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

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### **ABSTRACT**

After the Nirbhaya gang rape in December 2012 and certain members of Parliament, the Indian Parliament approved the Juvenile Justice (Care and Protection of Children) Act 2015 amid heated debate, lengthy debates, and street rallies by child rights organisations and on popular requests. India's primary legal framework for child protection is the Juvenile Justice Act of 2015. The JJ Act assures that India's poor children are secure, protected, educated, and well-cared for. The Juvenile Justice (Care and Protection of Children) Act 2015 is discussed in this paper. As a result, the purpose of this article is to examine the provisions of the recently modified Juvenile Justice Act. The Juvenile Justice Act (JJA) deals with the provisions for children found in conflict with the law in India, It also gives provisions for children in need of care and protection, children legally free for adoption and offences against children. This article gives the basic idea of the Juvenile Justice Act 2015 and brief idea about all the other laws that are related to Juveniles. What was the need for bringing the new Act if we already have Juvenile Justice Act of 2002? So this article gives answers to many questions in the readers mind and revolves around the 4 basic part of Juvenile Justice i.e. (a) Child in Conflict with Law. (b) Child in Need of Care and Protection of Law. (c) Children legally free for Adoption. (d) Punishment for offences against Children.

**KEY WORDS:** Juvenile, Delinquency, Juvenile Justice Act, Child in Conflict with the Law, Child in Need of Care and Protection.

## I. INTRODUCTION

*We cannot always build the future for our youth, but we can build our youth for the future.*

*-Franklin D. Roosevelt (32<sup>nd</sup> U.S. President)*

Children are known to be most innocent human being on the earth because they cannot create wrong intentions for others, they are the most lovable, who don't have the understanding about what is wrong and what is right. One of the important doctrines under criminal jurisprudence is doctrine of 'DoliIncapax' which means that juvenile under or of the age of 7 years should not be prosecuted or punished for commission of the crime given under section 82 of the Indian penal code 1860. So, section 82 and 83 of the Indian penal code, 1860 talks specifically about the exemption from punishment of the juveniles.

As we know the children of today is future of tomorrow, so they the most precious assets of our country and it is responsibility of everyone in this country that children should be cared and protected, and we should give them the Environment where they can grow safely and it is also the duty of the parents at first place to give their most precious time in nurturing them to be a good human being. There must be this thinking in everyone's mind that why now taking care of children is major concern now. The concern of protecting there children have increased because of involvement of children in the crime rates has increased rapidly.

First of all we should understand the meaning of the word juvenile delinquency before moving forward.

### **(A) Definition of a Juvenile**

The term 'juvenile' comes from the Latin term 'juvenis,' which literally means "young." The Cambridge dictionary defines juvenile as a young person who is not old enough to be considered an adult. Juvenile is defined as a child who has committed an offence, and has not completed a specific age to consider as an adult.

According to Juvenile Justice (Care and Protection) Act, 2000 "a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of the said offence"<sup>1</sup>.

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<sup>1</sup>Juvenile Justice (Care and Protection) Act 2000, No.56, Acts of Parliament, 2000.

In section 2(35) of Juvenile Justice (Care and Protection of Children) Act 2015 defines 'Juvenile'- juvenile means a child below the age of eighteen years.<sup>2</sup>

### **(B) Definition of Delinquency**

Delinquency can be termed as a certain behavior of a juvenile which is not accepted by the society. When any offence is being done by the adults it is termed as crime but for juveniles we don't say it crime we say delinquency. Delinquency is not the normal behaviour, it is some kind of criminal behaviour. The deviation from the normal social life and behaving like a criminal is delinquency.

Thus Juvenile Delinquency is defined as an individual under the age of 18 who fails to abide by the laws.

## **II. THE FOLLOWING ARE THE REASONS FOR CHANGING THE 2000 ACT:**

- The government revised the previous law dealing with children who are in violation of the law, citing, among other things, implementation issues and adoption delays.
- Data from the National Crime Records Bureau was also used by the government to illustrate that the number of young people committing crimes had increased, particularly among those aged 16 to 18.
- There was no distinction in the 2000 Act between children in conflict with the law and children in need of care and protection. That was changed by the amended Act of 2015.
- In addition, there were no provisions in the 2000 Act for reporting abandoned or missing children to the appropriate authorities in order to ensure their safety and protection.
- The amendment to the 2000 statute was driven by public outrage over the infamous Delhi gang-rape case (Nirbhaya Case) in 2012. One of the accused in the case was a 17-year-old.
- By avoiding the death penalty and life imprisonment for juveniles, the legislation aims to strike a balance between child rights and justice.

