

THE JUVENILE JUSTICE

The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. This law, brought in compliance of Child Rights Convention, repealed the earlier Juvenile Justice Act of 1986. This Act has been further amended in year 2006 and 2010. Government of India is once again contemplating bringing further amendments and a review committee has been constituted by Ministry of Women and Child Development which is reviewing the existing legislation.

However the implementation is a very serious concern even in year 2012 and Supreme Court of India is constantly looking into the implementation of this law in *Sampurna Behrua Versus Union of India*.

A separate petition titled *Deepika Thusso Versus State of Jammu and Kashmir* is also pending consideration before Supreme Court on implementation of Juvenile Justice Act, 1995 which is applicable in the State of Jammu & Kashmir.

Based on a resolution passed in year 2006 and reiterated again in 2009 in the Conference of Chief Justices of India, several High Courts have constituted "Juvenile Justice Committees" which are monitoring committees headed by sitting Judges of High Courts. These Committees supervise and monitor implementation of Juvenile Justice Act in their Jurisdiction and have been very effective in improving state of implementation. Juvenile Justice Committee of Delhi High Court is considered a model in this regard.

History

The first legislation on juvenile justice in India came in 1850 with the *Apprentice Act* which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the *Reformatory Schools Act, 1897*, the *Indian Jail Committee* and later the Children Act of 1960. The Juvenile Justice Bill was first introduced in the Lok Sabha on 22 August 1986.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

(Act No. 56 of 2000) - [30th December 2000]

An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

WHEREAS the Constitution has, in several provisions, including clause (3) of article 15, clauses

(e) and (f) of article 39, articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected;

CONSTITUTIONAL PROVISIONS

15/3	State to make special provisions for women and children.
21A	Right to education
23	Human trafficking and forced labour
24	Child labour
39	Healthy Development of children
45	Early childhood care +education
47	State to raise level of nutrition and standard of living

AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989; AND WHEREAS, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child;

AND WHEREAS, the Convention on the Rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings;

AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992;

AND WHEREAS, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments.

This Act, further amended in 2006 and is now known as the Juvenile Justice (Care and Protection) Act, 2000.

Features of Juvenile Justice Act

- Juvenile cannot be kept in police lock-up or jail.
- Juveniles cannot be treated or sentenced in the same manner as the adult criminals.
- Cases involving juveniles are tried by juvenile Justice board and not by regular courts.
- Juvenile Justice board consists of magistrate and two social workers.
- The case is decided by majority.
- If a Juvenile criminal is convicted, at maximum he gets three years in a reform facility
- Thereafter he must be released on probation.
- Juvenile can only be kept at the special home till he attains 18 years of age.
- Capital punishment (hanging) or life imprisonment cannot be imposed on a Juvenile offender, irrespective of the gravity of the crime.

Special Juvenile Police Unit

- JJ Act has provision for setting up such unit in every police station.
- Police officer of ASI or above rank shall work as as Child Welfare Officer.

- He shall be assisted by two local NGOs.
- These units are supposed to identify the children who are vulnerable to engaging in criminal behavior, and extend help to them.
- But in most of the districts in India, such police units are either not formed, or they're non-functional.

Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006), states that: "Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act-(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. (2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees".

While provisions relating to the Juveniles in conflict with law are very important from jurisprudence point of view, this Act becomes very crucial for Children in Need of Care and Protection, as they are very large in number. Section 29 of the Act provides constituting five members District (Administrative unit in India) level quasi-judicial body "Child Welfare Committee". One of the members is designated as Chairperson. At least one of the members shall be woman. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the 'Children in Need of Care and Protection' as well as to provide for their basic needs and protection of human rights.

Hon'ble Supreme Court of India vide Judgement in Hari Ram Versus State of Rajasthan confirmed retrospective effect of Juvenile Justice Act, 2000 in year 2009, which was earlier confirmed by some of the High Courts in India, particularly by Bombay High Court.

Pursuant to an order of Delhi High Court, Juvenile Justice Act was further amended in year 2011 whereby certain provisions which were discriminatory to the persons affected from leprosy have been deleted.

Ministry of Women and Child Development is contemplating bringing several amendments in year 2012. A draft Bill in this regard has been prepared and is pending before Ministry of Law and Justice for scrutiny.

Why in News/Controversy?

- One of the rapist in Delhi case, claims to be a Juvenile.
- Delhi police will file a separate charge sheet against him in a juvenile court.
- Even if he is convicted, he'll get maximum 3 years stay in a Juvenile reform facility.
- Once he attains majority (18+), he cannot be kept with minor convicts at Juvenile reform facility AND he can be sent to jail with adult convicts. So he'll be released.
- This so called "juvenile accused", had beat that Delhi gangrape-victim with an iron rod mercilessly. Yet the law calls him a juvenile and he'll be released with very light punishment.
- Therefore, people are angry.

Reforms Sought

- The age limit should be lowered for juvenile criminals.
- In case of heinous crimes such as rape and murder, the Juvenile criminals should be tried just like adult criminals.

- The JJ Act provides that a Juvenile Criminal be placed in a reform facility for maximum 3 years.
- But there is no logical or scientific reason which shows that a juvenile will be “reformed” within three years.
- In the case of the Delhi rapist, there is no assurance he will be reformed in three years and will not pose a threat to society for the rest of his life once released.

