



Juvenile Justice Board under Juvenile Justice Act, 2015: A Critical Analysis

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ABSTRACT

The paper is an endeavor to give a record upon the inadequacy of Juvenile Justice Board to look at and decide the adolescents in strife with law in the age gathering of 16-18, associated with grown-up shocking offenses as gave in the Juvenile Justice (Care and insurance of Children) Act, 2015. This Act supplanted the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act of 2015 permits Juvenile Justice Board, which would incorporate analysts and sociologists, to choose whether an adolescent in the age gathering of 16-18 ought to be attempted as a grown-up or not. This Act, interestingly, has given the expert to treat the adolescents of particular age aggregate as grown-ups and to rebuff them as grown-ups in the grown-up criminal equity framework. Such a noteworthy change has been taken because of the rambunctious that has occurred after the assault of 2012 Delhi assault where one of the blamed, who was 17 years has been

condemned to 3 years in a change home. Because of this, there were loads of unsettling influences in the general public where the general population made an immense complain by censuring such law which enables a charged to escape tremendous discipline however he was just couple of months from being 18. Such occasions prompted the death of the Act of 2015. The Act gives, "The board will direct a starter appraisal with respect to his psychological and physical ability to submit such offense, capacity to comprehend the outcomes of the offense and the conditions in which he purportedly dedicated the offense for such an evaluation, the board may take the help of experienced analysts or psychosocial laborers or different specialists." By making this arrangement, gigantic tact has been given in the hands of few for the most delicate issue.

Keywords: Juvenile Justice Board (JJB), Shelter Home (SH), Government, India



INTRODUCTION

The Government of India has Juvenile Justice Boards (JJBs) under the Juvenile Justice (Care and Protection of Children) Act 2015 to manage the kids in struggle with law and the kids needing care and insurance separately. JJB is distinctive in their working since the JJB glances through the instances of kids in struggle with law instead of the past Juvenile Courts. The JJB individuals likewise direct the working of Observation Homes and CWC individuals administer the working of Children's Homes for kids needing care and assurance. The Act has given an accentuation on receiving a kid amicable methodology during the time spent arbitration and demeanor. In short we can state that JJBs assumed an essential job in the adolescent equity organization.

There are 701 Juvenile Justice Boards (JJBs) in the nation which are bolstered under the Integrated Child Protection Scheme (ICPS) of the Ministry of Women and Child Development, The essential duty of setting up the JJBs vests with the State Governments/UT Administrations concerned.

Section 4 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, gives that the State Government will comprise for each region at least one JJBs for practicing the forces and releasing its capacities identifying with youngsters in struggle with law and this is a continuous procedure.¹

JUVENILE JUSTICE BOARD (JJB)

The centre of interest in the juvenile court is always the juvenile and his welfare, and not the act or its consequences which might have resulted in his (or her) being brought before the court.² Criminal cases of a juvenile in conflict with law are to be dealt with by the JJB, and not the regular criminal courts. The first Juvenile Court in India was established in Bombay in 1927.³ At first it was managed by a Presidency Magistrate who used to sit for a couple of hours on settled days. From there on, since 1942, the

¹ This information was given by Minister of State for Women and Child Development, Dr. Virendra Kumar in reply to a question in Lok Sabha, also see <http://www.pib.nic.in/Pressreleaseshare.aspx?PRID=1520104> 3/4

² Juvenile Justice and Juvenile Correction: Pride and Prudence, M.S. Sabnis (Somaiya Publications Pvt. Ltd., Bombay and New Delhi- 1996)

³ Child Protection and Juvenile Justice System for Juvenile in Conflict with Law, Ms. Maharukh Adenwalla, <http://www.childlineindia.org.in/pdf/CP-JJ-JCL.pdf>



Juvenile court was kept an eye on by a full-time stipendiary Magistrate who was helped by a group of specialists, for example, POs, clinicians. Juvenile Welfare Boards were comprised under the 1986 Act to only manage instances of dismissed adolescents, and the Juvenile Court, to have sole locale over reprobate adolescents.

