

CHILD RIGHTS & CHILD PROTECTION ISSUES:

- **Right to Protection & Right Against Exploitation:** *Juvenile Justice System / Sexual Abuse of Children / Child Marriage / Child Labour*
- **Right to life:** *Laws concerning an unborn child*
- **Right to family care:** *Child Adoption*
- **Right to Development:** *Education/ Children with Special Needs / Parenting skills*
- **National Policies and Programs**

# Juvenile Justice System



The Juvenile Justice System in India deals with two different categories of children.

1. Children who have come into Conflict with the Law
2. Children who are in need of Care & Protection

The Law offers protection against harsh criminal liabilities for persons under the age of 18. The Law also has provisions to rescue, protect, and provide for the growth and development of children declared as 'Children in Need of Care and Protection'.

## **LAWS GOVERNING THE JUVENILE JUSTICE SYSTEM IN INDIA**

### **Historical background:**

As a follow-up of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985 – the Government of India brought in **The Juvenile Justice Act of 1986**, that became the first central Act applicable to the entire Country. Earlier, different Children's Acts were in force in individual States, and in some states, there was no legal system protecting children against criminal liability.

As per the 1986 Act, a **“juvenile”** means a boy who had not completed the age of 16 or a **girl** who had not completed the

age of 18. Subsequently, **The Juvenile Justice Care & Protection of Children Act** - that came into force in the year **2000**, raised the criminal liability protection for both boys and girls up to the age of **18 years**. The above Act was replaced with a new Act in the year **2015** with a greater focus on social reintegration and rehabilitation of those children who are brought under this Act, and the same was further amended in the year **2021**.

### **Offences committed by children and young persons below 18 years of age:**

There are multivarious reasons that could contribute children and young persons from coming in to conflict with any of the criminal laws.

“Violence and insecurity perpetrated by and against young people are caused by various factors that work simultaneously to create situations of social instability. These factors can include the availability of firearms, the abuse of alcohol, large-scale migration to urban areas and overpopulation, drug trafficking, weak educational and policing systems, unequal distribution of wealth, and the frustration of many young people faced with unemployment and socio-political exclusion. In combination, these elements fuel hopelessness and frustration not only among the youngest segment of the population but within families, communities, and society more broadly.” **UNITED NATIONS FACT SHEET ON Juvenile Justice**

**Protection Against Criminal Liability** - *The Juvenile Justice System operates to protect young offenders on the premise that – Youth are fundamentally different from adults, in terms of the level of responsibility – and the potential for rehabilitation, and that the adult society is responsible for safeguarding its young members from criminal liabilities.*

***The Act of a child under seven years of age:***

***“Nothing is an offence done by a child under seven years of age”  
(Section 20 of Bharatiya Nyaya Sanhita ( BNS) of 2023 & Section 82 of the former Indian Penal Code (IPC) of 1860)***

**Hence, children under seven are exempt from all forms of criminal liability under our criminal laws.**

***The Act of a child above seven and under twelve years of age of immature understanding:***

***“Nothing is an offense which is done by a child above seven years of age and under twelve years of age, who has not attained sufficient understanding to judge the nature or consequences of his conduct on that occasion.” (Section 21 of BNS & Section 83 of IPC of 1860).***

The above sections under the IPC or BNS mandate responsibilities on the part of the enforcement authorities and the competent courts or authorities to determine the level of criminal intent or the necessity of imposing criminal liability for acts committed by children aged 7 to 12 years.

### **The *Juvenile Justice (Care and Protection of Children) Act, 2015 – (amended 2021)***

The Act primarily deals with two different categories of children:

**“Child who has come in Conflict with Law”**. and **“Child in Need of Care & Protection”**

The Act defines a ‘**child**’ as someone who has not completed 18 years of age.

### **Children who had come in Conflict with the Law**

Efforts are made in the Act to make it more child-friendly, including using non-stigmatizing language when dealing with children who have come into conflict with the Law. - (The use of adversarial or accusatory words such as **arrest, remand, accused, chargesheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent**, etc, are avoided)

**Section 2(13) of the act defines a “*child in conflict with Law* ” as a child – who is alleged or found to have committed an offense and who has not completed eighteen years of age on the date of commission of such an offense”.**

Such children will not be subjected to many of the procedures applicable to adults under our criminal laws, and they will not be tried in regular criminal courts.

**“The Juvenile Justice Board” (JJB)** is the competent authority to enquire and pass orders concerning children in conflict with the Law. Under certain circumstances, a **Children’s Court** will have the jurisdiction to pass orders.

Chapters III and IV of the Act deal extensively with the roles and responsibilities of **JJB** and other authorised persons, such as police, probation officers, parents, and guardians.

