



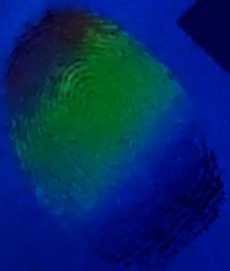
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# **GUIDELINES OF JUVENILE JUSTICE ACT AND UN INSTRUMENTS IN CONNECTION WITH JUVENILES IN CONFLICT WITH LAW IN INDIA: AN OVERVIEW**



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## **Abstract**

*Delinquency includes both violent and non-violent activities involved by juveniles below 18 years old. Prevalence of juveniles involvement in crime has been at increasing trend in our present society due to numerous factors including poverty, unemployment, broken families, illiteracy, maltreatment of children, alcoholism and drug abuse, the influence of peer groups, and negative impacts of modern media, etc. The nature of a child or teenaged is very susceptible to involve in criminal activities, if such child is not getting exposed to positive social environment. As society with psychologically matured adults gets failed in nurturing children in their moral and social life, throughout the world criminal justice functionaries feel that a different, in fact a rights and reforming approach based treatment shall be followed in the cases of juveniles in conflict with law. The recent amendments in Juvenile Justice (Care and Protection of Children) Act and the module rules in 2016, which has special attention towards juvenile rights, reformations, rehabilitation and also providing various provisions those who come in children in conflict with the law.*

*Our constitution providing certain rights and remedies to protection of life and personal liberty and the right against exploitation through its articles 14, 15, 15(3), 19 (1) (a), 21, 21(a), 23, 24, 39 (e), 39(f). Indian constitution shows its commitment to the protection, safety, security, and well-being of all its people, including children. This present paper attempts to briefly discuss Juvenile Justice Act and UN Instruments from the viewpoint of protecting the rights based interest of children in conflict with the law and the measures to prevent the delinquent behavior among the children in society.*

**Keywords:** *Beijing Rules, Children. Convention, Juvenile in Conflict with Law, United Nations.*

## **Introduction**

Juvenile in conflict with law is a serious social problem in the world, particularly in India. Delinquency includes both violent and non-violent activities such as involved by children below 18 years old. The growing trend of juveniles involved crimes necessitates the criminologist and sociologists exploring the root causes of how juveniles turned into involving criminal activities particularly those who are involving the heinous crimes such as rape,



murder, and other serious offenses. At this juncture, effective preventive strategies implementation is an essential one. Prevention mechanism can be ensured by taking cautious action in terms of individual and environmental adjustments and aftercare and rehabilitation services are one of the essential duties of the state and the whole community (DarshanKumar, 2003). The constitution of India providing certain rights to children. including children in conflict with law through Juvenile Justice (Care and Protection of Children) Act, 2015. The Government of India, having incorporated principles of certain conventions, has established its appropriateness to enact and amend the suitable law i.e Juvenile Justice (Care and Protection of Children Act-2015'. This law has been enacted bearing in mind that the children alleged and found to be in conflict with law and 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 and for their rehabilitation. On the other hand standard prescribed in the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), UN Convention on the Rights of the Child, (1989), UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990), The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments are always taken into consideration to deal with juveniles in the conflict with law.

### **Constitution of India**

The first step to fulfil the rights of children can be found in the Constitution of India. There are a number of articles that address various needs of children as outlined below. The articles are divided into two categories: Fundamental Rights and Directive Principles of State Policy (ChildlineOnline,n.d.). The right to equality, protection of life and personal liberty and the rights against exploitation are enshrined in articles 14, 15, 15(3), 19(1) (a), 21, 21 (a), 23, 24, 39 (e), 39 (f) and reiterate India's commitment to the protection, safety, security and well-being of all its people including juvenile (Rufus et al, 2006, p.11)

### **Definition of Juvenile Delinquency**

In India, the Juvenile Justice Act of 1986 is treated as model legislation which consistently gets amended in respect of treating and reforming juvenile delinquents, as it was felt to remove the stigma of calling children as delinquents and later renamed such category of children as 'Juveniles in conflict with law'. When it was revised in the year 2000 named as by Juvenile Justice (Care and Protection of Children) Act, 2000, it refers to 'Juvenile' or 'child' means a person (boys and girls) who have not completed the eighteenth year of age. It's also explained that certain children as neglected juvenile. The term 'Juvenile in conflict with law' denotes the children both alleged and found to be in conflict with law. The term 'child in need of care and protection' includes the underprivileged neglected juvenile that is found begging, without the home, without apparent means of survival, deprived, abandoned and victimized (ShipraLavania, 1993). Though the term 'delinquent' is renamed as "juvenile in conflict with



the law", in Juvenile Justice (Care & Protection of Children) Act 2000, but for universal understanding, the term delinquent is retained by many authors in practice. Further amendment of the Act was on 2006 with a vision to adopting a child-friendly approach in the negotiation and disposition of matters in the best interests of children and for their rehabilitation and overall development. (N.V. Paranjape, 2011).

