

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

(Act No. 02 Of 2016): A NEW HOPE

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Introduction-

In the olden days every home was the best place for child care, but with the growth of population, industrialisation and urbanisation, children are being neglected by their own society. Many of them come in contact with evil elements in society. Many of such children who are charged as criminals are themselves victims of the circumstances prevailing in the society. A young person can not be expected to be a person of practical wisdom because it can only be yielded by long experience. Keeping in view the social, psychological and economic factors of minors and concern for their mental, physical, moral and emotional development necessary for complete development of personality attempts were made world-wide to establish a distinct criminal justice system for juveniles. Juvenile Justice Jurisprudence had always accorded differential treatment towards Juveniles. Our constitution of India empowers state to frame special laws for protection of children because they are vulnerable and have some special characteristics due to which they could not be attributed same culpability as adults. In India also a separate criminal justice system had been established.

The Delhi gang rape case of December, 2012, in which a young lady was brutally assaulted and killed by six persons including a juvenile, shocked the general conscience of society in India and world at large and evoked wide scale public protests demanding exemplary punishment to all offenders and triggering collective introspection on safety of women and on juvenile justice system. A number of petitions were also filed in Hon'ble Supreme Court of India for decreasing the age limit of juvenility. In the backdrop of above circumstances the Criminal Law Amendment Act 2013 and this new

juvenile law has been passed. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 has come in to force from 15-01-2016 and repealed Juvenile Justice Act 2000. The Act passed by Lok Sabha on 7th May 2015 and by Rajya Sabha on 22-12-15 and received presidential assent on 31st December 2015.

Compelling Reasons to Enact new law-

It was argued that in United Kingdom, children between 10 to 18 years of age are considered capable of committing offence, but are usually tried in a youth court unless they have committed serious offence such as rape, homicide etc. In United States of America nearly all states permit persons below 18 years commits a serious offence, the offenders may be punished by youth justice court just like an adult. In Nepal a person between 16 to 18 years of age are charged and tried as adults. (Dr. Subramaniam Swami vs. Raju through member juvenile justice board A.I.R. 2014 SC 1649). The Supreme Court of India though refused to read down the Act of 2000 for lowering the age of juvenility but later on while hearing a case of forty year old man convicted of murder, who successfully raised a claim of juvenility as he was sixteen years old at the time of alleged commission of crime, The court described the juvenile law as too liberal and asked Attorney General to suggest the government to take a relook at the Act of 2000 because the law must satisfy the desire of society and prescribed a punishment as per the gravity of the crime (The Hindu, November 21, 2014). While hearing a plea by murder accused, who claim to be less than 18 years at the time of alleged crime, the court advised on 06-04-2015 asking the government to revisit the law so that a juvenile accused of rape and murder can not get away by claiming he is too young to understand the consequences of his act (The Hindu, April 07, 2015). In the light of above circumstances, following are the main compelling reasons to pass new Act:

1. Delays in various processes under the Act such as decisions by child welfare committee and by Juvenile Justice Boards, leading to higher pendency of cases.
2. Delay in inquiry of cases leading to children languishing in

homes for years altogether for committing petty offences.

If the committee or board is satisfied that the attendance of the child is not essential for the purpose of inquiry, shall dispense with the attendance of the child inquiry shall continue in even in absence of child.

Presumption and determination of age

In the previous Act of 2000 there were no particular section for determination of age but rule 12 of model rule 2007 contained provisions for determination of age of the child. In the New Act in Section 94 it is provided that where it is obvious to the committee or board, based on appearance of the person brought before, it, other than for the purpose of giving evidence the said person is child, the committee or the board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry without waiting for the further confirmation. If there are reasonable ground for doubt regarding whether the person brought before it is a child or not, the board or committee shall undertake the process of age determination, by seeking evidence regarding-

- (I) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available and in the absence thereof;
- (II) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (III) and only in the absence of (II) above, age shall be determined by an ossification test or any other latest medical age determination test on the orders of the committee or the Board.

