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**INSTRUMENTS AND STANDARDS OF LAW FOR PROTECTION OF
JUVENILE RIGHTS**- Sahil Kathuria¹

India is a home to almost 19% of the world's children. More than one third of the country's population is 18 yrs. The children are considered as the future perspective citizens of the country, therefore it is necessary to make them healthier, educated protected and well developed. 40% of India's children are vulnerable to or have difficulties in normal standard life. Juvenile delinquency is a subject which attracted the attention of law makers in India for over the last 150 years. The subject is the sign of sick society. Overcrowding in cities, increasing number of slums gambling, drinking etc. are some factors responsible for delinquency rate. Indian society in general though rural in character, cannot escape the impact of urbanization resulting in crime and delinquency.

The juvenile justice policy in India is structured around constitutional mandate prescribed as per articles 15(3), 39(e) and (f), 45 and 47 and also UN Convention on the rights of child (CRC) and UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

- **JUVENILES IN CONFLICT WITH LAW**

The problematic children can be classified as vagabonds, orphans, destitute, beggars, truants, mischievous children and children who are in conflict with law (Girl / Boy below age of 18 years who has committed an offence). This is the category which needs to be attended so that

¹ Student at Amity Law School, Noida

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the future of the country is in safe hands, as it is said that the future of the country is in the hands of its youth. Corrections may be institutional or non –institutional.

The Goals of corrections include:

- Reformation
- Humanization
- Recognition of the Rights
- Reorientation of Institutions
- Introduction of Scientific Methods etc.
- *The Juvenile Justice Board (JJB):*

A juvenile justice board should consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being chief Metropolitan Magistrate with at least three years experience and two social workers of whom at least one shall be a woman forming a bench. There are a several functions and responsibilities that are mentioned in section 8 of the Act of 2015.

- Keeping aside the Code of Criminal Procedure, 1973, the government of India might set out an Official Gazette on constituting JJ Boards in various districts to deal with juveniles in conflict with law.
- According to the mentioned guidelines, the JJ board should be legally headed over by a first class Metropolitan or Judicial Magistrate who is designated as the Principal Magistrate along with two social workers, one of whom needs to be a woman member. This bench shall be bestowed with legal powers as prescribed in the Code of Criminal Procedure, 1973 (2 of 1974).
- Only after specific training of the Magistrates in child psychology, they will be appointed as the Principal Magistrate. The same applies for the social workers, who need to be active workers in the field of child psychology, child health, education and social welfare for about seven years.
- The office term of all members of the JJ Board needs to be prescribed in details.

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- Any member of the board, if found guilty of misconduct or misuse of his/her judicial powers or has been convicted of any criminal charges, shall be terminated from the position by the government. In addition to this, if any of the members fail to attend the proceedings for three consecutive years or less than three-fourth of the sitting per year, their membership might be terminated.

- *Procedure*

- The JJ board meetings shall be conducted at times based on the set guidelines and rules.

- The case of a child can be produced before an individual member, if all other members of the board are absent.

- During the final disposal of the case, there needs to be presence of two members of the board along with the Principal Magistrate, absence of any of the parties would make the decisions invalid.

- If the board does not reach a unanimous decision during the final disposal of the case, the majority's decision is taken into account. If they do not agree to a single decision, then the decision made by the Principal Magistrate is considered the final one.

- *Powers of JJ Board*

- The JJ Board for a single or more than one district shall deal with all legal proceedings with relation to juveniles in conflict with law, and that mentioned under the JJ Act.

- Powers of the JJ Board can also be exercised by the High Court or Session Court if there was any revision or appeal in the court.

Procedure followed by the Magistrate that is not mentioned in the Act

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- If any Magistrate, who is not a member of the JJ Board, comes across any convicted individual who is a juvenile, he/she shall exercise the same power of the JJ Board and forward the juvenile to the competent authorities to deal with the case.
- The competent authority shall hold the inquiry as if the child was presented before them for the first time.

- **OBSERVATION OR CORRECTION HOMES**

- Any government of the state can establish an observation home in the districts, which can also be in association with nongovernmental organizations, which would accommodate the juveniles who are in conflict with the law or have faced any legal inquiry under the JJ Act.
- The state government can consider and certify any child care institute as a temporary rehabilitation centre for these juveniles, if the place is found to be fit for the purpose of rehabilitating the juveniles in conflict with law.
- The government shall provide all necessary requisites for the correction home that is needed for its management and social rehabilitation of the juveniles.
- When a juvenile is not charged and is sent to the correction home, he or she is admitted to the reception of the correction home for counseling and preliminary inquiries. The juvenile is also classified based on the age group (7-12 years, 12-16 years and 16-18 years), so the court could gauge the mental and physical status of the juvenile and the degree of crime that he/she has committed.