The central reason for particular treatment of a Juvenile's case is that such case requires a socio-lawful methodology as transformation and recovery, and discipline isn't the objective. Under JJA 2015, JJB is the "skillful expert" in connection to adolescents in struggle with law. The constitution of the JJB mirrors this goal of adolescent enactment. The JJB needs to tread a fine way; adolescents are punishable for their criminal demonstrations, however they ought not be punished for such activity, rather the point ought to be to convince them far from the allures of an existence of wrongdoing. The 2015 Act has given equivalent significance to the Magistrate and social workers; they mutually comprise the capable specialist to manage juvenile cases. At the point when the JJB is fulfilled that an offense has been submitted, at that point the

social workers assume an imperative job in choosing what ought to be improved the situation the far reaching restoration of the juvenile, keeping in view the conditions in which the offense was submitted.

The law perceiving the significance of fast request has ordered the JJB to finish a request inside four months from the date of its initiation, and if the equivalent isn't conceivable because of the extraordinary conditions of a case, the JJB is required to expand the stipulated period for fulfillment of Certain JJBs, particularly those working in cities, have gigantic excess of cases. A strategy for controlling this gathering of cases is by expanding the sittings of the JJBs.

Sec 4 of the Juvenile Justice (care and protection of children) Act, 2015 makes it obligatory for State Governments to comprise JJBs in each district. The State Government will, comprise for each district, at least one Juvenile Justice Boards for practicing the forces and releasing its capacities identifying with youngsters in struggle with law under this Act.

CONSTITUTION OF THE BOARD

A Board shall consist of a Principal Magistrate with at least three years experience and two social workers. CMM and CJMs cannot be appointed as Principal Magistrate of JJBs. The Magistrate should have at least three years experience. The selection procedure for the appointment of social workers should be prescribed by the State Government and two social workers selected as may be prescribed, of whom at least one shall be a woman,⁴

QUALIFICATIONS

Requirement of Magistrate to have special knowledge of child psychology/welfare has been dispensed with, Inclusion of practicing professionals with a degree in child psychology, psychiatry, sociology or law as eligible to be appointed as Members of the JJB.

ELIGIBILITY FOR THE MEMBER OF THE BOARD

No person shall be eligible for selection as a member of the Board, if he

- i. has any past record of violation of human rights or child rights;
- ii. has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
- iii. has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- iv. has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act

The State Governments have to ensure that the Principal Magistrate and Members are trained within 60 days of their appointment.

TERMINATION OF MEMBER OF THE JJB

Conviction of an offence involving moral turpitude is no longer a ground of removal.

⁴ <http://www.lawyersclubindia.com/articles/Critical-analysis-on-Juvenile-Justice-Care-and-Protection-of-Children-Act-2015-9017.asp>

The removal process cannot be invoked against the Principal Magistrate.

PROCEDURE ETC. IN RELATION TO BOARD

JJBs have to ensure that the procedures are child-friendly and the Board doesn't resemble regular courts. A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting. A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings: Provided that there shall be at least two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

POWERS, FUNCTIONS AND RESPONSIBILITIES OF THE BOARD (SEC-8)

The Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board. The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise. Sub-section (3) details 13 functions of the JJB that include ensuring informed participation of the child, protection of rights throughout, legal aid, interpreters and translators. They must direct the PO/CWO/SW to submit the SIR within 15 days from the date of the first production to ascertain circumstances in which the alleged offence was committed.

The JJB can transfer to the CWC matters concerning care and protection of a CICL. ICP for rehabilitation should be included in the final order along with follow-up by the PO/DCPU/NGO. They must conduct at least one inspection a month of residential facilities for CICLS and recommend action

for improvement of quality of services to DCPU and State Government.

They must also regularly inspect jails meant for adults to check if children are lodged and take immediate measures for transferring the child to the OH. They can also direct the police to register FIR for offences against CICL/CINCP. These are far more substantive than the functions listed in Rule 10, JJ Model Rules

ORDERS THAT MAY BE PASSED BY A JJB

Sec-17 provides that these disposition alternatives are available in cases of all children found to have committed petty or serious offences and children below 16 years found to have committed a heinous offence. The nature of the offence, need for supervision/ intervention, circumstances as brought out in the SIR and past conduct of the child have to be considered by the JJBs.

