

RIGHT TO DEVELOPMENT OF A CHILD AND JUVENILE JUSTICE ACT

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ABSTRACT

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated.

The frightful incident of “ *Nirbhaya Delhi Gang Rape Case*, on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “ Juvenile Justice (Care and Protection), 2015. The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes.

One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

OBJECTIVES:

- To understand the concept of juvenile
- Discuss the rights of juvenile
- To probe into the working of juvenile justice act.
- To analyse whether sufficient care is provided to juveniles.
- To suggest measures for development of a juvenile.

KEYWORDS:

Juvenile, Constitution Of India, Juvenile Homes, Development, Child.

CHAPTERIZATION:

CHAPTER 1: Introduction to Juvenile Justice Act

CHAPTER 2: Objects And Principles Of JJ

CHAPTER 3: Juvenile Justice (Care And Protection Of Children) Act, 2000

CHAPTER 4: Guarantees And Rights Recognized Under The International Law

CHAPTER 5: Guarantees And Rights Under Indian Law

CHAPTER 6: Recommendations And Conclusion

RESEARCH METHODOLOGY:

The Research methodology adopted by the Researcher is the Doctrinal form and the author has referred the secondary sources in doing the research analysis.

CHAPTER1 :**INTRODUCTION:**

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.¹

Children are the precious asset of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. But the last decade has seen a huge leap in the rate of Juvenile crime in a developing country like India. Today, Juvenile crime is like a disease to society.

Criminal justice system of India treats differently for different crimes and also gives some exceptions and leniency to some class of people. These exceptions are mentioned in Indian penal code, while the court is lenient for giving punishment in case of juveniles and separate act has also been made for juveniles. Juvenile has been defined differently in different acts but as per latest act i.e. The Juvenile justice (care and protection) Act, juveniles are those who has not attained the age of 18 years.

There is a juvenile justice system that treats juveniles differently than adults because our society believes juveniles are different from adults, both in terms of level of responsibility and potential for rehabilitation. Although there is concern with public safety and holding juvenile offenders accountable for their actions, there is greater emphasis on rehabilitation than on punishment in the juvenile justice system. "Rehabilitation" means to restore someone to a useful life through therapy and education. For example, a juvenile who commits an offense may be required to participate in counseling or a program to help him or her make better decisions in the future. But in the light of the present scenario does the "Rehabilitation" really leadsto a reformation in the child.Inspite of the presence of the welfare laws for juveniles, there is a rise in the number of Juvenile offenders across the country. ²For this purpose, rehabilitation centre are made so that special care and protection can be given to these children and it is assumed that they will return back as a reformed person. In this paper focus has been done on the functioning of rehabilitation centre and rights of juvenile.

¹<http://www.crin.org/docs/resources/treaties/uncrc.asp> visited 7/9/13 at 8.50pm

²R.V. Kelkar's Criminal Procedure, K.N. Chandrasekaran Pillai, 6th Edition, Eastern Book Company.

CHAPTER 2:**OBJECTS AND PRINCIPLES OF JJ**

The Juvenile Justice (JJ) system is based on principles of promoting, protecting and safeguarding the rights of children. It was enacted by the Indian Parliament in 1986. In the year 2000, the Act was comprehensively revised based on the United Nations Convention on the Rights of the Child (CRC), which India had ratified in 1992; the Beijing Rules; the United Rules for the Protection of Juveniles Deprived of their Liberty; and all other national and international instruments, thereby clearly defining children as persons up to the age of 18 years. Section 2 (k) of the Act defines ‘child’ as a person who has not completed eighteen years of age. The Act is based on the provisions of Indian Constitution and the four broad rights defined by the UN CRC:

- Right to Survival
- Right to Protection
- Right to Development
- Right to Participation

This Act repealed the earlier Juvenile Justice Act of 1986 and has been further amended in years 2006 and 2011. The Juvenile Justice (Care and Protection of Children) Act, 2000, is the primary legal framework for juvenile justice in India. The JJ Act primarily focuses on the twin interrelated aspects of juvenile delinquency and handling of children in need of care and protection. The JJ Amendment Act, 2006, brought substantive changes to the JJ Act, 2000. It has been enacted to provide for care, protection, development and rehabilitation of neglected, delinquent children and includes within its ambit child labourers. Section 2 (d) (ia) includes ‘working children’ within the purview of a ‘child in need of care and protection’.³ The Act broadened the scope of rehabilitation of the child in need of care and protection, or of a juvenile in conflict with the law, through not only the institutional but also the non-institutional approach. The JJA creates a juvenile justice system in which persons up to the age of 18 who commit an offence punishable under any law are not subject to imprisonment in the adult justice system but instead will be subject to advice/admonition, counseling, community service, payment of a fine or, at the most, be sent to a remand home for three years.

