

## **Child Rights and Juvenile Justice in India**

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### **Abstract**

The paper conjuncts upon child rights and the juvenile justice prevalent in India and the provisions being envisaged therein, keeping the child as the central theme of all the policy and legislative provisions and decisions. It is held in mind that whenever an issue related to the child is being confronted by the Juvenile Justice Board and Child Welfare Committee for a child in conflict with law and child in need of care and protection respectively, the best interest of the child is sought. The paper confers the liability of the Government, to make such decisions for providing such opportunities to the children to develop them to the fullest, as stated under Article 39 of the Indian Constitution as a directive to them. Thus, the Juvenile Justice System in India is a result of the several international treaties, one of which played a significant role in the present scenario is that of Convention on the Rights of Child. In India, the current legislation for juveniles is that of Juvenile Justice (Care and Protection of Children) Act, 2015. The Research Methodology adopted in the paper is doctrinal research mainly secondary sources such as the Government reports published by – NCRB, NPAC, and literary references.

**Keywords-** *Child rights, Juvenile Justice System, India, Crime against children, law*

## **Introduction**

The fundamentals unit of society are children. The building block which constitutes the further generations, i.e. the future of a society, since time immemorial has undergone various forms of exploitation depriving them of their fundamental rights inherent to them by nature and by law. They are portrayed as the weaker and vulnerable section dealing with tasks derogatory to their innocence. They being immature are often left open to the issues which circumstantially sometimes and the others which are unknown to them- child labour, child marriage, infanticide, foeticide, sexual harassment, rape, child abuse, neglect, mental ill-treatment, etc., certainly these are not the only instead some crimes or exploitation are often related to their daily lives which are still unknown to the society. As a result of such exploitation, it was necessary to devise tactics to handle such scenario at hand otherwise the result would be disastrous, herein the legal system stands as wall supporting, providing the provisions and guidelines to ensure that child rights are not mistreated or misused.

As regards child rights, these are basically inherent by nature and by law. Even the Constitution of India also suggests the provisions and even provides for safeguarding the children's rights.

There are around 472 million children belonging to the age group of 0-18 years, thereof constituting the 39% of the population- according to the Census of 2011. According to the National Crime Records Bureau, during 2015-16 there has been a 13% increase in the crime against children, whereof, there are instances which are left unregistered and unrecognised.

In this regard, there are instances where children are left to exploitation whereof protection is guaranteed through the juvenile justice system of the country. The juvenile justice system seeks to provide measures as well as protection to the juveniles or the child in conflict with the law.

Article 39 of the Constitution expressly lays the guidelines that the State shall ensure its policy so that children are given opportunities and facilities to develop in a healthy manner and in the conditions of freedom and dignity. Further, it provides that the childhood of child should be protected against exploitation and against moral and material abandonment. It is the directive that the Government must keep in mind while framing its policy as regards children so as to secure maximum possible benefits for them.

## **Child and Child Rights**

Article 1 of the United Nations Convention On The Rights Of Child, 1989 defines a child as – ‘every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier.’

Thereby, this definition provides that the countries on their individual basis could justify the age limit of children as for any such special provision which they deem fit, whereof the general age of majority provided is that of 18 years. Unlike this, different laws in India have mentioned different definition of a child as regards to their age. Some enactments containing this are-

<b>ENACTMENT</b>	<b>AGE OF CHILD PROVIDED</b>
Indian Majority Act	Upto 18 Years
Juvenile Justice ( Care And Protection) Act	Up to 18 Years
Prohibition Of Child Marriage Act	Male- 21 Years Female- 18 Years
Protection Of Children From Sexual Offences Act	Upto 18 Years
Convention On Rights Of Child	18 Years

Table 1

### **Child Rights-**

These are such rights which are inherent to the child from birth, which gives them the chance to develop to the fullest and thereby mould them in such a manner so as to ensure them the basic developmental, educational, skilful, emotional, psychological, physical and social balance in the society so that they are not being exploited by the evils of the society and as a consequence are being protected. The rights of child play a dual role by imposing the duty on State for their protection from the evils and on the society as a whole to provide them with an environment for blooming to the fullest.

## **Protection of Child**

The protection of the rights of a child is of crucial importance to impart full safety which is intrinsic to their innocence. Children have the right to enjoy under the good governance their right to survival, development, participation along with their wellbeing.

The protection of a child may be provided in two ways, i.e. by regulating the crimes against them and the crimes committed by them. Hence, this forms the base of the juvenile justice system of India, and thereof the issue is dealt with the following baselines- Children in Conflict with Law and Children in Need of Care and Protection.

