

Unit -I

Concept of Child & Juvenile

Introduction:-

The subject-“*Offences Against Child & Juvenile Offences*” is comprised of five units providing details of causes of offence against child, various international conventions to protect the child, offences against the child under various Laws such as- labour, criminal, matters involving child in social relations (like child marriage , custody of child during matrimonial suits and obligations of the parents towards their children’s) , protection of child and juvenile under the provisions of various Laws (such as constitution, I.P.C. , Cr.p.c., contract) , Juvenile Delinquency, rehabilitation, Juvenile court system etc.

Child:-

In common saying or in ordinary sense “Child” means a person who is unable to maintain itself. According to the provisions of various Acts dealing child exclusively one can come to know that it is the age of the child which determines as to who is child. In another words child may be determined according to his/her age subject to a particular Act to which he is subjected.

In India various Acts describe various age of the child and they are as follows:-

- According to section 2(b) of the Beedi & Cigar workers (condition of Employment) Act, 1966- Child means a person who has not completed his fourteenth year of age.
- According to section 2(ii) of the Child Labour (prohibition and Regulation) Act, 1986- Child means a person who has not completed his fourteenth year of age.
- According to section 3(a) of the Dangerous Machines (Regulation) Act, 1983- Child means a person who has not completed his fourteenth year of age
- According to section 2(bb) of the Minimum Wages Act, 1948- Child means a person who has not completed his fourteenth year of age
- According to section 2(2) of the M.P. shops and Establishment Act, 1958- Child means a person who is below fourteen year of age
- According to section 2(c) of the Factories Act, 1948- Child means a person who has not completed his fifteen year of age
- According to section 2 of the Children (pledging of Labour) Act, 1933- Child means person who is under the age of fifteen years.
- According to section 2 (aa) of the Immoral Traffic (pledging of Labour) Act, 1933- Child means a person who is under the age of fifteen years.
- According to section 2(b) of the protection of woman from Domestic Violence Act, 2005-Child means any person below the age of eighteen years and includes any adopted, step or foster child.
- According to section 2 (k) of the Juvenile Justice (care and protection of children) Act, 2000- Juvenile or Child means a person, who has not completed eighteenth year of age .
- According to section 2(a) of the prohibition of child marriage Act, 2006- Child means a person who, if a male, has not completed twenty-one years of age, and if a female. has not completed eighteen years of age.

“(Also at international level it is acceptable that any person below the age of eighteen years is called Child).”

► In Juvenile Justice (care and protection of children) Act, 2000 there is no distinction provided between Juvenile and child.

► The term Juvenile is derived from a Latin word “Juvenis” meaning young. ► The term Juvenile is defined by each member state of the United Nations in a manner which is compatible with its legal system and social welfare objectives.

Causes of offence against Child

Introduction:-

Justice V.R. Krishna Iyer said: “The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature- physical, mental and spiritual. It is the birth right of every child to demand justice from the whole world.

In a civilized society, the importance of child welfare cannot be underestimated because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop. Jawaharlal Nehru has said about children that: “Today’s child is tomorrow’s future’. Some factors which are known to affect the volume and type of crime occurring from place to place are as follows:-

- Population density and degree of urbanization (particularly the concentration of youth)
- Stability of population with resident’s mobility, community patterns and transient factors.
- Economic condition (medium, below poverty line and job availability)
- Cultural factors and educational, recreational and religious characteristics.
- Family conditions with respect to divorce and family cohesiveness.
- Effective strength of law enforcement agencies.
- Chronic hunger, lack of education, over work and forced labour.

International-Protection to Child and Convention

Children's are exploited to a large extent in work, humiliated in society and faces several discriminations. Looking to this there was a need globally for making declaration for the benefit and the rights of the children to provide them security to fight against all these evils of child abuse. So various declarations have been given internationally which are as follows:-

- ❖ Declaration of the Rights of the Child, 1959 (The General assembly of the United Nations adopted this declaration on 20th November, 1959)
- ❖ The world summit for Children, 1990.
- ❖ Declaration of Geneva 1924.
- ❖ General Conference of the International Labour Organization (ILO), Geneva, 29th October, 1919.
- ❖ Worst Forms of Child Labour convention, 1999.
- ❖ UN CRC (United Nations convention on the rights of the Child) in 1992.
- ❖ The International Convention on the Rights of the Child, 1989.