³Juvenile justice act in India.

CHAPTER 3:**JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

The 2000 Act made the age limit of 18 years uniform for both boys and girls in consonance with the CRC and sort to facilitate speedy disposal of disputes. It also made state intervention essential in the case of a Child in Need of Care and Protection (CNCP), under the 1986 Act, such a child was called a 'neglected juvenile' as well as the Child in Conflict with Law (CICL), earlier called the 'juvenile delinquent'. As the name suggests, the JJ (C&P) Act 2000 was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this very enactment.

The competent authority to deal with 'juvenile in conflict with law' is the Juvenile Justice Board and 'children in need of care and protection' is the Child Welfare Committee. The Board shall consist of a magistrate and two social workers, one of whom shall be a woman. All of them must have special knowledge of child psychology and child welfare. The constitution of the Board under the JJ (C&P) Act differs significantly from the juvenile court under the JJA. The two social workers, who were required to assist the magistrate under the JJA, have now been made part of the Board. This provision, if implemented in letter and spirit, has the potential to convert the legal and technical nature of the proceedings of the Board into care and welfare proceedings. All inquiries under the JJ (C&P) Act should be completed within a period of four months. A wide range of persons are allowed to take charge of children covered under the JJ (C&P) Act, namely the police, public servants, nongovernmental organizations, authorized individuals or children themselves.⁴

There has been a significant change in the role and responsibilities of the Police. Now every Police Station is required to have at least one Police Officer specially trained to deal with

⁴[juvenile-justice-board](#) Author: Amar Gupta

children in conflict with law as well as those in need of care and protection. The terms 'care', 'protection', 'treatment'; development and 'rehabilitation' were not defined by the JJA. Unfortunately, the JJ (C&P) Act is also silent on the matter. These, terms however, may be understood by the reference to the statements in the National Policy and other related schemes. Hence, care ought to include the survival needs of children, that is, adequate food, clothing and shelter. They ought to be protected against neglect, cruelty and exploitation. Provisions should be made for proper programmes for reforming the behaviour and attitude of the delinquent children. Such programmes should be aimed at instilling in children the values of honest life so that they become robust citizens fit in all aspects and endowed with the skills and motivations required to live peacefully in the society (Kumari, 2004).⁵

Even though children in both categories come within the purview of this system, any person aggrieved by an order made by a competent authority under the juvenile justice law is allowed to take his/her complaint to the Session or High Court. This Act also envisages state protection and establishment of institutions for such children. For children in need of care and protection, there are Shelter Homes (Short-term stay) and Children's Homes (Long-term stay). For children in conflict with law, there are Observation Homes and Special Homes. The former are where the accused are housed till the enquiry is completed and an order is passed for their rehabilitation. In most cases, a single institution serves as both these categories. Additionally, there are After-Care Homes to fulfil that special role of rehabilitating children leaving Special Homes and integrating them with the larger society. However, there are very few After Care Homes in the country. Even this act was seen to be weak on care jurisdiction and inadequate in after care and follow-up of the children in difficult circumstances, and was amended in 2006 to become the Juvenile Justice (Care and Protection of Children) Amendment Act 2006. The 2006 amendments attempt to strengthen and widen the juvenile care and justice framework as well as establish the premise that the best of institutions cannot substitute for care in a family, with the ultimate aim of promoting a child-centric rehabilitation and family restoration focused system (HAQ, 2009).

⁵Juvenile-justice-system-in-india- Author: Devdatta Mukherjee

THE NIRBHAYA CASE (16TH DECEMBER, 2012)

It had a profound impact on public perception of the Act because one of the convicts was a juvenile and few months shorter than 18 years of age. Due to which he was sentenced to three years in a reformatory home. Several writ petitions were filed against the legislation's "soft" treatment to juvenile offenders even in heinous crimes but Supreme Court of India hold the Act to be constitutional. Public debates have been started about should the age of juvenility be reduced to 16 years as more and more children of this age group committing crimes. Of the 1163 murders by juveniles in 2014, 844 were committed by those in the 16-18 years age group as per data released by NCRB. Director of an NGO Childline was of the view that children are getting exposure of that kind of which they are unable to think about the consequences of their actions. Thus, when they commit serious crimes, they must be dealt with accordingly as it would send a right message in the society and will discourage organised gangs that are using juveniles for heinous crimes (Hindustan Times, 2015, December 23).