Children are an eternal part of our society. Thus it is the duty of the State, administration, judiciary and the citizens and persons to protect them from any form of exploitation.

The reason to bring the concept of child protection is two-fold:

a. Crime committed by children

In the recent trend, it has been observed that the crime rate done by children has been increasing day by day. It is also a consequence that since children under our penal or other laws are left or partially left under its ambit of punishing or whereof the punishment is less in case of a child who is in conflict with the law. It has been reported that around 0.7% of the crimes were committed by the children in 2016 and 2015. It becomes the responsibility of the Government to make provision for the due need and attention so as to take care of such child and thereof reform them, which the juvenile system does provide certain aspects of punishment.

b. Crime against children

Being the most vulnerable section of the society, the children are open to exploitations which may be in the form of abuse, ill-treatment, rape, neglect, foeticide, and infanticide, abetment to suicide, kidnapping and abduction, sale of obscene objects, etc. With the increase in such crimes against children the innocence of such affected child is being tarnished, leaving them traumatised throughout their life and thus to protect and safeguard them several legislative and constitutional provisions have been envisaged in this regard.

The constitution specifically provides for the rights of children that are envisaged to safeguard them –

- i. Right to free and compulsory elementary education to all children in 6 to 14 year of age group under Article 21A.
- ii. Right to be protected from any hazardous employment till the age of 14 years under Article 24.
- iii. Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength under Article 39(e).
- iv. Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment under Article 39 (f).
- v. Right to early childhood care and education to all children until they complete the age of 6years under Article 45.
- vi. Right to equality under Article 14.
- vii. Right against discrimination under 15.
- viii. Right to personal liberty and due process of law under Article 21.
- ix. Right to being protected from being trafficked and forced into bonded labour under Article 23.
- x. Right of minorities for the protection of their interests under Article 29.
- xi. Right of weaker sections to be protected from social injustice and all forms of exploitation under Article 46.
- xii. Right to nutrition and standard of living and improved public health under Article 47.

Legislations envisaged for the protection of children areas –

- i. Bonded labour System (Abolition) Act, 1976
- ii. Immoral Traffic (Prevention) Act, 1956
- iii. Medical Termination of Pregnancy Act, 1971
- iv. Mines Act, 1952
- v. National Food Security Act, 2013
- vi. Juvenile Justice (Care and Protection of Children) Act, 2015
- vii. Young Persons (Harmful Publication) Act, 1956
- viii. Right of Children to Free and Compulsory Education Act, 2009
- ix. Probation of Offenders Act, 1958

x. Protection of Children from Sexual Offences Act, 2012

Several other laws are also there to mitigate the exploitation being faced by the children in various avenues.

**Government Policies – National Plan of Action, 2016**

It is the responsibility of the Government to frame such policies for the benefit of the child so as to secure maximum possible wellbeing and development to them. Even it is the duty of the Government to release such funds as are necessary for maintaining such norms and policies both at the centre and state level accordingly. The National Plan of Action (NPAC) calls for the equal opportunities of children along with their protection, the recent plan that has come forth is of 2016. The background of such policies dated back to the National Policy for Children envisaged in 1974.

The National Plan Of Action, 2016 is based on the principles specified in the NPAC, 2013.

Key Approaches Of NPAC, 2013, which forms the base for NPAC, 2016 as well-

1. Survival, health and nutrition- ensuring equitable access towards comprehensive and preventive, curative, rehabilitative and promotive health care of the highest standard during and after their birth and throughout the period of their growth to all the children.
2. Education and development along with skill development- securing the right of the child to that of education, knowledge, learning and development opportunity with due regard to the special needs by providing, promoting the access to the required environment, information, infrastructure, service and support for the development of the child to the fullest.
3. Protection- a creation of a safe, caring and protective environment to prevent them from all forms of vulnerabilities in all situations.
4. Participation – to enable children to get engaged in development and the matters concerning and affecting them.

The NPAC, 2016 is a blend of the previous running schemes or programmes along with the new initiatives introduced therewith with a strategical approach to get the desired outcome. It takes into account the current priorities and challenges for the children in India. It acts as a step to strengthen the national commitments and policies and that of the United Nations Convention On The Rights Of The Child, providing a road map for the same. Further, it aims to achieve the outcomes by the year 2021, thereby to attain the Sustainable Development Goals as targeted.

