

Re-Thinking Juvenile Justice System In India

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“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

- Nelson Mandela

The Juvenile Justice (Care and Protection of Children) Act, 2015² received the assent of the President on 31st December, 2015 and as per the Press Release of the Ministry of Women and Child Development, Government of India came into force on 15th January, 2016. The Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed by Lok Sabha on 7th May, 2015 and by Rajya Sabha on 22nd December, 2015.

According to the preamble of the new JJ Act: *“it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.”*

Moreover, as per the Ministry of Women and Child Development the Juvenile Justice Act, 2015 *“provides for strengthened provisions for both children in need of care and protection and children in conflict with law.”*³ The same Press Release said that they have opted to change the nomenclature of *“Juvenile”* to *“Child”* throughout the new Juvenile Justice Act of 2015. The Ministry was of the opinion that there is a negative connotation associated with the word *“Juvenile”*. But the term *“juvenile”* is used all over the globe and even by the United Nations to deal with the subject. Moreover, if this was the actual position of then the Act should not have been named *“Juvenile”*

² Hereinafter *“JJ Act, 2015”*

³ Press Release 15th January, 2016

Justice Act. Nevertheless, the proper term which to be used now is “child in conflict with law” rather than “juvenile in conflict with law” or anything else.

To further cite from the preamble of the new JJ Act: *“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.”* Therefore, dealing with *“Children in conflict with law”* is in the prime focus of the new Act.

Section 2 Sub-section 14 of the Juvenile Justice Act, 2015 defines *“child in conflict with law”* as to mean *“a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.”* This is a more elaborate definition than the definition of *“juvenile in conflict with law”*⁴ as given in the old Act of 2000, which was just an inclusive definition as can be read below in footnote number 2. Though the age criteria is same in the construction of both terms i.e. below eighteen years of age, but the novel thing in the new definition is that it mention the time at which the age has to be considered. The provision clarifies that the age of the child has to be seen on the date of the commission of the offence and not any other.

Before proceeding further it is expedient to mention a comparative analysis of the treatment by various other countries meted out to Children in conflict with law:⁵

⁴ Section 2 Clause k: “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence;

⁵ Source -PRS Legislative Research

Country	United States Of America	United Kingdom	South Africa	Canada	India
Minimum Age at Which Juvenile can be Charged for an offence	6-10 years	10 years	10 years	12 years	7 years Under IPC
Age at Which Juvenile can be tried as adult	13 years	17 years in England, Wales and N.Ireland . 16 years in Scotland	16 years	14 years	16 years
Type of offence for which juvenile can be tried as adult	Assault, murder, robbery, aggravated sexual abuse, firearms offences, drug offences	Murder, rape, causing any explosion likely to endanger life or property	Murder, rape, robbery	Murder, aggravated sexual assault, serious bodily harm to another person	Serious offence (punishment 3-7 years e.g. cheating, counterfeiting) or heinous offence, (punishment > 7 years e.g. murder, rape, robbery)

Country	United States Of America	United Kingdom	South Africa	Canada	India
Penalty for juveniles treated as adults	Same as adults. life imprisonment; no death penalty	Same as adults. Life imprisonment allowed; no death penalty	Same as adults. No imprisonment; no death penalty	Murder: 7-10 years; maximum penalty for other offences is three years; no imprisonment; no death penalty	Same as adults. Life imprisonment with possibility of release allowed; no death penalty

By examining the chart above and the system of trying juveniles as adults, it seems that the new juvenile justice philosophy seems to be in accordance and on the lines of the juvenile justice system of the so-called “advanced” jurisprudences of developed countries.

Statutory Provisions

A separate chapter has been introduced in the new Juvenile Justice Act of 2000 dealing with Children in conflict with law. Chapter IV of the new Act has been titled as “PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW”

However, before going into the special procedure provided by Chapter IV of the Act, it is expedient to mention the General Provisions while dealing with Children under the new JJ Act, 2015. Section 3 mandates that the Central Government, the State Governments, the Board, and other agencies shall be guided by certain general

principles which are fundamental while dealing with Children in conflict with law and the implementation of the provisions of the Act in general.

Section 3 (i) reiterate the most basic principle of criminal law i.e. *Principle of presumption of innocence*. It provides that “Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.” This principle becomes more important while dealing with children in conflict with law and basically negates all those provisions in the Indian Penal Code, 1860 and Indian Evidence Act, 1872 or any other criminal law for that matter that raises the presumption of guilt or puts the burden of proving his innocence on the accused.

Every person has the right to be heard. Just because the perpetrator is a child doesn't mean he loses this right. He has every right to participate in his proceedings while going to decide his future. Section 3 (iii) provides right in the form of *Principle of participation* that “every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.” The other important point is that the child's views have to be taken into consideration. However, they have to be balanced with the welfare of the child.

