The Juvenile Justice (Care and Protection of Children) Act, 2000: A Critical Analysis

K. SHANMUGAVELAYUTHAM

The paper critically analyses the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act was passed in the Winter Session of Parliament in 2000 and gained the assent of the Honourable President of India. In substance, the Juvenile Justice (Care and Protection of Children) Act, 2000, has adopted the scheme and special features of the Juvenile Justice Act, 1986, with some minor changes. This paper deals with reasons, objects, special features, and limitations of the Act. The final section incorporates some suggestions for effective implementation of the Act.

Dr. K. Shanmugavelayutham is Reader, Department of Social Work, Loyola College, Chennai. He is also the Convenor of Tamil Nadu FORCES, a Network Organisation working the cause of Early Childhood Care and Development.

INTRODUCTION

India has a population of about 1,027 million, and of these nearly 450 million are children. Article 39(F) of the Constitution of India states that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment. The government stands by its commitment to ensure that all children within our community are safeguarded and protected from abuse and neglect. It is also society's responsibility to promote the welfare of children and prevent child destitution. The term 'juvenile delinquency' is to describe children who take to crime. It is neglect, which drives them to crime, and parents and the society are responsible for making children commit crimes. Numerous studies have proven that such children are not 'delinquents', but only 'destitutes'.
Laws regarding juvenile justice have always been passed in a hurried manner in India. The Juvenile Justice (JJ) Act, 1986, allegedly drafted to the whims of the then Prime Minister in just a few days, was passed by the Parliament without many debates and made into a Law in record time. The same story seems to have been repeated with the present Juvenile Justice (Care and Protection of Children) Act, 2000. Despite repeated adjournments and interruptions, 16 Bills including Juvenile Justice (Care and Protection of Children) Bill were passed in the Winter Session of Parliament in 2000 and gained the assent of the Honourable President of India. In substance, the Juvenile Justice (Care and Protection of children) Act, 2000, has adopted the scheme and special features of the JJ Act, 1986, with some minor changes.

A review of the working of the JJ Act, 1986, would indicate that much greater attention is required to be given to children in conflict with law and children in need of care and protection. It is necessary that the juvenile justice system be easily accessible to a child and anyone on their behalf, including the police, voluntary organisations, social workers, or parents and guardians throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the legislation with a larger involvement of informal systems, especially the family, the voluntary organisations and the community.

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

**Objectives**

- To lay down the basic principles for administering justice to a juvenile or child;
- To make the juvenile justice system meant for a juvenile or child more appreciative of the developmental need in comparison to criminal justice system as applicable to adults;
- To bring the juvenile law in conformity with United Nations Convention on the Rights of the Child;
- To prescribe a uniform age of 18 years for both boys and girls;
- To ensure speedy disposal of cases by the authorities regarding a juvenile or a child within a time limit of four months;
- To spell out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of the legislation;
• To create Special Juvenile Police units with a humane approach through sensitisation and training of police personnel;
• To enable increased accessibility to a juvenile or child by establishing Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) and Homes in each district or group of districts;
• To minimise the stigma, and in keeping with the developmental needs of the juvenile or the child, to separate the Act into two parts — one for juveniles in conflict with law, and the other for juveniles or children in need of care and protection;
• To provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and after-care of abandoned, destitute, neglected, and delinquent juvenile or child.

Definition

A juvenile or child has been defined as one who had not completed 18 years (Section 2[K]). This is keeping in conformity with Article 1 of the UN Convention of Rights of Child.

Children Covered Under the JJ Act, 2000

The JJ Act, 2000, applies to juveniles found to have committed an offence (conflict with law) and the children found to be living in the specified circumstances of neglect (in need of care and protection).

Children in Need of Care and Protection

• Child who is found without any home.
• Child beggars.
• Destitute children.
• Children whose parents or guardians are unfit or incapacitated to exercise control over the them.
• Sex worker's child.
• Child who is abused or is likely to be abused or exploited for immoral or illegal purposes.
• Mentally or physically challenged children.
• Children with terminal illness.
• Children in difficult circumstance.
• Working children.
Juvenile in Conflict with Law

A juvenile who has been found to have committed an offence is defined as a juvenile in conflict with law. The term 'juvenile in conflict with law' has been used for removing the stigma attached with the word 'delinquent' and make the law more child-friendly. This has to be read in the context of Sections 82 and 8 of the Indian Penal Code that states that nothing is an offence that is done by a child below 7 years and by a child between 7-12 years who has not attained sufficient maturity of understanding to judge the nature and consequences of his/her action on that occasion.