It is also provided that age determination test shall be completed within fifteen days from the date of order and the age recorded by committee or board shall be deemed to be true age of that person. All reports related to the child and considered by board or committee shall be treated confidential but the victim shall not be denied access to their case record, orders or relevant papers. The Supreme Court of India in Parag Bhati (Juvenile) through mother and

in Smt. Rajni Bhati vs. State of UP. and another in criminal appeal no. 486 of 2016 dated 12-05-2016 relied upon Abuzar Hossain @ Gulam Hossain vs. State of WB (2012) 10 SCC 489, it was held that the credibility and acceptability of the documents would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected and if such document prima facie inspires confidence of the court. The court may act upon such document for the purpose of section 7A and order an inquiry for determination of age. In para 26 it was held that when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is juvenile or not, cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of the justice. If there is any doubt or a contradictory stand on correctness of date of birth, the determination of age is permissible. It was also held in (2012) 5 SCC 201 Om Prakash vs. State of Rajasthan by Hon'ble Supreme Court that the duty of courts is to scrutinize plea of juvenility with extreme caution in cases involving heinous crimes and also to ensure that the plea of minority is not employed to escape punishment. In cases where school record is ambiguous and does not conclusively prove minority of accused, medical opinion assumes importance.

Provisions as to bail-

When a child, alleged to have committed a bailable or non bailable offence, is apprehended or detained by the police or appears or brought before a board, such person shall be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person but a child shall not be released on bail in the following circumstances-

- (a) If there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal,
- (b). If it exposes the said person to moral, physical or

psychological danger or

(c). If the person's release would defeat the ends of justice.

It is provided that if the board decide to reject the bail application of child, the board shall record reasons and circumstance for such a decision and such person shall be send to an observation home -

- Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection.
- Offences has been classified into-
 - Petty offences,
 - Serious offences
 - Heinous offences
- Termination of proceeding in petty offences if inquiry remains inconclusive after a period of six months.
- At least one inspection visit month of homes by Juvenile Justice Board and child welfare committee to check abuse of children in institutions.
- Detailed procedure for declaration of child as legally free for adoption by child welfare committee.

Application and provisions of the Act-

This Act is applicable to the whole of India except Jammu & Kashmir. The Act will apply to all matters concerning child in conflict with law including apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social reintegration of children in conflict with law. It also provides the procedures and decisions or orders relating to rehabilitation, adoption, reintegration and restoration of children in need of care and protection. (section 1(4). Children Court has been defined as a court establish under the commission for protection of child rights act, 2005 or a special court under POCSO act, 2012, if not designated the court of sessions having jurisdiction to try offences under such act (Section2(20). Heinous offences defined as the offences for which a minimum

punishment under Indian Penal Code or any other law punishment is imprisonment for seven years or more (Section2(33)), while an offence will be treated as serious offence if punishment is provided for that offence is imprisonment between three to seven years (section2(54) and if maximum punishment provided for that offence is upto three years, that shall be treated as petty offence. Orphan defined as a person who is without biological or adoptive parents or legal guardian, or whose legal guardian is not willing to take or capable of taking care of child (Section2(42) and surrendered child defined as a child who is relinquished by the parent or guardian to the committee, on account of physical, emotional and social factors beyond their control and declared as such by the committee (Section2(60). The new section containing the general principles is most important for the implementation of the Act because these are guiding factors for the working of authorities under the act (section 3). As per section 4 of the Act state government is empowered to constitute a Juvenile Justice Board for every district for exercising power and discharging its functions relating to children in conflict with law under this act. The Principal Magistrate should have atleast three years experience and out of two members one should be a woman. This section also provides that within a period of sixty days from the date of appointment there should be an induction training and sensitization of all members including the Principal Magistrate on care, protection, rehabilitation, legal provisions and justice for children. If during course of inquiry the child has completed 18 years of age, the inquiry shall be continued by the board and orders may be passed as if such person had continued to be a child (Section 5).