Anti-arguments (no reform needed)

The age limit for juvenile justice should not be reduced because

- Most of these children grow up in an environment where they are neglected or face mental, physical or sexual abuse themselves.
- These happen because most of the children belong to the poorest of the poor sections of society and grow up watching violence and abuse in their families and neighbourhoods.
- Throwing them in a jail will not help in their rehabilitation.
- Main reason for juvenile crime is the failure to protect vulnerable children from falling under the influence of drugs or in the wrong company of adults.
- Delhi alone has around 80,000 children on its streets.
- When children are living on the streets or in pitiable conditions, they can easily come under the influence of criminal-minded adults.

On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India.

The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms. We summarise the key recommendations of the Committee.

Rape: The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape.

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

Sexual assault: Currently, “assault or use of criminal force to a woman with the intent to outrage her modesty” is punishable under Section 354 of the IPC with 2 years imprisonment. The term outraging the modesty of a woman is not defined in the IPC. Thus, where penetration cannot be proved, the offence is categorized as defined under Section 354 of the IPC.

The Committee recommended that non-penetrative forms of sexual contact should be regarded as sexual assault. The offence of sexual assault should be defined so as to include all forms of non-consensual non-penetrative touching of a sexual nature. The sexual nature of an act should be determined on the basis of the circumstances. Sexual gratification as a motive for the act should not be prerequisite for proving the offence. The offence should be punishable with 5 years of imprisonment, or fine, or both.

Use of criminal force to disrobe a woman should be punishable with 3 to 7 years of imprisonment.

Verbal sexual assault: At present, use of words or gestures to “insult a woman’s modesty” is punishable with 1 year of imprisonment or fine or both under Section 509 of the IPC. This section should be repealed. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 1 year imprisonment or fine or both.

Sexual harassment: Some of the key recommendations made by the Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 that is pending in Parliament are provided below:

- Domestic workers should be included within the purview of the Bill.
- Under the Bill the complainant and the respondent are first required to attempt conciliation. This is contrary to the Supreme Court judgment in Vishakha vs. State of Rajasthan which aimed to secure a safe workplace to women.
- The employer should pay compensation to the woman who has suffered sexual harassment.
- The Bill requires the employer to institute an internal complaints committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints.

Acid attack: The Committee opined that the offence should not be clubbed under the provisions of grievous hurt which is punishable with 7 years imprisonment under the IPC. It noted that the offence was addressed in the Criminal Laws Amendment Bill, 2012 which is currently pending in Parliament. The Bill prescribes a punishment of imprisonment for 10 years or life. It recommended that the central and state government create a corpus to compensate victims of crimes against women.

Offences against women in conflict areas: The continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction by the central government for initiating prosecution against armed forces personnel. The Committee has recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offences. Training of armed personnel should be reoriented to emphasise strict observance of orders in this regard by armed personnel.

Trafficking: The Committee noted that the Immoral Trafficking Prevention Act, 1956 did not define trafficking comprehensively since it only criminalised trafficking for the purpose of prostitution. It recommended that the provisions of the IPC on slavery be amended to criminalise trafficking by threat, force or inducement. It also recommended criminalising employment of a trafficked person. The juvenile and women protective homes should be placed under the legal guardianship of High Courts and steps should be taken to reintegrate the victims into society.

Child sexual abuse: The Committee has recommended that the terms ‘harm’ and ‘health’ be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health, respectively, of the juvenile.

Punishment for crimes against women: The Committee rejected the proposal for chemical castration as it fails to treat the social foundations of rape. It opined that death penalty should not be

awarded for the offence of rape as there was considerable evidence that death penalty was not a deterrence to serious crimes. It recommended life imprisonment for rape.

Medical examination of a rape victim: The Committee has recommended the discontinuation of the two-finger test which is conducted to determine the laxity of the vaginal muscles. The Supreme Court has through various judgments held that the two-finger test must not be conducted and that the previous sexual experience of the victim should not be relied upon for determining the consent or quality of consent given by the victim.

Police reforms: The Committee has recommended certain steps to reform the police. These include establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the state. The Commission would lay down broad policy guidelines so that the Police acts according to the law. A Police Establishment Board should be established to decide all transfers, postings and promotions of officers. Director General of Police and Inspector General of Police should have a minimum tenure of 2 years.

Reforms in management of cases related to crime against women:

- A Rape Crisis Cell should be set up. The Cell should be immediately notified when an FIR in relation to sexual assault is made. The Cell must provide legal assistance to the victim.
- All police stations should have CCTVs at the entrance and in the questioning room.
- A complainant should be able to file FIRs online.
- Police officers should be duty bound to assist victims of sexual offences irrespective of the crime's jurisdiction.
- Members of the public who help the victims should not be treated as wrong doers.
- The police should be trained to deal with sexual offences appropriately.
- Number of police personnel should be increased. Community policing should be developed by providing training to volunteers.

Electoral reforms: The Committee recommended the amendment of the Representation of People Act, 1951. Currently, the Act provides for disqualification of candidates for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The Committee was of the opinion that filing of charge sheet and cognizance by the Court was sufficient for disqualification of a candidate under the Act. It further recommended that candidates should be disqualified for committing sexual offences.

Education reforms: The Committee has recommended that children's experiences should not be gendered. It has recommended that sexuality education should be imparted to children. Adult literacy programs are necessary for gender empowerment.

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Standing firmly against lowering of the age criteria for juveniles accused of heinous crimes including rape, the Justice J.S. Verma Committee report on 'Amendments to Criminal Law' has noted that "the Juvenile Justice Act has failed miserably to protect the children in the country. We cannot hold the child responsible for a crime before first providing to him/her the basic rights given to him by the Indian Constitution."

The report recommended the creation of a new constitutional authority akin to the Comptroller and Auditor-General for education and non-discrimination in respect of women and children.