- *Special Homes*

- For rehabilitation of juveniles in conflict with law, the state government shall set up special homes in the districts.

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- Any institute where the juvenile in conflict with law is admitted, other than his family, the institute needs to be certified as special homes by the state government.
- According to the JJ Act, the State Government offers management of these special homes, which includes the standard, quality of food offered, rehabilitation of the juveniles, and re-socialization. If these criteria are not met, the government might withdraw the grant or certification status.
- The state government shall be responsible for classifying the juveniles based on their age groups and nature of offence committed by the juveniles.
- **APPREHENSION OF JUVENILE IN CONFLICT WITH LAW**
 - Once a juvenile is apprehended, he/she needs to be apprehended by special juvenile police officer who shall present the juvenile to the JJ Board immediately.
 - The government may make rules to declare the person or any voluntary organization who shall present the juvenile before the board, or to set out the procedure for sending the juvenile to the special home.
 - *Custodian of the Juvenile*

The individual who is in charge of the juvenile during the court proceedings shall be responsible for his/her maintenance, as stated by the competent authority.

Bail procedure

- The decision of granting bail to the juvenile, irrespective of bailable or non-bailable offence, lies with the Board, who shall decide the bail on grounds of the offence committed by the juvenile and whether he/she would be exposed to any further criminal activities on granting of the bail that would bring defeat to the end of justice.
- If any of the adverse situations arises where the juvenile is arrested, then the officer-in-charge shall keep the juvenile in the observation home until he is presented before the Board.

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- If the juvenile is not granted a bail, he/she needs to be sent to the correction home as directed by the Board till the inquiry continues.

Information for parents, guardians or probation officer

When the juvenile is arrested being accused in any of the cases, the officer in charge needs to:

- Inform the juvenile's parents/guardian regarding the arrest; and
- Inform the probation officer regarding the arrest of the juvenile in order to obtain information regarding his family background and other matters that would be required during the time of presentation in front of the Board.

Inquiry by the Board

An inquiry is set up against the juvenile as directed by the Board which is in accordance with the JJ Act and the procedures established. The period of inquiry is set at usually 4 months from the date of commencement, except for cases where the time period can be changed as prescribed by the Board members in any particular case or circumstances. The reason for extension should be provided in writing.

Orders passed by the Board

- If the offence is proved against the juvenile, then notwithstanding any contraries contained in the law, the Board may, if it thinks so fit-
- Let the juvenile go home with his/her parents on advice and post-counseling;
- Let the juvenile participate in group counseling for rehabilitation along with performing community service;
- If the juvenile earns money and is more than 14 years of age, himself/herself or the his/her parents need to pay the fine;

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- If the juvenile is observed with good conduct, then they can be released on probation to be taken care of by the parents, guardians or any certified institutions. In this case, the parents and guardians need to sign a bond for a period of not more than three years;
- The Board can direct the juvenile to be sent to the special home for a time period of 2 years at maximum, if he/she is less than 18 years and above 17 years; If the Board is satisfied with the behavior of the juvenile before he/she attains the age of 18 years, based on the records, the Board can reduce the tenure of stay as it thinks fit.
- Before passing any order, the board shall get the investigation report from the probation officer or the institution.
- When an order is passed under the clauses (c) and (d), the Board can expedite the proceedings against the juvenile in conflict with law by keeping him/her under the supervision of a probation officer maximum for three years, and during this period of supervision, the juvenile is presented before the Board as desired along with the report. If the juvenile has not maintained good behavior during the supervision period, then the juvenile is sent to the special home for counseling and rehabilitation. In such case, the Board would hand over a copy of the order to the juvenile, parents or guardian or institution, and the officer-in-charge, who so ever is in charge of the juvenile in conflict with law.
 - *Order not to be passed against any juvenile in conflict with law*
- The sentence of death or imprisonment for life cannot be awarded to any juvenile who has not attained the age of 18 years. If the juvenile fails to pay the fine in default of security furnishing, he/she cannot be sent to prison based on this reason. However, if any juvenile who is 16 years and above, has committed any serious offense based on which the Board feels that he/she cannot be sent to the special home as it may not be in best interest of other juveniles, then the Board may direct the officer in charge to keep the juvenile in some other place of safety, which is followed by reporting of this special case to the state government.

