

## **Summary Paper (Criminal Law )**

**Subject :- Salient features of  
Juvenile Justice  
( Care and Protection of Children) Act 2015**

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★ ***The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.***

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Madan B. Lokur, JJ. In Ashwani Kumar Saxena vs. State of M.P. MANU/SC/0753/2012

### **Importance & Introduction**

➤ The Children' constitute almost half of the world's population. They are the future of mankind and asset of the nation. They inherit past and they are themselves the future. They own the right to live and grow as children. However, as the children themselves are not aware of their rights, they become the victims of abuse or delinquent.

➤ It is necessary to discuss some theories which may help in understanding the reason behind the delinquent behavior of juveniles. Among them, two popular theories are Psychodynamic theory and Social Learning theory. The Psychodynamic Theory was formally proposed by Sigmund Freud, which states that a child is born with animal instinct and ego is the realization of real life. Super ego is developed through interaction with parents. But when a child doesn't get such guidance, then ego and superego can not control the animal instinct and the juvenile become delinquent. Another theory is Social learning theory, which states that a child is good when born but surrounding environment influence his or her nature because child always learns from imitating elders. However, in both the cases, the role of parents, society and environment are pivotal. Many Neuro scientists confirmed that the pre-frontal lobe in the human brain, which is conscientious for planning, reasoning, judgment, and impulse control, does not develop before twenty five. Also, the reason of delinquency can be the environment where such juvenile lives.

➤ It is well evident from the National Crime Bureau Statistics. It states more or less 80 per cent of juveniles delinquent, who committed crime are mostly from poor families with annual income of less than Rs. 50,000 and among them, more than 50 per cent did not even complete their primary school. The rea-

sons behind a Juvenile to become criminal can be many. This may be beyond the control of the immature youngster. In all these cases, giving punishment to the juvenile, who is in conflict with law, not always a solution, as pointed out by Prof. Faizan Mustafa, Vice-Chancellor, NALSAR University of Law, Hyderabad. He said, "Adolescents in conflict with law need adult guidance not the company of hardened criminals."

### **History of Child delinquency Laws in India**

➤ The first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the Reformatory Schools Act, 1897, the Indian Jail Committee and later the Children Act of 1960. The first proper intervention by the government of India in justice for children was via the National Children's Act, 1960. This act was replaced later with Juvenile Justice Act, 1986. In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC). To adapt to the standards of the convention, the 1986 act was repealed and the JJ Act, 2000 was passed. The JJ Act 2000 dealt with two categories of children viz. 'child in conflict with law' and 'child in need of care and protection'. The said act came to be amended from time to time to incorporate new provisions and concepts relating to a child.

### **Need of New Juvenile Justice Enactment of 2015**

➤ The Articles 15(3), 39 (e) and (f), 45 and 47 of the Constitution of India confer powers and impose duties on the State to ensure that all the needs of the children are met and their basic rights are fully protected.

➤ It was the need of the time to re-enact the Juvenile Justice Act, 2000 taking into consideration various international conventions. The concept of juvenile in India, until passing of Children Act, 1960 there was no uniformity regarding age limitation of juvenile delinquent. Bombay Children Act 1948, Haryana Children Act defined "Child" to mean a boy who has not attained the age of sixteen years or girl who has not attained age of eighteen years. The U.P. Children Act and The East Punjab Act, Andhra Pradesh (Telangana Area) Children Act defined "Child" as a person under age of sixteen years. Under A.P. Children Act 1920 "child" means a person under 14 years. The Saurashtra & West Bengal defines a 'child" a person who has not attained the age of eighteen years. Juvenile Justice Act, 1986 defined a juvenile or child to be a person who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age. The JJA Act, 1986 was repealed by 2000 Act and the distinction with regard to age between male and female juveniles has been done away with by the Government of India in performance of its obligation to the international obligations. Now age of juvenile in conflict with law for male and female has been fixed at 18 years.

➤ The National Crime Record Bureau (N.C.R.B.) data shows that there had been an increase of offences committed by juvenile, especially in the age group of 16-18. One of the preparators in the Delhi gang rape of 2012, was few months short of 18 years age and he was tried as juvenile. He was sent to Reformation Home for 03 years and was released in December, 2015. This had raised the public demand for lowering age of juvenile under the Act. . The provisions of this new enactment is basically generally highlighted only for the aspect of a much contemplated change in the definition of a child in conflict in law and mak-

ing classification based on age and understanding of offence. This would be indeed injustice to the legislators and the makers of this excellent legislation relating to child welfare. Therefore, the Act, 2015 has been enacted.