Subsequently, the new amendment in the JJ Act came into effect as Juvenile Justice (Care & Protection of Children) Act, 2015. This Act directing the Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile involved in criminal activities in the age group of 16-18 should be tried as an adult or not. While the possibility of children between the ages of 16 and 18 years being tried as adults for heinous offenses has arisen, a distinct set of reform and rehabilitation measures have also been taken for such children. (The Gazette of India, 2016, Ministry of Child and Women Development). It is noteworthy that International court of public opinion continues to scrutinize countries that treat juveniles as adults, as more critics are emerging with discussion concerning the cognitive development of children (Human and Civil Rights, n.d.).

### **Juvenile Justice (Care and Protection of Children) Model Rules, 2016**

The model rules stretch some guidelines to the Juvenile Justice Systems deal with juveniles comes under the category of conflict with the law. Here the rules are also focusing on the prevention of children from getting conflict with the law. Such as "Individual Care Plan" is an all-inclusive development plan for a child, based on age and gender-specific needs and case history of the child, prepared in consultation with the child, in order to modernize the child's self-esteem, dignity and self-worth and nurture him/her into a responsible citizen and consequently the plan shall discourse the following, including desires of a child, namely:- (a) health and nutrition needs, including any special needs; (b) emotional and psychological needs; (c) educational and training needs; (d) leisure, creativity and play; (e) protection from all kinds of abuse, neglect and maltreatment; (f) restoration and follow up; (g) social mainstreaming; (h) life skill training and etc. (Juvenile Justice (Care and Protection of Children) Model Rules, 2016)

#### **International Mechanisms and United Nations instruments in favor of the Children in Conflict with the Law**

There are International mechanisms cherishing with the provision to deal with, treat and rehabilitate the Juvenile in Conflict with the law. In the history of last one century, there have been a number of international treaties and documents that outline the rights of a child. Prior to World War II the League of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924. The United Nations (UN) took its first step towards declaring the importance of child rights by establishing the United Nations International Children's Emergency Fund in 1946 (The name was shortened to United Nations Children's Fund in 1953, but kept the popular acronym UNICEF). Two years later the UN General Assembly adopted the Universal



Declaration of Human Rights, making it the first UN document to recognise children's need for protection (Childline India Online, n.d.).

The Second United Nations Congress on Prevention of Crime and Treatment of Offenders in 1960 indicated that juvenile delinquency should be understood as the instruction of an act, which when committed by an adult above a prescribed age would constitute an offense in law. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 deliberated promote and in the element of the problem of juvenile delinquency. They recognize that there should be the UN Standard Minimum Rules for the Administration of Juvenile Justice. Every child has its human rights and they should not be deprived of to it by anyone. Therefore, they said that there should be laws to safeguard the right of the children. Subsequently, it was accepted that special attention should be given to the steps instigated to prevent deviancy among the children and also to homeless and street children in the urban setting. (James Vadackumchery, 1996, pp.139-174).

### **United Nations Rules for the Administration of Juvenile Justice 'Beijing Rules' (1985)**

The Beijing rules provide direction to states on safeguarding the child rights and regarding their needs when developing distinct and specified systems of juvenile justice. These rules were to firstly emphasize international legal implementation of juvenile justice. These rules were to generously detail norms for the administration of juvenile justice with a child rights and child development approach. Rules focused on unbiased training and treatment of juveniles placed in homes for the purpose of providing care, protection, treatment, reformation, education, and vocational skills, with an observation to helping them to accept socially accepted and innovative roles in society.

Juveniles who are institutionalized shall receive care, protection, treatment and all necessary action social, educational, vocational, psychological, medical and physical-that they may require because of their age, gender, and personality and in the interest of their wholesome development.

