

## “Juvenile Justice and Juvenile Courts”

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### INTRODUCTION

The words “juvenile” and “delinquency” have their origin in the 17<sup>th</sup> century from Latin words *juvenilis, juvenis* meaning “young, a young person” and *delinquent* meaning ‘offending’. When a child or a non adult person who has not acquired the specified age as stated in the law of different countries commits a crime or violates any law, he is considered to be a juvenile. In legal term, the word minor defines the legal capacity of a person while the word juvenile is used is referred to a young criminal offender. Delinquency is when a juvenile commits a punishable offense or behave immorally or fails to meet certain social obligations in a society. In order to administer these delinquencies committed by juveniles, the concept of Juvenile Justice emerged. Therefore, according to the recent meaning, the term “Juvenile Delinquents” or “Children in Conflict with the Law refer to any children below the age of 18 years who has come in contact with the juvenile justice system as a result of committing a crime or being suspected of committing a crime”.

### CAUSES OF JUVENILE DELIQUENCY

Finding and understanding the root cause of a problem is essential in order to curb or prevent future crimes from happening. There are various issues that a minor child faces which defines their Actions in future or to put it in a simple way, there are various contributing factors that lead us to juvenile delinquency.

- For children to develop a sense of *self-worth* and to have *self-discipline, parental love, care* and *moral guidance* are very important. Many a times, instead of assisting their children in the maturation process, parents tend to avoid or escape responsibilities for their Actions. It has been observed that parents sometimes tend to brush off their children rather than provide them with needed attention. Therefore, when their children are delinquent, instead of trying to reach or understand the core of the problem, these parents will easily lay the blame on their children itself or on other person, who, they insist, are a ‘bad influence’ and caste out their responsibilities.
- Other important factors that back up the previous factor are *violence* and *substance abuse*. When a child is subjected to conditions like violence or substance abuse, he/she tends to adopt the same and later it leads to the committing of crime to sustain their habit.

- *Socioeconomic factors and lack of proper education* also contributes to juvenile delinquency. Sometimes in poorer neighbourhoods, children feel they must commit crime to prosper or it can even be a result of necessity that forces them to commit crimes. No education or poor educational standards also contribute to their delinquency.
- *Financial issues, peer pressure, drug or alcohol abuses* are some of the other factors that back Juvenile delinquency.

## HISTORY

The era of Industrial Revolution witnessed a gauge shift in the conception of children which led to the introduction of Juvenile Justice in western countries. The changes which led to initiation of law in India dealing with the Juvenile delinquency were influenced by a number of legislations that were introduced all across the globe. However, the JJS originated during the British rule in India. The reform movements that took place in the United Kingdom were one of the major influences. Subsequently, India adopted *parens patriae* (welfare approach) model that was followed by the American Juvenile courts. But this approach to the rights of the delinquents, led to due process concerns. Gradually, a shift towards a ‘right’ based approach took place, which complies with the Constitutional and procedural rights enshrined in the constitution. Following are the legislations which were enacted over a period of time that deals with juvenile:

1. **The Apprentices Act, 1850**: this was the first ever Act that led the foundation of Juvenile Justice System in India. Under this Act, delinquent children below the age of 15 were to be punished as apprentices.
2. **Reformatory Schools Act, 1897**: this Act introduced the concept of sending delinquent children to reformatory schools rather than prison.
3. In the early 20<sup>th</sup> century, the era of separate Juvenile System started its diversion from the criminal justice system in the Indian Constituency. The first Children Act to be enacted was The **Madras Children Act, 1920**, introducing separate Justice Courts and residential institution pursued by **Bengal** and **Bombay** in year 1922 & 1924, respectively.
4. **The Children’s Act, 1960**: First central legislation to be legislated by the Indian Government that was applicable only to the UT. Although it served as the model law to all the states in the making of their separate legislations.
5. **The Juvenile Justice Act, 1986**: the said Act was applied to the whole of the Nation except the State of Jammu and Kashmir. However, a need for amendment was felt as it showed a large gap in the cherished principles and the real implementation.
6. **Juvenile Justice (Care & Protection of Children) Act, 2000**: After taking experience from the past developments, the government enacted this new legislation which inculcated the principles of the UN conventions like the 1990 rules, the CRC and the Beijing rules. It made use of terminologies as “juveniles in conflict with law” and “children in need of care and protection”. The chief purpose of this Act was to deal with

delinquent juveniles through rehabilitation and not in a usual manner as applied to the adults.

## **CONTEMPORARY LAW DEALING WITH JUVENILE JUSTICE**

The Juvenile Justice (Care and Protection of Children) Act of 2015 was enacted to deal with matters relating to the children alleged and found to be in conflict with law and children in need of care and protection which received president assent on 31<sup>st</sup> December 2015<sup>1</sup> and thereby repealed the previous JJ Act of 2000. The Act provides a child-friendly for the adjudication and disposition of the cases.

### **SALIENT FEATURES OF THE ACT:**

#### **Definition of child**

The Act defines a child under the section 2(12) which is classified under section 2(13) and section 2(14) namely 'child in conflict with law', and 'child in need of care and protection'. The present Act has extended the meaning of 'child in need of care and protection' covering a wide range.

