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## JUVENILE JUSTICE IN THE CONTEXT OF FAMILY DISPUTES

~ *Aashish Gupta*

### Introduction

The Juvenile Justice (Care and Protection of Children) Act consists of provisions for children found in conflict with the law in India. It also provides for the 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.<sup>1</sup> A juvenile felon is an adolescent who has been convicted or has been found condemned for an offence that is punishable by law.<sup>2</sup> Such a juvenile is known as Child in Conflict with Law (CCL) according to juvenile justice (Care and Protection of Children) Act, 2015.<sup>3</sup> The law also addresses the rising number of offenses that minors in trouble with the law and those between the ages of 16 and 18 have committed in recent years. Hence, the Juvenile Justice (Care and Protection of Children) Act, 2015 went into effect on January 15, 2016 repealing the Juvenile Justice (Care and Protection of Children) Act, 2000.

### Historical Background

The act upon the juvenile justice was first passed in 1986 as “The Juvenile Justice Act, 1986”. It was the first central law on juvenile justice that provided a uniform law which would be applicable for the whole country in this respect. Later, by the end of the 20<sup>th</sup> century, the government of India ratified the UN Convention on the Rights of the Child, 1989 and a need was felt to update the existing laws according to the prescribed standards of the convention.

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<sup>1</sup> Ved Kumari, The Juvenile Justice Act 2015-Critical Understanding, vol.58 no.1, Journal of the Indian Law Institute, 83–103, (2016), <https://www.jstor.org/stable/45163062>.

<sup>2</sup> IPleaders, <https://blog.ipleaders.in/introduction-overview-juvenile-justice-care-protection-act-2015/> (26<sup>th</sup> May, 2024).

<sup>3</sup> IPleaders, <https://blog.ipleaders.in/introduction-overview-juvenile-justice-care-protection-act-2015/> (26<sup>th</sup> May, 2024).

Hence, the JJA, 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted.

The Juvenile Justice (Care and Protection of Children) Act, 2000 was later amended for implementational issues and procedural delays with adoption, etc. This Act of 2000 was mainly challenged under the frightful incident of “Nirbhaya Delhi Gang Rape Case” in 2012 which shocked the whole nation and sparked debates. The main reason and issue of the debate was the involvement of an accused, who was just six months short to attain the age of 18 years. This accused who was still a juvenile was sentenced to three years in a reformation home as per the provisions of the Act of 2000. On appeals, the Delhi High Court claimed itself to be bound by the provisions of this law and refused to extend the sentence of this accused. This led to a widespread feeling of failure of justice among the masses and the family of the victim. 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) Act, 2015”.<sup>4</sup> This Act led to the setup of Juvenile Justice Board (JJB) which –

- Evaluates the juvenile’s mental and physical capacity to commit the offence.
- Takes into account their capacity to comprehend the consequences of the offense.
- Examines the circumstances in which the offence was allegedly committed.

This also led to the treatment of juveniles who are above the age of 16 years and are involved in a heinous crime as adults after a preliminary assessment by Juvenile Justice Board. If the JJB determines that a certain juvenile committed a heinous crime as an adult, they may order the trial to proceed in an adult court.

### **Juvenile justice in context of family disputes**

Family problems are a significant contributing factor to the rise in “juvenile delinquency”. A child's first attachment is to their family. Youngsters generally pick up knowledge from what they see around them. Juvenile delinquency can result from family disintegration, which can occur due to ongoing fights between parents, a lack of love and affection, or broken families, among other things. These factors can hinder a child's mental, physical, and emotional development. A youngster may become aggressive and experience other bad emotions, which

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<sup>4</sup> IPleaders, <https://blog.ipleaders.in/juvenile-justice-system-india/> (26<sup>th</sup> May, 2024).

may lead to criminal activity, if they believe that their own parents or other family members have abandoned them.<sup>5</sup>

The main purpose of the juvenile justice system is that it provides a transformative experience for young people so that they can make better decisions in life, to know the difference between right and wrong and to develop into healthy adults. For this purpose, an effective family engagement is critical for achieving these outcomes.<sup>6</sup> But, in various countries, families struggle to fully support young people in the system, and juveniles when alienated from their source of support, face increased likelihood of juvenile delinquency. Families are central to a young person's support network, sense of identity and healthy development and when that particular young mind is stripped of it, it may result them to seek unlawful conduct.

Juvenile justice in the context of family disputes is a complex issue that involves the intersection of family law and juvenile law. It addresses the legal processes and protections for minors who are involved in disputes within the family, including custody battles, allegations of abuse or neglect, and delinquency proceedings. For this, Juvenile Justice (Care and Protection) Act, 2015 contains various chapters such as – Chapter IV “Procedure in relation to children in conflict with law”, Chapter VII “Rehabilitation and social re-integration”, etc.

Mentioned below are some of the possible ways to resolve disputes regarding the juveniles and to promote their social re-integration and rehabilitation –

### **Custody and Visitation Disputes:**

Section 37 of Juvenile Justice (Care and Protection) Act, 2015 contains the provisions regarding the custody of a juvenile in conflict with law. The best interests of the child are the primary consideration in these cases. When parents are in conflict over custody or visitation rights, the juvenile justice system may become involved if allegations of abuse, neglect, or delinquency arise. Also, under Section 9 (4) it has been mentioned that, in case a person is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.<sup>7</sup> Courts

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<sup>5</sup> IPleaders, [https://blog.ipleaders.in/juvenile-delinquency-related-legislations-india/#Family\\_issues](https://blog.ipleaders.in/juvenile-delinquency-related-legislations-india/#Family_issues) (26<sup>th</sup> May, 2024).