The procedure of the board should be child friendly and venue should not be intimidating to child and must not resemble a regular court. A child in conflict with law may be produced before an individual member of the board, when the board is not in sitting. A board may act in the absence of any member during the proceeding. But for final disposal of the case or in making an order under section 18(3), at least two members including principal magistrate should be present. In case of difference of opinion in Board the majority shall prevail but if there is no majority, the opinion of Principal Magistrate

shall prevail (Section 7). The board is to deal exclusively with all the proceedings under this Act, relating to children in conflict law. These powers can also be exercised by the High Court or the children's courts. Under Section 19 or in appeal, or revision or otherwise (Section 8) The main functions of juvenile justice board are as follows-

1. To ensure the informed participation of the child and parent or guardian in every step of proceeding.
2. To ensure child's right throughout process, after care and rehabilitation.
3. To provide legal aid for child through legal service institution,
4. To provide interpreter or translator to the child
5. To direct probation officer or child welfare committee or a social worker to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production of child before the board to ascertain the circumstances in which the alleged offence was committed.
6. To adjudicate and dispose of cases of child in conflict with law in accordance with the process of inquiry specified in Section 14.
7. Transfer to committee of matters concerning the child alleged to be in conflict with law stated to be in need of care and protection at any stage. A child in conflict with law can also be a child in need of care simultaneously.
8. To dispose of matters and passing final order in respect of child in conflict with law.
9. To conduct inquiry declaring fit person for the purpose of the Act.
10. Atleast one inspection visit every month of residential facilities for child in conflict with law and recommend quality of service,
11. To order police to register first information report for offences

committed against any child in need of care and protection on a written complaint of committee, under this act or any other law,

12. To conduct regular inspections of Jails to check if any child is lodged in such jails and take immediate measures for transfer of such child to the observation home and
13. Any other function as prescribed by rules (yet to be framed).

If any person have committed offence and brought before a magistrate who is not empowered under this act, and such Magistrate is of opinion that the person is a child, he shall without delay, record such opinion and forward the child immediately along with the record of such proceeding to board. If any claim of such nature is made, the court shall make an inquiry and take evidence as may be necessary to determine the age of the person and shall record finding. Such person shall be required to be kept in protective custody during inquiry that is the place of safety(Section 9).

Procedure

In Chapter 4, Section 10 to 26 prescribe procedure in relation to children in conflict with law. If a child alleged to be in conflict with law, apprehended by police, such child shall be placed under the charge alleged to be in conflict with law, apprehended by police, such child shall be placed under the charge of special juvenile police unit or designated child welfare police officers, he shall produce the child before the board within 24 hours, but in no case child shall be placed in lockup or in jail (Section 10). A social investigation report containing antecedent, family background and other material circumstance to be submitted by probation officer or child welfare officer to board for assistance regarding child in conflict with law, and if a child is released on bail, the probation officer or child welfare shall be informed by board (Section 13). An inquiry shall be completed within a period of four months until period of three months from the first production of the child. A special procedure has been prescribed under this Act in respect of petty offences that if inquiry remains inconclusive even after extended period the proceeding shall be terminated. In serious or heinous offences if further extension of

time is required for completing the inquiry, the same shall be granted by Chief Judicial Magistrate for reasons recorded in writing. The proceedings shall be conducted in simple manner and child friendly atmosphere and child should have and for serious and heinous offence summons proceeding as per CrPC, 1973 shall be followed by Board, (Section 14). If the child is above the age of 16 years and alleged to have committed heinous offence, the board shall conduct a preliminary assessment with regard to ability to understand the consequences of the offence, the mental and physical capacity to commit such offence and the circumstances in which he allegedly committed the offence. The board may take the assistance of experienced psychologists or psycho-social workers or other experts but this preliminary inquiry is not the trial. If after the inquiry, Board is satisfied that the matter should be disposed of by Board, the Board shall follow the procedure prescribed for summons cases (Section 15). Juvenile Justice System is based on the principle of restorative justice but the law will act as a deterrent for child offenders committing heinous offences such as rape, murder etc. because trend as per NCRB data is that heinous crimes being committed by children in recent time has also compelled a rethinking in handling of child offenders in the age group of 16-18 years. The special provisions are made to address heinous offences, these provisions would address the issue of increased lawlessness in the society to some extent and will also protect the rights of victim. If the board after conducting a preliminary inquiry comes to conclusion that there is a need for a trial in such cases it has been given the option to transfer the matter to the children's court which is the Sessions court having jurisdiction to try heinous offences. If after the trial, a child is found guilty of committing heinous offence, then such a child is proposed to be sent to a place of safety for reformation and rehabilitation up to the age of 21 years. After completing 21 years of age, an evaluation of the child is to be conducted by children's court after which the child is either released on probation or transferred to a regular jail for rest term of imprisonment but such order shall only be made in case his is incorrigible and measures in place of safety do not result fruitful. The Chief Judicial Magistrate shall review once in very three month