As per sec.18 allow the child to go home after advice or admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian direct the child to participate in group counseling and similar activities; order the

child to perform community service under the supervision of an organization or institution, or a specified person, persons or group of persons identified by the Board;

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behavior and child's well-being for any period not exceeding three years; Reformative services including psychiatric support should be provided in the SH. -The child can be sent to a place of safety if the child's conduct is such that it would be against the child's interest or the interest of other children to keep her/him in the SH.

The JJB does not have the power to reduce the period of stay in the SH, as per Sec 18 (2) JJ Act 2015 Board may, in addition pass orders to

- i. Attend school; or

- ii. Attend a vocational training centre; or
- iii. Attend a therapeutic centre; or
- iv. Prohibit the child from visiting, frequenting or appearing at a specified place; or
- v. Undergo a de-addiction programme.

INFECTIVE WORKING OF JUVENILE JUSTICE BOARD⁵

There are many instances which might contribute to the concluding of the fact that the juvenile justice board is currently crumbling with insufficient funds, distorted infrastructure and lacking facilities to carry out its functions that it ought to carry out with full diligence. One of such instance is that the escape of 34 juveniles from Chennai's Kellys juvenile home in 2016.

Those who have been brought back confessed that they did such an act to escape from the torture in the home. There are several haunting truths inside juvenile homes that prove that the juvenile justice board is incapable of controlling even the

basic functions that has been endowed to them. The current vocational training programmes that are being provided to the juveniles are of cooking, tailoring and hair cut. As per today's times, such vocational training programmes stand outdated and cannot comply with the new existing market and practices that are followed and thus the juveniles don't take interest in learning out of the courses.

Even when the training/learning of computer science was introduced, most of the inmates created a ruckus by breaking. Several studies have been made that rejected the haunting episodes which are uncontrolled and not monitored by the juvenile justice board. There are number of complaints and cases where a juvenile is beaten up by the police authorities as soon as he is brought in an observation home and later by the senior inmates. They are forced to accept their involvement in criminal cases.

Many observers have documented the tendency of police to arrest and detain children in inhuman condition without good reason. In an incident, a 14-year-old juvenile from Jamnagar was sodomised allegedly by the four boys at the observation home on

⁵ <http://www.legalserviceindia.com/legal/article-80-juvenile-justice-board-adult-offences.html>



Gondal Road, Rajkot. They allegedly also beat four inmates with polymer pipes and two of the accused forced others to perform oral sex. They also filmed the victims naked. The peon, who was on duty when the incident took place at the observation home, did not make any attempt to stop this incident or to report this incident. It has been found that in many cases the perpetrators are staff members including caretakers, security guards, etc in the observation homes. As per the report of Careshare India, it was even called as 'pillai jail' because of the overburdening of inmates. Scarcely hygiene, insufficient nutrition, lack of space, lack of drainage systems, water shortage-all this makes the children prone to contagious diseases and low hygiene levels in the homes.

All these indicate the lack of effective working of the juvenile justice board. There are several reasons for such incongruous nature of boards such as overcrowding, lack of community support etc. There are several

problems that a juvenile justice board has to encounter with which they are not looking into. In such condition, empowering them with the discretion of deciding the fate of many juveniles is a threat to justice.

CONCLUSION

The above mentioned measures could have been taken instead of depriving the juveniles of such rehabilitative scope. Instead of imposing the threat of punishments, law could have made arrangements that would help the juveniles reintegrate into the society. India has been lacking concerns in mental health. It is high time that they should take great concern in the mental health aspects which could solve almost all of the problems in the society. It is concluded by the author in this paper that the measure opted by the Act of 2015 is totally erroneous and the law should provide that is much rational which would satisfy the main objective of Juvenile Justice Administration.