

JUVENILE JUSTICE LEGISLATION RELATING TO CHILDREN IN NEED OF CARE AND PROTECTION: INDIAN SCENARIO

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Abstract

India has undergone significant legal reforms to address the unique challenges faced by vulnerable children, emphasizing rehabilitation and protection over punitive measures. The legislative framework primarily revolves around the Juvenile Justice (Care and Protection of Children) Act, with subsequent amendments reflecting the evolving understanding of juvenile rights.

The Juvenile Justice Act recognizes the special status of children in need of care and protection, encompassing those without adequate family support, victims of abuse, and abandoned or orphaned children. The legislation aims to provide a comprehensive support system, ensuring their welfare, rehabilitation, and reintegration into society. Key provisions include the establishment of Juvenile Justice Boards, Child Welfare Committees, and Special Juvenile Police Units to handle cases involving children in conflict with the law or those in need of care and protection.

The Indian legal framework emphasizes a child-centric approach, promoting the best interests of the child as a primary consideration in all decisions. It introduces non-institutional alternatives such as foster care, adoption, and sponsorship, aiming to create a nurturing environment for children deprived of a stable family life. Additionally, the Act incorporates provisions for counseling, education, and skill development, acknowledging the importance of holistic development for these children.

The legislative evolution also reflects a shift from a punitive mindset towards a rehabilitative one, especially in cases involving juvenile offenders. The focus is on guiding them towards reformation rather than subjecting them to harsh punitive measures. Special provisions exist for dealing with heinous offenses committed by juveniles, striking a balance between accountability and the recognition of their developmental stage. While the legislative framework in India has made significant strides in recognizing and addressing the needs of children in need of care and protection, challenges persist in terms of effective implementation, resource allocation, and awareness. Ongoing efforts involve continuous refinement of the legal provisions to adapt to emerging challenges and align with international standards, ensuring a robust system for the care and protection of children in need.

Key Words: Juvenile Justice, Protection, Care, exploitation, Child Welfare

Introduction:

The introduction of the Juvenile Justice Legislation pertaining to Children in Need of Care and Protection within the Indian Scenario is an exploration into the legal landscape, policies, and concerns surrounding the welfare of children in the country. At the heart of this framework lies the Juvenile Justice (JJ) Act of 2015, a specialized legal structure meticulously crafted to safeguard and promote the well-being of minors. This legislation encompasses a range of safeguarding measures, presenting a comprehensive characterization of Children in Need of Care and Protection on a global scale.

Acknowledging children as a distinct demographic due to their developmental stage, vulnerability, and dependence on caregivers is paramount. The imperative is to tailor interventions to their developmental needs, address their unique requirements, and ensure their optimal welfare. Recognizing the family unit as the foundational cornerstone of society emphasizes its primary duty to provide care and protection for children within its fold.

Embedded within the Indian Constitution are specific provisions mandating legislation that imposes a legal obligation on the state to assume responsibility for children vulnerable to harm, neglect, abuse, and exploitation. This duty extends to situations both within and outside the family, particularly when there is a breakdown in the safety net.

This chapter's central focus lies on the JJ Act of 2015, along with the Juvenile Justice (Care and Protection of Children) Model Rules of 2016, collectively known as Model Rules 2016, concerning Children in Need of Care and Protection (CNCP), and the Adoption Regulations of 2017. Furthermore, the chapter will delve into the historical evolution of Juvenile Justice Legislation in India, providing a comprehensive overview of the legal framework dedicated to the welfare of vulnerable children in the country.

Historical Back Ground:

In the aftermath of India's independence, several states, including Uttar Pradesh, Hyderabad, Mysore, West Bengal, and Saurashtra, introduced their individual legislation concerning children. Meanwhile, the centrally governed states, known as union territories, were subject to the Central Children Act of 1960, which underwent an amendment in 1978. In 1969, Assam, Madhya Pradesh, and Rajasthan formulated distinct acts. Considering Gujarat's earlier inclusion in Maharashtra, the Mumbai Children Act was enforced in areas beyond Saurashtra. The Children's Acts were implemented at different junctures, with Himachal Pradesh adopting it in 1979 and Haryana in 1984.