Schemes introduced under the NPAC, 2016 are –

1. Child Protection Service ( earlier Integrated Child protection Scheme- ICPS)
2. Mid-Day Meal
3. National Nutrition Mission
4. National Health Mission
5. Integrated Child Development Services (ICDS)
6. Maternity Benefit Programme
7. Janani Shishu Suraksha Karyakram
8. Dindyal Disabled Rehabilitation Scheme
9. Beti Bacvhao Beti Padhao
10. Pradhan Mantri Kaushal Vikas Yojana, etc.

#### **Role of Convention On The Rights Of Child:-**

The United Nations Convention on the Rights of Child adopted in 1989 is a historical movement in ensuring child rights with the following core principles at hand-

1. Right to Non- Discrimination
2. Right to life, survival and development
3. Right to have a child's best interests taken as a primary consideration in all matters affecting them.
4. Right to express views freely.

India ratified the convention in 1992, solely to provide the children in India the basis for their maximum benefit and development and to thereby secure and protect them from exploitation. However, India did not ultimately ratify it but incorporated the provisions according to the country's scenario. This convention applies to the children till the age of 18 years.

#### **Crimes Against Children**

In the year 2015, a total of 94,172 cases were reported for the crimes done against the children, whereby, above 6,000 cases were reported mainly from Uttar Pradesh, Madhya Pradesh, Delhi and Maharashtra as per the NCRB (National Crime Records Bureau) statistics. According to the NCRB (National Crime Records Bureau), the percentage-wise crimes committed against children in the year 2015, the major crimes include -

- Kidnapping and abduction being 44.5%,

- rape being 11.5%,
- under Protection of Children from Sexual Offences Act (POCSO, Act) – 15.8%,
- Assault on Women with the intent to Outrage her Modesty- 8.9%,
- Procurement of Minor girls – 3.3%
- Murder- 1.9%
- Under the Juvenile Justice (Care and Protection of Children) Act- 1.5%
- Other Crimes (including – attempt to commit murder, transportation of human organs, selling of minor for prostitution, immoral trafficking, an insult to the modesty of women, importation of girls from a foreign country, buying of minors for prostitution, abetment of suicide of a child, foeticide, infanticide, child labour and child marriage) – 10.7%
- Exposure and Abandonment – 0.9%
- Unnatural Offences- 0.9%

Approach to guarantee the rights of children in regards to the crimes committed against them-

- Generating awareness through camps and events among the children about the possibilities of their exploitation and making them understand the sense of being exploited.
- Introducing more eccentric policies directed towards the welfare of the children.
- Strict policing to be done in regards to such places and areas where the crimes are being reported.
- Provision for more strict punishments to the offenders who commit crimes against the children.
- Vigilance on the part of Government to ensure the wellbeing and development of children along with them getting proper opportunities for their development.

Children are the essence of society and the future, and it is of utmost importance to guarantee them the full chance of their development.



## **Juvenile Justice System in India**

In India, the juvenile justice system co-relates to the Juvenile Justice (Care and Protection of Children) Act, the recent of which is that of 2015. The Act defines 'Juvenile' in its Section 2(35) as – "a child below the age of 18 years". The word 'juvenile' is derived from the Latin word "Juvenis" meaning young, and thereby the juvenile justice system is that of providing justice to the young people below 18 years of age by securing their rights.

### **Child, Society and Law**

Children are an integral part of society wherein if we relate the social and legal aspects in totality; it could be understood that the base for determining the legal system is the resultant of the social, economic, psychological, political, moral and cultural aspects whereof exclusion of the children is observed in one or the other sense. The foundational block of a system, if ruined lead to catastrophic results sooner or later, same is there with the children, if they are being exploited, then contrast to this, the experience of facing or doing such a thing remains for a lifetime, leaving their innocence diminished to ashes.

Society and law thus play a crucial role in providing a great future for children by helping them in order to cherish each and every aspect of their life wilfully and freely.

### **Concept and History of Juvenile Justice in India**

The conceptualisation of juvenile justice is an outcome of the abnormal situations wherein, under the traditional laws there were barely any provisions for the punishment of the juveniles or such provisions for the protection of juvenile victims as the situation exists, whereof the situation is unchangeable under the criminal law.

The basic approach to the juvenile justice system is to ensure the bare needs and protection of the children who are victimised or has done any act derogatory to the law.