While on the other side, child right activists and scholars were of opposite views. They opposed the proposed Bill which aimed to reduce the age of juvenility from present under 18 to 16 years. However, the government came out in support of reducing the age of juvenility by passing a new Bill in December, 2014. The highlights of the Bill are:

The Bill replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. It addresses children in conflict with law and children in need of care and protection.

The Bill permits juveniles between the age group of 16-18 years to be tried as adults for heinous offences. Also, any 16-18 years old, who commits a lesser, i.e., serious offence may be tried as an adult only if he is apprehended after the age of 21 years.⁶

⁶S.N Mishra, The Code of Criminal Procedure, 1973, Reprint 2017, Central Law Publication.

CHAPTER 4:**GUARANTEES AND RIGHTS RECOGNIZED UNDER THE INTERNATIONAL LAW:**

Development of the Juvenile Justice System(JJS) has come a long way, from the seeds of a rights based approach being found in the International Covenant on Civil and Political Rights (ICCPR) of 1966 to its final culmination in the Convention on the Rights of a Child (CRC). The ICCPR lays down specific provisions in the context of juvenile justice, these being Article 10(2), which provides for the separation of juvenile offenders from adults for their speedy adjudication. Further still, Article 14 (4) categorically provided that the trial procedures for juveniles should take into account the age of juveniles and the desirability for their rehabilitation. These provisions could be considered as the platform or the stepping-stone for the development of certain necessary rights with regards to juvenile offenders. But despite their importance and usefulness the provisions as laid out were narrow and limited, and failed to provide wide spread protection to juvenile offenders. With the passage of time and with States developing separate juvenile justice systems, the need to have a complete framework at the international level became apparent.⁷

Beijing Rules-

In 1980 the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders called for the preparation of minimum rules regarding the administration of juvenile justice. Following which in 1985 the General Assembly adopted the United Nations Standard Minimum rules for the Administration of Juvenile justice also known as the Beijing Rules. The Beijing rules provided States with a constructive and definitive framework within which they could create and model their own juvenile justice systems. Even though the Beijing rules were not a set of treaty rules they still found a binding force after their eventual incorporation in the CRC. Despite its ground-breaking approach, the biggest deficiency in the Beijing Rules was its ambiguity with regards to who is or can be considered as a juvenile under Rule 2(2) (a). The gaping hole in the definition allowed national legal systems to define juveniles. In essence the Beijing rules said no more than that if a person is treated as a juvenile he or she is a juvenile.

⁷ Rights-Juvenile-India Author:AnkitKaushik

Even though the Beijing rules were widely adopted in the legal system of many states, the definition of juvenile severely limited and hampered the application of the rules.

Convention on the Rights of the Child 1989

The United Nations Convention on the Rights of the Child 1989 which came into force on September 3rd 1990 can be considered as the highest point in the quest for ensuring right to juveniles without at any point undermining the welfare principles of the JJS. The Convention not only recognized the rights which were to be processed according to the principles of justice, but also the rights to participation, name, nationality, identity, survival, development, adoption and the right against exploitation.⁸

CHAPTER 5:

GUARANTEES AND RIGHTS UNDER INDIAN LAW :

The minors are exempted from the punishments and the fines because there had to be a difference in the level of understanding of an 8 year old and an 18 year old. The immunity to children is based on the principles of Juvenile Justice Act. The constitutional basis for juvenile justice can be derived from Articles 15(3), 39(e) and (f) of the Constitution. Article 15(3) provides that "Nothing in this article shall prevent the state from making any laws regarding women and children". Article 39 forms a part of the directive principles of the state policy. Clause (e) of Article 39 provides inter alia, that the tender age of children is not abused. Clause (f) stipulates that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.⁹

According to the Indian Penal Code:

According to Section 82 up to 7 years of age there is an absolute irrefutable presumption that the child is doliincapax. This immunity is granted to the children below seven years on the pragmatic approach of the state that children below seven years are not capable hence they do

⁸[2017/09/juvenile-delinquency-india-critical-analysis/RupalyMiddha&ShashwatTomar](https://www.researchgate.net/publication/317099707/figure/fig/1/figure-fig1/1517221111111/2017/09/juvenile-delinquency-india-critical-analysis/RupalyMiddha&ShashwatTomar)

⁹[RIGHTS OF A JUVENILE DELINQUENT IN INDIA](#) Author: Swati Mohapatra

not have the capacity to have the requisite mensrea. According to Section 83,if the child does not attain maturity of mind the burden of proof lies with the child. To make them liable they must attain maturity of mind and this is called “mischievous discretion” under English Law. The children of this age(up to 12yrs) will have to prove that there was no maturity of mind when the act committed and therefore no mensrea.. In the case of **HarilalMallick v. State of Bihar**¹⁰;it was held that not only a proof of a child being under 12 but also it has to be proved that the child did not have enough understanding at that point of time and was immature. If no sufficient proof is laid down in front of the court to prove the immaturity of the child then it will be presumed that the child- accused intended to do what he really did. Thus in this case where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity or understanding was led on his behalf, thus held liable.

