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# An Analytical Study of Rehabilitation of Juveniles and Neglected Children in India

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## ABSTRACT

*Children are the living asset of our country it is the duty of the society to save their childhood and nourish it for their best future. Children from vulnerable background are often exposed and neglected by their family, peers, society, teachers etc. The neglected children are either fallen victim to crime or they opt to commit offence. Every time a child is neglected and forced to suffer such abnormalities; the nation loses its future. Juvenile Justice (Care and Protection of Children) Act 2015 is designed to deal with the child in conflict with law and child in need of care and protection. The purpose of JJ Act 2015 is to cater the child through giving him protection, treatment, rehabilitation and development to ensure the best interest of child. And among these rehabilitation of a child is the foremost concern so that the best environment could be provided to that child in a roof. However, institutionalization is considered the last resort taken by Juvenile Justice Board or Child Welfare Committee after conducting due enquiry. In this paper we will discuss about the rights of child, responsibilities of JJB and CWC and rehabilitation process of child falling in either of the categories.*

**Keywords:** Juvenile Justice (Care and Protection of Children) Act 2015, child in conflict with law, child in need of care and protection, Rehabilitation.

## I. INTRODUCTION

*“Children are the world’s most valuable resource and its best hope for the future”*

- John F. Kennedy

Child being the most vulnerable section of the society has been abused on several occasions and go through various atrocities such as trafficking, begging, child labour, desertion, sexual abuse etc. They have been neglected and their basic needs have been compromised one after the other. Every child decides the future of a state and where a child’s desires a suppressed and are left unacknowledged, then the fate of nation is in grave danger. However, children rights have been recognised in the Constitution of India and other statutes too so that children may no longer remain the neglected. Among them some of the children are recognised as juveniles as these

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children take the step towards committing crime. Such children are tagged as *child in conflict with law* (CCL) which means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence under section 2(13) of The Juvenile Justice (Care and Protection of Children) Act, 2015. The term 'Juvenile' has been defined as child below the age of eighteen years under section 2(35) of JJ Act, 2015. According to the data revealed by NCRB for the year 2022 the juveniles were found to be involved in 2436 criminal cases in national capital Delhi, followed by Chennai with 521 criminal cases. Whereas, Ahmedabad had 433 and Mumbai located 363. In ancient period, lenient approach was observed before juvenile delinquents thinking them to be young-bloods reacting impulsively due to hormonal changes, effect of puberty or emerging masculinity. Today also it is significantly observed that children between the age group of 15 to below 18 years are more aggressive and if not taken care of their emotions, then they are often prone to get befriend with groups having criminal mindsets and involve in criminal activities such as pickpocketing, harassment, assault, snatching, theft and sometimes murder. Though the children with criminal approach are threats to society like adult criminals but it should not be forgotten that they are minors and require attention to correct themselves. For such juveniles, correction homes play an important role where CCL are placed and they are given an opportunity to correct their behaviour according to the society.

## II. DEFINITION OF CHILD

According to Black's Law Dictionary "*a child must be less than 14 years old. Barnhill's Adm'r v. Mt. Morgan Coal Co., D.C.Ky., 215 F. 608, 610. A minor more than 15 years of age is not included within the meaning of the term. Paulk & Fossil v. Lee, 31 Ga.App. 629, 121 S.E. 845.*"<sup>3</sup>

Article 1 of Convention on the Rights of the Child, 1989 says "*child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*"<sup>4</sup>

In The Child Labour (Protection and Regulation) Act, 1986 s. 2(ii) states that "*child means a person who has not completed his fourteenth year of age.*"<sup>5</sup>

Whereas s. 2(b) of The Prohibitions of Child Marriage Act, 2006 states, "*child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed*

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<sup>3</sup> Black's law Dictionary, Fourth Edition, 1968

<sup>4</sup> Convention on the Rights of the Child, 1989

<sup>5</sup> The Child Labour (Protection and Regulation) Act, 1986

*eighteen years of age.*"<sup>6</sup>

However, The Juvenile Justice (Care and Protection of Children) Act, 2015 provides gender-neutral definition of child under *section 2(12)* which "*means a person who has not completed eighteen years of age.*"<sup>7</sup>

*"Delinquent child" means a child who has been found to have committed an offence (s. 2(j) of The Children Act, 1960).*<sup>8</sup>

But it is a mystery to apply the accurate definition of a child as its sometimes gets mix with the definition of minor. Every law has been made based upon their objectives and therefore the definition of child is different but it cannot be denied that it has created an ambiguity and confusion. The definition of child loses the uniformity with respect to different statutes. Infact, a child is always minor but a minor is not always a child.