The shared features of these actions include encompassing children facing neglect, delinquency, or victimization. Initially, the juvenile court was the sole entity handling matters related to minors. The Central Children Act established the Child Welfare Board as a distinct entity, responsible for neglected children, while the juvenile court managed cases involving delinquent children. The provision of a dedicated probation officer for juvenile cases and the implementation of aftercare services for their societal reintegration were established. However,

in practice, these measures were often overlooked by state authorities. Those tasked with handling neglected or delinquent juveniles lacked specialized qualifications, training, or expertise in child psychology. Inconsistencies existed among these acts concerning the age of the child, with different states adhering to distinct practices and protocols. Consequently, a need arose for a standardized legal framework applicable across the entire nation.

The preceding section provides an in-depth exploration of the legal framework, policies, and both traditional and contemporary concerns related to children in India. The Juvenile Justice (JJ) Act of 2015 stands as a specialized legal framework meticulously designed to ensure the protection and well-being of minors. This comprehensive framework encompasses distinct safeguarding measures and presents a broader characterization of Children in Need of Care and Protection on a global scale.

Recognizing children as a unique demographic due to their developmental stage, susceptibility, and reliance on caregivers is crucial. It is imperative to tailor treatments to their developmental stage, address their unique requirements, and ensure their optimal welfare. The family unit is acknowledged as the fundamental building block of society, with the primary responsibility of providing care and protection for the children within its purview.

The Indian Constitution has incorporated specific provisions for the welfare of children, mandating the enactment of legislation that places a legal obligation on the state to assume responsibility for children vulnerable to harm, neglect, abuse, and exploitation. This responsibility extends whether they are within the family or outside it due to a breakdown in the safety net.

The primary focus of this chapter is on the JJ Act of 2015, along with the Juvenile Justice (Care and Protection of Children) Model Rules of 2016 (referred to as Model Rules 2016), concerning Children in Need of Care and Protection (CNCP) and the Adoption Regulations of 2017. Additionally, the chapter delves into a discussion on the historical evolution of Juvenile Justice Legislation in India.

The Juvenile Justice Act of 1986 aimed to establish a consistent nationwide framework for juvenile justice with several objectives:

- a) Preventing any child's detention in a correctional facility or police holding cell under any circumstances.
- b) Establishing a specialized approach for the prevention and treatment of juvenile delinquency.
- c) Detailing the equipment and physical structures required for the care, safeguarding, therapy, enhancement, and restoration of various categories of minors within the juvenile justice framework.
- d) Creating guidelines and benchmarks for juvenile justice management.
- e) Establishing connections between the official juvenile justice system and non-profit organizations.
- f) Establishing specific criminal offenses for individuals who are minors.
- g) Aligning the juvenile justice system with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

According to the provisions, a "juvenile" refers to a male under 16 or a female under 18. Juvenile populations are divided into neglected and delinquent categories. Neglected juveniles include those engaged in begging, lacking a stable home due to destitution, or living in undesirable conditions. Delinquent juveniles are those who violate the law. Neglected cases are handled by the Juvenile Welfare Board, while delinquent cases are addressed by the Juvenile Court.

The definition of a neglected child encompasses various situations, such as abandonment, cruelty, parental imprisonment, improper supervision, wandering without lawful occupation, lack of medical care, or being found in an unlawful place.

The Juvenile Justice Act of 2000, amended in 2006 and 2011, aligns with the Convention on the Rights of the Child. It was influenced by cases like Ramdeo Chauhan and Arnit Das. It aimed to provide care, protection, and treatment, prioritizing the welfare of children in conflict with the law or in need of care and protection. It expanded the definition of neglected juveniles, encompassing mental or physical disabilities, terminal diseases, abuse, torture, drug risk, or impact from armed conflict or natural disasters.