Since the advent of the British, new legal methodology was introduced, thereby channelling new sources and procedures of law. It was through such circumstances that for the first time in 1850 where the first law provided a special status for juveniles- Apprentices Act, 1850. Another major enactment was that of Reformatory Schools Act, 1876 which provided for the treatment and rehabilitation of the juvenile delinquents (a child who below 18 years of age commits an act derogatory to law and society). Under Article 253 of the Constitution, the Parliament envisaged to incorporate the provisions which were ratified by India in the United Nations Standard Minimum Rules for the Administration of

Juvenile Justice, 1985 (Beijing Rules) so as to mandate care, protection, rehabilitation, treatment and development of the neglected and the delinquent juveniles along with the disposition and adjudication of such matters. And as a consequence of this, the Juvenile Justice Act, 1986 was formulated.

Further, with the happening of the United Nations Conference on the Rights of Child, the prior legislation was repealed, i.e. the Juvenile Justice Act, 1986 was repealed and was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000, which was further repealed by the new Act of 2015, i.e. Juvenile Justice (Care and Protection of Children) Act, 2015. Now, the Act of 2015 is currently in the application in the country governing the law related to juvenile justice.

Objects of the Act of 2015 as in accordance with the Convention on the Rights of Child; as provided in the Act are-

1. Treatment of a child in a manner consistent with the promotion of the child's sense of dignity and worth.
2. Reinforcing the child's respect for the human rights and fundamental freedoms of others.
3. Taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Basically, the children are *dole incapax*, i.e. incapable of committing any crime, and in contrast, the Indian Penal Code lays that an offence is not so if done by a child below seven years of age. Hence, the Act targets to approach to deal with children in a manner that is more reformatory and rehabilitative in nature.

### **General Principles to be followed in administration of the Juvenile Justice Act of 2015**

The principles to be followed while implementing the provisions of the Act as under Section 3, are-

1. Principle of presumption of innocence- Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of 18 years.
2. Principle of dignity and worth- All human beings shall be treated with equal dignity and rights.
3. Principle of participation- Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest. The child's view

shall be taken into consideration with due regard to the age and maturity of the child.

4. Principle of best interest- All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child develop to full potential.
5. Principle of family responsibility- The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
6. Principle of safety- All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
7. Positive measures- All resources are to be mobilised including those of family and community, for promoting the wellbeing facilitating the development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under the Act.
8. Principle of non-stigmatising semantics- Adversarial or accusatory words is not to be used in the process pertaining to the child.
9. Principle of non-waiver of rights- No waiver of any of the rights of the child is permissible or valid, whether sought by child or person acting on behalf on the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
10. Principle of equality and non-discrimination- There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
11. Principle of right to privacy and confidentiality- Every child shall have a right to protection of his privacy and confidentiality, by all means, and throughout the judicial process.
12. Principle of institutionalism as a measure of last resort- A child shall be placed in institutional care as a step of last resort after making a reasonable enquiry.
13. Principle of repatriation and restoration- Every child in the juvenile justice system shall have the right to be reunited 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 the Act, unless such restoration and repatriation is not in his best interest.

14. Principle of a fresh start- All past records of any child under the juvenile justice system should be erased except in special circumstances.
15. 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.
16. Principle of natural justice- 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 the Act.

Thus, these are the basics which act as a guiding principle for the administrators of the Act of 2015 to act in accordance with them while dealing with any issue.

### Juvenile Justice System under the Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice Act of 2015 deals with the two categories of children who are to be treated in accordance with the circumstance.

