

JUVENILE JUSTICE CARE AND PROTECTION OF CHILDREN ACT, 2015

The act contrary to the traditional belief that it deals with the sole subject of Children in Conflict with law, actually covers several aspects for the welfare of the child like the Child Welfare Committees, Child in need of care and protection, Adoption of child etc. It also deals with surrendered child and Abandoned Child. The Amended act has covered several offences, which evolved during the time from the enactment of the old act like corporeal punishments to children; offences by relative or guardian etc. We will see the offences separately after this brief overview of the difficulties that are faced during the inquiry and enquiry of the cases registered under the act.

Non-obstante Clause:

The offence of kidnapping a child under IPC is a bailable offence, but the same is non-bailable under JJ act. The JJ act will prevail over the IPC. Irrespective of the non-obstante clause in other Special and local laws like POCSO act or SC & ST POA act for instance, if the offence is alleged against the Child in conflict with law of committing such offences under special act, then the same is to be inquired or enquired by JJB alone, irrespective of the forums mentioned under such special enactments.

F.I.R:

No FIR should be issued in respect of the offence committed by CCL, except in cases of Heinous in nature, that too if committed along with adult offenders, but the FIR is being issued in routine manner.

Every Police station should designate an officer as Child Welfare Police Officer (who was earlier referred as Special Juvenile Police Officer). This CWO should be an officer of a rank not below that of Asst. Sub-Inspector of Police. (Sec 107). All these Child Welfare Police Officers shall function under the Police officer not below the rank of Deputy Superintendent of Police.

But we see that the FIR is being issued by regular Law and Order Police. The CWPO is no way involved in the investigation, inquiry or trial of the case.

The case is being dealt as any normal case trying adults.

This shows the lack of sensitization of the police towards the needs and requirements of child.

This is one backdrop in the journey towards a safe society for children.

- (a) (i) *the matriculation or equivalent certificates, if available; and in the absence whereof;*
(ii) *the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*
(iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*
and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

A bare reading of the same shows that they are exclusive of each other that is to say that they are admissible only in the absence of the earlier proof mentioned therein, but police are directly producing the Bonafide certificate, which should be resorted to only in absence of the Matriculation certificate.

Further, the Bonafide certificate issued by Private school managements is invalid in the eye of law.

2001 0 CrLJ 2902; 2001 0 SCC(Cri) 915; **Ram Deo Chauhan @ Raj Nath versus State of Assam, wherein the supreme court held that**

“It is not shown that the school register was maintained by a public servant in the discharge of his official duty or by any other person in the performance of a duty specially enjoined by the law of the country in which such register is kept. Thus the entry in the school register remains away from the range of accept ability as proof positive regarding the date of birth of the petitioner.”

Hence the age certificate issued by Public Servant alone is admissible.

HEINOUS OFFENCES:

This act for the first time differentiates offences into Petty, Serious and Heinous offences, basing on punishment prescribed for offence like upto 3 years; between 3 to 7yrs and above 7 years of imprisonment.

This is a unique feature of this act. No other act did it earlier. Earlier it was the police manual, which characterized the offences into simple and grave offences.

This aspect makes the age certificate more relevant at the initial stages of inquiry itself.

The CCL is just described in the FIR or apprehension reports, as being aged, basing on the oral statement of the parents of CCL or others.

The Age certification is subsequently collected, during the course of investigation,

The intent of the legislation is not this. As Sec 15 of the act, depicts

In case the child is decided to have enough maturity to commit the offence and in know of the consequences of his actions, he has to be sent to Children's Court (I ADDL DJ Court) for trial.

161 CrPC Statements:

The 161 CrPC statements of the Child victims should be recorded by preferably a lady officer not below the rank of Sub-Inspector, in cases of sexual offences against the child victim, by the CCL. The said woman police officer should not be in uniform, and record the statement at the place convenient to the victim.

