

Writs of Juveniles under Juvenile Justice Act (2016)

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Abstract: Supreme Court added that it cannot be questioned that children are amongst the most vulnerable sections in any society. It is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him.

Keywords: Right of child, natural justice

1. Introduction

Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India. It aims to replace the existing Indian Juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults. The Act came into force from 15 January 2016.

This is an Act 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 to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

2. Basic Principle Mentioned in the Act

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

- (i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- (ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.
- (iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- (iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- (v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- (vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to

any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

- (vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.
- (viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- (ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- (x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
- (xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- (xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
- (xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
- (xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
- (xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
- (xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the

right to review, by all persons or bodies, acting in a judicial capacity under this Act.

3. Implementation of Principles of the Act

The State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three(3)years' experience and two(2) social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended: Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

When any person, who is apparently a child and is 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, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, 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.

At the time of initiating the inquiry,

- a) The Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;
- b) In all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;
- c) Every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;
- d) Cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;
- e) Inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in

summons cases under the Code of Criminal Procedure, 1973;

Information to parents, guardian or probation officer and further inquiry of heinous offences for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board.

In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order.

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act.

4. Case Laws

Considerations before the SC: Prayers: A bunch of petitions, [1-5] have been taken up together by the Supreme Court for consideration in view of the commonality of the grounds and reliefs prayed for therein.

Grounds for prayers: Following prayers have been made on various grounds: Declaration of the Juvenile Justice Care and Protection of Children Act, 2000, as ultra vires the Constitution

To strike down the provisions of Section 2(k) and (l) of the JJCPA Act, and [1] to bring the Act in conformity with the provisions of the Constitution

To take steps to make changes in the JJCPA, 2000, to bring it in line with the United Nations Standard Minimum Rules for administration of juvenile justice.

In offences like rape and murder, juveniles should be tried under the normal law and not under the JJCP Act and protection granted to persons up to the age of 18 years may be removed and

To declare that prohibition in Section 21 of the JJCPA, 2000, be declared unconstitutional.

The investigating agency should be permitted to keep the record of the juvenile offenders to take preventive measures to enable them to detect repeat offenders and to bring them to justice.

Not to release the juvenile accused in the Delhi gang rape case of 16.12.2012 and to keep him in custody or any place of strict detention, after he was found to be a mentally abnormal psychoperson.

That proper and detailed investigation be conducted by the CBI to ascertain his correct age by examining his school documents and other records and

To declare that prohibition in Section 21 of the JJCPA, 2000, be declared unconstitutional.

To appoint a panel of criminal psychologists to determine through clinical methods whether the juvenile is involved in the Delhi gang rape on 16.12.2012.

Arguments in Favour of Reducing the Age of Juvenile in India: Argument/Contention in the first matter [1] in the bunch:

That it was necessary for the provisions of Section 2(k), 2(l) and 15 of the JJCPA, 2000, to be reconsidered in the light of the spurt in criminal offences being committed by persons within the range of 16 to 18 years, such as the gang rape of a young woman inside a moving vehicle on 16th December, 2012, wherein along with others, a juvenile, who had attained the age of 17½ years, was being tried separately under the provisions of the JJCPA, 2000.

That in view of the provisions of Sections 15 and 16 of the JJCPA, 2000, children, as defined in the above Act, were not only taking advantage of the same, but were also being used by criminals for their own ends. That after being awarded a maximum sentence of three years, a juvenile convicted of heinous offences, was almost likely to become a monster in society and pose a great danger to others, in view of his criminal propensities.

That, under Article 21 of the Constitution, every citizen has a fundamental right to live in dignity and peace, without being subjected to violence by other members of society and that by shielding juveniles, who were fully capable of understanding the consequences of their actions, from the sentences, as could be awarded under the Indian Penal Code, as far as adults are concerned, the State was creating a class of citizens who were not only prone to criminal activity, but in whose cases restoration or rehabilitation was not possible.

That the provisions of Sections 15 and 16 of the JJCPA, 2000, violated the rights guaranteed to a citizen under Article 21 of the Constitution and were, therefore, liable to be struck down.

That the provisions of Section 19 of the Act, which provided for removal of disqualification attaching to conviction, were also illogical and were liable to be struck down.

That in order to prevent repeated offences by an individual, it was necessary to maintain the records of the inquiry conducted by the Juvenile Justice Board, in

relation to juveniles so that such records would enable the authorities concerned to assess the criminal propensity of an individual, which would call for a different approach to be taken at the time of inquiry.

5. Comparative Study UK and US

UN Declaration of the Rights of the Child: The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, which came to be proclaimed by the United Nations on 20th November, 1959, in the best interests of the child. This was followed by the Beijing Rules of 1985, the Riyadh Guidelines of 1990, which specially provided guidelines for the prevention of juvenile delinquency, and the Havana Rules of 14th December, 1990. The said three sets of Rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish a Juvenile Justice System for juveniles in conflict with law, to safeguard fundamental rights and to establish methods for social reintegration of young people who had suffered incarceration in prison or other corrective institutions. One of the other principles which was sought to be reiterated and adopted was that a juvenile should be dealt with for an offence in a manner which is different from an adult. The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules especially applicable to juvenile offenders.

It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age level, keeping in mind the emotional, mental and intellectual maturity of children.

International Obligation: Four years after the adoption of the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly on 20th November, 1989, which came into force on 2nd September, 1990. India is not only a signatory to the said Convention, but has also ratified the same on 11th December, 1992.

The said Convention sowed the seeds of the enactment of the JJCPA, 2000, by the Indian Parliament.

Developments in India: India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26th November 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of 14 years in factories, mines or hazardous occupations.

The Constitution enables the State Governments to make special provisions for children. To prevent female foeticide, the Preconception and Pre-natal Diagnostic

Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012.

Law on Juvenile in India: Legal basis for fixing the Age the JJCPA, 2000, [9] is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the JJCPA, 2000, was Article 1 of the Convention of the Rights of the Child and that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier.

In India, in case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order.

6. Conclusion

Having regard to the serious nature of the issues raised before the SC, Court had given serious thought to the submissions advanced and had also considered the relevant extracts from the Report of Late Justice J.S. Verma Committee on "Amendments to the Criminal Law, 2013" and are convinced that the JJCPA, 2000, as amended in 2006, and the JJCP Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution and there is a definite thought process, which went into its enactment.

SC further added that it cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time.

Added to this are the factors of poor education and poor economic set up that are jointly the main attributes of a juvenile in conflict with law, making it difficult for him to negotiate the legal procedures.

Studies conducted by NCRB, Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Further, 56.7% of the total juveniles arrested fell into the lowest income category.

SC observed that such being the position, it is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him.