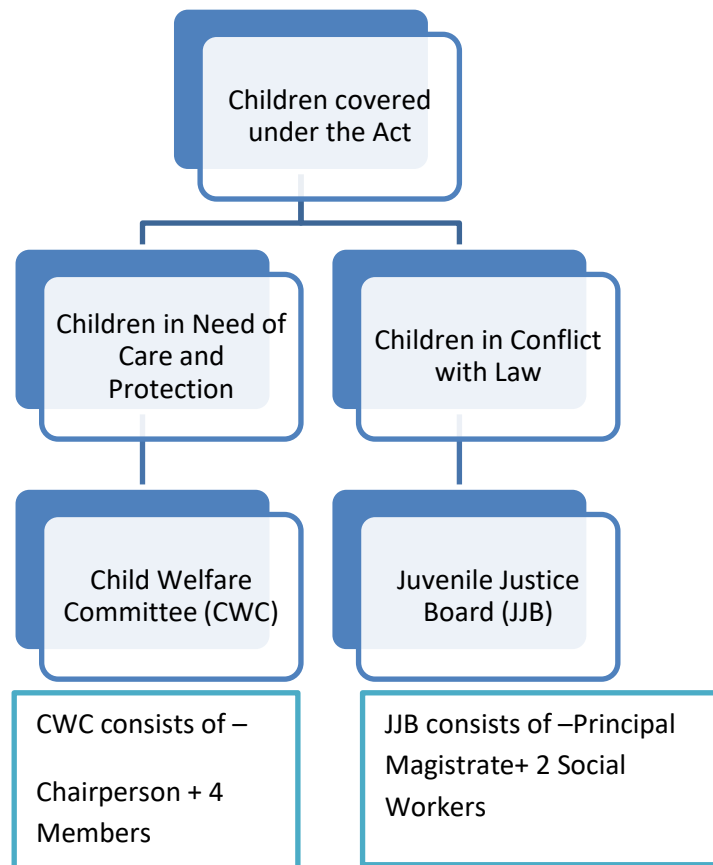


Fig.1

Earlier, the term delinquent juvenile was usage for the child who committed a crime. But now in present day Child in Conflict with Law terminology is used. It was done with the mindset to not develop agitation in children so that they are not treated as criminals and thus approaching them in a friendly manner. Thus the Act of 2015 extensively provides for a systematic approach towards the juvenile justice system in India.

### **Integrated Child Protection System (ICPS)**

This scheme was laid out by the Central Government wherein it was basically meant to serve the purpose to provide to the children protection through authorised system or unit, by way of funds directed towards the States or the Union Territories, for proper and effective implementation of the Juvenile Justice Act of 2015. For this purpose, the ICPS system is differentiated at various forms accordingly-

1. For State- State Child Protection Society (SCPS) -- all the funds from the State are directed towards the SCPS in regard to the child protection scheme so formulated. It is headed by concerned Secretary of the State Government along with the team of officials.
2. For District- District Child Protection Society (DCPS)—every district has a DCPS being chaired by the District Magistrate or by the Chairman of Zila Parishad. It is also responsible for the functioning of the District Child Protection Unit (DCPU).
3. For Blocks- Block Level Child Protection Committee (BLCPC)—it is being headed by the elected representatives at the Block Level along with the Block Development Officer (BDO) as its Member Secretary.
4. For Villages- Village Level Child Protection Committees (VLCPC)—the head of the Gram Panchayat is the Chairman of this Committee.

Thereof, the distribution of the Committees is done in a way to ensure the implementation of Child Protection Measures at each level effectively as regards the health, education, Integrated Child Development System (ICDS), thereby safeguarding the children at all the levels.

The basic motto of the ICPS is to provide a structure to the essential services in the form of institutions and thus to look after the child welfare or development or for their rehabilitation. In contrast to this, the Ministry of Women and Child Development has created bye-laws for the governing of such societies at the State which are registered under the Societies Registration Act of 1860.

The SARA, i.e. State Adoption Resource Agency is subsidiary to the SCPS system recognised in Section 67 of the Act of 2015, for dealing with the adoptions and the related matters in the State under the guidance of the Authority.

### **Child Welfare Committee- Children in Need of Care and Protection – Juvenile Justice (Care And Protection) Act, 2015**

The Child Welfare Committee is set up for those children as Section 2(14) of the Act specifies-

1. If found homeless with non-means of subsistence
2. If found working in contravention of the labour laws
3. If lives with a person who has exploited, injured or threatened to kill, or abused the child
4. If the guardians are unfit to take care
5. If the guardian is found incapacitated by the Committee
6. If one does not have any parents or no one is there to look after or in case the parents have abandoned the child
7. If a child is missing or has ran away, whereof the parents cannot be found after reasonable inquiry
8. If one is likely to be found abused for the purpose of sexual abuse or illegal acts
9. If found vulnerable and is likely to be inducted towards drugs abuse or trafficking
10. If a victim of any armed conflict, civil arrest or natural calamity
11. If in imminent danger of marriage before attaining the desired age of marriage

Thus, the Committee basically looks after the issues concerning the child who is being neglected out of the above reasons.

The Committee shall consist of – (Section 27)

1. A chairman
2. Four other members, whereof
  - i. At least one is a woman
  - ii. At least one of them is an expert on child matters

To ensure that every day one member is present, rather it is Sunday or a holiday, the Chairperson is required to draw monthly duty roster of the Committee members as regards their presence. The presence of at least one member is necessary as there are instances whereof, the need may arise to take cognizance of any emergency matters along with issuing directions that are of necessary nature to the

Special Juvenile Police Unit or to the local police unit of the country. The term for which they can hold the office is up to 3 years.

