

Annual National Seminar
on
“Working of the Juvenile Justice Boards in India”

FAIR & SPEEDY INQUIRY UNDER JJ ACT



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Children are small.

Hence,

They require big rights.

➤ We often say that we must leave a better planet for our children;

But

➤ It is equally important to leave better children for our planet.

➤ For this,

➤ No child should be denied the care and protection that is guaranteed to him/her by law.

J.J. ACT

- Beneficial piece of Legislation.
- Recognizes that it is a socio-legal, economic issue.
- Act does not do away the enforcement of law.
- The same law–IPC applies to Children-in-Conflict with Law, (*for short, “CICL”*).
- Only Difference – Different scheme for trial, inquiry and disposition.
- In J.J. Act, it is not the “**trial**”, but “**inquiry**”.
- Inquiry hence, not to be adversarial.

- Necessary to bear in mind the difference.
- CICL not '**arrested**', but '**apprehended**'.
- Emphasis of Inquiry – Not only to find out guilt / innocence;

But also

- To investigate the underlying social or familiar causes.
- To reform and rehabilitate; hence, to have the inquiry and post-inquiry avenues to be kept open for child.

The Basic Concept of Parens-Patriae : **The State / Court as the Parent.**

- The underlying philosophy is that, if a child has gone astray, it is the parents who had failed.
- Hence, Court to take over the role of the parent, diagnose the problem and prescribe the appropriate treatment.
- It does not matter what the child had done.
- His or her defiant behaviour is merely a symptom of the problem.

- The duty of the Court – Not to blame the child or determine the guilt, but to identify and treat the underlying problem.
- At the heart of the J.J. System – Social construction of childhood, under which children are perceived as immature, both, mentally and socially.

OBJECTS OF J.J. SYSTEM

- To promote a holistic approach concerned with the development, care and protection of child throughout his interactions with Justice System.
- Child should come in minimum contact with the System and such contact should result in positive impact.
- For that, to provide an inclusive and enabling environment.
- By reducing vulnerabilities of the child.

- Hence, Section 8 mandates inquiry to be fair and speedy.
- What is fair?
- If it is done in the spirit and the object of the Act.
- What is object of the Act?
- To adopt child friendly approach to protect best interest of the child.
- **Three 'R's – Reformation, Rehabilitation, and Re-integration of the child.**

What Is Child Friendly ?


Section 2(15) – means any behaviour, conduct, practice, attitude, environment or treatment that is humane, considerate and in the best interest of the child.

What Is Fairness ?

- Fairness implies presumption of innocence.
- Child innocent of any *mala fide* or criminal intent.
- Fairness implies strict compliance with principles of natural justice by following basic procedural safeguards:
 - ◆ Right to fair hearing.
 - ◆ Rule against bias.
 - ◆ Right to review.

- Right to be informed promptly and directly in a language that child understands.
- Effective participation of the child in the proceedings.
- For that, proceedings must be of his understanding.
- This right to be fully respected and implemented throughout every stage of the process.
- Responsibility of JJB to ensure that this right is protected.

*[Article 12 of Child Right Convention, (for short, "CRC"),
and Section 8(3)(a)(b).*

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- Child must be encouraged to speak without fear, not only of the circumstances of the incident, but also of his home and social surroundings.
 - For that, child must be put at ease.

- Inquiry – to be in the nature of fact finding.
- JJB has to use power under Section 165 of Evidence Act.

Principle of Dignity and Worth

- Treatment must be consistent with the child's sense of dignity and worth.
- Treatment that re-enforces child's respect for the human rights and freedom of others.
- Treatment that takes into account child's age and child's re-integration and assuming a constructive role in the society.

[Article 40(1) of CRC]

Principle “VII”

Positive Measures

- To implement wide range of measures to ensure that children are dealt with in a manner proportionate to their well-being;

And

- Proportionate to, both, their circumstances and the offence committed.

[Article 40(4) of CRC]

Principle 'VIII'

Non-Stigmatizing Semantic & Processes

- Re-integration of the child requires that no action be taken that can hamper the child's full participation in community; such as,
- Non-user of ;
 - ◆ Adversary or accusatory words;
 - ◆ Stigmatization;
 - ◆ Social Isolation;
 - ◆ Negative publicity.

- Right to effective legal representation and assistance free of charge.
- Responsibility of JJB - to ensure availability of competent Legal Aid for the child.

[Section 8(3)(c)]

- Freedom from self-incrimination.
- Plead guilty?

- Full respect for child's right to confidentiality by all means and throughout judicial process.
- No publication of information that would disclose his identity.
- Record to be kept confidential / destroyed.
- Even in Judgment, his identity should not be disclosed.

Section 24

Removal of Disqualification on the Findings of an Offence.

- Principle of fresh start.
- All past records of child to be erased.

Section 23

- No joint proceedings with adult.
- Proceedings to be separated immediately, if one of the child is found to be adult.

- Right for prompt decision, without delay.
- Child has no time to wait.
- Delay causes more harm and stigmatization.
- Loses desired positive impact of decision making.

Section 8

Responsibilities of JJB

- To provide an Interpreter / Translator with sufficient experience and qualification.
- To get Social Investigation Report of Probationary Officer within fifteen days from production of child.

Section 14(2)(3)

- Inquiry to be completed within four months from the date of first production.
- Maximum six months, having regard to the circumstances of the case.
- After recording reasons in writing.

Section 14(4)

Preliminary Assessment :-

- ◆ In case of heinous offences – Within 3 Months.
- ◆ In petty offences – Within 6 Months.
- ◆ If inconclusive - After 6 Months – the proceedings to stand terminated.

If, in inquiry, it is found that child is actually in need of care and protection, then, transfer him/her to CWC.

“Right is the time.

His bones are being formed.

His blood is being made.

His senses are being developed.

To him, we cannot answer tomorrow.

His name is today.”

- *By Gabriela Mistral*

- ◆ If not now, then when ?
- ◆ If not we, then who ?
- ◆ Children of the world are after all yours and mine.
- ◆ If we don't do anything for them, who else will ?

