

“Juvenile Justice and Juvenile Courts”

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INTRODUCTION:-

The crime rate among children under the age of 16 has increased in the last few decades. The reason the crime rate is rising can be due to the educational environment of the child, economic conditions, lack of education, and parental care. The frightening incident of the “Nirbhaya Delhi Gang Rape Case” in December 2012 shocked the nation as a whole, and many debates between legal fraternity and socialists were initiated. The main reason and the topic of the debate was the involvement of the accused, who was only six months short to attain the age of 18 years. The involvement of the accused in such a heinous offense of rape forced Indian law and thus brought a new law known as “Juvenile Justice (Care and Protection), 2015 to the Indian Parliament. The Introduction to the Act replaced existing juvenile laws and introduced some notable changes. One of the notable changes is that the juveniles under 16 to 18 years of age should be tried as an adult.¹

WHO IS A JUVENILE ?

A person who has not attained the age of 18 years is called a “juvenile”.

JUVENILE JUSTICE ACT, 2015

The Act seeks to achieve the objectives of the Convention on the Rights of Children of the United Nations, as ratified by India on 11 December 1992. It stipulates procedural safeguards for children in conflict with the legislation. The Act further seeks to address children in the 16-18 age group, in conflict with the law, as they have reported an increased incidence of crimes committed by them over the past few years. The Act, came into force on January 15, 2016 and repeals the Juvenile Justice (Care and Child Protection) Act,2000.

DEFINITION OF CHILD:-

The Act defines a child as a person who has not reached the age of 18 years. The Act classifies the term “child” in two categories: “child in conflict with the law” and “child in need of care.”

INSTITUTIONAL CARE:-

The Child Care Institutions are the Observation Home, Special Home, Safety Place and Fit facility in respect of children in conflict with law. Open Shelters, Children Home and Special

¹ <https://blog.ipleaders.in/juvenile-justice-system-india/> (last accessed on june10th,2020;9:26pm)

Adoption Agencies have specific roles to play for the children in need of care and protection. All child care institutions must be registered within 6 months of the date of commencement of the Act and failure to do so is a punishable offence. Child Care Institution's registration applications are to be disposed of within 6 months; otherwise they would be deemed a dereliction of duty and would invite departmental proceedings (Section 41).

CHILD IN CONFLICT WITH LAW:-

A child who is in conflict with the law is sent temporarily to an Observation Home during an inquiry pendent. The child is segregated by age, sex, physical and mental status and nature of the offence. A child found by the Juvenile Justice Board to have committed an offence will be placed in a special home. A Place of Safety will be established for children over 18 years of age or children aged 16-18 years of age who are accused or convicted of a heinous offence. The Juvenile Justice Board will conduct regular inspections of prisons intended for adults to check whether any child is lodged in these prisons and take immediate measures to transfer such a child to the Observation Home [Sec 8(3)(m)].

CHILDREN IN NEED OF CARE AND PROTECTION

A child in need of care and protection shall be produced within 24 hours before the Child Welfare Committee. The Act stipulates that a child found separated from his/her guardian must be reported. Non-reporting was treated as a criminal offense. The Child Welfare Committee shall send the child in need of care and protection to the appropriate child care institution and shall, within 15 days, direct a social worker, case worker or child welfare officer to conduct the social investigation. The Child Welfare Committee shall meet at least 20 days in a month, and a quarterly review of the functioning of the Child Welfare Committee shall be conducted by the District Magistrate. The Act provides for short-term community support for children in need of open shelters to protect them from abuse or to keep them away from life on the streets. The Specialized Adoption Agency shall be responsible for the rehabilitation of orphans, abandoned children or surrendered children.

PUNISHMENT FOR CHILD OFFENCES:-

- Juvenile Justice Act, 2015 prescribes punishment for various offenses against children from 6 months to 3 years, such as increased punishment for cruelty to children.
- The selling or buying of children will be a punishable offense with 5 years of imprisonment.

- Adoption without prescribed procedures shall be punishable with 3 years of imprisonment or fine of Rs. 1 lakh or both.²

MODIFICATIONS/ AMENDMENTS TO THE 2015 ACT:-

- On 12th August, 2014, the Ministry of Women and Child Development introduced the Juvenile Justice (Care and Protection) Bill, 2014 in the Lok Sabha. The purpose of this Bill was to create a stronger, effective and responsive legislative framework for children in need of care and protection and children in conflict with the law.
- The Children's Court was instituted in the 2015 Act. A court for the Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012 has been established under this act. In case such courts have not been designated, the Court of Sessions will have jurisdiction to try offences under the Act.
- Some of the criticisms are:-

➤ Juveniles are treated as adults in some cases:-

If the juveniles commit any wrongful act they can be tried as an adult under this Act. Every person below the age of 18 should be treated as a 'child' according to the United Nations Convention on the Rights of the Child. Accordingly, the aforementioned provision in the Act of 2015 is considered to contravene the Convention.