They must sit for a minimum of 20 days in a month, i.e. a minimum of 6 hours on all the working days.

#### **Initiation of Inquiry-**

1. When a child is produced before the Committee
2. When the Committee receives a report regarding the child in need of care and protection
3. When the Committee *suo moto*, i.e. takes cognizance of the case by itself in case of a child in need of care and protection.

#### **Functionaries of The Committee- Section 30**

1. To take cognizance of matters brought before it.
2. To make *suo moto* cognizance of the cases.
3. To give directions for conducting inquiries for declaration of a fit person, placement of a child in foster care or for social investigation.
4. To select registered institutions, conduct inspection, give recommendations and to certify the execution of surrender deed by the parents, along with ensuring prior formalities and procedures.
5. To restore the lost or abandoned child or to the children who are sexually abused.
6. To declare children free for adoption and ensuring that the proper process of adoption is followed.
7. To conduct inquiry and to direct the police to take due action in an instance of abuse of a child in the child care institutions.

The Committee also performs additional functions which are required as per circumstances or are there with them under their responsibility.

#### **Production Of A Child Before The Committee**

A child who is in need of care and protection can be produced before the Committee, by anyone from the following – (Section 31(1))

1. Police Officer or Special Juvenile Police Unit or Child Welfare Police Officer

2. Officer of District Child Protection Unit
3. An inspector under any labour laws
4. Public Servant
5. Child-line or NGO
6. Recognised agency of State
7. A social worker or public spirited citizens
8. Nurse or Doctor or management of nursing home or hospital or any maternity home
9. Child himself or herself

**Time For Production Of Child-** the child should be brought before the Committee without any loss of time, within 24 hours of timeframe except for the travelling time (Section 31(1)).

#### **Production Of A Child In Case Of An Individual Member**

This situation arises when there is a single member, and the following are there-(Section 28(3))

1. When the Committee is not in its session
2. When a child is placed in a children's home or with a fit person.

**Time Of Inquiry-** ideally the inquiry must be done within 15 days, (but from case to case it may differ), along with the submission of the Social investigation report by the Social Worker or by the Child Welfare Officer or Police Officer.

**Order Of The Committee-** The Committee must produce its order within four months from the date of the first production of the child before the Committee, ideally.

Thus, the Committee may after its final order on being satisfied that there is no one to look after the children, can send them to the following- (Section 37)

1. Children's Home
2. Shelter Homes
3. Specialised Adoption Agencies ( like SARA, CARA)- in certain cases
4. After Care
5. Foster care
6. Under sponsorship
7. Placement of a child with fir person for long term or temporary care
8. Declaration of a child being legally free for adoption



## **Juvenile Justice Board- Child in Conflict with Law- Juvenile Justice (Care And Protection Of Children) Act, 2015**

The Juvenile Justice Boards are set up for the children who are in conflict with the law, i.e. one who has committed an offence and not completed 18 years of age. With time, a shift has been seen where children are getting involved in committing crimes, and many factors or situations are there where adults use children to satisfy their *ulterior motives*, as it is a well-known fact that the children are exempted to a lot in committing of an offence against the law.

The unfortunate event of Nirbhaya Case is an example where one of the accused was a child, and as a result of this, he was exempted from the capital punishment granted to other three accused involved in the gang-rape.

The Juvenile Justice Act of 2015 provides a structure and foundation of dealing with children in terms of their treatment, rehabilitation, prevention and re-integration. In dealing with a child in conflict with the law, the basic measure is through their treatment or rehabilitation.

The Act classifies the nature of offences committed by the children under three categories-

1. Heinous Offences- these are those offences under which the punishment under the Indian Penal Code or in any other law is imprisonment for seven years or more (Section 2(33)).
2. Serious Offences- those offences wherein the punishment under the Penal Code or under any other law is imprisonment between 3 to 7 years (Section 2(54)).
3. Petty Offences- those offences wherein the punishment under the Penal Code or in any other law is imprisonment up to three years (Section 2(45)).

The Juvenile Justice Board is thereby constituted to deal with the nature of offences done by the juveniles when they are in contradiction to the provisions of law or particular legislation.

### **Constitution Of Juvenile Justice Board- Section 4**

The Board constitutes of –

1. Principal Magistrate (who may be the Judicial Magistrate of First Class or a Metropolitan Magistrate and not the Chief Judicial/ Metropolitan Magistrate)
2. 2 Social Workers, whereof one must be a woman.