This is not being followed strictly. Thanks to us, we have a precedent which states that the non-recording of the statement of a sexual offence child victim by woman officer, if not objected by the victim, does not enure to the benefit of the accused.

2016 1 ALD(Cri) 207; 2015 0 Supreme(AP) 634; **Pasupalleti Srinivasa Rao Versus The State of A.P. rep by its Public Prosecutor & Another, wherein the Hon'ble Judge held that**

“A perusal of the provisions with reference to the object in incorporating the same is crystal clear that these are meant to protect the right of privacy as part of Article 21 of the Constitution of India of the victim and not even to protect the right of the privacy of the accused under that qualified fundamental right. When such is the case when the very victim not complained of; the accused has no right to complain, muchless to take any advantage therefrom to perpetrate his wrong if any, muchless to complain any prejudice to him for non-compliance of the procedure by the provision is of the rights of the victim to say in the victim's point of view is mandatory and if all for her to complain, who did not when the protection.”

Charge Sheets (CASE SHEETS):

The Charge sheets are to be filed by designated Special Juvenile Police Unit officer and in cases involving the POCSO act cases and SC & ST POA act case, by the designated officer under the said act.

Some Important precedents:

2017 (2) SCC 210; 2017 (1) SCC (Cri) 710; 2016 4 Crimes(SC) 310; 2017 1 JLJR(SC) 152; 201612 Scale 379; 2017 1 Supreme 560; 2016 0 Supreme(SC) 949; MUKARRAB Versus STATE OF U.P.

Juvenile Justice (Care and Protection of Children) Act, 2000 – Section 7A and Section 49(1) r/w Rule12, Juvenile Justice Rules, 2007 – Determination of age – Ossification test – Ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years as in the present case – Object of the Act is not to give shelter to accused of grave and

adopted by the Sessions Court. This Court observed that a witness could be confronted only with a previous statement made by him. The day on which he was first examined in the Sessions Court, there was no such previous statement. This Court observed that the witness must have given some other version before Juvenile Court for some extraneous reasons. He should not have been given an opportunity at a later stage to completely efface the evidence already given by him under oath. It is the wrong procedure and attempt to efface evidence which persuaded this Court to observe that once the witness was examined in-chief and cross-examined fully such witness should not have been recalled and re-examined to deny the evidence which he had already given in the court even though he had given an inconsistent statement before any other court subsequently. It is pertinent to note that this Court did not discuss Section 311 of the Code. **2014 STPL(Web) 452 SC Mannan Sk & Ors. Vs. State of West Bengal & Anr.**

the differences in the juvenile justice system and the criminal justice system working in India. This would have relevance to the arguments made in W.P. No.204 of 2013. It may be convenient to notice the differences by means of the narration set out hereinunder:

Pre-trial Processes

Filing of FIR:

Criminal Justice System: The system swings into action upon receipt of information (oral or written) by the officer in charge of a police station with regard to the commission of a cognizable offence.

JJ System: Rule 11(11) of the JJ Rules, 2007 states that the Police are not required to file an FIR or a charge-sheet while dealing with cases of juveniles in conflict with the law. Instead, they must only record the information of the offence in the general daily diary, followed by a report containing the social background of the juvenile, circumstances of the apprehension and the alleged offence.

An FIR is necessary only if the juvenile has (i) allegedly committed a serious offence like rape or murder, or (ii) has allegedly committed the offence with an adult.

Investigation and Inquiry:

Criminal Justice System: Ss. 156 and 157, CrPC deals with the power and procedure of police to investigate cognizable offences. The police may examine witnesses and record their statements. On completion of the investigation, the police officer is required to submit a Final Report to the Magistrate u/s 173(2).

JJ System: The system contemplates the immediate production of the apprehended juvenile before the JJ Board, with little scope for police investigation.

parents/guardian that the details of his alleged offence and his social background have been submitted to the Board (Rule 11(9)).