#### **Classification of offences**

The Act classifies the offences, basing on the term of punishment, categorising them as petty, serious and heinous though such distinction creates ambiguity as the time comes when an offence falls under two of such categories. It also stated that the trial the heinous offence when committed by a child of the age of sixteen years or above may proceed as that of an adult after conducting a preliminary assessment accounting his physical and the mental capacity of committing the said crime. If the board passes an order favouring hearing to be tried of a child as that of an adult then the board may order the transfer of the case to the children's court with competent jurisdiction.

#### **Children's court**

The present Act added a vital provision of 'children's court', which was not present in the JJ Act of 2000. According to this, a court or a special court is constituted under a court is established under the Commissions for Protection of Child Rights Act, 2005 and the Protection of Children from Sexual Offences Act, 2012 respectively,<sup>2</sup> the court of sessions will be competent to adjudicate where such courts are not present or not in Action.

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<sup>1</sup> The Juvenile Justice (Care and Protection of Children) Act 2015.

<sup>2</sup> The Juvenile Justice (Care and Protection of Children) Act 2015.

**Registration of Child Care Institutions:**

The Act states mandatory registration of all kinds of child care institutions regardless of whether they are governed by a state government or not, what service they provide, whether they receive financial help from government or not, from the commencement of the Act in six months. Non-compliance to this provision results in a strict penalty.

**Penalties for committing offences against children:**

The Act lays down various penalties for offences committed against children under chapter IX of the Act. Under the said chapter penalty of imprisonment and fine are given according to the crime committed, some such crimes are employing a child for begging, intoxicating a child with a substance, buying or selling of a child, etc

**Several Measures for Social Reintegration and Rehabilitation of the Juvenile:**

The Act provides for both institutional and non-institutional rehabilitation and social reintegration measures to assist in maintaining a social and productive role in society. Under chapter VII there are various such options covering both institutional and non-institutional services such as health, nourishment, education, rehabilitation process, vocational training, foster care, family environment, etc.

For the successful execution of these provisions, JJ Model Rules, 2016 mentions provisions relating to the procedures of the recording, reporting and trial in a child friendly manner. However, all its commendable characteristics have been outshined by one section, according to which a child could be tried as an adult if found committing 'heinous offences', such feature and transfer of children to adult court according to section 19(3), raised questions to the nature of the law as such provisions make the law being more retributive than reformative; also the job of the judicial board of preliminary assessment is of high importance still lacks any certain guidelines or provisions governing it making it more challenging and uncertain. The legislators believe that such provisions will give equal importance to the rights of the victims and also erase the perception that ever increasing child offenders are easily punished after committing serious crimes.

## **JUVENILE COURTS**

### **Juvenile Justice Board**

There is a Juvenile Justice board established in each district for hearing and investigating the cases of the juveniles accused of crime. Such board shall consist of principle Magistrate and two social workers, out of which one should be a women.<sup>3</sup> According to the Act such board is not allowed to function from the regular court premises. The opinion of the majority holds the priority and in case of no majority of opinion is established the opinion of the principle magistrate shall prevail.<sup>4</sup>

### **Procedure of the Juvenile Justice board**

The Act mentions the procedure to be followed while functioning of the board. Some vital procedures are-

- The trial against the offender cannot be initiated on the basis of the complaint filed by the citizen or police. Hearing of the cases coming under the Act must be held informally and strict confidentially.
- The hearing shall be carried out by a lady magistrate of a child in conflict with law.
- After detention such offender should be sent to observation home.
- If the JJ board is not in session, alleged offender may be presented to an individual member from the JJ board.

### **Child Welfare Committee**

The provisions dealing with the construction and functioning of CWC are mentioned in chapter V of the Act. CWC is constituted to deal with children in need of care and protection, who are in some or other way deprived and are in need. CWC composition includes a chairperson and four other members, such members should consist of at least one women and one expert on the matters relating to the children.<sup>5</sup> The committee is same as a judicial magistrate of the first class or a metropolitan magistrate in terms of power and functions as a bench of Magistrates. Final authority regarding the disposal of the cases or matters lies with the committee.

## **CONCLUSION**

The increasing rates of juvenile crimes is raising concerns and pertinent issues which need attention of policy and law makers, providing of a credible legislation is not the end of the job instead is the first step towards the solution of the issue, today with growing juvenile offences we need implementation, balancing both reformative and deterrent aspect of the law. Functioning of bodies has to be improved covering all features such lacks of proper infrastructure, co-

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<sup>3</sup> The Juvenile Justice (Care and Protection of Children) Act 2015, s 4.

<sup>4</sup> The Juvenile Justice (Care and Protection of children) Act 2015, s 7(4).

<sup>5</sup> The Juvenile Justice (Care and Protection of Children) Act 2015, s 27(2).

ordination, legal qualification, etc. Emphasis has to be given to the circumstances which made juvenile react in such way and maintaining their mental and physical health so they understand that this is not the end and they have a future ahead.