In our country, dealing with the criminal law is looked down upon and avoided by society, even if it's a routine matter. Even if a uniformed police officer visits your house, the neighbours will start to talk. Similarly, stigmatising accusations and semantics are used while going through the criminal justice system. Therefore, Section 3 (viii) provides for a *Principle of non-stigmatising semantics* i.e. “adversarial or accusatory words are not to be used in the processes pertaining to a child.” This will make the child more comfortable and a soothing experience while going through the system. Similarly, to save the child from the stigma from the society Section 3 (xi) provides for the *Principle of right to privacy and confidentiality* which provides that “every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.” Moreover, Section 3 (xiv) ensures a chance for the child in conflict of law to start a new and better life. By the *Principle of*

fresh start “all past records of any child under the Juvenile Justice system should be erased except in special circumstances.”

There are various provisions within the Code of Criminal Procedure the direct or indirect consequence of which results in waiver of some rights by the accused. However, there is an absolute bar on it by the JJ Act. Section 3 (ix) provides for this *Principle of non-waiver of rights*: “No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.”

While dealing with the child in conflict with law the *Principle of institutionalisation as a measure of last resort* [Section 3 (xii)]. “A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.” Moreover, by Section 3 (xiii) a *Principle of repatriation and restoration* has to be followed. “Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.”

It has to be remembered that child in conflict with law are not criminals. Therefore, in order to save them from the normal judicial system the whole JJ Act has been adopted. Therefore, by Section 3 (xv) *Principle of diversion*: “Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.” However, this Section is more aimed at children between the age of 16-18 who are accused of heinous offences as the controversial moves of trying them as adults has been introduced in the new Act on the lines of the system in the US. By this section there is a safety valve for children of such age.

However, it is the *Principles of natural justice* [Section 3 (xvi)] that guide the procedure for children in conflict with law or any other procedure under that Act. “Basic

procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

Most of these provisions and principles are supposed to be part and parcel of criminal justice system as a whole. Nevertheless, the JJ Act, 2015 re-asserts these basic philosophies thereby guaranteeing that these are not bypassed in any manner. This seems to be a good philosophy of making everything clear by specifically writing it within the Act itself so there are no diversions within the Juvenile Justice System. Whether if these safeguards, in practice, remain available to children within the age group of 16 to 18 remains to be seen.

Procedure In Relation To Children In Conflict With Law

Chapter IV provides for a special procedure to be followed while dealing with Children in conflict with the law. The child is not supposed to have any contact with the traditional criminal system.

In the criminal justice system, bail has always been proven to be a problematic thing to achieve. Therefore, Section 12 of the JJ Act makes special consideration for bail of the child. It apparently bypasses the provisions of the Code of Criminal Procedure, 1973 and any other law with respect to bail. “When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person.”⁶ Only ground on which he shall be denied bail is provided in the proviso that “such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into

⁶ Section 12 (1)

association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice."⁷ But the Board shall record the reasons for denying the bail and circumstances that led to such a decision.⁸ Also, where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.⁹

Moreover, special sections have been designed for the apprehension and custody of the child in conflict of law in case of arrest. Section 10 (1) provides that "as soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail."

By Section 10 (2), The State Government is provided the power to make rules –

"(i) to provide for persons through whom (including registered voluntary or nongovernmental organisations) any child alleged to be in conflict with law may be produced before the Board; (ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be."

⁷ Proviso to Section 12 (1)

⁸ Section 12 (3): When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4): When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

⁹ Section 13(2)

By Section 11 the person charged with the child in conflict with law shall bear full responsibility of that child as if he was the parent of the child.¹⁰ That person's responsibility does not end until "the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person is fit to exercise charge over such child." Moreover, if the child is not released on bail which is the rule, under Section 12 (2): "When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board."

Section 13 (1) further provides the procedure that "where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform – (i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and

(ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry."

¹⁰ Section 11: Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

The Juvenile Justice Board has survived the reforms in the Juvenile Justice System. Therefore, Section 14 (1) provides the procedure for the Juvenile Justice Board. “Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.¹¹

¹¹ 17. (1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

18. (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child’s well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child’s well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Section 14(2) mandates that the inquiry must be completed within four months. The maximum period it can be extended is two month, with reasons for such extension be recorded. The time has to be counted from the date the child is first produced before the Board. This ensures that there is a speedy inquiry.¹² Sub-section (5) puts the duty on the Board to take the following steps to ensure fair and speedy inquiry, namely: –

“(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.

¹² Section 14(4): If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;

(f) inquiry of heinous offences, –

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.”

The Chief Judicial Magistrate or the Chief Judicial Magistrate exercises control over the Boards. Section 16 provides:

“(1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

(2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or nongovernmental organisation to be nominated by the Chairperson.

(3) The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.”

As mentioned earlier, the new JJ Act completely changed the philosophy of Juvenile Justice in India. From a very protective system, it became selective towards the children whom the protection is extended and disappears if you’re of a certain age. With the Juvenile Justice Act, 2015 it was for the first time that the Children of the age 16-18 were put in a separate category as far as heinous offences were concerned. These children must possess advanced level of understanding in order for them to be tried as a major. Section 15 provides for such screening process/ preliminary assessment, which is not a trial, just an assessment:

“(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. – For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.”