## **III. THE EVOLUTION OF JUVENILE JUSTICE IN INDIA**

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<sup>2</sup>Juvenile Justice (Care and Protection) Act 2015, No.2, Acts of Parliament, 2016.

Some notable scholars have looked at the origins of juvenile justice in India and how it has evolved. Juveniles in India prior to British control were governed by Hindu and Muslim laws. Parents and guardians are responsible for their children's actions. The sole ownership is given to the parents of the children. Till then they felt no need of the some specific laws for juveniles, when they felt the need of special laws they made certain laws and regulation from 1850 to 1919.

The first one is *Apprentices Act of 1850*- this was the first ever legislation in India to deal with children it was passed during colonial era. If children have done something in conflict with law is regarded as a criminal offence in the eyes of law. Then we have *Indian Penal Code of 1860*, *reformatory school act of 1897*, *code of criminal procedure (1898)* and recommendations by the Indian jail committee in 1920, which first time mentioned the different treatment for young offenders from adult's offenders. In 1920 only madras high court enacted the Children Act. Later other states by seeing madras high court also enacted the Children Act and according to Children Act children were tried by the juvenile court.

Following India's independence, the Constitution of India established some provisions under Chapters III and IV, namely fundamental rights and state policy directive principles, to develop, care for, and protect children. *The Children Act of 1960* was passed by the government of India, and this Act was not in the favour of punishing children. This Act made it illegal to imprison children under any circumstances and mandated that they be cared for, protected, educated, and maintained. The Juvenile Justice Act of 1986 was enacted to bring uniformity to the Children Act and to define the norm for the protection of juveniles in accordance with the United Nations Declaration on the Rights of the Child of 1959. The Juvenile Justice Act of 1986 was repealed by the Indian government, and the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted in its place. Until now, this act has been the most strong; it has provided a clear definition of juvenile. According to this Act juvenile is a person who is under the age of 18 years.

In 2006 Amendment was made in the Juvenile Act to make a clear that juvenility is considered from the date when a crime is committed. Amendment also makes it clear that in no condition juvenile can be put in jail or police station lockup. The metropolitan magistrate or judicial magistrate reviews the pendency of the board in every six months. After repealing the Juvenile Justice Act of 2000 new Act was introduced i.e. *Juvenile Justice (Care and Protection of Children) Act, 2015*. This Act was passed by the parliament after a very long controversy and

protest by the people after the Nirbhaya gang rape took place in Delhi in which one of the offender was a juvenile. This Act has introduced many changes in it. This Act allows juveniles between 16-18 years are treated as adults. This Act gives more power and function to the Juvenile Justice Board and child welfare committee.

#### **IV. THE KEY PROVISIONS OF 2015 ACT**

- The Act's nomenclature is being altered from "juvenile" to "child" or "child in dispute with the law" to remove the negative connotation associated with the word "juvenile."
- Orphaned, abandoned, and surrendered children, as well as minor, serious, and heinous offences committed by teenagers, have all been added to the definitions.
- Clarity in the Juvenile Justice Board's (JJB) and Child Welfare Committee's (CWC) powers, functions, and responsibilities; precise timelines for the Juvenile Justice Board's (JJB) inquiry; Every district must establish Juvenile Justice Boards and Child Welfare Committees under the Act. Both groups must include at least one female member.
- Special provisions for juveniles over sixteen who commit serious crimes - Special procedures have been devised under Section 15 to deal with serious criminals who are 16 to 18 years old. The Juvenile Justice Board has the option of transferring instances of serious offences committed by adolescents to a Children's Court after completing preliminary evaluation (Court of Session). The rules provide for the placement of children in a "place of safety" both during and after the trial until they reach the age of 21, following which the Children's Court will perform an examination of the child. After the evaluation, the youngster is either freed on probation or returned to jail for the remainder of his or her sentence if he or she has not reformed. The law will serve as a deterrent to young criminals who commit heinous crimes like as rape and murder, as well as safeguard victim rights.
- Adoption: A new chapter dedicated to orphans, abandoned children, and surrendered children - The present Central Adoption Resource Authority (CARA) is given statutory status in order to help it fulfil its mission of streamlining adoption procedures for orphaned, abandoned, and relinquished children more efficiently. Adoption is covered in its own chapter (VIII), which includes detailed requirements as well as penalties for failing to follow the procedure. Both in-country and inter-country adoption timelines have been shortened, as has the process of designating a child legally free for adoption. A single or divorced person can adopt if the requirements are met, however a single male cannot adopt a girl child.

