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- - Note - -

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

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Juvenile Justice Act: An Overview

-Tanishq Dev Kadam, student, Vivekananda Institute of Professional Studies.

Introduction:

The Juvenile Justice Act is the legislation that has been enacted with a view to introducing a legal framework relating to children alleged and found to be in conflict with law and children who are in requirement of special care and protection. The act aims to build a system that would be able to cater to the basic needs of such children along with the aim to build a framework that would provide for fruitful ways for social re-integration and rehabilitation by way of adopting an approach of adjudication and disposal of matters in the best interest of the children.

According to Section 2(9) of the Juvenile Justice (Care and protection of Children) Act, 2015 the term 'best interest for the child' means the basis of decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being, and physical, emotional and intellectual development.

Furthermore, according to the above-mentioned act the term 'children in conflict with law' means who is alleged or has been found to have committed an offence and who has not completed the age of eighteen years on the date of commission of such offence.¹

General Principles:

The act lays down some general principles that are to be followed in administration of the act. A few of them are described as follows²:-

1. Principle of Presumption of Innocence

It states that any child shall be presumed to be innocent and independent of any mala fide or criminal intent up to the age of eighteen years.

2. Principle of Dignity and Worth

This principle states that all human beings shall be treated with dignity and rights.

¹ Juvenile Justice (Care and protection of Children) Act, 2015, S.2(13)

² Juvenile Justice (Care and protection of Children) Act, 2015, S.3

3. Principle of Participation

It states that every child shall be given the best opportunity to participate in all the processes and decisions regarding his interests, he shall also be given right to be heard and his views shall be taken in consideration keeping in mind the age and maturity of the child.

4. Principle of Non-Stigmatising Semantics

This principle strictly states that any antagonistic or accusatory words are not used during proceedings pertaining to a child.

5. Principle of non-waiver of rights

According to this principle no waiver of any right of the child is valid or permissible during the processes regarding the interests of the child, whether sought by the child or anyone acting on behalf of the child. This principle also states that any non-exercise of a fundamental right shall not be deemed as waiver of the same.

Juvenile Justice Board:

The Juvenile Justice act lays down provisions for the formation of a Juvenile Justice Board by virtue of Section 4 of the Act. It directs that the state government shall constitute one or more Juvenile Justice Board, for every district, having such powers to discharge its functions relating to children in conflict with law.

1. Constitution of the Board³

Section 4(2) states that a board shall consist of a Metropolitan Magistrate or Judicial Magistrate of the first class not being chief metropolitan magistrate or chief judicial magistrate. The concerned magistrates shall be having at least three years of experience. To complete the formation of the bench the act lays down that the concerned magistrate shall be accompanied by two social workers who are to be appointed in such manner as may be prescribed.

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, on Judicial Magistrate of First

³ Juvenile Justice (Care and protection of Children) Act, 2015, S.4

Class. The term of the office of the members of the board and the manner in which they shall resign shall be such, as may be prescribed.

2. Procedure of the Board⁴

According to Section 7 of the act the board shall meet at times and shall observe rules regarding the transaction of the business at its meetings, as may be prescribed. The procedures of the board shall be child friendly and it shall be made sure that the venue is not intimidating for the child. Section 7(2) of the act states that a child in conflict with law may be produced before an individual member of the board, when the board is not sitting. It has been directed under Section 7(4) that in the event of differences of opinion among the members of the board, the majority opinion shall prevail.

3. Power, Functions and responsibilities of the Board⁵

According to Section 8(3) the functions and responsibilities of the board shall include-

- a. Ensuring the participation of the child and his/her guardian or parents in every step of the process.
- b. Ensuring that the children right remain intact and protected during the process of apprehension of the child, inquiry and rehabilitation.
- c. The board shall provide legal aid to the child through legal aid institutions, in case the child fails to understand the language of the proceedings the board shall ensure the availability of an interpreter or translator for aid and assistance of the child.
- d. Directing the probation officer to conduct a social investigation into the case and submit the report of the same within the period of fifteen days from the date of first production of the case and its circumstances before the board.
- e. Disposing the matter and passing a final order that includes an individual care plan for child rehabilitation and social re-integration.
- f. Conducting at least one inspection visit every month to check the residential facilities of the children in conflict with law and in case of any requirement of improvement, the board shall direct the District Child Protection Unit for recommended action.