Child Welfare Committee

The State Government will establish CWCs to handle the child in need of care and protection, which was earlier known as the Juvenile Welfare Board. A Committee shall consist of a Chair and four other members, of whom not less than one shall be a woman and another, an expert on matters concerning children. A Member shall be vested with the powers of a Magistrate under the Code of Criminal Procedure, 1973. The Committee shall function as a Bench of Magistrates. The Committee should complete the enquiry within a time limit of four months. A child in need of care and protection may be placed under the care of his/her parent or guardian; or in addition under the supervision of a Probation Officer; or with a fit person or may be sent to a Children's Home or Shelter Home. The Shelter Home shall function as drop-in-centre for the children in need of urgent support. The Committee shall have the powers to restore any child in need of care and protection to his/her parents, adopted parents and foster parents.

Juvenile Justice Board

The State Government will constitute JJBs to handle juveniles in conflict with law. A JJB consists of a Magistrate and two Social Workers of whom at least one should be a woman (Section 4 [2]). Further, the Magistrate should have special knowledge or training in child psychology or child welfare (Section 4[3]). The Social Workers should have been involved in health, education or welfare activities pertaining to children for at least seven years (Section 4[3]). The Board is empowered to obtain the social investigation report on a juvenile even through a recognised voluntary organisation (Section 15[2]).
**Observation Homes**

The Act provides for establishment of Observation Homes by the State Government for temporary reception of the juveniles in conflict with law during the pendency of any enquiry. In the JJ Act, 1986, there was no clear demarcation between the Observation Homes to be provided for delinquents and neglected juveniles.

**Special Homes**

The State Government will establish and maintain Special Homes for the reception and rehabilitation of juveniles in conflict with law. The Special Home will provide accommodation, maintenance and facilities for education, vocational training and rehabilitation. It will also provide him/her with facilities for the development of his/her character and abilities and give him/her necessary training for protecting himself/herself against moral danger or exploitation. It shall also perform other functions to ensure an all round growth and development of his/her personality.

**Procedure to deal the Juvenile in Conflict with Law**

As soon as a juvenile in conflict with law is apprehended by the police, he/she shall be placed under the charge of the Special Juvenile Police Unit. A juvenile in conflict with law, whatever the offence committed by him/her, cannot be sentenced to death or imprisonment or committed to prison in default of payment of the fine or furnishing sureties. In fact, no juvenile dealt with under the provisions of the JJ Act, 2000, is to be kept in a police station or jail under any circumstances. The JJ Act, 2000, specifies the person who may be present during the proceedings to save the children from stigmatisation or adverse publicity. It prohibits publication of names, identity, and so on, of the juveniles dealt with under the Act and penalises violation of this provision. A juvenile cannot be tried together with a person who is not a juvenile.

A juvenile in conflict with law should be released on bail whether accused of a bailable or non-bailable offence (Section 12[1]). The Board is empowered to obtain the social investigation report on a juvenile even through a recognised voluntary organisation (Section 15[2]). As per the provisions of the Act, continuation of proceedings or enquiry in respect of juvenile in conflict with law shall continue even after the juvenile or child ceases to be a juvenile (Section 3).
juvenile who is arrested, or is brought before a Juvenile Court, may be released on bail with or without surety. In certain circumstances, he/she shall not be so released if there appears reasonable grounds for believing that the release is likely to bring him/her into association with any known criminal or expose him/her to moral danger or that his/her release would defeat the ends of justice. Such person having been arrested is not released on bail by the Officer In-charge of the Police Station, but such Officer shall cause him/her to be kept in an Observation Home or a Special Home, until he/she can be brought before a JJB.

The Act specifically emphasises on counselling to the parents, guardians and the juveniles. It also provides for participation in group counselling and in performance of community services. It provides for the child who has committed an offence of serious nature and also for keeping him/her in a place of safety, which may be different from the special homes meant for other juveniles. All these offences are cognisable. The reason for this is to deter exploitation of the child.