The Board have the same power as conferred by the Code of Criminal Procedure, 1973.

The term of office is according to the prescribed rules as specified in Section 4(6).

### **Production Of Child In Conflict With Law To The Board-**

The Board must be so designed that it is not like a regular court but is child friendly and not intimidating to the child. The child can be produced to the Board or to an individual member in the case when Board is not sitting.

The child has to be produced before the Board within 24 hours, and if that is not possible, then they must be kept in observation homes and not in police custody or jail.

The Principal Magistrate has to draw a monthly duty roster of the members wherein they are to be available and accessible all day (also Sunday and holidays).

### **Provision Of First Information Report (FIR)**

As the Act of 2015 is concerned, no FIR must be filed against a child in conflict with the law, unless he has done a heinous offence, and not for petty and serious offences; otherwise, the police maintains a record in the General Daily Diary and moves accordingly with it (Rule 8(1) of the Juvenile Justice Rules, 2016).

### **Protection Of Identity Of Child**

The baseline of the provision is that the children are a part of the society and in case of their immaturity or by reason that they are unable to understand the nature of the offence committed by them, and if in this regard their identity is disclosed their future might get affected and may face humiliation from the society and even cannot start their lives afresh. The main aim of the Act is to bring correction to the mentality to these children by providing them with a chance for social re-integration, so that they can live their lives again with dignity (Section 74).

### **In Case Of Heinous Offences-**

In case, where the child has done an offence which is of heinous nature then the trial and inquiry may,-(Section 15 and 18)

1. If it has been committed by a child below 16 years – inquiry can be done by the Board
2. If it has been done by a child who is 16 years or above 16 years of age- preliminary assessment by the Board and if it thinks fit can transfer it to the Children's Court.

Hence, if it thinks that the mental capacity of such child between 16 to 18 years is that as of an adult, may transfer the matter to the Children's Court, whereof the Court decides to try it and that Court will be that as of Sessions Court.

### **Order By The Juvenile Justice Board**

The Board may give the following of the dispositional order according to the nature of the offence committed by the juvenile who is under 16 years of age – (section 18(1)).

1. Release the child after advice or admonition by following appropriate inquiry and counselling to the child and the parents or guardian
2. Direct the child to take part in group counselling and similar activities
3. Order the child to perform community services under the supervision of an organisation or institution or a specified person or group of persons identified by the Board
4. Order the child or parents or guardians of the child to pay the fine
5. Direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person for a maximum of 3 years
6. Direction for probation of good conduct under the care of fir facility for a maximum of 3 years.
7. Directing the child to be sent to a special home for a maximum of 3 years or sending to a place of safety for maximum three years, in keeping the view of the best interest of the child
8. Additional orders that the child has to follow and have to- Section 18(2)
  - i. Attend School
  - ii. Attend Vocational training
  - iii. Attend Therapeutic centres
  - iv. Undergo De-addiction programmes
  - v. Prohibiting the child from visiting, frequenting or appearing in specified places.

When the Board passes an order after a preliminary assessment that the child needs to undergo a trial for the said child as an adult, then the order may be transferred to the Children's Court having the jurisdiction to deal with such type of offences as under Section 18(3).

Other orders that the Board can make are-

1. The State Government, through sponsorship for children for an individual to individual/ group/ community sponsorship, to the families or children home or special homes, to improve the quality of life.
2. After Care for the children who are leaving the child care institution (18 years- 21 years), i.e. to assist them financially.

The board thus may according to the nature of the offence may direct the orders accordingly and may sometimes for rehabilitation may send the child in conflict with the law to the rehabilitative centres such as –

1. Observation homes- it is for temporary reception, care and rehabilitation of the child alleged to be in conflict with the law during the pendency of inquiry (Section 47).
2. Special homes- these are voluntary and non-governmental organisations, which are registered, and whereof the children in conflict with the law are sent by an order under the Board (Section 48).
3. Place of safety- it is such a place where the children who are under the process of inquiry and who are above 18 years or between 16 to 18 years of age are kept and have been alleged to commit a heinous offence. (Section 49)
4. Children's home- these are established by the State Government for the care, protection, treatment, education, development and rehabilitation of the child in conflict with the law (Section 50).
5. Fit facility- it is a place run by a government organisation or a voluntary or non-governmental organisation being registered, which could temporarily take the responsibility of the child for a specific purpose after a due inquiry regarding the sustainability of the facility and the organisation to take care of the child(Section 51).
6. Open shelter- it is established by the State Government or by voluntary or non-governmental organisations, being registered with the objective to protect the child from abuse or weaning them or keeping them away from a life on streets (Section 43).
7. Foster care- in this the child is put in a family excluding his adoptive or biological parents to an unrelated family for the care and protection of that child and this foster care may that be of group foster care.