### III. INTERNATIONAL RECOGNITION OF THE RIGHTS OF CHILDREN

- *United Nations Convention on the Rights of the Child (UNCRC)*<sup>9</sup>

Adopted by UN General Assembly in 1989, the UNCRC is a comprehensive and internationally binding agreement which protect the rights of children. It has outlined the basic human rights, classified into political, social, economic, and cultural rights of each child.<sup>10</sup>

The 'Protection Rights' enshrined therein ensure to safeguard children against all forms of abuse, neglect, and exploitation. It also provides special care for refugee children, safeguards for children in the criminal justice system, protecting children from engaging in employment and providing rehabilitation to children who have been the victim of such exploitation or abuse of any kind.<sup>11</sup>

*Article 3:* Ensures the best interests of the Child which is a primary consideration for all actions of public as well as private social welfare institutions; courts of law; administrative authorities; legislative bodies; States parties should confirm the standards prescribed by the institutions for care of children.

### IV. CONSTITUTIONAL RIGHTS OF CHILD

The supreme law of the land- Constitution of India has taken care of the rights of every section

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<sup>6</sup> The Prohibitions of Child Marriage Act, 2006

<sup>7</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>8</sup> The Children Act, 1960.

<sup>9</sup> UNCRC, *Article 3*

<sup>10</sup> Delhi State Legal Services Authority

<sup>11</sup> *Id.*

of society and every individual including children. The provisions which ensure the rights of children are:

**Fundamental Rights-** *Article 14* which ensures right to equality provides that State is not to deny to any person equality before law (here the rights of the child are also included). It confers powers and impose duties under *article 15(3)*, *article 39(e) and (f)*, *article 45* and *article 47*, on state to ensure that all the needs of children are met and that their basic human rights remain fully protected.

Similarly, *article 19(1)* ensures freedom of speech, *article 21A (inserted in 86<sup>th</sup> amendment)* mandatorily provides free and compulsory education to children between 6 to 14 years of age. *Article 24* prohibits the employment of children in any factory or mine or engaged in any other hazardous employment.

**Directive principles of state policy (DPSP)** being non-justiciable shares certain guidelines to both Central and State government to make laws for the benefit of people living in India. *Article 39(e)* guides the state to ensure that children of any age group are not forced to enter in avocations unsuited to their age or strength. *Article 39(f)* provides protection against exploitation; *article 45* to provide early childhood care and education for children till the age of six.

Further, *Article 39A* lays down the foundation of State sponsored Free Legal Services to weaker and vulnerable sections of the society. Accordingly, the Delhi State Legal Services Authority (hereinafter "DSLISA") was constituted under the Legal Services Authorities Act, 1987.

## V. LEGISLATIONS FOR CARE AND PROTECTION OF CHILD

children being vulnerable require attention, awareness and protective environment which may help them to grow as good human being and which could develop basic humility in their behaviour. For this, government introduced statutes time to time which were child centric and gender neutral. *The children Act 1960* was one among them which aimed to *provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories. But later on as the society grew and population increased, due to this crime exceeded and children from vulnerable families opted to commit offences against society due to lack of education, hormonal changes, aggressiveness, more number of siblings/members in a family and poverty. Therefore, the government was forced to introduce Juvenile Justice (Care and Protection of Children) Act 2000 for juveniles.*

*The devastating case of Nirbhaya shook the whole country reason being the active involvement of a minor, which compelled the parliament to create new law and introduced Juvenile Justice (Care and Protection of Children) Act 2015 passed by Lok Sabha and Rajya Sabha which has replaced Juvenile Justice (Care and Protection of Children) Act 2000.*

## **VI. DIFFERENCE BETWEEN CHILD IN CONFLICT WITH LAW AND CHILD IN NEED OF CARE AND PROTECTION**

Child in conflict with law commonly known as CCL means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence defined under *section 2(13)* of JJ Act 2015. The offence encompasses a broad spectrum of offences from petty offences under *section 2(45)*; to serious crime *{section 2(54)}* or heinous crime *{section 2(33)}*.