The Act provides for social auditing of Children's Homes, both by the Central Government and State Governments through various persons and institutions. The reasons for bringing in the Central Government, along with the State Government, is because 50 per cent of the fund for running these institutions is being provided by the Central Government. The Act also provides for setting up of Shelter Homes for children in need of urgent support by reputed and capable voluntary organisations.

A juvenile in conflict with law may be released after advice or admonition, or released under the care of a parent/guardian/fit person, with or without supervision, or placed with a fit institution, sent to a special home or ordered to pay a fine, if above 14 years of age and is earning. In making any order, the JJB has to take into consideration the age of the juvenile, the state of his/her physical and mental health, living circumstances, report of the Probation Officer, religious persuasion, and the circumstances necessary to ensure his/her welfare.

After-Care Organization

The State Government will establish or recognise After-Care Organisations for the purpose of taking care of juveniles after they leave Special Homes and for the purpose of enabling them to lead an honest, industrious and useful life.
Procedure to Deal with Child in Need of Care and Protection

Public servants, voluntary organisations, social workers, public-spirited citizens and the child himself/herself are authorised to produce any child in need of care and protection to the CWC. The question whether a juvenile is neglected or delinquent is to be decided by the JJB and the CWC, respectively. During the pendency of their proceedings, juveniles may be kept with their parent or guardian or in a place of safety or an Observation Home. The JJ Act, 2000, also makes provision for early discharge. If the Committee so thinks fit, it may, instead of making an order for sending the child to a Children's Home, make an order placing the child under the care of a parent, guardian or other fit person. A parent or guardian of a juvenile can complain to the Committee that he/she is not able to exercise proper care and control over the juvenile and if the Committee is satisfied after inquiry, the juvenile may be sent to an Observation Home or a place of safety.

Uncontrollable Children

Though the concept of 'uncontrollable children' has been removed, the present JJ Act, 2000, has introduced a provision in defining the child in need of care and protection as a 'child whose parent or guardian is unfit or incapacitated to exercise control over the child'. Therefore, the concept 'uncontrollable' has been shifted from the child to parent (Section 2[d] [vi]).

Rehabilitation and Social Re-Integration

The Act provides for various alternatives to a child for his/her rehabilitation and social reintegration. The main principle behind this is to provide a family to such children who do not have one and also ensure their aftercare. Adoption is one of the methods for rehabilitation of orphaned, abandoned, neglected and exploited children. Other methods are foster care, sponsorship and sending the child to an after-care organisation.

CRITIQUE OF THE JJ ACT, 2000

The JJ Act, 2000, applies to children in conflict with law and those living in the specified circumstances of neglect. Over the years it has been recognised that the distinction between juveniles in conflict with law and neglected children may be more circumstantial than real.
Despite this recognition, the JJ Act, 2000, continues to divide children into two categories on the basis of commission of an offence *per se* rather than their characteristics. The presumption underlying this criterion for division is that the mere commission of an offence means that those children are a contamination risk. They are harder to deal with. However, when it comes to disposal of their matter, the JJ Act, 2000, expects the decision-maker to completely ignore the very fact due to which the proceedings were initiated, namely, the offences.

**Strengths of the Legislation**

1. The Act puts forth a uniform legal framework for juvenile justice in the country.
2. It ensures that no child under any circumstances is lodged in a jail or police lock-up.
3. It provides for a specialised approach towards the prevention and treatment of juveniles in conflict with law in keeping with the developmental needs of the child found in any situation of social maladjustment.
4. It explains the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children.
5. It establishes norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation.
6. It develops appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and it specifically defines the areas of their responsibilities and roles.
7. It brings the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.
8. The present JJ Act, 2000, provides for rehabilitation and after-care of the child and has a foster care, adoption and sponsorship programme.
9. Local bodies are asked to care for neglected children.
10. The Act has provided for Special Juvenile Police Unit which exclusively deal with juveniles or children and are primarily engaged in prevention of juvenile crimes. The officer is designated as Juvenile or the Child Welfare Officer.
11. In the Act a separate provision is made for punishment to persons who exploit the juveniles in different manners. A separate provision has been brought in under Clause 27 to make all these offences cognisable.