<sup>6</sup> Amani, Bita, Milburn, Norweeta G., Lopez, Susana, Young-Brinn, Angela, Castro, Lourdes, Lee, Alex, & Bath, Eraka, Families and the juvenile justice system, vol.41 no.1, 55–63, Family & Community Health, (2018), <https://doi.org/10.1097/fch.0000000000000172>.

<sup>7</sup> The Juvenile Justice (Care And Protection Of Children) Act, 2015, IndiaCode, Page no. - 14, (2015), <https://www.indiacode.nic.in/bitstream/123456789/8864/1/201602.juvenile2015pdf.pdf>.

may appoint child advocates to represent the child's interests and ensure their voice is heard. In that manner, the disputes regarding juvenile's custody may be resolved.

### **Allegations of Abuse or Neglect:**

Section 75 of Juvenile Justice (Care and Protection) Act, 2015 consists of provisions pertaining to neglect of children. It says that – “Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both”.<sup>8</sup> Child Protective Services or similar agencies often intervene when there are allegations of abuse or neglect within a family. Juvenile courts should oversee these cases to determine whether the child should be removed from the home, placed in foster care, or if family reunification services should be provided.<sup>9</sup> The court's goal is typically to ensure the child's safety and, where possible, to facilitate family reunification, provided it is safe and, in the child's best interest. This may lead to protection of juveniles from abuse or neglect.

### **Rehabilitation:**

Section 39 of Juvenile Justice (Care and Protection) Act, 2015 talks about the rehabilitation of juveniles who are found in conflict with the law. Family disputes can sometimes contribute to delinquent behaviour of minors, such as in situations of domestic violence or parental substance abuse. The juvenile justice system takes care of the cases where a juvenile is suspected of committing a crime as a result of these disputes. This system focuses more on rehabilitation rather than punishment, aiming to address underlying issues, including family dynamics, that may contribute to the minor's such behaviour. The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family-based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care.<sup>10</sup>

### **Family Mediation and Counselling:**

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<sup>8</sup> The Juvenile Justice (Care And Protection Of Children) Act, 2015, IndiaCode, Page no. - 35, (2015), <https://www.indiacode.nic.in/bitstream/123456789/8864/1/201602.juvenile2015pdf.pdf>.

<sup>9</sup> Sage Journals, <https://doi.org/10.1177/0306624x241240697> (27th May, 2024).

<sup>10</sup> The Juvenile Justice (Care And Protection Of Children) Act, 2015, IndiaCode, Page no. - 24, (2015), <https://www.indiacode.nic.in/bitstream/123456789/8864/1/201602.juvenile2015pdf.pdf>.

Section 18 of Juvenile Justice (Care and Protection) Act, 2015 consists of orders regarding child found to be in conflict with law. This section consists of various programs that the court mandates a guilty juvenile to go through, some of them are – group counselling, community service, etc. Many jurisdictions also encourage or mandate mediation and counselling to resolve family disputes, aiming to minimize the impact on the child and avoid escalation to juvenile court involvement. Programs and services may be provided to support families in resolving conflicts and improving communication and relationships.<sup>11</sup> Counselling may also be used to correct the behaviour of a certain juvenile who is found to be in conflict with law by providing them professional assistance in resolving their psychological problems.

### **Assessing the Impact on the juvenile:**

Involvement in family disputes and domestic fights can have significant psychological and emotional impacts on children.<sup>12</sup> Assessing the impact on a juvenile because of these disputes can help in providing suitable remedies which are fit for them accordingly. Courts and associated agencies strive to handle cases with sensitivity to the child's needs and development. Ensuring the child has access to mental health services and support systems is a critical aspect of these proceedings.

### **Conclusion**

In conclusion, the juvenile justice system's involvement in family disputes aims to protect the welfare of the child while addressing the complexities of family dynamics. The main goal is to ensure the child's safety, stability, and well-being through legal and supportive measures tailored to the unique circumstances of each case. The juvenile justice system plays a crucial role in addressing and resolving issues that arise from custody battles, allegations of abuse or neglect, and instances of juvenile delinquency, all within the broader context of family dynamics. Key to this process is the system's emphasis on rehabilitation, protection, and the welfare of the child. Juvenile courts strive to create outcomes that prioritize the child's safety, emotional health, and developmental needs.

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<sup>11</sup> Amani, Bitu, Milburn, Norweeta G., Lopez, Susana, Young-Brinn, Angela, Castro, Lourdes, Lee, Alex, & Bath, Eraka, Families and the juvenile justice system, 41(1), 55–63, Family & Community Health, (2018), <https://doi.org/10.1097/fch.0000000000000172>.

<sup>12</sup> NCSC, [https://www.ncsc.org/data/assets/pdf\\_file/0023/80870/aecf-familyengagementframework-2021.pdf](https://www.ncsc.org/data/assets/pdf_file/0023/80870/aecf-familyengagementframework-2021.pdf) (27<sup>th</sup> May, 2024).

Moreover, the system recognizes the significant psychological and emotional impacts that family disputes and legal interventions can have on children. Consequently, there should be a concerted effort to provide supportive services, including mental health care, legal advocacy, and family support programs, to mitigate these impacts and promote healthier family environments.