It is sub-section 2 of section 15 that provides that such person must be tried as per Code of Criminal Procedure by following the pattern of trial of a summons case.¹³ Such assessment has to be within three months.¹⁴

When it appears to the Board that the Child has not committed any offence, it can either pass that order to that effect or if it deems fit refer the Child to the Committee for care and protection.¹⁵

However, where the Board finds the child guilty then under Section 18:

“(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit, —

¹³ (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

¹⁴ Section 14(3): A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

¹⁵ Section 17 (1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.”

However, it is not up to the Board to decide whether the child is tried as under Code of Criminal Procedure, 1973. Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.¹⁶ Therefore, it can only give its assessment.

Section 19 (1) provides “the procedure after the receipt of preliminary assessment from the Board under section 15, the Children’s Court may decide that –

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.”

However, the role of the Children’s Court does not end there. Sub-section (2) provides “the Children’s Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.”

¹⁶ Section 18(3)

Moreover, the Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail. But there is a proviso that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.¹⁷ Further, the reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required according to sub-section (5)

The Children's Court also has the duty to ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.¹⁸

Even after the Child attains the age of 21, the Children's Court is kept in the loop. Section 20 (1) provides "when the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may –

¹⁷ Section 19 (3)

¹⁸ Section 19(4)

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.”

Section 21 provides that no child in conflict with law, not even the ones charged with heinous offences shall be sentenced to death or for life imprisonment without the possibility of release, under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force. This ensures that there is a possibility of reformation and his joining the society as an upstanding citizen. Moreover, Section 22 provides that no child can be proceeded against a child under preventive detention laws or Code of Criminal Procedure, Chapter VIII.¹⁹ Moreover, merely because a child is tried as an adult under Code of Criminal Procedure does not mean he can be tried in a joint trial with a person who is not a child.²⁰

Section 24(1) provides that a conviction under this Act does not provide any disqualification attached to such conviction. However, the benefit is not extended to children above the age of sixteen. Section 24 (1) reads:

¹⁹ Section 22: Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

²⁰ Section 23 (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children’s Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

“Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children’s Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply”.

Similarly, under Sub-section 2 the Board shall order the destruction of the records of the child by the police. But this benefit is also not extended to children above the age of sixteen charged with heinous offences. Section 24 (2) reads:

“The Board shall make an order directing the Police, or by the Children’s court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children’s Court.”

Section 25 basically is a savings clause that saves the prior proceedings. “Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.”

The last section talks about the procedure to be followed if a child escapes from custody. Section 26 reads

“(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge of a child in conflict with law who has run away from a special home or an observation home or a place of safety or from the care of a person or institution under whom the child was placed under this Act.

(2) The child referred to in sub-section (1) shall be produced, within twenty-four hours, preferably before the Board which passed the original order in respect of that child, if possible, or to the nearest Board where the child is found.

(3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may deem fit:

Provided that the Board may also give additional directions regarding any special steps that may be deemed necessary, for the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.”

Criticism

The new Juvenile Justice Act, 2015 has been severely criticised on various accounts. First of all it is said that the new JJ Act defies logic as it has been shown from the examples of US that 80% juveniles go on to commit crimes again. Therefore, trying children between 16-18 years will only make them hardened criminal rather than reform them. Moreover, international examples show that transferring children to the adult system has failed to prevent repeat offences, to reduce the juvenile crime rate or to promote public safety

One of the main objectives of the new Act as stated in the Statement of Objects and Reasons is to bring it in accordance with the United Nations Convention on the Rights of the Child of 1989. However, by differentiating between children below 16

years and those between 16-18 years, the Bill abandons this Convention instead of sticking to it.²¹

Records show that there are 472 million children of the country, only 1.2% have committed crimes. And that, of these, only 2.17% had committed murder and 3.5% had committed rape, i.e. 2% of 1.2%.²² Does such a small percentage justify such stringent provisions, let alone bringing a new Act?

The Act does not include a provision for reviewing the standards for determining the age of a child. As in the present system, the courts absolutely rely on the Matriculation Certificate of a child or his Birth Certificate from a School or a Municipal Corporation, which may not always be accurate. A bone ossification test is conducted only when these documents are not available.

Another major loophole in the juvenile law is that there are no special provisions or guidelines for either a female juvenile in conflict with law. It fails to recognize that the female child is more vulnerable and is often exploited and abused in the system. She needs special protection for the JJ Act which she fails to get. Moreover, there are no special provisions for a juvenile sex offender.

There should also be a system in which the Board can take cognizance of a complaint directly from the Juvenile, rather than going through the police.

There is a need for evolving alternate ways of dealing with juvenile offenders. Critics like Dr. Shashi Tharoor have correctly argued that the Act merely replaces the word

²¹ Article 3 of the Convention declares that States party to the Convention ought to give importance to the interest of the child over public safety, contrary to what the Act prescribes, requiring the adjudication of children as adult criminals in the interest of public safety. The concept of preliminary assessment for determining the transfer of a child to a court violates the principle of presumption of innocence guaranteed under Article 40(2)(b)(i) of the Convention.

²² NCRB 2012-2013

'juvenile' with 'child in conflict with law', a supposedly more humane reference as far as juvenile offenders are concerned.

"Children need love, especially when they do not deserve it."

- Harold S Hulbert, child psychiatrist