⁴ Juvenile Justice (Care and protection of Children) Act, 2015, S.7

⁵ Juvenile Justice (Care and protection of Children) Act, 2015, S.8

Child Welfare Committee:

According to Section 27 of the concerned act the state shall by notification establish one or more child welfare committees, in every district for exercising the powers and to discharge such functions regarding the children in need of care and protection. The above-mentioned Section directs that the committee shall consist of a chairperson and four other members that the state government may think fit to appoint. It also directs that of the four members of the committee at least one shall be a woman and another, an expert on the matters concerning children in conflict with the law.⁶

1. Procedure, Powers and Functions of the Committee

Section 28 of the Act lays down the procedure regarding the way of operation of the committee. It states that the committee shall meet at least twenty days in a month and shall devise such rules and regulations regarding the transaction of the business at its meetings. The committee shall visit an existing child care institution by the committee, to check its functioning and well-being of children in need of care and protection.⁷

According to Section 29 of the Act the committee shall have the authority to dispose of cases for care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The committee shall have the power to deal exclusively with all the proceedings under this Act in relation to children in need of care and protection.⁸

Section 30 of the Act lays down the functions and responsibilities of the committee which includes-

- a. Taking cognizance of and receiving the children produced before it
- b. Conducting inquiry on issues affecting the safety of the children and inquiry for declaring fit persons for care of children.
- c. Taking the individual care plan of a child under special consideration and ensuring proper care, rehabilitation, social re-integration of the children in need of care and protection.

⁶ Juvenile Justice (Care and protection of Children) Act, 2015, S.27

⁷ Juvenile Justice (Care and protection of Children) Act, 2015, S.28

⁸ Juvenile Justice (Care and protection of Children) Act, 2015, S.29

- d. Taking suo moto cognizance of the cases and reaching out to the children in need of care and protection.⁹

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

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 which seeks to amend the Juvenile Justice (Care and Protection of Children) Act 2015 was passed in Rajya Sabha on July 28, 2021.

Important Changes made by the Amendment Act-

Section 2(54) of the Act has been amended for the definition of ‘Serious offences’ to include offences for which the maximum imprisonment under the Indian Penal Code is more than seven years and minimum imprisonment is not prescribed to be less than seven years.¹⁰

The amendment Act amends Section 86(2) of the Juvenile Justice Act 2015 to provide that an offence punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable. The new Act also amends Section 86(3) of the principal Act which now states that where an offence, under this Act is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable and bailable¹¹ The provisions have been made with a view to ensure that children are protected and kept out of the adult justice system.

Additionally, the Amendment Act provides that under Section 27 of the principal Act no person shall be appointed as a member of the Child Welfare Committee unless he has a degree in child psychology or psychiatry or law or social work or human health or has been involved in other welfare activities pertaining to children for seven years or more. Furthermore, following the directions given in the above-mentioned Section the Committee shall submit a report to the District Magistrate in such form as may be prescribed and the District Magistrate shall conduct a quarterly review of the functioning of the committee. Thus, in such a way, the Amendment Act places more responsibilities of ensuring smooth working of the Committee on District Magistrate’s shoulders. The District Magistrate also has to make sure whether the Child

⁹ Juvenile Justice (Care and protection of Children) Act, 2015, S.30

¹⁰ Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

¹¹ ibid

Welfare Committees falling within the vicinity of their district are following the norms and procedures as directed under the Juvenile Justice Act.

Adoption:

The principal Act of 2015 states that the adoption order issued by the court establishes the fact that the child belongs to the adoptive parents. Now the amendment states that instead of the court under Section 61 of the Act, the District Magistrate will be issuing adoption orders. This amendment has been made with a view to ensure smooth implementation of the adoption process and to decrease the amount of pendency along with the aim to enhance accountability.

Furthermore, the Amendment Act provides for a mechanism through which any person aggrieved by an adoption order passed by the District Magistrate may file an appeal before the divisional commissioner under Section 101 of the Act. According to the amended Section 101(7) of the Act an endeavour shall be made to dispose of the concerned appeal within a period of four weeks from the date of filing of the appeal. The inclusion of this provision is a step forward from the earlier provision where the adoption of the child is final once a civil court issues an adoption order.¹²

Conclusion:

The amendments have been made to provide improved protection and care to children in need of care, certainly with a view to ensure speedy trials. The new provisions increase the power and responsibilities of the District Magistrate along with ideal checks and balances to provide balanced working, however the biggest concern surrounding the enactment of the Amendment Act is that too many responsibilities and powers have been conferred upon the District Magistrate. There arises another question that whether it is fitting for an administrative body to give adoption orders rather than a judicial body. The District Magistrate exercises all the functions and processes in a district and there is an apprehension that the processes of the Juvenile Justice Act may not be given a priority. As the District Magistrates are not trained, usually or they are not equipped with the specific knowledge to deal with such cases, special

¹² Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

training regarding Child care and protection rules will be needed to be arranged so as to impart such specific knowledge to the concerned District Magistrates.