

JUVENILE JUSTICE LEGISLATION IN INDIA

The first central legislation on Juvenile Justice was passed in 1986, by the Union Parliament, providing a uniform law on juvenile justice for the entire country. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. The Juvenile Justice Act was thus passed to provide care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the settlement of certain matters related to and disposition of delinquent juveniles

There are certain guiding principles which need to be adhered to in the administration of juvenile justice and they form the basis on which the Act and the Rules are formed. The juvenile justice functionaries should abide by the following fundamental principles in order to understand the Act, interpret according to the situation in which the child is taken into custody and most importantly contribute to better and effective implementation of the Act. They are basically drawn from all the national and international standards pertaining to children wherein a strong impetus is given to the fulfilment and protection of the child's rights. Emphasis is also laid on reintegration of the child into the family system to ensure proper care and protection from all kinds of exploitative situations.

Principles to be followed in administration of the rules:

- Principle of presumption of innocence
- Principle of dignity and worth
- Principle of Right to be heard:
- Principle of Best Interest:
- Principle of family responsibility:
- Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment):
- Positive measures to promote well being of the child, reduce vulnerabilities and aim at development of child's identity:
- Principle of non-stigmatizing semantics, decisions and actions:
- Principle of non-waiver of rights:
- Principle of equality and non-discrimination:
- Principle of right to privacy and confidentiality:
- Principle of last resort:
- Principle of repatriation and restoration:
- Principle of Fresh Start

When these principles are adhered to in letter and spirit, it would certainly ensure that every child who comes into contact with the JJ System is assured safety, care, protection and justice.

History of Juvenile Justice Legislations in India since 1986 and their specific provisions:

1. Juvenile Justice Act 1986

- JJ Act was enacted in pursuance of the Beijing Rules 1985, prior to the CRC
- Definition of juvenile or child – 16 years for boys and 18 years for girls
- Children were categorized as delinquent juveniles and neglected juveniles
- Both categories of children were kept in an Observation Home together pending inquiry
- Juvenile Welfare Board was formed to deal with the neglected juveniles and the Juvenile Court was the adjudicating authority for the delinquent juvenile
- The neglected juveniles were in the Juvenile Home and the delinquent juveniles to the Special Home

The Government of India ratified the United Nations Convention on the Rights of the Child in 1992 thereby making it expedient to adhere to the standards prescribed in the Convention. Hence, the 1986 JJ Act had to be reviewed and changes had to be made in order to secure the best interest of the child and focus on social re-integration of the child without resorting to judicial proceedings.

The JJ Act 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act

2000 was passed taking into consideration all the International standards prescribed as per the Convention on the Rights of the Child, the Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules), The UN Guidelines for the Prevention of Juvenile Delinquency called the Riyadh Guidelines, 1990 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

2. The Juvenile Justice (Care and Protection of Children) Act 2000

- The Title of the Act stresses on the need for care and protection to both categories of children
- Uniform age for both boys and girls – any child who has not completed the age of 18 fall within the jurisdiction of the Act to comply with the CRC definition of the child
- Separation of child in need of care and protection and child in conflict with law
- Constitution of Child Welfare Committees to deal with children in need of care and protection and Juvenile Justice Boards to handle children in conflict with law

- The category of children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, child who is found vulnerable and likely to be inducted into drug abuse
- More legal protection assured for the child in conflict with law – detention to be resorted to as the last option, disqualification of past records and privacy maintained
- The innovation the law makes with respect to children in need of care and protection is the conceptualization of restoration of the child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents. (Sec39).
- The law outline four options of restoration for children in children’s homes and special homes which include adoption, foster care, sponsorship and after care

3. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

- The JJ Act 2000 was subsequently amended and hereafter referred to as the Principal Act
- The Amendment Act brought about 26 amendments which are in force
- This Act forms the legal system and framework for the care, protection, treatment and rehabilitation of children of both categories

THE OBJECTIVE OF THE ACT

- To Lay Down a Legal Structure for the Juvenile Justice System in the Country
- To Provide a Special Approach to the Protection and Treatment of Juveniles
- To outline the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of juveniles
- To establish norms and standards for administration of juvenile justice
- To establish linkages and co-ordination between the formal system of juvenile justice and voluntary efforts in the welfare of juveniles
- To constitute special offences in relation to juveniles and provide punishment.

SALIENT FEATURES OF JUVINILE JUSTICE ACT

1. a. The Act known as ‘The Reformatory Act’ deals with two categories of children, namely children in need of care and protection and children in conflict with the law.

b. The competent authority to deal with children in need of care and protection is the Child Welfare Committee which constitutes a Chairperson and four other members, one of whom atleast should be a woman. Chapter IV of this Module would focus in detail about Children in need of care and protection and the functioning of the CWC in rehabilitation and disposition of cases

c. Juvenile Justice Board (JJB) is the competent authority to deal with children in conflict with law which comprises of three members. The Chairperson of the Board should be a First Class Judicial Magistrate and two honorary social workers out of whom atleast one should be a woman. Special provisions for children in conflict with law and the responsibilities of the Board are discussed in detail in Chapter III of this Module.

2. The Act provides for the establishment of various kinds of Institutions such as

- Children's Home for the reception of child in need of care and protection.
- Special Homes for the reception of child in conflict with law
- Observation Homes which are meant for the temporary reception of children during the pendency of any inquiry.
- After-care Organizations which are meant for the purpose of taking care of children after they have been discharged from Children's Home or Special Homes.

3. A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a child such as assault, causing mental or physical suffering and employment of a child which are considered as non bailable offences.

iii. Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000) and the Amendment Act 33 of 2006):

The Ministry of Women and Child Development at New Delhi, the 26th day of October, 2007 notified the Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 and the Amendment Act 2006 to be administered by the States for better implementation and administration of the provisions of the Act in its true spirit and substance.

These rules called the Juvenile Justice (Care and Protection of Children) Rules, 2007 has come into force on the date of its publication in the Official Gazette and these Rules will be conformed to until the concerned State Government formulates Rules specific for the State with effect to implementation of the JJ Act.

The Act in Section 68 prescribes various areas wherein the Rules can be applied to for better

implementation of the Act, specifically with management of the homes, standards to be adhered to, roles and responsibilities of the JJ functionaries, procedures and functioning of the competent authorities, rehabilitation mechanism and operation of JJ Fund.

It is recommended that the Act is implemented in line with the Rules to promote better understanding of the Act in order to benefit the children who come in contact with the JJ System.