Law

UNIT II

OFFENCES AGAINST CHILD

Definition of Child Abuse: -

Child abuse refers to the intended, unintended and perceived maltreatment, whether habitual or not, of the child, including any of the following.

- Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment.
- Any act, deed or word which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.
- Unreasonable deprivation of his/her basic needs for survival such as food and shelter; or failure to give timely medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.

Child abuse includes child battering, extreme punishment, hard labour emotional abuse, sexual abuse, including incest and exploitation, and abandonment.

According to WHO:-

- **Physical Abuse**
- **Sexual Abuse**
- **Emotional Abuse**
- **Neglect**

Various Types of child abuse:- Child abuse refers to the intended, unintended and perceived maltreatment of the child, whether habitual or not and includes the following reasons or the acts:-

- Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment.
- Any act, deed or word which degrades or demeans the dignity of a child as a human being.
- Unreasonable deprivation of his/her basic needs for survival (food and shelter) or failure to provide medical treatment to an injured child resulting in serious impairment of their growth and development or their permanent incapacity or death.
- Physical abuse is inflicting physical injury upon a child. It includes- beating, hitting, kicking etc.
- Emotional abuse that includes acts done by parents, caretakers. Peers and others that have caused or could cause serious behavioral, emotional or mental distress in the child.(Also known as verbal, mental or psychological maltreatment)
- Sexual assault or sexual abuse of a child (inappropriate sexual behavior with a child).
- Child neglect- it pertains to an act of omission or commission leading to the denial of a child's basic needs. Neglect can be physical, educational, emotional or psychological.

- Every fifth child in the world lives in India.
- Every third malnourished child in the world lives in India.
- Every second Indian child is underweight.
- Three out of four children in India are anaemic.
- Every second new born has reduced learning capacity due to iodine deficiency.

Child Labour and Forced Labour

Despite there being several legislations dealing with the issue of child labour. But there is no universally acceptable definition of child labour. All enactments dealing with the child labour provide for different age limit for entering into an employment.

The following legislative enactments are in force prohibiting employment of child labour in different occupation:-

- **Section 67 of Factories Act, 1948** provide for the prohibition of the employment of young children. “As per this section no child who has completed his 14th year shall be allowed to work in any factory.”
- **Section 24 of Plantation Act, 1951** provides that –“No child who has completed his 12th year shall be allowed to work in any plantation.
- **Section 109 of Merchant Shipping Act, 1951** provides that-“No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-
 1. In a school/ training ship,
 2. In a ship in which all the persons employed are members of one family,
 3. In a home –trade ship of less than 200 hundred tons gross,
 4. Where such person is to be employed on nominal wages and will be supervised by his father or other adult near male relative.
- **Section 45 of Mines Act, 1952** :- prohibit employment of child in any mine and in any part of it.
- **Section 21 of Motor Transport Act, 1961**- provides that No child shall be required to work in any capacity in any motor transport undertaking.

Causes of child Labour

Main causes of child Labour are as follows:-

- Poverty
- Unemployment

- Low wages of the adult.
- Migration to urban areas
- Large families
- For want of compulsory education
- Illiteracy and ignorance of parents, and
- Traditional attitudes.

In all cases of child labour, it seems that the poverty is the basic reason which compels parents of a child, despite their unwillingness, to get them employed. The Survey report of the Ministry of Labour had also stated the same reason for the employment of child.

“Section 14 of the Child labour (prohibition and Regulation) Act, 1986, provides for the penal provisions-

- **Imprisonment for 01 year (minimum 03 months) ,or**
- **With fine up to Rs. 20000/(minimum being Rs. 10000/)**

Demerits of the Child Labour (prohibition and Regulation) Act, 1986:- There are a number of loopholes in the act which has made it “completely ineffective instrument for the removal of children working in industry”.

- Children can continue to work if they are a part of family of labour.
- The Act does not restrict the employment of children on work which is of hazardous nature.
- The act provides for punishment of the employer, but does not provide for any relief or compensation to the child so removed from employment.
- The Act is silent about the family of the child so removed from the employment.

Case law -- “M.C. Mehta V/S State of Tamilnadu. AIR 1977 SC 699.

Important point:

The children below the age of 14 years cannot be employed in any hazardous industry, mine or other work.

In this case the Supreme Court laid down exhaustive guidelines to protect economic, social and humanitarian rights of millions of children. M.C. Mehta, a social worker and public spirited lawyer told the court about the plight of the children engaged in sive kasi cracker factories by a PIL under Article 32 of the constitution of India.

