

Juvenile Justice (Care and Protection of Children) Act 2016 - A Critical Review

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ABSTRACT

Aim of this article is to look into the provisions of newly amended Juvenile Justice Act. This Act received president assent on 31st December, 2015 and was enacted to consolidate and amend the law relating to the child and provide basic needs through proper care, protection, development, treatment, social re-integration by adopting a child friendly approach with the help of various institutions and bodies under the act. So, with the help of this article an approach has been made to understand the salient features followed by some necessary criticism to evaluate the act.

Keyword: - Juvenile Justice Act, Child, Features, Criticism

I INTRODUCTION

A landmark case popularly known as NIRBHAYA (DELHI GANG RAPE CASE) in which the girl was raped and inhumanly injured inflicted. Finally the girl died due to injuries makes this act all that important by 6 people out of which one was minor but he was about to be 18 and he was very actively involved in the crime. Now the question arises of his liability for the crime and this led to amendment in Juvenile Justice Act, 2000. The normal public also demanded harsh punishment for the offenders and criticised judiciary for minor liability in the crime. This incident demanded a change in Juvenile Justice Act which came in the form of Juvenile Justice (Care and Protection of Child) bill which got passed by Lok Sabha on 7th May, 2015 and by Rajya Sabha on 22nd December 2015 and received the President assent on 31st December.

II SAILENT FEATURES OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 deals with both categories of children;

(a) Children in conflict with law

A child who has committed the offence when he was 16-18 year of age and is apprehended after attaining 21 year as an adult comes under this category.

It prescribes that any child between 16-18 years of age if commits heinous crime can be tried as adult.

This act prescribe punishments according to seriousness of the crime:-

- for heinous offence 7 years
- for serious offences 3-7 years
- For petty offences - 3 years imprisonment

This act restricts death penalty and life imprisonment on a child. It has following features also:-

- (i) The act prescribes composition of the board which includes one metropolitan magistrate and two social workers (including women).
- (ii) It lays down powers of juvenile justice board:-
 - To conduct preliminary inquiry of crime committed by child.
 - To decide whether child is to be sent to rehabilitation centre or to children court to be tried as an adult.
- (iii) This act lays provision for psychologists and psycho-social workers and other experts to take decisions.
- (iv) Child is generally tried in children court or under special court but in absence of both there is a provision for trial under session court that has jurisdiction to try the offence.

(b) Children in Need for Care and Protection

The act lays down special provisions for children who are in need of care and protection and for this purpose-

- (i) It establishes child welfare committees in every district.
- (ii) The committees consists of chairperson and other members who are experienced in matter dealing with children and one member necessary has to be women.
- (iii) The committees has power to decide whether an abandoned child should be send to care home or put up for adoption or foster care
- (iv) The central adoption resource agency will frame rules and regulation for adoption of orphaned children.
- (v) It also prescribes qualification for the parents who are opting for adoption.

III PROTECTION, CARE & SUPPORT

(a) Rehabilitation and Social Re –Integration -

This act deals with rehabilitation and social integration of children which is based on individual care plan.

For rehabilitation a child can be kept.

- (i) if he is in conflict with law –in observation home.
- (ii) restoring to family or guardian.
- (iii) adoption or foster care.
- (iv) any fit person

(b) Offences against Child

This act strictly prohibits disclosure of identity of children; other idea behind including it in the act was that every child shall be given proper chance to start a fresh life.

It prescribe punishments for offences which are not adequately covered in other laws

- (i) Cruelty to child - 3 year or fine or 1 lakhs rupees or both
- (ii) Employment of children for begging – 5 to 10 years or 5 lakhs rupees
- (iii) Giving intoxicating liquor or any narcotic drug or tobacco product or psychotropic substances - 7 year or fine 1 lakhs.
- (iv) Using child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drugs or psychotropic substances - 3 year or 1 lakhs rupees
- (v) Bondage of child.
- (vi) Buying and selling of child
- (vii) Prohibit corporal punishment to child in any institution.
- (viii) All child care institutions, whether run by state government or by voluntary or non-governmental organisations, which are meant either fully or partially for housing children, whether they are receiving grants from government shall be registered under the act within 6 months from date of commencement of act, penalty is provisioned for non compliance.

IV CRITICAL ANALYSIS

- (a) Many doubts are raised regarding the nature of the Juvenile Justice (Care and Protection of Children) Act 2015 and the debate is between Reformatory and Retributive Justice. Retributive because it contains the provision for teenager who commits heinous crimes (gives punishment of 7 years or more) shall be tried like an adult but in the Child Court. The Child Court shall make sure that the child who

is found guilty of heinous crime shall be sent to a place of safety till the age of 21 years and afterwards the person shall be shifted to jail which clearly shows that once a juvenile is found guilty of committing any heinous offence he/she shall not get the benefit of being a child.

- (b) The new Juvenile Justice Act, 2015 was also criticized by many people for being unconstitutional as it violates Article 14, 15(3) and 20 of Indian Constitution. The act gives importance to the type of crime committed and does not gives importance to the circumstances of both offender and offence.
- (c) The work of Juvenile Justice Board is very challenging because the procedure followed is full of uncertainty because the act contains the provisions for individualized assessment of adolescent mental capacity which is very difficult.
- (d) The new act is based on following principles which means that every one discharging the duties under the act should keep these principles in mind;
 - (i) Presumption of innocence.
 - (ii) Principles of dignity and worth.
 - (iii) Principles of participation with due regard to maturity.
 - (iv) Principles of best interest of the child.
 - (v) Principles of family responsibility to take care.
 - (vi) Ensuring safety without any abuse of child.
 - (vii) Measures for wellbeing and development of child.
 - (viii) Principles of non-accusatory or non-stigmatizing semantics
 - (ix) Principles of non waiver of rights.
 - (x) Principles of equality and non discrimination.
 - (xi) Principles of right to privacy and confidentiality.
 - (xii) Principle of institutionalization should be last resort.
 - (xiii) Principles of repatriation and restoration.
 - (xiv) Principles of fresh start by erasing of past records
 - (xv) Principles of diversion.
 - (xvi) Principles of natural justice.

All these principles sound very good and also reflect good intention of our judicial system but there is a great difference between theory and practical because all these principles are very difficult to practice and implement.

V CONCLUSION

The main aim of the act is subjected to controversy that whether it is reformative, rehabilitative or retributive in nature. The act includes special principles which every person dealing under the act is expected to abide, however the reality is different, nobody can completely stick to these rules. So, we can say that there is a great difference between theory and practical. The legislature has clearly stated its intention that it understands the importance of child in the society and it wants to work for its betterment and for that no matter how many amendments will be there but law is not for individual but it is for the society. This act has provisions for psychologists to understand the nature of a child. Provision of restoration for the protection and care of child is included and for this purpose, restoration is made to parents, adoptive parents, foster parents, guardian or any fit person. Sponsorship programme is also included to help children who by any reason cannot be taken care by parents or else are orphan. This act also lays down the qualification for adoptive parents so that proper care and good environment shall be provided to a child. Nothing in the world is perfect, similarly this act is also a mixture of good and some non practical things, but as a whole this act is a gift to the entire society especially to children, as this act aims for their betterment, reformation and care of child. Largely it covers all offences against child and also provides sanctions for them and this act also imposes duty over governments to take care of the provisions of the act so that proper delivery of justice can be achieved and no one shall defeat the justice.

REFERENCES

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