12. In India, there is a low rate of adoption of destitute children. The various reasons for low adoption rates are complex procedures and rules and the long waiting period were foremost. The present waiting period of eight months on an average ought to be reduced to two months. The present Act would provide for a JJB that would simultaneously declare destitute children as abandoned and order their handing over to recognised institutions, which could arrange for rehabilitation through adoption. The need to expedite renewal of the recognition of placement agencies was also emphasised in the Act to ensure that credible institutions were allowed to function without delay and hurdle. To this day, there is no progressive legislation on child adoption in India.

13. The JJ Act, 2000, is more child-friendly and ensures the best interest of the child. The JJ Act was based on the UN Convention on the Rights of the Child, which India ratified in 1992. The rights of the child included right to survival, protection, development, and participation.

14. In the JJ Act, 2000, provides for bigger role for voluntary organisations and such other categories including the child himself/herself so that the child in need of care and protection does not suffer any neglect and is immediately taken care of without any delay.

15. Setting up of Inspection Committee consisting of representatives of the state government, local authority, CWC, voluntary organisations and others like medical experts and social workers to inspect the Children's Home.


Lacunae Inherent in the JJ Act, 2000

1. The Statement of the Objects and Reasons of the Act, Clause 2(vi) states 'to spell out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of the proposed legislation'.
This is a blatant denial and abdication of the responsibility of the State to take appropriate measures for the care and protection of the neglected, abandoned and vulnerable children including rehabilitation and social integration of children in conflict with law.

2. The JJ Act, 2000, covers within its purview, majority of the poor children. Implementation of the infrastructure under the Act, however, has been left to the discretion of the State Government.

3. The use of the word 'may' in all the sections relating to establishment of various agencies required for implementing it, as 'may' in official parlance means 'may not'. The problem of non-implementation has become more acute in case of the JJ Act, 2000. The Legislation has been enacted by the Parliament, but the responsibility for its implementation has been imposed on the State Governments. This division provides a scapegoat to both the Central and State Governments against non-implementation of the Act.

4. Twin administrative structures are provided for dealing with children in conflict with law and children in need of care and protection. It is separately too elaborate to be implemented and 'has little hope of survival in the coils of red tape and bureaucratic regime.'

5. Majority of the provisions in the JJ Act, 2000, focuses on institutionalisation as the prime measure for dealing with children. This tilt towards institutionalisation is against the principle laid down in the UN Standard Minimum Rules Administrative of Juvenile Justice (Beijing Rules), namely use of institutionalisation only as a last resort.

6. The existing Act does not address the offence of child abuse and contains serious contradictions.

7. The Act has not clearly defined concepts like 'care' 'protection' rehabilitation' and 'social reintegration'.

8. The Act is not appreciative of the developmental needs of the children.

9. The Act should have provisions regarding interventions for reduction and control of juvenile crimes, building coalitions and convergence of stakeholders in protection of children at work.

10. The JJ Act, 2000, is strongly criticised for providing a raw deal to the neglected juvenile category because they were treated
like delinquents in matters of their apprehension, pre-trial detention, custodial care and rehabilitation. That is why child rights activists recommended two distinct Bills, with a view to demarcate welfare jurisdiction from justice jurisdiction.

11. Even though the Government passed the Act dealing with juvenile crimes, the setting up of enough JJBs and correctional institutions leave much to be desired.

12. The Act has attempted only at renaming the existing Institutions without any structural modifications towards improving the conditions to make it child-friendly.

13. Terms like arrest, sentence and imprisonment used in Section 13 and 16 of the Act are unmindful of the child and revolves around criminal jurisprudence.

14. Provision to transfer persons with mental retardation and children suffering from leprosy to another home is in contravention to the Government of India policy on Leprosy.

15. No legal aid is available from the States to children, whether neglected or delinquent, against whom proceedings have commenced.

16. All children produced before the JJB or CWC are first 'arrested' by the police and caretakers of state-run institutions, primarily commit these crimes. It is ironic that the police 'arrest' a child who is then charged either for a petty crime committed, for vagrancy or on suspicion of having committed a crime. Majority of children are sent to juvenile homes on charges of vagrancy or suspicion. But these children were never formally charged with an offence. This is true of most children who are booked under the JJ Act, 2000. The actual procedure is that the children are not to be arrested, but produced before a Magistrate as they are not to be seen in the same light as adult criminals.