However, the Act had limitations, such as imprecision in defining CNCP, inadequate care for children with disabilities, insufficient education provisions, and limited dispositional options for CNCP. The Act did not address international adoption, lacked connections to other child-related legal provisions, and lacked provisions for effective inspections of residences.

The Juvenile Justice Act of 2015 emerged in response to the 2012 Delhi gang rape case, eliminating the differentiation between male and female juveniles. It expanded care and protection, incorporating development and social re-integration. While commendable, it faced criticism for prosecuting individuals aged 16-18 as adults for severe crimes. The Act emphasizes a child-friendly approach, with definitions for "Child-friendly" and "social reintegration."

Child in Need of Care and Protection

The definition of "child in need of care and protection" incorporates elements from both the JJ Act of 2000 and the JJ Act of 1986, with certain omissions, augmentations, and alterations. The clauses defining a child in need of care and protection

Exploited Child:

This provision concerns a minor living with an individual, irrespective of their legal guardianship. The individual falls into one of the following categories:

1. The individual has caused harm, mistreatment, exploitation, or neglect to the child, or has violated any existing legislation aimed at safeguarding the child.
2. The individual has made threats to harm, mistreat, exploit, or abuse the child, and there is a reasonable likelihood that these threats will be carried out.
3. The individual has previously harmed, abused, neglected, or exploited another child or children, and there is a reasonable likelihood that the child in question will face similar harm, abuse, exploitation, or neglect from the same individual.

Section 2(14), clause (iii), aims to establish preventive oversight for minors. These groups of children encompass those currently under a genuine threat of initial or recurring harm. This includes minors residing with an individual who has either previously inflicted harm upon them or poses a credible threat of causing harm to the child. The term "harm" encompasses both manifested harm towards a child and instances of harm directed at another child in the past.

Mentally and Physically Challenged Child:

The fourth provision addresses minors facing mental illness, physical disabilities, or terminal and incurable ailments, lacking proper support or care from responsible parties, or whose parents or guardians have been deemed unfit by the Board or Committee. It underscores the State's responsibility to provide care and protection to every child devoid of support or guardianship, particularly those dealing with special needs. This provision recognizes that parents or legal guardians of children with special needs may struggle to provide adequate care, necessitating state intervention.

The primary objective of the Committee or Board, concerning minors within this provision, is to determine the suitability of the parent or legal guardian in furnishing appropriate care. The Committee has the authority to instruct that the child remains under the supervision of the same parent or guardian, assisted by sponsorship or necessary support services. Alternatively, if deemed necessary, the child may be relocated to a children care institution. The provision aims to ensure care for minors with disabilities, terminal illnesses, or incurable diseases under the Juvenile Justice Act of 2015 without revoking parental or custodial rights.

The inclusion of the Board aligns with the acknowledgment in the JJ Act of 2015 that a juvenile offender may also be a child in need of care and protection. Collaboration between the Board and the Committee is crucial, especially in cases where a juvenile offender may not have any disability, incurable disease, or terminal illness before their involvement in criminal activity. The cooperative efforts include the monitoring and maintenance of a database related to the children and the provision of sponsorship or other supportive services.

The subsequent discussion touches upon the educational needs of individuals with disabilities in post-Independence India. Despite significant transformations in education, the question arises about whether children with disabilities are receiving sufficient opportunities for education. This concern emphasizes the need for additional measures to address the substantial exclusion of children with disabilities from the mainstream education system.

Parent or Guardian found to be Unfit or Incapacitated:

Clauses (iv) and (v) address minors whose guardians are deemed unsuitable to provide for them, but they differ in their implications. The term "unfit" in clause (iv) may suggest the parent's inability due to the child's unique circumstances. On the other hand, clause (v) pertains to a minor under the care of a parent or guardian deemed unsuitable or incapacitated by the Committee or Board.