In this case, the court gave the following directions-

- Offending employer should pay for each child a compensation of Rs. 20,000 to be deposited in the Child Labour Rehabilitation welfare Fund to be set up as per directions of the court.
- The liability of employer would not cease even if he would desire to disengage the child presently employed but Government should ensure that an adult member of the child’s family gets a job in a factory in lieu of the child.
- In those cases where it would not be possible to provide job, the appropriate Government should deposit Rs. 5000 in the Fund for each child employed.
- The authority concerned should ensure alternative employment for the adult whose names would be suggested by the child concerned or it should deposit the amount of 25000 in the fund.

The court also identified the following industries where the guidelines be implemented first:-

- Match Industry in Siva kasi, T.N.
- Diamond Polishing industry in Surat, Gujarat.

- The precious stone polishing industry in Jaipur, Rajasthan.
- Glass industry in Firozabad.
- Brass-ware industry in Moradabad.
- Handmade carpet industry, Mirzapur.
- Lock making industry, Aligarh.

“By providing various provisions relating to safety, welfare and working hours etc. It has protected children working in the factories and make sure that their welfare is to be kept at priority.”

Provisions for child- worker under the Factories Act, 1948 are as follows:-

- **Employment of young person on dangerous machines (section 23)**- No young person shall be allowed to work at any machine unless he has been fully instructed as to the dangers arising in connection with machine and what precautions has to be observed by him.
- He must be employed under the guidance or supervision of a person who has through knowledge and experience of the machine, and
- He has received sufficient training in work at the machine.

Prohibition of employment of women and children near cotton openers:- No women or child shall be employed in any part of a factory for pressing cotton in which a cotton- opener is at work. (Section 27)

Excessive weights:- No child shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

Crèches - In every factory where in more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room for the use of children below the age of 6 years of such women.

Such room shall be maintained as instructed by the Government U/S 50 of the Act. All such rooms shall be maintained in clean and sanitary conditions and shall be under the charge of women trained in the care of children and infants. (Section 48.)

Prohibition of employment of young children- No child (below 14 years of age) shall be required or allowed to work in any factory.

Non- adult workers to carry tokens- A young person or adolescent (who has completed his 14 years of age but below 18 years) shall not be required or allowed to work in a factory unless he has a certificate of fitness granted with reference to him U/S 69 is in the custody of the manager of the factory and a token to that reference has been issued to him, which he must carry while at work. (section 68)

Working hours for children- No child shall be required or allowed to work in any factory—

- For more than four and a half hours in any day.
- During the night (B/W 7 p.m. to 6 a.m.)
- Here night shall mean a period of at least 12 consecutive hours.

- The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than 5 hours each.
- The provisions of section 52 relating to weekly holiday shall also apply to child workers.
- He is exempted from double employment.
- No female child shall be allowed or required to work in any factory except between 8 a.m. and 7p.m.

Notice of period of work for children – In accordance with the provisions of sub-section (2) of section 108 a notice of period of work for children, shall be displayed and maintained in every factory. The period shown in the notice of work shall be prepared before hand as laid down in section 61 for the adult workmen.

Register of child worker—The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the inspector at all times showing all required particulars related to child worker.

No worker shall be allowed to work in a factory unless his name and other particulars are born on the register of the child worker.

Penalty for permitting double employment of child—Section 99 – one thousand rupees except if child works without the consent of the parents.

Various Articles of the constitution which protect the interest of child are as follows

- **Article 23-** prohibition of traffic in human beings and forced labour- Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- All the states under the provisions of this Article while imposing compulsory services for public purposes shall not discriminate on grounds only of religion, race, caste or class or any of them.
- **Article 24-** Prohibition of employment of children in factories- According to it no child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous employment.
- **Article 39 (e)**—According to this men , women and the tender age children's health and strength are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- **Article 39 (f)**—According to this all the children's must be provided with opportunities and facilities to develop in a healthy and in conditions of freedom and dignity and that childhood and youth are protected agained explosion and agained moral and material abandonment.
- **Article 41—Right to work, to educate and to public assistance in certain case**—By this article state is directed to provide to its citizens (within its limit of economic capacity and development effective provisions for securing) the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement etc.

- **By all these Articles** – central as well as state Governments are duty bound to protect their citizens, specially the children and the needy one, by protecting them from social and economic evils by providing them free education, medical and other assistance and make them good citizens of this country.