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- Based on the report sent by the Board, the state government shall keep the juvenile under protective custody, provided that the detention period not exceeding the maximum time for imprisonment of a juvenile.

- *Proceeding under Code of Criminal Procedure- Chapter VIII⁸⁹:*

Chapter VIII of the mentioned code denies passing of any order or carrying forward any proceedings against the juvenile.

- *No joint proceedings:*

- According to Section 223, Code of Criminal Procedure, 1973, or any such laws related to the concerned offence, no juvenile can be put on trial with an adult who has committed that offence.

- In such case, the Board shall direct separate trials for the juvenile and the accused adult.

Removal of disqualification attaching to conviction:

- A juvenile shall not face any disqualification with relation to the offence/conviction.

- Once the appeal period expires, the Board shall order removal of the records of the juvenile as mentioned under the Act's provisions.

- *Special provision for pending cases:*

On the date of commencement of the Act, all proceedings regarding the juvenile in conflict with law shall continue in the same court. If the offence committed by the juvenile is proved in the court, then the court cannot declare any order or sentence. It shall pass the case to the JJ Board as per the provisions mentioned in the JJ Act. The final decision lies with the Board whether the offence is proved or not.

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- *Prohibition of publication of details of juvenile –*
- The Act deters publication of information of the juvenile in any print or electronic media, such as name, picture or images, address that would lead to identification of the juvenile in conflict with law. However, if any such disclosure is needed and is in best of the interest of the juvenile, then the authority can permit so.
- Any individual who do not abide to the section (1) rules shall be punishable under the law with a fine that can extend up to 1000 INR.

- *Provision for Escaped Juvenile:*

If a juvenile escapes from the special home, institutes or care of any person as determined by the Board, then any police officer may take charge of that juvenile without issuing a warrant, and can send the juvenile back to the correction home. In case of such escape, no proceeding shall be initiated against the juvenile; however, the institution or special home can take appropriate steps as deemed necessary and stated under the JJ Act provisions.

- *Provisions in the Act for Cruelty Against any Juvenile:*

The person who is in charge of a juvenile/child, is found to abuse, abandon or neglect him/her, which leads to physical abuse and mental instability in the juvenile/child, then that person shall be punishable up to six months of imprisonment, or fine, or both.

- *Employing a juvenile/child in the act of begging:*

- Anyone who employs juveniles or children in the act of beggary is punishable under law with an imprisonment of around three years along with a fine.
- Whoever is in charge of the juvenile/child, and puts them in such act, they shall be liable to imprisonment for a one year term and also liable for fine.

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- Punishment for intoxication of juveniles/children- Whoever offers psychotropic drugs or liquor to any child, except in case of qualified medical practitioner, shall face imprisonment for an extended term of three years along with fine.

- *Exploitation of juvenile or child employee:*

Whoever keeps a juvenile/child in bondage for employing him/her in hazardous fields and also does not pay him/her earnings, and then the individual shall face imprisonment for an extended term of three years along with fine.

- **CHILD IN NEED OF CARE AND PROTECTION**

The legal provisions regarding meaning of child in need of care and protection Section 2 of the Juvenile Justice (Care and Protection of Children) Act 2000.

As per Section 2 (d) of the Juvenile Justice (Care and Protection of Children) Act 2000, “Child in need of care and protection” means a child –

- Who is found without any home or settlement place or abode and without any ostensible means of subsistence?
- Who resides with a person (whether a guardian of the child or not) and such person:
 - Has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
 - Has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.
- Who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after;

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- Who has a parent or guardian and such parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.
- Who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away child and whose parents cannot be found after reasonable inquiry.
- Who is being or is likely to be grossly abused tortured or exploited for the purpose of sexual abuse or illegal acts.

CONCLUSION

Children develop the nation's precious human resources. The future accomplishment of the nation depends on upon how its children perform and execute. The great poet Milton said, "Youth Shows the man as morning presentations the day". So it is the devotion of the general masses to deal with every pre-adult with a point of view to ensuring full advance of its personality. Children are the future controllers and light bearers of the Society: they are the units of our understanding, social legacy, conviction structures, and rationalities.

Children are genuinely future parts as sensational instructors, specialists, judges, rulers, powers, coordinators, engineers, politicians on whom the entire society set up (rests). Disastrously a broad number of children are obstructed from securing their childhood and right to bearing and thereby they are subjected to exploitation, misuse, and abuse.

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