- Inclusion of new child-abuse offences - The Act includes several new child-abuse offences that are currently unaddressed by any existing law. These include the sale and procurement of children for any reason, including unlawful adoption, physical punishment in child care institutions, militant groups' use of children, crimes against disabled children, and child kidnapping and abduction.
- Cruelty to children, giving a narcotic substance to a youngster, and kidnapping or selling a child have all been sanctioned. Any official who fails to report an abandoned or orphaned child within 24 hours faces a six-month prison sentence or a Rs 10,000 fine, or both. Non-registration of child care institutions carries a penalty of up to one year in prison or a fine of one lakh rupees, or both. Giving alcoholic liquor, narcotics, or psychotropic medications to a kid carries a sentence of up to seven years in prison or a fine of one lakh rupees, or both.
- Mandatory registration of Child Care Institutions - Within six months of the Act's commencement, all child care institutions, whether run by the state government or by voluntary or non-governmental organizations, that are intended to give shelter to children entirely or partially, regardless of whether they receive government grants, must be registered under the Act. In the event of non-compliance, the legislation imposes severe penalties.
- Children in conflict with the law and those in need of care and protection have access to multiple of rehabilitation and social reintegration programs. Children in institutional care get a variety of services such as education, health, nutrition, de-addiction, disease treatment, vocational training, skill development, life skill education, counseling, and other services to help them play a positive role in society. Sponsorship and foster care, especially group foster care, are non-institutional methods for placing children in a family context other than their biological family, which must be thoroughly examined, qualified, approved, and supervised to provide care to children.

**V. Juvenile Justice (Care and Protection of Children) Act 2015**

So, we are here for discussing about the *Juvenile Justice (Care and Protection of Children) Act 2015*, The Juvenile Justice Act, 2015 here is divided into 4 parts:

C.C.L- Child in Conflict with Law (Offence by Child)	C.N.C.P- Child in Need of Care and Protection	C.L.F.A- Child Legally Free For Adoption	Offence Against Child
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Given under Chapter IV	Given under chapter VI	Given under chapter VIII	Given in chapter IX
Section 10 to 23	Section 31 to 38	Section 56 to 73	Section 74 to 89

### ❖ CHILDREN IN CONFLICT WITH LAW

If we start reading we will get to know that that there are 10 chapters and 112 sections in the Juvenile Justice Act of 2015. Under C.C.L i.e. Child in Conflict with Law we have these chapters. “Child in Conflict with Law” is defined under section 2(13) of the Juvenile Justice (Care and Protection of Children) Act 2015 as **a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence.**<sup>3</sup>

This is the procedure for the Child in conflict with the law, during the course of the inquiry; a child who has broken the law will be placed in an Observation Home. The child will be separated based on his or her age, gender, physical and mental condition, and the nature of the offence. A juvenile will be placed in a Special Home if the Juvenile Justice Board determines that he or she has committed an offence. A Place of Safety will be established for minors above the age of 18 or children between the ages of 16 and 18 who have been accused or convicted of committing a heinous offence. Separate arrangements and facilities will be provided for children who are under trial and children who have been convicted in the Place of Safety. The Juvenile Justice Board will perform regular inspections of adult jails to see if any children are being held there, and if so, will take urgent action to transfer the child to the Observation Home [Section 8 (3) (m)].

Chapter III deals with Juvenile Justice Board from section 4 to 9, this Board is made see the cases related to the juveniles, So that Juveniles cannot be treated as adults, they cannot be treated as a same way as criminals and cannot be send to the court as adult criminals because if we start treating them as criminals there image in the society will be destroyed. It's not only about their image it's also about the Juvenile Justice System which assumes that child offenders are doing these criminal acts because of the unfavorable environment and in societal influence

<sup>3</sup>Juvenile Justice (Care and Protection) Act 2015, No.2, Acts of Parliament, 2016.