Main provisions of Child Labour (prohibition and Regulation) Act, 1986

Despite there being number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there was no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. Thus the child labour (prohibition and regulation) Act, 1986 was enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

**PROVISIONS RELATING TO KIDNAPPING
AND ABDUCTION UNDER INDIAN PENAL CODE**

Sections 359 to 369 of the IPC deals with the offences of Kidnapping and Abduction.

Kidnapping is of two kinds: - Kidnapping from India (section 360) and Kidnapping from lawful guardianship (section 361).

Kidnapping from India (section 360): ▼

- Whoever conveys any person beyond the limits of India without the consent of that person, or
- Of some person legally authorized to consent on behalf of that person, **is said to kidnap that person from India.**
- Lawful guardian (in section 360) includes any person lawfully entrusted with the care or custody of such minor or other person.
- Exception:- This section does not extend to the act of any person who in good faith – believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.
- The whole object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards.
- Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. (section 361)

“Prakash vs. State of Haryana, AIR 2004 SC 227”

Abduction (section 362): ▼

- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for Kidnapping :- (section 363) – Whoever Kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

Kidnapping or maiming a minor for purposes of begging (section 363A):--

Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor with the intention of employing or using him for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable for fine.

Whoever maims any minor in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

- In this section “**begging**” **means**—soliciting or receiving alms in a public place, whether under the pretense of singing, fortune-telling, performing tricks or selling articles or otherwise, or
- entering on any private premises for the purpose of soliciting or receiving alms,
- exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal,
- Using a minor as an exhibit for the purpose of soliciting or receiving alms.
- Minor means—a male less than 16 years of age and in the case of female- below 18 years of age.

Kidnapping or abduction in order to murder (section 364):-

- Whoever kidnaps or abducts any person in order that such person may be murdered or so disposed of as to be put in danger of being murdered,
- Shall be punished with life imprisonment for life or rigorous imprisonment for a term which may extend to 10 years, with fine.

Example: - A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

Kidnapping for ransom (section 364A) :-

- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt such person, or
- By his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or caused death or hurt to such person in order to compel Government or any foreign state or international inter- governmental organization or any other person to do or abstain from doing any act or to pay a ransom,
- Shall be punishable with death or imprisonment for life, and shall also be liable to fine.
- This particular section (364A) was introduced in the penal code by way of an amendment (42 of 1993).
- It was introduced with an objective to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Cr.pc.

Kidnapping or abducting child under ten years of age with intends to steal from its person:-

- Whoever kidnaps or abducts any child under the age of 10 years with the **intention of taking dishonestly any movable property from the person of such child,**
- Shall be punishable with imprisonment of either description for a term which may extend to 7 years, and shall also be with fine.

Abetment of suicide of child

1. Prevailing conditions which are responsible for committing suicide by child.
2. Measures for prevention of suicides.
3. Relevant provisions of I.P.C., 1860.

Suicide is defined as the intentional taking one's life. In some European languages, the word for suicide translates into English as "self-murder". In legal terminology used the Latin phrase *felo-de-se*, which means "a crime agenized the self."

Much of the social stigma that is still associated with suicide derives from its former connection with legal judgment, as well as with religious condemnation.

The reason behind a teen's suicide or attempted suicide can be complex. Although suicide is relatively rare among children but rate of suicide or attempts to suicide have been seen increasing among adolescence. Suicide is the third-leading cause of death for 15 to 24 year olds.

It has been observed that the teens between childhood and adulthood are under great confusion and anxiety. Because at such juncture of age they undergo tremendous pressure to fit in society, to perform academically, and to act responsibly. Despite these factors there is the awakening of sexual feelings, a growing self-identity, and a need for autonomy that often conflicts with the rules and expectations set by others.

A teen with an adequate support network of family, friends, religious affiliations, peer groups, or extracurricular activities may have an outlet to deal with every day frustrations. But many teens do not believe they have that and feel disconnected and isolated from family and friends. These teens are at increased risk for suicide.

Factors that increase the risk of suicide among teens include:-

- A psychological disorder, spatially depression, bipolar disorder, alcohol and drug use.
- Feeling of distress, irritability, or agitation
- Feeling of hopelessness and worthlessness that often accompany depression (repeated failures at school)
- A previous suicide attempt
- A family history of depression or suicide (genetic component)
- Physical or sexual abuse
- Lack of a support network, poor relationship with parents or peers, and feelings of social isolation
- Dealing with homosexuality in an unsupportive family or community or hostile school environment

Child suicide in India

It is seen that childhood today is no longer a joyful experience; instead lives of children and young adults are full of stress, tension, and apprehension. It is all because of current education system, extra tuition, coaching classes, competitive exams, reservations policies, admission processes, quota systems, parental attitude, modernization etc- the fact of the matter is that student suicide in India is an alarming problem.