➤ The Juvenile Justice (Care and Protection of Children) Act 2015 will be enforceable from January 15, 2016. The Act, passed by the Rajya Sabha in the winter session of Parliament, received Hon'ble President's assent on December 31 2015

➤ **Child Ascertainment**

➤ Issue of the Child is one of the most vexed and critical issue in implementation of the Act. The crucial date for determining the claim of child is the date of commission of the offence and not the date of arrest or production of juvenile before the Juvenile Justice Board. **Pratap Sing Vs. State of Jharkhand, AIR 2005 SC 2731**

➤ As per Section 9 of the New Act, the Magistrate who is not empowered to exercise the power of Juvenile Justice Board under this Section, is of the opinion that a person brought or appearing before him with allegations of having committed any offence is a juvenile, then he shall without any delay, and without waiting for such person to raise claim of juvenility, ascertain the age of that person and record its opinion and forward the juvenile along with record to the Juvenile Justice Board, having jurisdiction over the proceeding.

➤ In **Hari Ram v. State of Rajasthan and Anr.** MANU/SC/0744/2009 : (2009) 13 SCC 211. Hon'ble Supreme Court of India took the view that the Constitution Bench judgment in **Pratap Singh** case was no longer relevant since it was ren-

dered under the unamended Act. In ***Hari Ram*** while examining the scope of Section 7A of the Act, it is held that the claim of juvenility can be raised before any court at any stage and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. {proviso to Sec 9 of New Act}

➤ Further, it was also held that on a conjoint reading of sections 2(k), 2(l), 7A, 20 and 49 r/w Rules 12 and 98 {proviso to Sec 9 of New JJ Act} places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1.4.2001 would be treated as juveniles even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. ***In Dharambir v. State (NCT of Delhi) and Anr.*** MANU/SC/0290/2010 : (2010) 5 SCC 344 The Appellant was not a juvenile within the meaning of 1986 Act, when the offences were committed but had not completed 18 years of age on that date. ....Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the Court, while maintaining the conviction to set aside the sentence imposed and forward the case to the J.J. Board concerned for passing sentence in accordance with the provisions of the 2000 Act.

### **Age Determination**

➤ While determining the age, as observed by the Honourable Apex Court in ***Rajinder Chandra Vs. State of***

**Chhatisgarh, AIR 2002 SC 748**, the approach of the Courts or Juvenile Justice Board should not be hypertechnical.

➤ It obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code

➤ Section 9 & 94 has also used certain expressions which are also be borne in mind. It uses the expression "on the basis appearance. Further, the age determination inquiry has to be completed and age be determined within fifteen days which is also an indication of the manner in which the inquiry has to be conducted and completed.

➤ "Age determination inquiry" contemplated under section 94 of the Act enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by

considering his or her age on lower side within the margin of one year.

### **BAIL GRANT OF TO CHILD**

➤ In normal course, a juvenile is entitled to bail, notwithstanding gravity of the crime. His bail can be refused only when there are reasonable grounds for believing that his release is likely to bring into association with any known criminal or expose his moral, physical or psychological danger or that his release would defeat the ends of justice.

➤ The language in Section 12 of the Act that “notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force ” mandates that this Section is having overriding effect and the juvenile accused shall be released.

➤ Since the juvenile in conflict with law is entitled to be released on bail, he is also entitled to get interim bail. It may be pointed out that the Hon'ble Supreme Court has held in the case of Sukhwant Sing & ors. Vs. State of Punjab, (2009) 7 SCC 559 that when there is power to grant bail, there is inherent power to the court concerned to grant interim bail to the person, pending final disposal of the bail application and it is in the discretion of the concerned Court to grant interim bail. The same is applicable to the Juvenile Justice Board. When pending final disposal of the application, juvenile may be released on interim bail.

### **CHANGES BROUGHT ABOUT BECAUSE OF NIRBHAYA'S CASE**

➤ New Act classifies offences. A 'heinous offence' is offence with minimum punishment of seven years of im-

prisonment or more . A '**serious offence**' are offences with three to seven years of imprisonment and a '**petty offence**' is with a less than three year imprisonment.