### **Juvenile Justice Board (J.J.B)**

#### **Composition:**

The Juvenile Justice Board shall comprise a *Metropolitan*

*Magistrate* & *Two Social Workers* (at least one shall be a woman)

The Bench shall have the powers conferred by the Code of Criminal Procedure, 1973.

The Board shall function as a Bench of Magistrates, and the majority's opinion shall prevail in the event of a difference of opinion among members. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.

## **Norms & Proceedings**

### **Norms to be followed during the apprehension and inquiry of a Child in Conflict with the Law**

- Police should inform the parents/ guardians and the Probation officer or Child Welfare Officer, without time loss.
- No child or Juvenile can be kept in a police lock-up. Instead, the child could be sent on bail or handed over to an authorized Observation Home or a place of safety as per the norms laid down in the Rules.
- The Child should be produced before JJB within 24 hours of apprehension of the child by the police, excluding travel time.
- When initiating the inquiry, the Board should satisfy itself that the child is not subjected to any ill-treatment by the police or any other person involved in the process.
- J.J.B. TO Call for probation officers' report – interim /final
- Time limits for investigation & disposition are prescribed.
- Recommends Dispensation with the child's attendance unless it is necessary
- J.J.B. atmosphere – to be informal.
- Participatory rights of the child – to be respected: hence Ample time and opportunity should be given to the children to express themselves.

- The Board could dispose of petty offenses through a summary proceeding.
  - Inquiry into serious offenses can be conducted as per the existing Law of Criminal Procedure.
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- **When it is proved beyond doubt that The Child had done something deliberate that conflicts with the Law, then the following are the orders that may be passed:**

- Send the juvenile after advice and admonition
- Direct the juvenile to participate in group counselling
- Order the juvenile to perform community service
- Order the parent or juvenile to pay a fine
- Release the juvenile on probation
- Release on probation and place under the care of any fit institution
- Direct the juvenile to be sent to a Special Home.

**❖ Prison Sentencing Prohibited**

**HOMES AUTHORIZED FOR JUVENILES IN CONFLICT WITH THE LAW**



- **OBSERVATION HOMES** – run by Government / Non-Government Organisations - for temporary custody
- **SPECIAL HOMES** - run by Government / Non-Government Organisations

Rules are to be framed to segregate children on account of age and the nature of the offense committed, and provide every child with adequate opportunities for education, development, and reintegration into society.

**Other features of protection offered to a juvenile under the Act:**

- **Eligible for Bail** – Irrespective of whether an alleged act is a bailable or a non-bailable offense as per any of the prevailing criminal Laws, a Juvenile may be sent on bail at any time.

- **Claim of juvenility could be raised before any Court, at any stage of trial, or even after conviction:**

- When a Juvenile was wrongly produced as an adult in a criminal Court, he or she could claim juvenility by producing proof during the trial period or even after conviction and claim the protections under the Act. Similarly, when a person commits an offense while

under 18 and is apprehended by the police after reaching adulthood, all procedures and protections under this Act will apply, and he cannot be treated as an adult criminal.

- **Criminal Record – gets Wiped Out: (excluding the orders issued by the Children's Court)**

Whenever a child/juvenile in conflict with the Law is found guilty of the act and is punished by the JJB – his or her criminal record gets wiped out once the term of punishment is completed. Hence this negative record will not imperil his future progress in life.

**As per Section 18 (3) of the Act** – any Serious offense committed by a person whose age at the time of the commission of the offense was above 16 and below 18, and the Board concludes that there is a need for the trial of the said child as an adult. the case could be transferred to a **Children's Court** having jurisdiction to try such offences.

Hence under certain special circumstances, A Juvenile could be tried like an adult in a Children's Court and could be punished as per the applicable criminal Law.

## Orders that may not be passed by the Children's Court against a juvenile:

- No Juvenile in conflict with the Law shall be sentenced to death
- No Juvenile shall be committed to prison while still below 21 years of age. Instead, the Children's Court could send the person to a place of safety until he or she reaches 21 and then transfer him or her to prison.
- No punishment in default of payment of fine or default of furnishing security

## Children who are in Need of Care & Protection

### JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The second part of the above Act deals with: ***all Children between the ages of 0 -and 18 years - who are in need of Care & Protection -***

As per Section 2(14) of the J.J Act – the following children are broadly classified as children needing care and protection.