➤ Discriminatory nature of the Act:-

The new law demonstrates the discrimination against the children in relation to their age and the extent of the offence. Children cannot be held to the same standards of guilt as adults due to their developmental immaturity and susceptibility to rehabilitation interventions.

➤ Scope for misuse and arbitrariness:-

It is also criticized that the method of determining whether the child has committed the crime as a child or as an adult between the ages of 16 and 18 is very subjective, and can sometimes be very inaccurate.

➤ Children's Courts:-

Children's courts have been set up to try children's offenses and are now trying children's offenses under the new law that destroys the essence of these courts. The person's fate will lie in the hands of the Children's Court when he turns 21. The Court will decide, pursuant to Clause 21 of the Act, whether a person has undergone any "reformative changes" or "can contribute to the society". Such an

² <https://vikaspedia.in/education/child-rights/juvenile-justice-care-and-protection-of-children-act-2015>(last accessed on June 10th,2020; 10:30pm)

inquiry is highly subjective and prone to arbitrariness which is contrary to Article 14 of the Constitution of India.

➤ Similar laws in other states:-

1. The UK Juvenile Justice System:-

In the United Kingdom, as juvenile crime became a growing concern, many legislatures adopted more stringent legislation, and the 1993 Children and Young Persons Act was implemented. Section 16 of the Act stipulates not to arrest a person under the age of 10 years. Between the ages of 10-14 a child is presumed to be unaware of the difference between right and wrong and thus unable to commit a crime due to lack of mens rea.

A child should only be kept for 72 hours in the police custody and the concerned constable should arrange for the investigation to take place as soon as possible. Under schedule 6, of the Police and Criminal Evidence Act, a juvenile who has been arrested with a prior warrant should not be released. A juvenile shall not be detained in a police cell unless other accommodation is available and the custody officer does not believe it is practical to supervise him unless he is placed in a cell.

2. The US Juvenile Justice System:-

The first US juvenile court came into being in Illinois in the year 1899. After that most states had established a juvenile court system within a span of 25 years. In almost all US states, there is unanimity about trying juveniles on a par with adults on juveniles who reach the age of 14 in certain circumstances, barring states such as Vermont, Indiana, South Dakota where a child of even 10 years may be tried as an adult. In heinous crimes, the 12- year- old can also be granted life imprisonment.³

JUVENILE COURT

There shall be special courts in each State which are usually referred to as Juvenile Courts to deal with minors accused of violating criminal status. The proceedings are not criminal but civil. So, instead of being formally charged with a criminal offence, juvenile offenders are charged with committing a criminal act.

A juvenile case normally begins when a prosecutor or probation officer files a civil petition, accuses the juvenile of breaking a criminal statute and asks the court to determine that the juvenile is delinquent. If the charges are proven and a determination of delinquency is made, the juvenile offender is given broad powers under the courts. The juvenile court shall have the

³ <https://lexlife.in/2020/01/16/analysis-the-juvenile-justice-care-and-protection-of-children-act-2015/> (last accessed on June 11th, 2020; 9:00pm)

authority to do what it deems to be in the best interests of the juvenile. The juvenile court often retains legal authority over the minor for a specified period of time- until the juvenile becomes an adult, or even longer.

JUVENILE COURT ELIGIBILITY:-

A young person must be considered a “juvenile” under state law to be eligible for the juvenile court. The maximum age for juvenile court, in most states, is 17 .

CASES HEARD AT JUVENILE COURTS:-

1. Juvenile Delinquency Cases:-

These cases involve minors who are alleged to have committed the crimes, but if an adult had committed the crime, the matter would have been tried in the regular criminal court. The juvenile court procedures may differ significantly from those in adult criminal court.

2. Juvenile Dependency Cases:-

Minors are being abused or neglected by their parents or guardians under the juvenile dependency cases. The judge will ultimately decide whether a minor in a juvenile dependency case should be removed from the problematic home environment or not.

3. Cases involving offenses in respect of status:-

A status offense is a violation of which only minors are subject to it. Some of the examples include violations of the curfew, running away and, and in some cases, drinking underage.

PROCEDURES IN A JUVENILE COURT CASE

In cases where a juvenile is suspected of infringing criminal law, the procedures used in adult criminal courts are very different. Most importantly the police, prosecution, adolescent court officials and juvenile court judges all have wide discretion to take more informal steps to handle the case. Many young offenders never reach the point of a formal court hearing. The constitutional rights of juveniles differ from those of adults charged with criminal offences. Some juvenile cases are transmitted to adult court in a “waiver” procedure. Juvenile cases that are subject to waiver typically involve serious offences, such as rape or murder, or previously troubled juveniles. Juveniles have the right to a hearing to determine whether they should bring their case to adult court.⁴

CONCLUSION

The crime rate is increasing day by day. Proper guidance, proper treatment, education, health care and so on give a child an opportunity to reform. It is the responsibility of the community and the state to provide a child with these facilities so as to increase the possibility of a better life.

⁴ <https://www.nolo.com/legal-encyclopedia/juvenile-court-overview>(last accessed on June 11th,2020; 10:00pm)