Arrest

Criminal Justice System: Arrest of accused persons is regulated under Chapter V of the CrPC. The police are empowered to arrest a person who has been accused of a cognizable offence if the crime was committed in an officer's presence or the police officer possesses a reasonable suspicion that the crime was committed by the accused. Further, arrest may be necessary to prevent such person from committing a further crime; from causing disappearance or tampering with evidence and for proper investigation

(S.41). Persons accused of a non-cognizable offence may be arrested only with a warrant from a Magistrate (S.41(2)).

JJ System: The JJ Rules provide that a juvenile in conflict with the law need not be apprehended except in serious offences entailing adult punishment of over 7 years (Rule 11(7)). As soon as a juvenile in conflict with the law is apprehended, the police must inform the designated Child/Juvenile Welfare Officer, the parents/guardian of the juvenile, and the concerned Probation Officer (for the purpose of the social background report) (S.13 & R.11(1)). The juvenile so apprehended is placed in the charge of the Welfare Officer. It is the Welfare Officer's duty to produce the juvenile before the Board within 24 hours (S. 10 & Rule 11(2)). In no case can the police send the juvenile to lock up or jail, or delay the transfer of his charge to the Welfare Officer (proviso to S.10 & R.11(3)).

Bail

Criminal Justice System: Chapter XXXIII of the CrPC provides for bails and bonds. Bail may be granted in cases of bailable and non-bailable offences in accordance with Ss. 436 and 437 of the CrPC. Bail in nonbailable offences may be refused if there are reasonable grounds for believing that the person is guilty of an offence punishable with death or imprisonment for life, or if he has a criminal history (S.437(1)).

JJ System: A juvenile who is accused of a bailable or non-bailable offence shall be released on bail or placed under the care of a suitable person/institution. This is subject to three exceptions: (i) where his release would bring him into association with a known criminal, (ii) where his release would expose him to moral, physical or psychological danger, or (iii) where his release would defeat the ends of justice. Even where bail is refused, the juvenile is to be kept in an observation home or a

the charge by reliable and legal evidence and the presumption of innocence of the accused. Culpability is to be determined on the touchstone of proof beyond reasonable doubt but if convicted, punishment as provided for is required to be inflicted with little or no exception. The accused is entitled to seek an exoneration from the charge(s) levelled i.e. discharge (amounting to an acquittal) mid course.

JJ System: Under S.14, whenever a juvenile charged with an offence is brought before the JJ Board, the latter must conduct an "inquiry"™ under the JJ Act. A juvenile cannot be tried with an adult (S.18).

Determination of the age of the juvenile is required to be made on the basis of documentary evidence (such as birth certificate, matriculation certificate, or Medical Board examination).

The Board is expected to conclude the inquiry as soon as possible under R.13. Further, the Board is required to satisfy itself that the juvenile has not been tortured by the police or any other person and to take steps if ill-treatment has occurred. Proceedings must be conducted in the simplest manner and a child-friendly atmosphere must be maintained (R.13(2)(b)), and the juvenile must be given a right to be heard (clause (c)). The inquiry is not to be conducted in the spirit of adversarial proceedings, a fact that the Board is expected to keep in mind even in the examination of witnesses (R.13(3)). R.13(4) provides that the Board must try to put the juvenile at ease while examining him and recording his statement; the Board must encourage him to speak without fear not only of the circumstances of the alleged offence but also his home and social surroundings. Since the ultimate object of the Act is the rehabilitation of the juvenile, the Board is not merely concerned with the allegations of the crime but also the underlying social causes for the same in order to effectively deal with such causes.

The Board may dispense with the attendance of the juvenile during the inquiry, if thought fit (S. 47). Before the Board concludes on the juvenile's™ involvement, it must consider the social investigation report prepared by the Welfare Officer (R.15(2)). The inquiry must not prolong beyond four months unless the Board extends the period for special reasons due to the circumstances of the case. In all non-serious crimes, delay of more than 6 months will terminate the trial (R.13(7)).