- It treats all the children below 18 years equally,

### **ESSENTIALS TO TRY THE OFFENCE AS ADULT**

➤ **(Sec 19 of new Act ) The Childrens Court to Decide the aspect as to whether the child is to be tried as an adult if**

- age group of child is 16-18
- committed heinous crime having minimum imprisonment of more than seven years .
- or , who commits a serious offence, may be tried as an adult if he is apprehended after the age of 21 years.
- The Board on inquiry and assessment of child of
  - his mental and physical capacity to commit such offence ,
  - ability to understand consequences of such offence and
  - circumstances in which he allegedly committed an offence
- The JJBs will conduct a preliminary inquiry of a crime committed by a child within a specified time period and decides whether he should be sent to rehabilitation center or sent to a children's court to be tried as an adult. The board can take the

help of psychologists and psycho-social workers and other experts to take the decision.

➤ Such an inquiry is to be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension. If inquiry by the Board for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated. However that for serious or heinous offences, if the Board requires further extension of time for completion of inquiry, the same is to be obtained from the Chief Judicial Magistrate or, the Chief Metropolitan Magistrate, as the case may be.

## **PROCEDURE OF INQUIRY AND TRIAL UNDER NEW ACT**

### **Section 14 (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;

➤ 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;

➤ 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 ;

(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.

➤ **Offences under JJ act**

Sr.	Sec/	Offence.	Penalty
1.	<b>74.</b>	Prohibition on disclosure of identity of children.	Imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both. (JJB or CWC).
2.	<b>77 &amp; 78.</b>	Giving a child any intoxicating liquor/narcotic drug/tobacco/ psychotropic substances.	Imprisonment: upto seven years; Fine: upto one lakh rupees.
3.	<b>81.</b>	Selling or buying a child.	Imprisonment: upto five years; fine: one lakh rupees.
4.	<b>75.</b>	Subjecting a child to cruelty.	Imprisonment: upto three years; fine: and/or one lakh rupees.
5.	<b>76.</b>	Employing a child for begging.	Imprisonment: upto five years; fine: one lakh rupees.
6.	<b>79.</b>	Engaging a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes.	Rigorous imprisonment for a term which may extent to five years and shall also be liable to fine of one lakh rupees.
7.	<b>80.</b>	Punitive measures for adoption without following prescribed procedures.	Imprisonment of either description for a term which may extend upto three years, or with fine of one

			lakh rupees, or with both.
8.	<b>34.</b>	If information regarding a child as required under Section 32 is not given within the period specified in the said Section, then, such act shall be regarded as an offence.	Imprisonment upto six months or fine of ten thousand rupees or both.
9.	<b>42.</b>	Failure to comply with Section 41 (1) – Registration of Child Care Institutions.	Imprisonment upto one year or minimum fine of one lakh rupees or both.

### Child Welfare Committee

➤ Chapter 5 of the act provides for constitution of a Child Welfare Committee for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitization of all members of the committee is provided within two months from the date of notification.

### Welfare measures

➤ **for 'child in need of care and protection'**

2(14) new categories	(14 ) “child in need of care and protection” includes like missing child , a child who is to be married
2(5) Recognition of support after 18 years also	(5 ) “aftercare” means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society;

<p>2(9), 2(15)</p> <p>NEW Statutory Definition of best interest child friendly</p>	<p>(9 ) “best interest of child” means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;</p> <p>(15 ) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;</p>
<p>New concept of Aid created</p>	<p>(58 ) “sponsorship” means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child;</p>

### **New welfare institutions established**

- Sections 43 and 44 provide for the constitution of open shelters and foster homes respectively by the State Government for care and protection of the child.
- Section 47 of the act enables the State Government to establish such observation homes in every district as it deems fit for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.
- 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 soci-

ety. 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. Section 48 of the act enables the State Government to establish such safety homes in every district as deems fit for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board.

➤ **Confidentiality** Section 74 prohibits the disclosure of identity of children with respect to their name, address, school or any other particular in newspapers or any other media.

### **Principles to be followed before the authorities when relating to child**

3] As per section section 3 of the new Act The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

- (i) Principle of presumption of innocence
- (iii) Principle of participation.
- (iv) Principle of best interest.
- (v) Principle of family responsibility.
- (vi) Principle of safety.
- (vii) Positive measures.
- (viii) Principle of non-stigmatising semantics.
- (ix) Principle of non-waiver of rights.
- (x) Principle of equality and non-discrimination.
- (xi) Principle of right to privacy and confidentiality.
- (xii) Principle of institutionalisation as a measure of last resort.
- (xiii) Principle of repatriation and restoration.
- (xiv) Principle of fresh start.
- (xv) Principle of diversion.
- (xvi) Principles of natural justice.