Parents and teachers play the pivotal role in caring, consoling, counseling and most importantly 'being there' for these kids.

Parents should bring up their children in an atmosphere of freedom and happiness, where they share a comfort level with the parents. Apart from this parents need to spend 'quality time' with their kids where they can understand the inner feelings of their wards. Parents must avoid creating unnecessary pressure on the kids as far as studying is concerned and do not compare your child with other children.

Similarly, teachers need to pay attention to all the kids and avoid favoritism against some. They must make the study joy and not the pressure.

All these things when incorporated at the childhood level go a long way in avoiding any kind of suicidal tendencies in kids.

Many warning signs and symptoms of teen suicide feelings are similar to those of depression. Parents when observe such signs in their kids they must talk to them and seek professional help.

These signs includes:-

- Change in sleeping and eating habits.
- Withdrawal from friends, family and regular activities.
- Violent behavior or running away.
- Drug and alcohol abuse.
- Unusual neglect of personal appearance.
- Radical personality change.
- Persistent boredom, difficulty in concentrating or decline in school work.
- Frequent complaints about physical symptoms often related to emotions, such as stomach ache or headache, fatigue.
- Loss of interest in pleasurable activities.
- Not tolerating praise or rewards.

With the support of the family, friends and professional treatment the tendency of suicide can be prevented and one can lead his life to a healthier path.

Relevant provisions of Indian penal code, 1860 concerning suicide are as follows:-

1. Section 305- Abetment of suicide of child or insane person-

If any person under the age of 18 years, any insane person, any idiot or any person in state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding 10 years and shall also be liable to fine.

2. Section 306 abetment of suicide-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

Protection of child and juveniles

Various Articles of constitution which are directly or indirectly for the protection (safeguarding) the interest of the children are as follows:-

- **Article 14 Equality before law**--- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- **Article 15 Prohibition of discrimination on grounds of religion, caste, race, sex or place of birth**—Nothing in this article shall prevent the state from making any special provision for women and children.
- **Article 21 Prohibition of life and personal liberty**—Except according to procedure established by law.
- **Article 21A Right to education**—The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.
- **Article 24 Prohibition of traffic in human beings and forced labour.**
- **Article 39 Certain principles of policy to be followed by the state**—The state shall, in particular, direct its policy towards securing—that the health and strength of workers, men & women and the tender child are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- That children's are given opportunity and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 41 Right to work, to education and to public assistance in certain cases**—The state shall, within its economic capacity and development, make provisions for securing the all these rights in cases of unemployment, old age, sickness and disablement, and in cases of undeserved want.
- **Article 45 Provisions for early childhood care and education to childrens below the age of six years**—The state shall endeavor to provide early education and childhood care for all children until they complete the age of six years.
- **Article 51A Fundamental duties**—it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child between the age of six and fourteen years.

By these provisions of the constitution one can say that the children's has been protected by both the Governments, that is central as well as all the state Governments by making suitable provisions in the law.

Children's are the most valuable assets of our society. In a civilized society welfare of the children is well recognized because the welfare of the whole nation, growth and development depends upon the growth of the children.

As great poet Milton has said: "child shows the man as the morning shows the day"

Protection of child and juveniles

SALE OF OBSCENE OBJECTS TO YOUNG

Introduction:-

- At the tender age child mental capability is not fully developed or grown, they are not in a position to differentiate between good and bad, whatever they will see or read will put those things into act or action because of their innocence.
- Home is said to be the first school of a child and the culture, ethics, education etc. which parents can provide nobody else can provide. So a good environment is very much responsible for physical, mental and moral growth of a child.
- Pictorial and other publications containing stories of the glorification of crime, violence and vice, known as “horror comics” are being circulated in India in large quantities. The dissemination of such stories is likely to encourage anti-social tendencies among children and exert harmful influence on young persons.

So far as the import into India of pictorial publications is concerned the G.O.I has imposed a ban under sea Customs act.1878.

“The young person’s Harmful Publication Act, 1956 have been enacted to prohibit the production in India of such literature or of any variant and its circulation within India.

