed to express his/her emotion and concerns. The child welfare committee instructs the police officials to file a report against the abusers according to the relevant provisions of the IPC. The child's statement is to be recorded with all the vital details so that the offender can be punished accordingly if the statement is proved to be true. The child is also provided with counselling and guidance of a psychologist. The medical examination of a child is done only when the CWC issues a memo. Such a medical examination is vital for the prosecution and conviction of the abuser. If the girl is found to be pregnant then she can be taken to another girl's house for care and counselling till she delivers the baby. After the birth of the child the DNA test is conducted and that is used as an evidence to prove the crime and disclose the identity of the abuser.

### **REHABILITATION**

Normally the juvenile is tried as an adult by the court by depending on how horrendous the crime is, but the punishment awarded to the juvenile offender is different from that of what is sentenced to an adult criminal. More focus is given on rehabilitation rather than punishment in the case of a juvenile. One question that arises is, whether rehabilitation can be counted as a good enough choice for a juvenile offender?, yes rehab can be used for treating the juvenile offender as the juvenile when commits a crime is unaware of his environment and is immature, he needs to be aware of what he has done and how he can stop it from happening again. Rehabilitation centers solve this problem by using different methods/types of treatments. These centers provide treatments according to the crime committed by the juvenile. Most of the juvenile delinquents enter the court by bringing with them-academic failure, substantial emotions, emotional disturbances, physical health issues, family problems, and a history of physical or sexual abuse. The juvenile offender is brought in mostly in the case of using drugs (marijuana) to escape from their problems. Drug treatment is one common type of juvenile rehabilitation program. The juvenile who is involved in drug crimes is maybe tried by a drug court. Drug treatment, Drug test, Drug treatment are the procedures that are sentenced by the court upon the juvenile. After completing the treatment, the outgoing juvenile is given an ongoing outpatient treatment which continues for about a year or so.

Most of the juvenile offenders think that committing a crime is the only way to earn or is a very nice thing to do, they are not aware of the other things that are available to them. To solve this problem the educational rehabilitation program has been started, it provides hope and a path to success to the juvenile offender. They can explore the other things and see for themselves that there are other things in life other than crime. Education is a fundamental inhabitant of any juvenile rehabilitation program. Through this program the juvenile can obtain a GED or a high school diploma, they are also provided with the facilities to earn community college credit. This program ensures that the juvenile offender has a scope in life after serving his sentence, so that he does not turn back to crime. In addition to education, vocational training program is also being provided to the juvenile delinquents. They are also taught building, carpentry skills and trade knowledge so that the youth is provided with a lot of opportunities outside the life of crime.

The integral part of any rehabilitation program is individual counseling and family counseling. One of the methods used to address the concerns and needs of the youth offenders is individual counseling. Juveniles are teens who go through a series of hormonal and physiological changes and problems which need to be addressed with a particular degree of care available only in individual counseling. Family counseling adds another dimension to this rehabilitation program. The family members are known to motivate the youth and they help the youth to come out of his current situation and prosper.

### **PROBLEMS WITH JUVENILE REHAB**

Provision for comprehensive rehabilitation programmes for the released inmates is non-existent even though explicitly mentioned in section 12 about after care organisations; it has not been taken seriously by the concerned officials. A realistic approach however, entails for more comprehensive measures taking into account the inmates's entire life situation dealing with his or her shelter support and employment problems and establishing his or her social network to integrate her or him into the family. Various array of factors determines what happens to the inmates. If previous to serving his or her sentence, the inmate had a good social life, the reintegration efforts won't go in vain as there would be a solid standing ground, making the reintegration efforts easier. Many of the inmates come

from disorganised families. Especially, a single mother cant provide for much in raising an inmate. The same case applies with a single father, as he cannot also offer much help. The purpose of rehabilitation cannot be served by people who are very old even though they are the parents of the inmates. The problem becomes more serious if the fathers or mothers are themselves not in a position to help themselves. An example of this would be alcoholic parents. This clearly presents to the reader a case of a typical dysfunctional family. Not being able to fulfil their (Children's) emotional and parental needs they often extenuate the problem at hand.

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