Examining Section 76(2), the term "unfit" in this context refers to a parent or guardian intentionally maltreating and manipulating a child for illicit objectives. Incapacity does not inherently imply culpability, arising from factors like physical or mental infirmity, parental incapacity, or parental imprisonment. The Committee or Board's investigation aims to issue directives for the child's safeguarding and welfare, not necessarily designating a suitable guardian.

In cases where parents are deemed unfit or incapacitated, efforts should be made to enhance their parenting fitness. If unsuccessful, alternative arrangements for children's care, such as involving relatives or exploring quasi-adoption methods, become imperative. This recommendation is particularly relevant to clause (vi).

Imminent Risk of Child Marriage:

The concluding provision (xii) in Section 2(14) encapsulates a minor facing an imminent threat of entering into matrimony before reaching the legal age for marriage. Moreover, individuals such as parents, relatives, guardians, and others are expected to be held accountable for orchestrating such a marriage. This recently added category falls within the definition of children in need of care and protection, recognizing the pressing concern of child marriage. It is widely acknowledged that a considerable number of children are married before reaching the legally stipulated minimum age. In many instances, these unions occur despite the objections of the minors involved.

The purpose of this clause is to empower agencies and individuals involved in preventing child marriages. Parents, who may potentially subject their offspring to immediate marriage risks, can be addressed through suitable directives issued by the Committee in the child's best interest. The Child Marriage Restraint Act serves as specialized legislation aimed at tackling the issue of underage marriage. An argument can be made that if a child is born from such a union, they should be classified as a child born to non-citizen parents (CNCP).

According to a newspaper report, law enforcement officials intervened to rescue a 15-year-old girl from a forced marriage to a man twice her age who was already married, despite her objections. The male parent of the girl had allegedly received a sum of 60,000 Indian Rupees and a motorized rickshaw from the prospective groom but failed to repay the borrowed funds. Two intermediaries facilitated the transaction, and upon receiving an additional sum of Rs. 20,000, the father consented to the marriage of his daughter. Those involved in the incident, including the groom, his father, the girl's father, and two mediators, were apprehended and faced legal charges under both the Child Marriage Act and IPC. The report does not specify whether the rescued girl was brought before the Child Welfare Committee (CWC) as a Child in Need of Care and Protection (CNCP). The Child Welfare Committee (CWC) operates under the JJ Act, 2015, handling all matters related to CNCP.

Orders Passed Regarding a Child in Need of Care and Protection:

Concerning children brought before the committee, the Committee is mandated to issue both temporary and permanent orders. If the Committee finds that the child still requires care, lacks family or apparent support during the ongoing investigation, and needs temporary placement until a suitable arrangement for permanent rehabilitation is secured or until the child turns eighteen, the court may opt for the following interim orders:

1. If the child is below six years old, the court may place the child in a specialized adoption agency.
2. In other circumstances, the court may direct the child to stay in a children's home, a suitable facility, with a fit person, or within a foster family for immediate care until the investigation concludes.

These clauses emphasize that adoption is the preferred method of care for children under six. However, the Act specifies that for other children, placement orders should be periodically reviewed to explore alternative community care options, adhering to the principle of using institutions as a last resort and for the minimal necessary time until community care is available. Section 37 outlines the conclusive directives that the Committee can issue when resolving matters related to a child in need of care and protection. Despite the use of "may" in considering the social investigation report, it's fundamental due to the individualized decision-making principle in juvenile justice. This ensures that the chosen order aligns with the child's future prospects and circumstances, focusing on their development and well-being. If the child is deemed in need of care and protection, the court can issue one or more of the following orders:

1. Reunite the child with their parents, guardian, or family, with or without the presence of a child welfare officer.
2. Place the child in a children's home, suitable facility, or specialized Adoption Agency.
3. Arrange short-term or long-term care under a suitable individual.
4. Facilitate sponsorship for the child.
5. Provide explicit instructions for immediate shelter and essential services in collaboration with relevant agencies.
6. Officially declare the child as legally eligible for adoption.