According to the Juvenile Justice Act

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The objective of this legislation is to ensure the care, protection and development needs of the children who are either neglected or have come into conflict with law constituting delinquency. This law, brought in compliance of Child Rights Convention, repealed the earlier Juvenile Justice Act of 1986. This Act has been further amended in year 2006 and 2010.

Section 2(k) of the Juvenile Justice Act 2000, defines the term ‘juvenile’ as a child or a juvenile who has not completed the age of 18 years”. The juvenile justice act ,2000 has categorized the children under two heads – “juvenile in conflict with law”¹¹& “child in need of care”¹²The Act provides that (section-16) no juvenile can be sentenced to death or imprisonment or committed to prison for any offence under I.P.C. In the United States of America , execution of a child of 16 or above at the time of commission of crime was valid till 2005 when the U.S.A supreme court in Christopher Simmons case¹³, by split majority of 5 to 4 held death penalty for offenders under

¹⁰ AIR 1977 SC 2236

¹¹ Section-2 (l),juvenile justice act,2000

¹² Section-2 (d), J.J Act,2000

¹³ Donald P. Roper v. Christopher Simmons (2005) US 125

the age of 18 years at the time of the commission of crime cruel and unusual punishment contrary to VIIIth&XIVth amendment to the U.S constitution & national decency.

Through Juvenile Justice (Care and Protection) Act, 2000, several rights have been provided to ensure that a juvenile is not punished or treated like hardened criminals. Some of the rights are –

- Hearing of cases involving juvenile by Juvenile Justice Board (**section-4 & 14**)
- Bail Provisions for juvenile (**section-12**)
- No prison term to juvenile.(**section-10, juvenile justice (care and protection)act,2006**)
- No joint proceeding of Juvenile and Non Juvenile(**section-18**)
- Removal of disqualification attached to conviction(**section-19**)

Social Protection

- Juvenile Justice Act also contains measures to ensure that a juvenile in conflict of law is given opportunities to reform and rehabilitation. (**section-40**)
- Establishment of Observation and Special Home(**section- 8 &9**)
- Education and Training facilities

Preventive Measures

- Several acts such as employment of juveniles in dangerous activities, forcing juveniles to beg, or steal, or giving intoxicating substances to a juvenile, publication of names or other details of a juvenile in conflict of law in media, have been made cognizable offences by Juvenile justice act.(**section 23-26**)
- Supervision by Probation Officer to ensure that a juvenile is not influenced by bad elements. (**Section-15**)

The Act stipulates that the Juvenile should be sent home after advice or admonition, released on probation of good conduct and placed under the care of parent or guardian or sent to a special home.¹⁴ When presumption of juvenile innocence is sought to be displaced by the prosecution on the basis of circumstantial evidence the circumstance must unmistakably prove the guilt beyond

¹⁴ Section-15 ,juvenile justice act,2000

doubt this has also been seen in the case of **Sakha Ram v. State of M.P**¹⁵. In the case of **Gopinath Ghosh v. State of West Bengal**¹⁶ the defense of being a minor was raised for the first time.

Section 9 of Juvenile Justice Act, 1986 when a Juvenile girl produced before court is not claimed by any person and she is not a delinquent juvenile, court must ensure that she is kept in place of safety until she attains majority as seen in the case of **R. Rathinam v. Kamala Vaiduriam**¹⁷. **Section 21** of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006), states that: "Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act. No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published.

Lacunae:-

1. The act fails to express the minimum age, below which the Act would not be applicable. The definition of juvenile delinquency provides very little scope for petty acts to be dealt within the community.
2. There is no segregation on the basis of age and severity of the crime. Juvenile who has committed a severe crime when put with a juvenile who have committed a minor offence, would lead to disastrous effects
3. There is no concept of parental responsibility in generating situations ripe for delinquency under this Act. In many cases, the parents place the children in situations where their exploitation and abuse become imminent. The parents are the first and the foremost rudimentary educators and trainers of a child before he is exposed to the environments outside the family and hence it is the wholesomeness of the parental conduct which is primarily responsible in shaping training molding and channelizing his

¹⁵1992 AIR 758, 1992 SCR (1) 638

¹⁶1984 AIR 237, 1984 SCR (1) 803

¹⁷1993 CriLJ 2661

energy in proper manner so as to keep the child free from developing any undesirable social impulses in him.

