

“Juvenile Justice and Juvenile Courts”

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In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated.³ The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011 .The amendment was made to address the gap and loopholes in the implementation. Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “Delhi Gang Rape Case” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by The Juvenile Justice(Care and Protection) Act, 2015.⁴

Juvenile Justice Act, 2015

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care& protection , development, treatment , social- integration , by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions.⁵ The most important subjects of the Act are as follows:-

Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by Juvenile Justice Board. The

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³ www.blog.ipleaders.in/juvenile/justice/system/india: accessed on June 7th, 2020

⁴ www.blog.ipleaders.in/juvenile-justice-india: accessed on June 12, 2020

⁵ www.advocatekhaj.com/bareacts/juvenilelaw2016: accessed on June 13th, 2020

Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board .The Board had to consider Rule 12 of the Juvenile Justice Rules, 2007 in order to determine the claim of juvenility.⁶ In case of **KulaiIbrahim v. State of Coimbatore** it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act , 2015.

In case of **Deoki Nandan Dayma v. State of Uttar Pradesh** the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

Again in the case of **Satbir Singh& others v. State of Haryana**, Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not , the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of **Krishna Bhagwan v. State of Bihar** the court stated that for the purpose of trial under Juvenile Justice Board , the relevant date for the considering the age of juvenile should be on which the offence has been committed.

But later in case of **Arnit Das v. State of Bihar**, the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.⁷

The frightful incident of “Nirbhaya Delhi Gang Rape Case”,on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “ Juvenile Justice (Care and Protection), 2015.”⁸The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.⁹ Generally, a “child ”mean a person who has not attain the age of 18 years and is not

⁶ www.indiacode.nic.in/claim-of-juvenility: accessed on June 13th , 2020

⁷ www.archive.pov.org/15tolife/supreme/court/cases: accessed on June 13th , 2020

⁸ www.opindia.com/nirbhaya/gang/rape/case/juvenile/justice/system/india: accessed on June 7, 2020

⁹ www.blog.ipleaders.com/remarkable/changes/juvenile/justice: accessed on June 7, 2020

mature to understand that what is right and wrong . In modern era, the penal laws of most countries have adopted the principle of ‘doli incapax’, which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act.¹⁰ Youth under the age of 18 who are accused of committing a delinquent or criminal act are typically processed through a juvenile justice system. While similar to that of the adult criminal justice system in many ways—processes include arrest, detainment, petitions, hearings, adjudications, dispositions, placement, probation, and reentry—the juvenile justice process operates according to the premise that youth are fundamentally different from adults, both in terms of level of responsibility and potential for rehabilitation. The primary goals of the juvenile justice system, in addition to maintaining public safety, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community.¹¹

According to sub- section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a “child” means a person who has not completed eighteen years of age. The Act classifies the term “child” into two categories: –

“child in conflict with law” and

“child in need of care and protection”.¹²

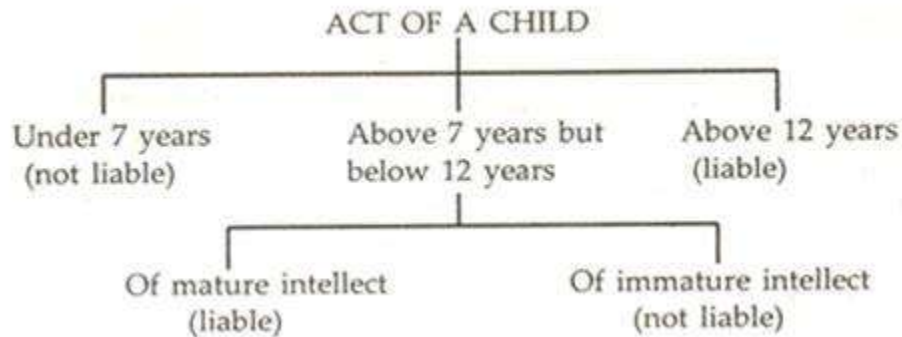
The child who has committed an offence and he or she is under the age of 18 years on the date of commission of the offence is basically called as “ child in conflict with law”. The second sub – category is “ child in need of care and protection” means a child ad defined under Section 14 of the Act.Children Act, 1960 :- Section 2(e) of the Act states “ child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