18. Police use the Juvenile Justice Act for two purposes; it makes their task of booking a number of pick-pockets and robbers in the vicinity easily. They do not have to labour over investigations, and so on. Besides, in India, the efficiency of a police station is measured against the number of arrests made. Police stations can prove to their higher-ups they have been able to solve most of the crimes committed in the vicinity, and thereby their efficiency, on the backs of unlawful arrests of poor children.
Suggestions

The list of criticism is endless. It is only a piecemeal effort of improvement. What is needed is a comprehensive review of not only all the provisions, but also the philosophy and purposes of the JJ Act, 2000. The existing Act has specifically not created any entitlement to the children to receive the services, facilities and opportunities for their development. In other words, these legislations have empowered the state to intervene in the life of any juvenile covered under it (and the JJ Act covers almost the entire child population living in poverty) leaving the juveniles at the mercy of the various agencies of the state involved in its implementation. The Act makes the majority of poverty-stricken children vulnerable to harassment, maltreatment or sheer neglect at the will of various state functionaries. Various cases decided by the Supreme and High Courts have focussed attention against various instances of lawlessness by state agencies.

It is therefore, a necessary task to ascertain:

1. What is and what ought to be the function of a legislation providing for care and protection of neglected and delinquent children? Should it empower the state or should it empower the children?

2. Whether a provision of opportunities for development of children is a welfare function of the state or is it the right of the child. The question has acquired new significance in view of the UN Convention on Rights of the Child, to which India has acceded in 1992.

3. Whether provision of opportunities for development to children is justifiably the responsibilities of the Ministry of Social Justice and Empowerment or that of the Ministry for Human Resource Development, considering that children are 'the most important asset of a nation?'

4. Why is a legislation needed if the provision of welfare services is a discretionary function of the state and it cannot be directed to fulfilment. In any case, the state is running various welfare schemes for children without a legislation also.

5. There is need for two Acts with a view to demarcate welfare jurisdiction from justice jurisdiction, where children in need of care and protection should be dealt with exclusively by the Children Act, whereas the Juvenile Justice Act is meant to deal only with children in conflict with the law.
6. The Act does not see any real distinction between the delinquent and the neglected child; otherwise why group victimised children with children in conflict with the law.

7. The National Institute of Social Defence should develop modules for training functionaries of the juvenile justice system to make them work in the best interests of the children rather than in the best interest of themselves.

8. The JJ Act, 2000, does not address the offence of child abuse and contains serious contradictions.

9. The local bodies such as panchayats should take up the responsibility of looking after neglected children; providing education and taking care of these children should be on top of their agenda.

10. Children in need of care and protection and juveniles coming in conflict with the law often commit offences in despair. Stating that the term JJ Act was incorrect, it can be said that it could be proved that justice was juvenile and not children. The children who beg for a living should not be rounded up and lodged in Juvenile Homes. They should be allowed to be free.

11. The policemen on the street truly believe all street children are thieves and anti-social elements and, therefore, need to be ruthlessly dealt with; so also probation officers, supervisors, wardens and teachers in the various Homes. Some of their attitudes are so hard and inhuman that they should be the last persons to be given the task of looking after children.

12. The rehabilitation programmes in Juvenile Homes, Special Homes, Observation Homes and After-care Homes are pathetic. None of the trades or skills taught will help the youth to get a job in the outside world.

13. The emphasis in law on proper implementation by creating an adequate number of institutions and extending the coverage of the law.

CONCLUSION

The JJ Act, 2000, is 'child friendly and ensures the best interests of the child' will go a long way in lifting the neglected and juvenile delinquents.

Children are voiceless citizens. Children are also not able to enforce those safeguards that any legislation may provide them. Hence
while considering legislation for juvenile justice, it is extremely im-
portant to ensure that,

- children do get adequate legal protection
- legal provisions are made for children's welfare, that is their,
nutrition, health and education, and
- there is suitable machinery provided by law for the enforcement
or implementation of these provisions.

In the absence of such a machinery for implementation, care, pro-
tection, rehabilitation and social integration, however well designed,
may prove ineffective. Ultimately, it is the state that can ensure justice
for children.

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