Juveniles in homes shall be kept distinct from adults and shall be apprehended in a separate home or in a separate part of an institution which also holding adults.

Young female delinquents placed in a home deserve special attention as to their personal needs and problems. They shall by no means receive less care, treatment, protection, maintenance, and training than young male delinquents. Their fair treatment shall be guaranteed.

In the attention and well-being of the juvenile apprehended in homes, the parents or guardians and caretakers shall have a right of access.

Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing sufficient academic or, as suitable, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage (Dahn Bachelor, 2006).



### **United Nations Convention on the Rights of the Child (UNCRC) 1989**

The first ever UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights. The convention consists of 54 articles covering all four major categories of child rights: Right to life, Right to development, Right to protection, and Right to participation. It came into force on the 2nd September 1990((Childline India Online,n.d.).

The UNCRC provides a widespread framework for the protection of children's rights and, more importantly, establishes a comprehensive listing of the legally necessary obligations towards children that countries are required to implement. Articles 37 and 40 of the UNCRC deals explicitly with the administration of juvenile justice; however it should be stressed that a number of other important Articles of the Convention on the Rights of the Child are very significant to any discussion regarding the issue of children's justice including; Article 2 (non-discrimination), Article 3(best interests of the child), Article 9 (separation from parents), Article 19 (protection from abuse and neglect), Article 23 (the rights of disabled children), Article 28(education), Article 31(Leisure, recreation and cultural activities and Article 39 (rehabilitative care). (Robert Agnew, 1999, pp.123-155). Today the convention has been ratified by almost all countries becoming the most ratified of all international Human Rights treaties. India signed and ratified the convention in 1992.

### **United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990)**

UN rules, known as Juvenile Deprived of their Liberty, established available principles appropriate when a juvenile (any person under the age of 18) is confined to any home/facility (whether this is to be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having involved an offense, or simply because the juvenile is estimated 'at risk' by order of any judicial, administrative or other public authority. In addition, these rules include principles that entirely define the particular conditions under which children can be deprived of their liberty, highlighting that deficiency of liberty must be a means of last resort, for the shortest possible period of time, and limited to exceptional cases. The Juvenile Deprived of their Liberty serve as a worldwide accepted framework envisioned counteracting the harmful effects of deficiency of liberty by safeguarding respect for the human rights of juvenile and guaranteeing the dignity and welfare of the children is upheld while in custody. (Arnold Binder, 2001).

Apart from that, several UN organizations and worldwide NGO's effectively working for the well-being of children includes children comes under the conflict with the law. Thus, the above national as well as international convention and laws were elaborately explains about necessary care, treatment, protection, reformation and rehabilitation of institutionalized juvenile as well as appropriate necessary assistance such as providing education, leisure and



recreation, medical and psychological treatment, protection from all neglect and exploitation as well as appropriate vocational training and etc., to the juveniles apprehended in juvenile institutions. Moreover, all the necessary facilities providing to the juvenile institutionalized in the homes.

### **Conclusion**

The above discussions undoubtedly indicate that national as well as international instruments strive and thrive safeguarding and rights of the children including institutionalized juvenile involved so called delinquent activities. The recent amendments in Juvenile Justice (Care and Protection of Children) Act 2015 and module rules 2016 highlights the special care, protection, treatment, reformation and rehabilitation of children and also meet their essential needs and care particularly those who come under the category of conflict with the law. On the other hand, it is evident through crime reports and media that the prevalence of juvenile crimes are at increasing trend in India today. Most of the heinous offenses like rape, murder and other offenses committed by juveniles particularly belong to the 16 to 18 years age category. Therefore, the amendments of Juvenile Justice (Care and Protection of Children) Act 2015, allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile involved in criminal activities in the age group of 16-18 should be tried as an adult or not.

The juvenile justice system deeply emphasizes a distinct set of reformative and rehabilitative measures to be taken for children in conflict with law. As like in the developed countries, Indian children are also protected from carefully enacted laws and principles which attempt to ensure the child protection, future and reformation which include some control mechanism such as state-level stakeholders to protect mainstream children. Apart from the existence of national and international written laws, convention and declarations, etc., the government should take consistent, follow-up and evaluation, and cautious actions along with the stakeholders such as criminal justice functionaries- especially juvenile justice systems, NGOs, legal experts, academicians, educational institutions to initiate and speed-up the internationally proved successful measures and control mechanisms to prevent the delinquent activities by children in the society.

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