Section 37 grants the Committee autonomy to issue any one or more of these orders, allowing a tailored approach for the child's welfare, survival, and development. The Committee can terminate proceedings if it determines that the child doesn't meet the criteria of a child in need of care and protection.

Rehabilitation and Social Re-Integration of a Child in Need of Care and Protection:

The Act facilitates the recovery and social inclusion of children through the implementation of personalized care plans. Ideally, family-based treatment is achieved through various methods, including the return of the individual to their family or guardian, with or without guidance or

support. Additionally, adoption or foster care may be considered as alternative approaches. Every effort is made to preserve the placement of siblings in either institutional or non-institutional care, with the decision to remain together based on the parties' best interests.

Observation homes for children deviate from legal guidelines by implementing a rehabilitation and social integration-centered methodology. This typically occurs when a child is denied bail and is detained, as per the Board's directive, in specialized residential facilities or under the care of a designated guardian. As per Section 39, children requiring treatment and security, yet unable to be placed in families temporarily or on a long-term basis, may be placed in a licensed institution designed specifically for such children or with an appropriate individual or facility.

The rehabilitation and social integration process should be implemented in any setting where the child is placed. Individuals requiring care and support residing in institutional care, special homes, or places of security are eligible for financial aid upon reaching the age of eighteen, as outlined in Section 46. This intervention aims to facilitate their reintegration into the broader societal framework.

Restoration of a Child in Need of Care and Protection:

The primary objective of Children's Homes, Specialized Adoption Agencies, and open shelters is to provide rehabilitation and protection for children. These facilities are responsible for implementing necessary measures to ensure the well-being and safety of a child who has been temporarily or permanently removed from their family environment and placed under their care and protection.

According to Section 40, the Competent Authority has the discretion to repatriate a child in need of care and security to their parents, guardian, or a suitable individual after evaluating their ability to provide appropriate care for the child. The committee is also capable of offering accurate guidance on any matters pertaining to the child. The term "restoration and security of a child" refers to the process of returning a child to their biological parents, adoptive parents, foster parents, guardian, or another suitable individual.

Employment of Child for Begging:

The act of employing or utilizing children for the purpose of begging, or inducing a child to beg, is deemed a punishable offense according to Section 76 of the Juvenile Justice (JJ) Act of 2015. Engaging in such behavior carries the potential consequence of imprisonment for a maximum duration of five years, in addition to a fine that has the potential to reach up to one lakh rupees.

In cases where an individual intentionally amputates or inflicts harm upon a child with the intention of exploiting them for begging purposes, the prescribed penalty entails a mandatory minimum sentence of seven years. However, this punishment may be extended to a maximum of ten years, in addition to a fine of five lakh rupees. In the event of the latter transgression, the court is not granted any discretion to impose a fine of less than five lakh, in addition to the duration of incarceration.

The act of aiding and abetting these offenses by an individual who possesses the direct responsibility or authority over the child is subject to the same penalties. Furthermore, it can be inferred that the individual in question is deemed unsuitable to provide proper care for the child as outlined in clause (v) of Section 2(14), which encompasses the definition of children requiring care and protection. This section serves to elucidate that, given that begging is deemed unlawful in numerous jurisdictions, any child engaged in such activity shall not be categorized as a child in violation of the law but rather as a child requiring care and protection.

The child in question must be removed from the custody or supervision of the aforementioned individual and presented before the Committee to receive suitable directives. The offense is classified as cognizable and non-bailable in accordance with the provisions outlined in Section 86 of the Juvenile Justice Act of 2015.