Such juveniles are produced before Juvenile Justice Board (JJB) as per JJ Act 2015 and it allows JJB to decide whether the CCL should be treated as an adult or not and on that basis such CCL is either acquitted, sent for judicial custody or to correction home.

Whereas, Child in need of care and protection (CNCP) is defined under *section 2(14)* of JJ Act 2015 and given an exhaustive list for CNCP as under:

- (i) who is found homeless; or*
- (ii) who is engaged into forced labour, begging or living on streets; or*
- (iii) Who has been (a) injured, exploited, abused or neglected or (b) threatened to be killed, injure, exploit; by the person with whom the child was living in a shared household; or*
- (iv) who have no support and is mentally or physically challenged or suffering from terminal or incurable disease; or*
- (v) whose parent is unfit or incapacitated to care and protect the child; or*
- (vi) child who is abandoned or surrendered; or*
- (vii) missing or run-away child; or*
- (viii) who is sexually abused; or*
- (ix) who is inducted into drug abuse or trafficking; or*
- (x) who is abused for unconscionable gains; or*
- (xi) who is victim of armed conflict, civil unrest or natural calamity; or*

(xii) *who at imminent risk of marriage before attaining the age of marriage;*

Whoever falls under any of the above category is often known as ‘neglected child’ and should be produced before Child Welfare Committee (CWC). Such neglected child be either rehabilitated while placing him/her in Child Care Institutions (CCI) or given financial assistance or restored to their family.

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

The act was introduced for catering the basic needs of child in conflict with law and child in need of care and protection 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. The act received the assent of President on 31 December 2015 and enforced on 15 January 2016. The Act of 2015 replaced the Juvenile Justice (Care And Protection Of Children) Act, 2000.

The Act of 2015 majorly works upon three main principles:

1. The young offenders should not be tried in court but rather corrected for their offence or omissions.
2. Instead of punishing juveniles, they must be given an opportunity to reform.
3. Trial for a CCL should encourage non-penal treatment and be supported by group action agencies such as Observation Homes, correction homes and Special Homes.

“CCL should be treated as children in difficult circumstances and the approach of the juvenile justice system should be aimed at addressing the vulnerabilities of children and ensuring their rehabilitation.”<sup>12</sup>

*Under Section 3*, there are certain general principles which need to be followed by the Board, the Committee or agencies, namely:

- (i) presumption of innocence; (ii) Principle of dignity and worth; (iii) participation principle; (iv) Principle of best interest; (v) family responsibility; (vi) Principle of safety; (vii) Positive measures; (viii) non-stigmatising semantics; (ix) non-waiver of rights; (x) equality and non-discrimination; (xi) right to privacy and confidentiality; (xii) institutionalisation as a measure of last resort; (xiii) repatriation and restoration; (xiv) Principle of fresh start; (xv) diversion; (xvi) natural justice

<sup>12</sup> Rehabilitation Of Children in Conflict with The Law- Possibilities and Opportunities, <https://wcd.nic.in/>

The Juvenile Justice Board has been constituted under *section 4* which is a competent authority for exercising powers and discharging its functions relating to CCL. A Board shall consist of three members i.e. Metropolitan Magistrate or a Judicial Magistrate of First Class with two social workers.

*Section 8(3)* provides certain functions and responsibilities of JJB which are also the rights of CCL such as to ensure: (a) in every step of process, participation of the child and the parent; (b) protect the child's rights throughout the proceedings; (c) legal aid for the child remains accessible; (d) if necessary, facilitate the child with provide an interpreter or translator; (f) speedy trial specified in *section 14*; (g) transfer the alleged child, thereby recognising that a child in CCL can also be a CNCP simultaneously.