so they should be given another chance to begin their life. At some point of time they commit some offences without any *mensrea* or *criminal intent* and also these children do not think about its repercussions in their life. In Juvenile Justice Board there are 3 people who are sitting to see the cases related to juveniles' i.e. magistrate and 2 other social workers are the member of the JJB. The magistrate who is there to see the cases related to juveniles is having 3 years of experience. Chapter IV deals with Procedure related to Child in Conflict with Law from section 10 to 26

There are various types of crime committed by the children are:

1. Petty offences- petty offences are very small offences it includes the offences for which maximum punishment under the Indian Penal Code or any other law for time being in force is up to 3 years.
2. Serious offences- serious offences are the offences in which they can get a maximum punishment up to 3 to 7 years under Indian Penal Code or any other law time being in force.
3. Heinous offences- Heinous offences are the offences in which the minimum punishment of imprisonment for the offence is 7 years or more under the Indian Penal Code or any other law for the time being in force.

#### ❖ CHILDREN IN NEED OF CARE AND PROTECTION

**C.N.C.P-** Chapter V deals with Child in need of care and protection, in this chapter we have C.W.C i.e. child welfare committee is made given under section 27 to 30. In Chapter VI of the Juvenile Justice Act of 2015 there is procedure for Child in Need for Care and Protection from section 31 to 38.

Within 24 hours, a child in need of care and protection must be brought before the Child Welfare Committee. A child found separated from his or her guardian is required to be reported under the Act. If reporting is not done it becomes a punishable offence. The Child Welfare Committee must refer the child in need of care and protection to the appropriate Child Care Institution and order a social worker, case worker, or child welfare officer to undertake a social investigation within 15 days. The Child Welfare Committees must meet at least 20 times a month, and the District Magistrate must conduct a quarterly review of the committee's functioning.



A child in need of care and protection will be placed in a Children's Home for treatment, education, training, development, and rehabilitation. The Act establishes Open Shelters for Children in Need of Community Support for a Limited Time in order to protect children from abuse or keep them off the streets. A facility could be designated as a Fit Facility by the Child Welfare Committee to temporarily take on the responsibility of a child. The Specialized Adoption Agency is responsible for the rehabilitation of orphans, abandoned children, and children who have been relinquished.

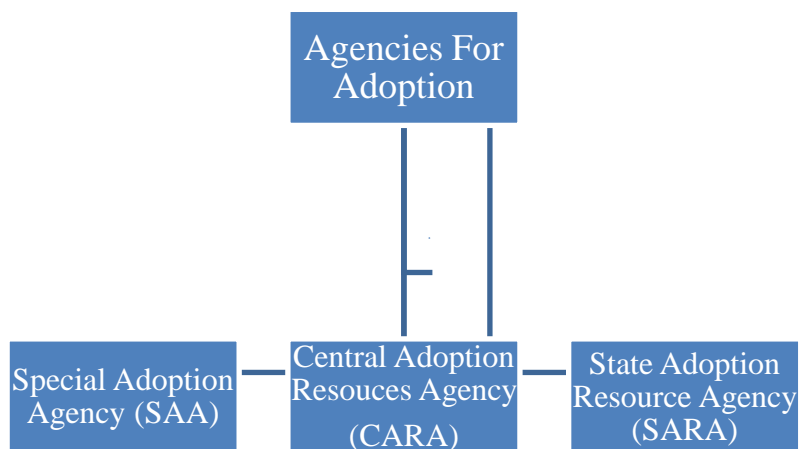
❖ **CHILD LEGALLY FREE FOR ADOPTION**

Adoption is the legal process of putting a child with a parent or parents other than the biological parents for the rest of their lives. The parental responsibilities and rights of the parents are severed when a child is adopted, and those responsibilities and rights are transferred to the adoptive parents. It is a globally recognised institution. Adoption is mentioned in almost all faiths and mythologies in some way. The desire for the concept of adoption has shifted in the modern world from delivering a child to the childless to offering a home to the homeless.

Meaning of Adoption- Section 2(2) of Juvenile Justice Act 2015“**adoption**” signifies the procedure through which the adopted child is for all time isolated from his biological guardians and turns into the legitimate child of his adoptive parents with all the rights, benefits and duties that are joined to a biological child.<sup>4</sup>

Chapter VIII of the Act 2015 deals with Adoption given under section 57 to 73.

**There are various agencies under the children legally free for Adoption is:**



<sup>4</sup>Juvenile Justice (Care and Protection) Act 2015, No.2, Acts of Parliament, 2016.