In response to public interest litigations (PILs) advocating for the recognition of fundamental human rights for individuals engaged in begging, a division bench consisting of ACJ Gita Mittal and C Hari Shankar J. has ruled that the provisions of the Bombay Prevention of Begging Act, 1959, as applied to the National Capital and criminalizing begging, are unconstitutional. The High Court declared that the Delhi Government has the freedom to introduce alternative legislation to reduce the prevalence of forced begging. Additionally, the Court clarified that provisions of the Act that do not explicitly or indirectly criminalize begging or pertain to it do not need to be invalidated. Gita Mittal, the Acting Chief Justice of the Delhi High Court, expressed the view that a society which fails to acknowledge legislative inequality and homelessness, thereby rendering them invisible, has undoubtedly deviated from the right path.

Conclusion:

The Juvenile Justice (JJ) Act of 2015 came into effect on January 15, 2016, after receiving approval from the President of India on December 31, 2015. This legislation replaced the Juvenile Justice Act of 2000.

The Juvenile Justice (JJ) Act of 2015 introduces enhanced provisions for children in need of care and protection, as well as those involved in conflicts with the law. For individuals experiencing chronic non-cancer pain (CNCP), various rehabilitation and social reintegration initiatives have been implemented. In institutional care settings, children benefit from a comprehensive range of services, including education, healthcare, nutrition, addiction rehabilitation, medical treatment, vocational training, skill enhancement, life-skills education, counseling, and additional provisions, all aimed at facilitating their positive integration into society.

Various non-institutional options are available for placing children in alternative family environments, including sponsorship and foster care, including group foster care. The proper selection, qualification, approval, and supervision of these alternative family environments are crucial to ensuring the well-being of the children.

The act identifies several newly categorized offenses against children that were previously inadequately covered by existing legislation. These activities include trafficking and acquiring

children for purposes such as illicit adoption, inflicting physical punishment within child care facilities, exploiting children by militant organizations, offenses against children with disabilities, and the kidnapping and forcible removal of children.

Implementation challenges have been exacerbated by the introduction of an additional classification of institutions known as "place of safety," lacking explicit guidelines regarding responsibilities, organizational framework, resources, and provisions. The absence of supplementary funding allocation further hinders the establishment of new institutions or the improvement of existing ones.

There seems to be a lack of consensus, even at the normative level, regarding the understanding that when the Board or Committee instructs a child to be placed in a Special Home or Children's Home for a specific period, it is not equivalent to "sentencing the child for that duration." According to the Beijing Rules, the use of institutions should be considered only as a final option and solely for the shortest possible period until alternative community care is arranged for the individuals in question. The inclusion of an early release provision reflects this underlying principle; however, the provision for extending the duration of stay in the event of a child exceeding the approved leave of absence or failing to meet the conditions of conditional release in the case of CNCP contradicts this approach. The formulation of different provisions has resulted in significant gaps in comprehending the extent of those Sections.

References:

- *Research Scholar, Apex School of Law, Apex University, Jaipur
- ** Assistant Professor, Apex School of Law, Apex University, Jaipur
- 1 Harsh Mander v. Union of India, 2018 SCC Online Del 10427 dated 08-08-2018
- 2. D. Murugesan & M. Ramakrishnan, "Children in Conflict with the Law: Some Notable Trends and Inferences" IPJ 168 (October- December, 2014).
- 3. Available at: <http://deshgujarat.com/2016/04/03asi-arrested-by-sog-team-in-gomtipur-boysuicide-case/> (accessed on 4th April 2023).
- 4. National Gender Center, Juvenile Justice Act, 2015 A Hand Book for Field Administrators (Lal Bahadur Shastri National Academy of Administration, Mussoorie, Uttarakhand, 2017).
- 5. JJMR, 2016, Rule 26(4).
- 6. Ved Kumari, The Juvenile Justice (Care and Protection of Children) Act 2015 Critical Analyses 145 (Universal Law Publishing an imprint of Lexis Nexis, Gurgaon Haryana, 2017).
- 7. JJ Act, 2015