



*Journal of Advances and
Scholarly Researches in
Allied Education*

*Vol. VIII, Issue No. XVI,
Oct-2014, ISSN 2230-7540*

**A STUDY OF NEW CONCEPTS RELATING TO
CHILD AND JUVENILES IN JUVENILE JUSTICE
(CARE AND PROTECTION OF CHILDREN) ACT,
2000**

AN
INTERNATIONALLY
INDEXED PEER
REVIEWED &
REFEREED JOURNAL

A Study of New Concepts Relating To Child and Juveniles in Juvenile Justice (Care and Protection of Children) Act, 2000

Dr. Aradhana Parmar

Head & Dean, Jaipur School of Law, MVGU, JAIPUR

Abstract – An Act 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 enactment. WHEREAS the Constitution has, in several provisions, including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected; AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989; AND WHEREAS, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child; AND WHEREAS, the Convention on the Rights of the Child emphasizes social reintegration of child victims, to the extent possible, without resorting to judicial proceedings; AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992; AND WHEREAS, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments. Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

-----X-----

INTRODUCTION

1. Short title, extent and commencement.- (1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2000. (2) it extends to the Whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

In this Act, unless the context otherwise requires,- a. "advisory board" means a Central or a state advisory board or a district and city level advisory board, as the case may be, constituted under section 62; b. "begging" means. soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence; ii. exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; c. "Board" means a Juvenile Justice Board constituted under section 4;

d. "child in need of care and protection" means a child - who is found without any home or settled place or abode and without any ostensible means of subsistence, ii. who resides with a person (whether a guardian of the child or not) and such persona. has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or b. has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person, iii. who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after, iv. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, v. who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

vi. who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, vii. who is found vulnerable and is

likely to be inducted into drug abuse or trafficking, viii. who is being or is likely to be abused for unconscionable gains, ix. who is victim of any armed conflict, civil commotion or natural calamity; e. "children's home" means an institution established by a State Government or by voluntary organisation and certified by that Government under section 34; f. "Committee" means a Child Welfare Committee constituted under section 29; g. "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;

h. "fit institution" means a governmental or a registered non-governmental organization or a voluntary organization prepared to own the responsibility of a child and such organization is found fit by the competent authority; i. "fit person" means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child; j. "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognized by the competent authority as a guardian in course of proceedings before that authority; k. "juvenile" or "child" means a person who has not completed eighteenth year of age; l. "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence; m. "local authority" means Panchayats at the village and Zila Parishad at the district level and shall also include a Municipal Committee or Corporation or a Cantonment Board or such other body legally entitled to function as local authority by the Government; n. "narcotic drug" and "psychotropic substance" shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

o. "observation home" means a home established by a State Government or by a voluntary organization and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law; p. "offence" means an offence punishable under any law for the time being in force; q. "place of safety" means any place or institution (not being a police lock-up or jail), the person in charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile; r. "prescribed" means prescribed by rules made under this act; s. "Probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958); t. "public place" shall have the meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); u. "shelter home" means a home or a drop-in-centre set up under section 37; v. "special home" means an institution established by a State Government or by a voluntary organization and certified by that Government under section 9;

w. "special juvenile police unit" means a unit of the police force of a State designated for handling of juveniles or children under section 63; x. "State Government" , in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution; y. all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that code. 3. Continuation of Inquiry in respect of juvenile who has ceased to be a juvenile.- Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child.

JUVENILE IN CONFLICT WITH LAW

4. Juvenile Justice Board.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this act. (2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate. (3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed. (5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if - i.e. he has been found guilty of misuse of power vested under this act, ii. he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence, iii. he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year. 5. Procedure, etc. in relation to Board.- (1) The Board

shall meet at such times and shall, observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed. (2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings: Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case. (4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate, shall prevail.

Powers of Juvenile Justice Board.- (1) Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act, relating to juvenile in conflict with law. (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceedings comes before them in appeal, revision or otherwise. 7. Procedure to be followed by a Magistrate not empowered under the Act.- (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child, and the record of the proceeding to the competent authority having jurisdiction over the proceeding. (2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

8. Observation homes.- (1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act. (2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such substitution as an observation home for purposes of this Act. (3) The State Government may, by rules made under this Act, provide for the management of observation homes, including the

standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn. (4) Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

9. Special Homes.- (1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act. (2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act. (3) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialization of a juvenile, and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn.

(4) The rules made under sub-section (3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status. 10. Apprehension of juvenile in conflict with law.- (1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. (2) The State Government may make rules consistent with this Act,- i. to provide for persons through whom (including registered voluntary organizations) any juvenile in conflict with law may be produced before the Board; ii. to provide the manner in which such juvenile may be sent to an observation home. 11. Control of custodian over juvenile .- Any person in whose charge a juvenile is placed in pursuance of this Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.

12. Bail of juvenile.- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. (2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order. 13. Information to parent, guardian or probation officer.- Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform- (a) the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Board before which the juvenile will appear; and (b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry. 14. Inquiry by Board regarding juvenile.- Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit: Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

Order that may be passed regarding juvenile.- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and the juvenile; (b) direct the juvenile to participate in group counselling and similar activities; (c) order the juvenile to perform community service; (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behavior and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years; (g) make an order directing the juvenile to be sent to a special home,- i. in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years; ii. in case of any other juvenile for the period until he ceases to be a juvenile : Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit. 2. The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order. 3. Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law : Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

4. The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Order that may not be passed against juvenile.- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of

payment of fine or in default of furnishing security :
Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. (2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit: Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

REFERENCES

- "Juvenile Justice Bill approved in Lok Sabha". Zee News. May 7, 2015. Retrieved June 4, 2015.
- <http://ibnlive.in.com/news/lok-sabha-passes-juvenile-justice-act-will-allow-trial-of-minors-accused-of-heinous-crimes-as-adults/544250-37-64.html>[dead link]
- TNN (31 August 2013). "Nirbhaya gang-rape case: Juvenile found guilty of rape and murder". The Times of India. Retrieved 31 August 2013.
- "Claim to be juvenile to escape law: LeT tells its cadre". Retrieved 16 July 2014.