- SAA- It helps to facilitate the process of adoption for the children in its institution, along with children in the Child Care Institutions links to the SAA. It also has the responsibility to provide care and protection to every child in its institution.
- CARA- It is the Central Authority of India, which is mandated to promote & facilitate domestic adoptions, regulate inter-country adoption and frame Adoption Regulations as per *Section 68* of JJ Act(C&PC), 2015.
- SARA- The state government shall set up a state adoption resource agency for dealing with adoption resource agency for dealing with adoptions and related matters in the state under the guidance of authority, as per the provisions of section 67 of the Act.

#### ❖ PUNISHMENT FOR OFFENCES AGAINST CHILDREN

Chapter IX of the Act given under Section 74 to 89 deals with offences against children.

A separate chapter on offences against children is included in the JJ Act, 2015, and several of the offences specified in this chapter were previously unaddressed by any other law. These include the illegal adoption of children, corporal punishment in child care institutions, giving children intoxicating liquor, narcotic drugs, psychotropic substances, or tobacco products, use of children by militant or adult groups, offences against disabled children, and kidnapping and abduction of children.

Furthermore, the JJ Act of 2015 prescribes penalties for a variety of offences against children, including an increase in the penalty for child cruelty from six months to three years. The sale or purchase of children will be a crime punishable by a five-year prison sentence. It will be illegal to use corporal punishment in a child care facility. Adoption without following the prescribed processes is punished by up to three years in prison or a fine of Rs.1 lakh, or both. JJ Model Rules, 2016 includes child-friendly reporting, recording, and trial procedures to ensure that these provisions are implemented effectively.

#### VI. The Juvenile Justice Care and Protection of Children Amendment Act 2021

According to a report released by the National Crime Reports Bureau (NCRB) in 2019, juvenile crime rates have increased when compared to previous years. NCRB studies also revealed that even after the 2015 Amendment to the Act was enacted; Child Care Institutions were not performing as planned or we can say that not working according to the guidelines of the Act. The Juvenile Justice Amendment Bill was passed by Rajya Sabha on 28th July 2021. The Juvenile Justice (Care and Protection of Children) Act, 2015 is amended by the bill. The Act

of 2015 includes provisions for children who are in conflict with the law and require care and protection. The bill attempts to provide steps to strengthen the child protection system.

- This amendment have authorized District Magistrate including additional district magistrate to make adoption orders under Section 61 of the JJ Act, in order to ensure that cases are dealt with quickly and effectively with speedy disposal. Under the Act, the District Magistrates have been given additional powers to facilitate the successful application of the Act and to coordinate actions in favour of children in distress.
- According to the amended requirements of the Act, any Child Care Institution must be registered after considering the recommendations of the District Magistrate. The DM will assess individual District Child Protection Units, Child Welfare Committees, Juvenile Justice Boards, Specialized Juvenile Police Units, Child Care Institutions, and other institutions.
- The requirements for CWC members to be appointed have been changed. Criteria for disqualification of CWC members have also been established to ensure that only those who are capable of providing quality service while also possessing the necessary competence and integrity are nominated to the CWC.
- When considering cases of children in conflict with the law, the Act defines three categories (petty, serious, and heinous) to which they are referred. However, it has been noted that some of the crimes do not properly fit into any of these categories. Offenses with a maximum punishment of more than 7 years in prison but no minimum sentence or a minimum sentence of less than 7 years have been determined to be serious offences under this Act.

## **CONCLUSION**

There is always a discussion nowadays whether the juveniles should be treated as adults or not. So, we should know these things first that before IPC or CRPC or we can say during the time of Britishers in our country or before that we don't have special law for juveniles. The juveniles were treated in the same manner as the adults were treated but after so many years of same treatment of juveniles as adults, by seeing other countries we also brought special laws for juveniles, where they can be treated differently from adults, cared , protected and punished according to their age. However, the Mukesh v. State (NCT of Delhi) gang-rape case in Delhi

resulted in significant improvements in the Indian criminal justice system. People have started arising this question that despite this, the Act breaches the Indian constitution's article 14 by treating two people accused of the same crime differently. This must be considered in the context of an accused's intentions to take advantage of these precautions. This Act establishes the age of the person and then analyses his or her mental capacity, which should be the contrary. Whether it is 2002 Act or 2015 Act all these laws are treating the same minded people differently.