The apprehension of a child in conflict with the law –

The police have the power to apprehend only when there is a consequence of a heinous offence being committed, and that apprehension must be in the best interest of the child (Rule 8(1)). For the apprehension so done the police officer had to submit a report regarding the same to the Board at the time of the first production of a child explaining the reason for the apprehension (Rule 8 (5) and Rule 10(1) of Juvenile Justice (Care and Protection) Rules, 2016).

Thus, the Board acts accordingly with the mind-set that there is the best interest of the child while disposing of any matter related to them.

### **Findings and Suggestions**

The Juvenile Justice Act provides a clear outlook as to the provisions for the children who are in need of care and protection and are in conflict with the law, for their prevention, care and treatment. The statistics of the NCRB provides that the crime rate done by the juveniles is more in the literate juveniles than by the illiterate ones, and Delhi is the epitome of all the centres whereof the highest number of crimes are recorded. Along with the research, it is clear that the Government both at Central and State level has taken due steps and diligence to provide measures for the protection of children and their rights by way of various policies and legislations. Even at a society level, the contribution is high; the recent trends portray that several non-governmental organisations also work in regards to this following the footsteps of the several international treaties of which India is part and parcel. It has been observed throughout the country that the child in the age group between 16 to 18 years commit most of the crimes, which are more of heinous nature.

Moreover, the pathetic situation of children being exploited continues and is becoming worse day by day. Despite several efforts being put by the Government to maintain the position and dignity of a child along with their protection of rights, more vigilance has to be developed to ensure that there is no such wrong that is committed against a child.

Suggestive measures that should be incorporated for the welfare of the child-

1. There is a need to make legislations more dynamic as per the present scenario, which might meet the current and existent exigencies of the society and time. This is the need of the hour, as the time passes by the maturity among child is being attained at early ages, and there are many tricky things in society which children are learning at an early age.

2. It has been observed that mostly the crimes are committed by the children in the age group of 16 to 18 years, and thus the Government must change the provisions related to the age group by declining it to 16 years.
3. The Government though, has made many policies and took several initiatives for the children, but because of so many policies the society or the bearers are unable to know them. Thus, the Government must take efforts to club up any extra policy with the one which could hold under its purview the ambit of the extra policy.
4. The Government must ensure that proper policing is done in the areas from where the crimes are much recorded.
5. The child care institutions in functioning sometimes do not work and act accordingly as per the guidelines, thus the Government must keep a check that the child in need of care and protection is not mistreated or misused by these forces.
6. A systematic approach needs to be adopted by the legislatures to ensure that every child is being taken care of whenever sent to any child care institute by way of consistent monitoring of such places by a deemed authority.

## **Conclusion**

The coherence on the child rights and juvenile justice in India is of dynamic approach which is based on the basic connotation that the best interest of the child is preserved whether it is in conflict with the law or need of care and protection. It could thus be concluded that the basic theme and propaganda of the legislations and the policy decisions for the children in India is based on the child as the central unit of the mechanism. India being a welfare state, guarantees its citizen the rights which must be vested in them along with their welfare as its main motto, and so does is the scenario with children. Specific laws are framed for the children to achieve or provide them with the opportunities for their development.

A Juvenile justice system is a key approach in India for the juveniles who are being exploited and misused or are left in such a manner that they require support and proper care for their good and healthy development. Even the Government plays a crucial role under its various programmes to ensure that children as the basic unit are taken care of, and are provided with the means for their best opportunities. Hence, an awakening of people and Government both socially and politically is required to achieve the goals which are for the child's welfare and thus for the bright future of the nation. At the legislative point of view, the matter of concern lies all round for the children and their

best welfare as India being a welfare state has the main motive to provide to its citizens an environment based on equitable rights. It is ensured at the country level that the best interest is served for the members of the State, incorporating the children as well. Children are a dynamic part of society and have a crucial role in its development. The laws in India are specifically framed so as to ensure the proper and due care of children from any exploitation and at times punishing them in a reformatory and a friendly manner so as to not hurt their innocence. Hence at this angle, the juvenile justice system in India can be comprehended in the manner that it covers all the adequate steps to safeguard the interest and goodwill of the children by providing a systematic functionality to them.

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