pendency of inquiry and shall direct to increase frequency of the sitting or may recommend constitution of additional board. A review shall also be made by high level committee in every 6 months. Information of pendency shall be furnished by board to Chief Judicial Magistrate or CMM and District Magistrate on quarterly basis (Section 16). The Board may pass following orders if a child is found to be in conflict with law-

- a. Allow child to go home after administration on advice,
 - b. Group counseling,
 - c. Communication section under supervision of an organization or Institution or a specified persons or group of persons,
 - d. To pay fine,
 - e. Probation of good conduct-under Parent, guardian or fit persons-not exceeding three years,
 - f. Probation under supervision of years.
 - g. Special home-not exceeding three years.
2. Additional orders that can be passed may include:- 1. Attend school, 2. Vocational training programmes 3. Therapeutics centre, 4. Prohibit child from visiting or appearing at a specified place, 5. Undergo a de-addiction programme. Also if a child is referred by board for trial, the children's court may decide to proceed as if the child is adult or may conduct an inquiry as a board and may pass appropriate orders.

A sentence of death or life imprisonment may not be passed against a child, a child shall not be tried with any adult person. No proceeding shall be instituted and no order shall be passed against any child under chapter 8 of Cr.P.C. of the Act provides that a child shall not suffer disqualification attached to a conviction and the record of conviction shall be destroyed after expiry of period of appeal as may be prescribed (Section 24). All proceeding in respect of a child alleged or found to be in conflict with law pending before any board or court on the

date of commencement of this act, shall be continue in that board or court as if this Act had not been enacted (Section 25). No additional proceeding shall be made with respect to a run away child though some additional direction may be given to such child (Section 26). Chapter 5 of the Act is related to child welfare committee that includes composition, procedure, powers and functions of the committee. Chapter 6 prescribes procedure in relation to children in need of care and protection. Chapter 7 is related to rehabilitation and social reintegration of child, chapter 8 is related to adoption. Chapter 9 of the Act prescribe certain new offence against children. The Juvenile Justice Board and the committee is empowered to require any parent or guardian to be present at any proceeding in respect of the following-:

3. Increase in reported incidents of abuse of children in institutions.
4. Inadequate facilities, quality of care, rehabilitation, reintegration measures in homes, especially those that are not registered under the Act, resulting in problems such as children repeating offences, abuse of children and run away children.
5. Disruption of adoption and delays in adoptions due to faulty and incomplete process and lack of time lines.
6. Limited participation of the child in the inquiry process, delay in rehabilitation plan and social investigation report for every child.
7. Lack of clarity regarding roles, responsibilities, functions and accountability of child welfare committee and Juvenile Justice Board.
8. Lack of friendly procedure by Juvenile Justice Board and conduct of board sittings in court premises in many districts.
9. Lack of any substantive provision regarding order to be passed if a child apprehended for allegedly committing an offence was found innocent.

10. No specific provision for reporting of abandoned or lost children to appropriate authority in order to ensure their adequate care and protection under the Act.
11. Non registration of institutions under the Juvenile Justice Act and inability of the states to enforce registration due to lack of lack of any penal provisions for non compliance.
12. Inadequate provisions to counter offence against children such as corporal punishment, sale of children for adoption purposes etc.
13. Increase in heinous offences committed by children and lack of any specific provisions to deal with such matters.