- Those children who are left alone, without a home, or means of subsistence

- are in the company of unscrupulous persons.
- Who are found working or likely to be married off, contravening existing laws.
- Has parents or guardians who are unfit persons
- Has no parents and no one to take care
- A child who is likely to become vulnerable to abuse, torture, and exploitation by a person who has custody of a child – A child who is physically or mentally challenged or terminally ill child who is denied care and protection

Hence, under this Act, all those children who are victims of Child Labour, Child beggary, Child marriage, and any child who is forced to live in an insecure environment under the custody of an adult who abuses the child physically, mentally, or sexually - could be brought under this act for rescue and rehabilitation. Most importantly this one Act is empowered to remove the custodial rights of a child from the parents themselves who are found to be acting against the interest of the child or found to be unfit persons to provide care and protection of the child.

**Competent authority to deal with children in need of protection:**

**Child Welfare Committee (CWC)**

The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another an expert on the matters concerning children.

**Powers of the Child Welfare Committee concerning child abuse & child protection**

- ❖ To receive complaints of child abuse and order for the immediate rescue of the child if the situation warrants;
- ❖ To issue notice for production of the child to parent/guardian/institutions/individuals holding custody of the child;
- ❖ To order for investigation by the Probation officer/ by the police;
- ❖ To refuse/ remove custody of the minor from parents/ lawful guardians/employers;
- ❖ To Order for Rehabilitation and social integration that is appropriate for a child who requires care and protection.

**Persons mandated to rescue and produce a child before the Child Welfare Committee:** *Any Police Officer, Special Juvenile police unit or designated Child Welfare Police officer, Labour Inspector, any Public Servant, CHILDLINE Services (with a toll-free No.1098), Probation Officer/ Child Welfare Officer, Non-Government Welfare Organisations, Nurses, Doctors and*

*management of hospitals and maternity homes, any social worker or public-spirited individuals or children themselves.*

All the above persons could report/produce a child before a Child Welfare Committee.

Hence, whenever a child is found abandoned or found to be in a situation as defined above, a member of the public could inform any of the entities mentioned above. Persons authorised to take custody of such children should produce them before C.W.C. within 24 hrs. excluding travel time.

CWC could ask for interim and final reports from the probation officers / social workers /psychologists and etc. Speak to the parents / guardians / and other family members if available before coming to a conclusion and pass an order.

**Orders that a CWC could pass regarding a child in need of care and protection:**

- After due verifications, CWC could declare that a child needs care and protection.
- Restore to parents/ family if they are found to be fit persons after due counselling.
- Order for removal of custody from parents /family/guardian/ or any

- person holding custody of the child if they are found to be abusers or unfit persons to provide care and protection.
- Order to place such children through Foster Care or in an authorized Child Care Institution.
- After due inquiry Certify an orphaned or abandoned child as a **child Legally Free for Adoption** and place the child in an authorized Adoption Agency.
- CWC is also authorised to receive a child from parents who, in the best interest of the child, wish to surrender their child for adoption. After counselling and due inquiry, parents will be allowed to execute a Document of Surrender in their presence, giving their consent for the child's future adoption. After the completion of the declared waiting period, the child will be certified as **Legally free for Adoption** by the CWC.
- ❖ While Chapter VII of the Act deals with the Rehabilitation and Social Reintegration of children who need Care and Protection, Chapter IX deals extensively with the process of Adoption of such children who are surrendered or abandoned by their own parents/family.

Restoration and Rehabilitation of a child in need of care and protection would be as follows: **1) Sending the child back to parents. 2) Placing a child in adoption, Foster Care, with guardians, or with fit parents – whichever is feasible and keeping the best**

interest of the child in mind. 3) Placing a child in a Children's Home registered under this Act

- Institutional care is considered the last option for such children. Children's Homes could be run either by a State Government or by Non-Governmental Organisations.
- Chapter IX prescribes punishments for adults who commit offenses against children. CWC can also lodge complaints with the enforcement authorities against serious adult offenders for further action.

- **The above Act was further amended in the year 2021.**

Provisions of Juvenile Justice (Care and Protection) Amendment Act 2021:

- Offenses committed against children, as mentioned in Chapter IX, that attract imprisonment between 3 and 6 years are declared as "non-cognizable."
- The district magistrate is given the authority to issue adoption orders for all adoptions done under this Act which were previously issued by the competent Courts in India.

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□ THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

[https://www.iccwtnispncanarc.org/upload/pdf/7716517779JJAct\\_2015.pdf](https://www.iccwtnispncanarc.org/upload/pdf/7716517779JJAct_2015.pdf)

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❏ JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT – MODEL RULES 2016

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❏ JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2021 (amendment)

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❏ JJ MODEL AMENDMENT RULE 2022

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❏ Integrated Child Protection Scheme (ICPS)

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❏ Role of the Juvenile Justice System in India

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❏ JUVENILE CRIMES IN INDIA

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❏ INFORMATION KIT ON CHILDREN IN NEED OF CARE & PROTECTION: ISSUES, PROGRAMMES & SERVICES

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