## Adoption

➤ Chapter 8 of the act deals with provisions with respect to Eligibility of adoptive parents and the procedure for adoption.

➤ To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

	2(1) 2(42) 2(60)  Various categories of child recognised to regularise and ease the process of adoption	(1) “abandoned child” means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;  (42) “orphan” means a child— (i) who is without biological or adoptive parents or legal guardian; or (ii) whose legal guardian is not willing to take, or capable of taking care of the child;  (60) “surrendered child” means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee;
2	2(2)	(2) “adoption” Legitimate changed to lawful rights of child recognised not relationship
3	2(3) Adoption rules	(3) “adoption regulations” new statutory recognition given to adoption rules

Sec 57 New category of adoptive parents recognised	2. Adoptive parents should be financially mentally and physically sound and highly motivated for upbringing child. A single or divorced person may adopt a child. A single male may not adopt a girl child. It has also tried to make the adoption process of orphaned, abandoned and surrendered children, more streamlined, while adopting some of the concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption.
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### ➤ **SOME SHORTFALLS**

➤ In the new Act the sections 14(1) and (2) are major issues of concern. The first is the ground on which the Juvenile Justice Board will decide if a 16- or 17-year-old is to be tried under the JJ Act or in a normal court. The most contentious aspect of these tests is that almost all, if decided in the affirmative, would have a presupposition that the child is guilty of having committed the offence. And also the question remains unanswered that on what grounds exactly is the board going to make these determinations within a one-month period and before the actual trial. Under this Act the juveniles between 16 to 18 years of age, who are found guilty of committing heinous offences after going through a preliminary inquiry by the Juvenile Justice Board, will be sent to a children's court that can pronounce the child guilty. Such juveniles can be detained in a 'place of safety' until they reach the age of 21. Even then if they are not found to have been "reformed" by 21, they can be sent to jails housing adults. At present, most states do not have the 'place of safety', also known as 'borstals'.

➤ The new juvenile laws have extended its definition of heinous offences beyond rape and murder. Heinous of-

fences include all offences that are punishable with 7 years or more of imprisonment. Experts have analyzed the law, and have enumerated various offences for which children can be tried as adults. These include offences related to drugs, waging war, trafficking, abetment of crimes, allowing one's premises to be used, and many others.

➤ As per the new Juvenile Justice Act there is a provision of availing experts in around 600 above districts in the country to provide their inputs to the JJBs Based on their analysis it is to be decided whether or not a child committing a crime is in a 'child-like' frame of mind or not. This idea may appear sound on paper, or in a parliamentary debate, but in reality it is highly subjective. It places too much liability on the Juvenile Justice Board which may end up succumbing to the public outcry and consequently would lead to the children being transferred to the adult criminal justice system.

This law becomes contentious also because of the rising phenomenon of teenagers eloping and consensual sex among teenagers. The boys can now face trials for rape. Under the Protection of Children from Sexual Offences Act (POCSO), a child cannot consent to a sexual act until the age of 18, so any act of sex, even consensual, is considered to be rape.

It reverses commitments to the UN, flowing from several conventions and guidelines to which India is a signatory, particularly recommendations 79 and 80 of the UN Committee on the Rights of the Child, which specifically desire India to "ensure that persons under 18 are not tried as adults, in accordance with the principle of non-discrimination contained in Article 2 of the Convention"

## Conclusion

The Juvenile Justice (Care and Protection of Children) Act 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law', across the Act to remove the negative connotation associated with the word "**juvenile**"

JJ Act, 2015, has brought the drastic change in the Juvenile Justice Act, 2000, in the area of treatments of juvenile, the functioning of the Juvenile Justice Board, and Child Welfare Committee, the forum of appeal against the order of Juvenile Justice Board and Child Welfare Committee, as well as in the area of intercountry adoption and aftercare of the children.

The Act is a beneficial piece of legislation and therefore, must be interpreted and understood to advance the cause of legislation and to confer the benefits of the provisions thereof to the categories of persons from whom the legislation has been made.

That a nation's future lies with its children has become a cliché. It is more so in case of India, with around 42% population below the age of 18 years.

★ ***Juvenile justice has constitutional roots in Articles 15(3) and 39(e) and the pervasive humanism which bespeaks the superparental concern of the State for its child-citizens including juvenile delinquents.***

Hon'ble Judges/Coram: R.S. Pathak and V.R. Krishna Iyer, JJ.  
In Satto and Ors. vs. State of U.P. (26.04.1979 – SC)  
MANU/SC/0233/1979

Humbly submitted...