Whenever an alleged child is apprehended, he may be sent to an observation home or place of safety, *Section 10(2)(ii)*. A child who has alleged to commit bailable or non-bailable offence can be released on bail with or without surety. In case the child doesn't get bail then the child shall be placed in observation home by officer in charge till he is brought before Board and could be kept further in observation home or any place of safety till the pendency of the case, *section 11*.

Pursuant to the decision of division bench of Hon'ble High Court of Delhi in WP(c) no. 6830 of 2007 titled as "*Child Welfare Committee Versus. Govt. of NCT of Delhi and others*", dated 03.09.2008, the Delhi State Legal Services Authority had appointed Legal Services Advocates at each of the eight Child Welfare Committees (recently ten CWCs) operating and functioning in Delhi, with a view to safeguard the interest of CNCP as well as their parents to determine whether they have been abused, and if so, to identify, whether any gang or organised crime is involved in their trafficking. Then CNCP are produced before Child Welfare Committees (CWC) which are statutory authorities vested with the powers of Metropolitan Magistrate and are empowered to take decisions for care, protection, rehabilitation, restoration, and social reintegration of such children.

## VIII. REHABILITATION OF JUVENILES

"The process of Rehabilitation shall also secure the Rights of the CCL and every CCL should be granted rights, including but not limited to: (a) Humane treatment (b) No corporal punishment (c) Separation from adult criminals, if detained (d) Access to legal assistance (e) Bail and release on recognizance (f) Privacy (g) Diversion, if qualified (h) Proportionate judgment (i) Restrictions on liberty kept to a desirable minimum (j) Automatic suspension of sentence (k) Probation, if qualified (l) Confidentiality of proceedings (m) Right against



discrimination (n) Constitutional rights”<sup>13</sup>.

Studies have shown that the children alleged for committing crime are better given emotional and psychological involvement by engaging them in various activities which may shapeup their skills. It is a kind of rehabilitation technique and not to consider them troublesome child, trouble makers or problem makers. Infact, the JJ Act 2015 has taken a clear departure from criminal justice model of punishment and adopted a reformatory approach as punishing them or keeping such juveniles in jail along with adult offenders could affect the possibility of reformation of children under growing age where their capacities are still being built and in the process of development.

“Bail is the rule and jail is an exception” underlines the principle that individuals are presumed innocent until proven guilty. Following the above statement, *section 3(xii)* instructs to follow the principle of institutionalisation as a measure of last resort should be observed after making due inquiry with respect to both CCL and CNCP/neglected child.

Similarly *section 18* sub-section 1 of JJ Act 2015 provides child found to be CCL, the Board may order— (a) allow the child to go home after advice or admonition; (b) the child to participate in group counselling; (c) the child to indulge in community service; (d) to pay fine; (e) release the child on probation of good conduct through executing a bond with or without surety; (f) release the child on probation of good conduct and place him under any fit facility not exceeding three years; (g) place the child to a special home, not exceeding three years, for providing reformatory:

(2) the Board may, in addition pass orders to attend— (i) school; or (ii) vocational training centre; or (iii) therapeutic centre; or (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or (v) place or attend de-addiction programme.

It is to be noted that rehabilitation is one of the crucial steps taken by Board by which a CCL could be sent to protected atmosphere which could allow him to go back to society and prevent recidivism. However, the rehabilitation measures also needs to be distinct for CCL who are under institutional care and the ones who have been released from the institution. An extra focus is required by CCLs for rehabilitation and re-integration into the society in the form of sponsorship, foster care and aftercare, to control the juvenile crimes. The preventive programmes can be classified as (a) *pure prevention or primary prevention*, aims to restrain delinquency before it takes place, and (b) *rehabilitative prevention or secondary prevention*,

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<sup>13</sup> Id at 10.

deals with youngsters who have been adjudicated delinquents by the courts.

Capacity building for stakeholders including family, school and neighbourhood, such as:

- i. Conduct frequent awareness programmes at community level for children and adults;
- ii. Develop a community vigilance team, Counselling units etc.;
- iii. Strengthen Youth clubs and youth volunteers;
- iv. Conduct regular meetings of Child Protection Committees constituted;
- v. Lead research to find out the ground cause of juvenile crimes so that appropriate interventions can be put in place.