Objects of the Act:

The new Act is passed to make comprehensive provisions taking into account-convention of rights of the child, the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), UN Rules for the protection of juveniles deprived of their liberty, 1990, the Hague Convention on Protection of Children and Cooperation in respect of Inter Country Adoption 1993. The main objects of the Act are as follows:

1. To consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering their basic needs through proper care, protection, development, treatment, social reintegration by adopting a child by friendly approach in the adjudication and disposal of matters in the best interest of children.
2. Their rehabilitation through processes provided,
3. Establishment of bodies and institutions for the above purpose.

Key provisions of the New Act of 2015:

The Act has been passed in the wake of intensified demand of severe punishment for juvenile offenders. This Act strike a balance between demands of stakeholders asking for continuation of the

previous law and popular demand of society at large in the light of increasing incidents of heinous crimes by the juveniles. Following are the salient features of the new Act:

- Change in nomenclature from juvenile to child or child in conflict with law.
- Several new definitions such as orphaned, abandoned, surrendered children included.
- More clarity in powers, functions and responsibilities of Juvenile Justice Board and child welfare committee.
- Specific and clear time schedule for inquiry by Juvenile Justice Board.
- Separate chapter on adoption to streamline adoption of orphan, abandoned and surrendered children.
- Inclusion of new offences committed against children.
- Mandatory provision for registration of child care institution within six months from the date of enforcement.
- Statutory status to CARA i.e. Central Adoption Resource Authority to function more effectively.

After considering the Section 3 and Section 12 of the Act, it is my considered view that bail to child offender is a rule and a juvenile is entitled to be released on bail irrespective of the seriousness of the offence unless the case falls within any of the exceptions enumerated in the section. The existence of such exceptions should not mean a guess work of the court but it should be substantiated by some evidence on record.

Provisions as to Appeals and Revision

There are three appellate authorities under the Act namely children's court, Sessions and District Court. Any person aggrieved by an order of committee or board under this Act may within thirty days from date of order, prefer an appeal to the children courts. In case of decisions by committee related to foster care and sponsorship after care, the appeal shall lie with the District Court. If sufficient

reasons are shown by victim, such appeals may be entertained after a period of thirty days. An appeal shall lie against an order of the Board passed after making the preliminary assessment into heinous offence under Section 15 of the act before the Court of Sessions. The court of Sessions may also take assistance of experience psychologists and medical specialist. It is also provided that no appeal shall lie against any order of acquittal made by board in respect of child other than the heinous offence by a child above the age of 16 years or any order made by committee in respect of finding that a person is not a child in need of care and protection, and no second appeal shall lie from any order of the court of session passed in appeal under Section 101(2). A person aggrieved by an order of children's court may file an appeal before the High Court. The High Court may at any time either *suo motu* or on application, call for the record of any proceeding in which any committee or board or children's courts or court has passed an order for the purpose of satisfying itself as to legality or propriety of any such order. (Section 102)

The committee or board may on application, amend any orders passed by itself as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act. Clerical mistakes arising from any accidental slip or omission may be corrected by committee or board at any time *suo motu* or on the application. The state government to make rules to carry out the purpose of this act and central government may frame model rules for the said purpose (Section 110).

Conclusion

In India, there is a general resentment amongst the people against the working of judicial system with regard to disposal and pendency of cases. It is belief that once litigation starts, it takes considerable period of time to get justice. In my view the Juvenile Justice (care and protection of children) Act 2015, will help in reducing backlog of cases and will also fulfil the constitutional obligation as well as societal obligation. By treating child between age group of 16 to 18 years as adults for heinous crimes the present law will establish harmony between the interest of child and interest

of victims, society at large. The appropriate government should create required infrastructure and also make proper arrangements for the implementation of the Act and create awareness in society about the Act through various channels such as electronic, as well as print media, public functions, public rallies and workshops on this new legislation in schools, colleges and other places.

References-

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4. The Hindu News Paper,
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