A child can commit no wrong (i) if he is below 7 years of age as he is at such age presumed to be not endowed with a sufficient maturity of understanding to be able to distinguish right from wrong, or (ii) if he is above 7 and below 12 but too weak in intellect to judge what is right or wrong. The principle of the law may be expressed in tabular form as follows:

¹⁰ www.shareyouressays.com/acts-of-under-section-82-&-83-of-ipc: accessed on June 8th , 2020

¹¹ www.youth.gov/juvenile-justice: accessed on June 12, 2020

¹² www.vikaspedia.in/child-rights-juvenile-justice-care-and-protection-of-children-act-2015: accessed on June 12, 2020



Section 82 says nothing is an offence which is done by a child under seven years of age and Section 83 says nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. United Nations Convention : – The UN Convention on the Rights of Child, 1989 defines that “child” means a human being below the age of eighteen years unless the law declaration applicable to child , majority is attained. These two sections lay down a rule which owing to its origin in the civil law, had long since become established in the criminal systems of all civilized countries. In English Common Law, a child below seven years of age cannot be guilty of any criminal offence whatever may be evidence as to its possessing a guilty state of mind in the ordinary course of nature. A person of such age is absolutely incapable of distinguishing between right and wrong. He is absolutely *doli incapax*. Indian law on this point is the same. If a child is accused of an offence under the Code, proof of the fact that he was at the time below 7 years of age is ipso facto an answer to the prosecution.¹³ The circumstances of a case may disclose such a degree of malice as to justify the *maxim miltia supplet actatem* (Malice supplied defect of years).

Juvenile Justice is the area of criminal law applicable to persons not old enough to be held responsible for criminal acts, In most states, juvenile justice law is applicable to those under 18 years old. Juvenile law is mainly governed by the juvenile justice codes of states. The main goal of the juvenile justice system is rehabilitation rather than punishment. Juvenile justice is administered through a juvenile or family court, however, but juvenile court does not have jurisdiction in cases in which minors are charged as adults. Where parental neglect or loss of control is a problem, the juvenile court may seek out foster homes for the juvenile, treating the child as a ward of the court.¹⁴ The Federal Juvenile Delinquency Act defines juvenile delinquency (any act that is otherwise a crime, but is committed by someone under 18 years of age) and sets forth rules by which state laws must comply with regard to juvenile court procedures and punishments. The purpose of the act is to assist states and local communities with

¹³ www.shareyouressays.com/acts-of-infant-under-sections-82-and-83-of-ipc: accessed on June 11, 2020

¹⁴ www.impactlaw.com/criminal/law/juvenile/glossary: accessed on June 14th, 2020

funding and standards to be used in providing community based preventative services to youths in danger of becoming delinquent, training individuals in occupations providing such services, and providing technical assistance in the field.¹⁵

Juvenile Justice and Constitution of India

The Constitution of India is consider as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided **Directive Principles of State Policies (DPSP)** which acts as general guidelines in framing government policies.¹⁶ Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

1. Right to free and compulsory elementary education for all the children under the age of 6 to 14 years.(Article 21A)
2. Right to be protected from any hazardous employment under the age of fourteen age.(Article 24)
3. Right to be protected from being abused in any form by an adult.(Article 39(e)).
4. Right to be protected from human trafficking and forced bonded labour system.(Article (Article 39)
5. Right to be provided with good nutrition and proper standard of living.(Article 47)
6. Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.¹⁷

¹⁵ www.legalservicesindia.com/article/1031/juvenile-justice-system-&-its-delinquency-in-india: accessed on June 14th, 2020

¹⁶ www.blog.ipleaders.in/juvenile/justice/constitution/of/india: accessed on June 14th, 2020

¹⁷ www.blog.ipleaders.in/juvenile-justice-sytem-india: accessed on June 13th, 2020