## **IX. REHABILITATION OF NEGLECTED CHILD OR CHILD IN NEED OF CARE AND PROTECTION**

The neglected children are commonly named as Child in need of care and protection (CNCP) and they are defined under *section 2(14)* JJ Act 2015. The children who specifically falls under the category of CNCP, they are brought before Child Welfare Committee constituted under section 27. It consists of a chairperson and four members. The committee has the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection (*section 29*). *Section 30* discusses about the functions and responsibilities of Committee and committee may pass certain orders regarding CNCP under *section 37(1)(b)* *may restore the child to parents or guardian; (c) place the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption; (d) placement of the child with fit person for long term or temporary care; (e) foster care orders under section 44; (f) sponsorship orders under section 45; (g) immediate shelter and services such as medical attention, psychiatric and psychological; (h) declare the child legally free for adoption (2) The Committee may also pass orders for — (i) declaration of fit persons for foster care; (ii) getting after care support.*

*Rule 65 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016* sets the guidelines for Rehabilitation Cum Placement Officer designated in Child Care Institutions, including place of safety has to perform the following functions:<sup>14</sup>

- i. *Identify the skills of the children placed in CCI;*
- ii. *Link the child children to agencies that offer vocational training services along with job opportunities or placement at the end of the course;*

<sup>14</sup> Rule 65, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

- iii. *Attaching the child with sponsorship schemes to support self-employment;*
- iv. *coordinate with agencies, individuals, corporates, recognised nongovernmental organisations and other funding agencies to set up vocational training units or workshops in CCIs as per age, aptitude, interest and ability;*
- v. *Mobilise voluntary vocational instructors in CCIs;*
- vi. *Facilitate financial and marketing support for self-employment;*
- vii. *Prepare rehabilitation plans;*
- viii. *Maintain the Rehabilitation Card in Form 14 and monitor the progress of child;*
- ix. *Facilitate the child with certificates on completion of the education or vocational training courses;*
- x. *Ensure placement of each eligible child;*
- xi. *Organise workshops on Rehabilitation programmes spread awareness such schemes;*
- xii. *In order to encourage the soft skills among children and stress management; Organise workshops; and*
- xiii. *Provide further assistance to children who have been already placed and also to monitor their progress.*

JJ Act 2015 has a modest towards crime committed by a child unlike other countries and categorise them into compoundable offence on routine bases including other petty offences. But there are certain preconditions for adopting restorative practice in a given case are: 1. The acceptance of commission of offence by CCL; 2. The CCL must be ready to accept responsibility for correcting the wrong own self; 3. The CCL must apologise to the victim 4. The victim will decide in what they want the CCL to do; 5. It must be focused on making good and correct the harm caused. 6. The victim should not be demanding something which is beyond the means of the CCL to fulfil.

## **X. CONCLUSION**

Children are the living assets of our state and it is the duty of our country to protect their rights. Though from recent years juvenile crimes are booming but we need to understand that none of the child is a born criminal. It's the circumstances or improper approach towards him that has converted him to commit an offence without knowing the consequences. They should be seen through compassion lenses. Their basic human rights need to be taken care of to build their future. And in order to rehabilitate and enforce social reintegration, children placed in CCI,

special homes, place of safety, children's home are required to observe discipline among inmates, encourage yoga-meditation classes on regular bases, personality development course, regular counselling, provide vocational and skill training, computer education, art and craft therapy, cultural gatherings, dance drama practice, farming and gardening, sports-games and recreation, maintain ICP, rehabilitation through professional course, draw post-release follow-up.

From the above discussion it is understood that child could be full of odds may it be CCL or CNCP but the society need to be compassionate towards them as they are neglected and seeking right direction to perform according to the norms of society. Stigmas attached to children such as thief, rapist, bastard, illegitimate, murderer, etc. could raise a bad character in them. Therefore, it should be kept in mind a child has his own dignity which should not be compromised. It is their human right and their dignity which could develop a positive change and that change is required for the growth and development of our country. Undermining the value of a child undermines the value of our nation. Children are the founders of future and role of social workers becomes all the more crucial as children need to be provided with continuous help even after their rehabilitation to prevent their relapse. Saving the pride of children is not an individual responsibility of NGOs or stakeholders, infact it is a collective responsibility of every adult citizen.

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