4. The education, training and recreation of children, who are in observation homes, have not been provided for. Besides, basic or school education, even higher education and training of these children should be considered in this Act.
5. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial
6. The Act does not take into account the orders and directions of the Supreme Court.
7. Juvenile Justice thrives under the shadow of the adult criminal justice agencies and institutions (like the police). Moreover, the juvenile Justice adjudicatory cadres are drawn from the pool of the magistrates from the state. Overloading the same cadre of judges who are also adjudging the cases of adult offenders, with the juvenile delinquency cases, thus leading the juvenile offenders to backseat, as the adult cases would be preferred over their cases.
8. The children affected by the problems like HIV/ AIDS, drug abuse, militancy, disaster etc. do not have any redressal under this law. Similarly the concomitant issues like child marriage, female feticide, street children, and working children too fall away from being covered in it.
9. The Act does not cast any obligation on the part of the state. A right based perspective, is a missing dimension in this law. In its present shape, child protection becomes more of charity than a commitment. Protection of such children is not seen as a right but as charity or welfare. The Juvenile Justice Act does not have specific provisions ensuring services for children relating to education, health, legal and social.
10. Addressing to the requirement of such children needs a regular coordination amongst parallel government agencies working in the similar areas. This lack of coordination and convergence of programmes defies the core objective for juvenile justice policy. The coverage of the act is quite limited and a large number of children technically fall away from the preview of this law. The resources and infrastructure required for the effective implementation of this law is hardly proportionate to the population and geographical regions covered under it. Children caught in the system are often helpless with very little redressal.

11. The lack of institutional infrastructure and trained manpower in the states has blunted the whole objective of this legislation.

12. The problem of enforcement of this law is also characterized by the lack of support services to vulnerable families, which becomes a major factor in turning their children into delinquency.

The basic idea of juvenile justice was to reintegrate the child into family and society. This needs a proper network of rehabilitation and after care services. Unfortunately, this arrangement is almost nonexistent. The current juvenile justice policy does not have a preventive approach. The delinquency prone situations are increasing but there is no substantial mechanism to check it.¹⁸

CHAPTER 6:

RECOMMENDATIONS:-

The Supreme Court condemned and discouraged the detention of children below 16 years in jails in a very important decision in the case of SheelaBarse Versus Union of India¹⁹ when it observed :

“On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes, the children should be released on bail instead of being subjected to incarceration in jail.”

Relating to juvenile justice system and various duties of the government ,the apex court in the case of SheeleBarse versus Union of India observing that

- 'a child is a national asset' held that it was a duty upon the State to look after the child with a view to ensuring full development of the personality and that every State government must take necessary steps so as to setting up adequate number of courts, appointing requisite number of judges and providing them for necessary facilities.

¹⁸Juvenile Justice and Juvenile Correction : Pride and Prudence, M.S. Sabnis (Somaiya Publications Pvt. Ltd., Bombay & New Delhi-1996), pg. 81

¹⁹JT 1986 136 1986 SCALE (2)230

- It was also stressed by the Court that the State government must set up necessary remand homes and observation homes where children accused of an offence may be lodged pending investigation and trials.
- The rising number of juvenile delinquency cases prove the fact that the problem is more social and economic rather than legal. So the problem needs to be viewed in a larger perspective and something such must be done as to correct conditions of childhood and families. Law alone cannot be supposed to eradicate the problem. The legislation shall only strengthen the judiciary but cannot bring change in the social and economic fronts.²⁰

CONCLUSION:

It is hereby concluded that juvenile justice is a right based perspective, is a missing dimension in this law. In its present shape, child protection becomes more of charity than a commitment. Protection of such children is not seen as a right but as charity or welfare.²¹

The politicians must have to come out of 'vote' and vote philosophy at least while thinking for Indian Children who are in danger to become delinquents and hardened criminals coming on age. What would be the situation tomorrow when they and they only would be holding the nation.

The basic idea of juvenile justice was to reintegrate the child into family and society. This needs a proper network of rehabilitation and after care services. Unfortunately, this arrangement is almost nonexistent.²² The current juvenile justice policy does not have a preventive approach. The delinquency prone situations are increasing but there is no substantial mechanism to check it.

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²⁰Ratanlal And Dhirajlal, The Code Of Criminal Procedure , 21st Edition, B.M Prasad, Manish Mohan

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