Sentencing: The Board is empowered to pass one of the seven dispositional orders u/s 15 of the JJ Act: advice/admonition, group counseling, community service, payment of fine, release on probation of

imprisonment.

Post-trial Processes

JJ System: No disqualification attaches to a juvenile who is found to have committed an offence. The records of his case are removed after the expiry of period of appeal or a reasonable period.

S. 40 of the JJ Act provides that the rehabilitation and social reintegration of the juvenile begins during his stay in a children's home or special home. After-care organizations recognized by the State Govt. conduct programmes for taking care of juveniles who have left special homes to enable them to lead honest, industrious and useful lives.

Differences between JJ System and Criminal Justice System

1. FIR and charge-sheet in respect of juvenile offenders is filed only in serious cases, where adult punishment exceeds 7 years.
2. A juvenile in conflict with the law is not arrested, but apprehended, and only in case of allegations of a serious crime.
3. Once apprehended, the police must immediately place such juvenile under the care of a Welfare Officer, whose duty is to produce the juvenile before the Board. Thus, the police do not retain pre-trial custody over the juvenile.
4. Under no circumstances is the juvenile to be detained in a jail or police lock-up, whether before, during or after the Board inquiry.
5. Grant of Bail to juveniles in conflict with the law is the Rule.
6. The JJ board conducts a child-friendly inquiry and not an adversarial trial. This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour.
7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of juvenile inquiry is to find the guilt/innocence of the juvenile and to investigate the underlying social or familial causes of the alleged crime. Thus, the aim of juvenile sentencing is to reform and rehabilitate the errant juvenile.
8. The adult criminal system does not regulate the activities of the offender once s/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the juvenile, it establishes post-trial avenues for the juvenile to make an honest living.

Dr. Subramanian Swamy And Ors vs Raju Thr.Member Juvenile Justice Board & others 2014 (2) ALT (CrI) 477 (SC)

ascertainable on the basis of a matriculation certificate, it is not open to the opposite party to demand a medical examination for establishing the age of the accused/convict. **2015 STPL(Web) 622 SC - STATE OF BIHAR Vs. CHHOTU PANDEY @ ROSHAN PANDEY.**

Juvenile Justice (Care and Protection of Children) Act, 2000 – Section 20 – Appellant more than 16 years of age but less than 18 years of age at the time of occurrence – Not a juvenile under Juvenile Justice Act, 1986 in force at relevant time – A juvenile under Act 2000 – Pending proceeding shall continue in the court and taken to logical end – However if found guilty, the juvenile shall not be sentenced – Instead, matter shall be referred to Juvenile Board for awarding appropriate fine u/s Section 21(1)(e) of Act, 1986 – Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 25 – Matter remitted to Jurisdictional Juvenile Justice Board for determining appropriate quantum of fine on the appellant and compensation to the family of the deceased. (2017) 1 SCC (Cri) 610; 2016 11 SCC 786; 2016 4 Supreme 711; 2016 0 Supreme(SC) 500; Mumtaz@ Muntyaz Versus State of U.P. (Now Uttarakhand)

2017 0 AIR(SC) 537; 2017 1 Crimes(SC) 64; 2017 3 SCC 280; 2017 2 SCC (Cri) 78; 2017 1 Supreme 351; 2017 0 Supreme(SC) 24; Sri Ganesh Vs State of Tamilnadu and another.

if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had occurred

the person who claims to be a juvenile has two matriculation certificates. it is the first declaration of date of birth, which is contained in the matriculation certificate issued to the respondent No. 2 by the CBSE i.e. 7th October, 1990 which should hold the field, a fact fortified by the own conduct of the said respondent No.2 in making a declaration to obtain a PAN card stating that his date of birth is 12th March, 1985.**Lok Nath Pandey Vs State of Uttar Pradesh, 2017(2) ALD Cri 565 (SC)**