The legislation has been framed in India to stop the sale of obscene objects to young.

- **“Harmful publication” means** -any book, magazine pamphlet leaflet, newspaper or other like publication which consists of stories told with the aid of picture or without the aid of pictures or wholly in pictures being stories portraying wholly or mainly –
 - i. The commission of offences; or
 - ii. Acts of violence or cruelty; or
 - iii. Incidents of a repulsive or horrible nature’ in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall. Whether by inciting or encouraging him to commit offence or acts of violence or cruelty or in any other manner whatsoever. {section 2(a)}
- **Power of Government to declare harmful publications forfeited -Section 4** (The state Govt. may if it is of the opinion, after consultation with the principal law officer of the state (Advocate General) that any publication is a harmful publication declare, by order notified in the official Gazette and forfeit such publication from further dissemination.)
- **Appeal to High Court against order of forfeiture-Section 5-** Any person aggrieved by an order of forfeiture under section 4 may, within 60 days of the date of such order, apply to High court for setting aside the order so passed and the H.C. may pass such order as it deems fit.
- **Power to seize and destroy harmful publications-section 6-** Any Magistrate of the first class may by warrant authorize any police officer(not below the rank of Sub-Inspector) to enter and search any place where any stock of harmful publication is kept and he is authorized to seize and shall be produced before such magistrate as soon as possible.
- **On production of such material before magistrate-** If in the opinion of the court such material or publication is a harmful publication, such court may order to destroy but if not found harmful the court shall dispose of it in the manner prescribed in law (section 523,524 and 525 of the criminal procedure code, 1973)

- **Offences under this Act to be cognizable-section 7--**
- **I.P.C. Section 292. Sale, etc., of obscene books, etc.** (Whoever offers or attempt to do any act which is an offence under this section **shall be punished on first conviction with imprisonment of either description for a term which may extent to two years, and with fine which may extent to 2000 thousand rupees**, and in the event of **second or subsequent conviction, five years imprisonment and fine up to 5000 rupees.**
- **Exceptions:-** This section does not extend to any book, paper, drawing, painting, representation etc.- which is proved to be justified as being for the public good on the ground that such publication or material is in the interest of science, literature, art or learning or other object of general concern,
- **Which is kept or used bona fide for the religious purposes?**
- **I.P.C Section 293. Sale, etc., of obscene objects to young person-** Punishable on first conviction – imprisonment of three years and with fine of rupees 2000, and in the event of the second and subsequent conviction-7 years imprisonment and fine up to rupees 5000.
- **I.P.C. Section 294. Obscene acts and songs-** whoever, to the annoyance of others- does any obscene act in any public place, or
- Sings, recites or utters any obscene song, words, in or near public place,
- Shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine of both.

UNIT III

**SOCIAL RELATIONS
& CHILD**

Introduction:-

The legal position today is that only an adult can marry. Child marriage is an offence under the Child marriage Restraint Act, 1929 and the Hindu marriage Act, 1955 also.

Before the Child marriage Restraint (Amendment) Act 1978 came into force **section 6 of the H.M. Act 1955 dealt with guardianship in marriage and enumerated the guardians of a minor bride.**

Under the amendment the bride should have completed the age of 18 years at the time of marriage and therefore the questions of consent of her guardian will not arise as being major can marry. As a result of this amendment, sec. 6 of the H.M. Act, 1955 is deleted.

The legislative measures have been adopted to curb this social evil customs of Child Marriage.

Hindu marriage Act, 1955

Conditions for a Hindu Marriage (Section 9)

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

- I. Neither party has a spouse living at the time of Marriage,
- II. At the time of the marriage, neither party –
 - (a) Is incapable of giving a valid consent to it in consequences of unsoundness of mind; or
 - (b) Though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) Has been subject to recurrent attacks of insanity or epilepsy.
- III. The bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage,
- IV. The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- V. The parties are not sapindas each other, unless the custom or usage governing each of them permits of a marriage between the two.
 - **Muslim Law:** - Under Muslim Law the condition is that the parties to the marriage must have attained the age of puberty. For girl it is 12 or 13 and for a boy it is 15 years.
 - **The Paris Marriage and Divorce Act, 1935**

This Act prescribed the age of completion of 21 years in respect of the bridegroom and 18 in respect of the bride.

- **The Indian Christian Marriage Act. 1982-** 21 years in R/O bridegroom and 18 years in R/O bride.
- **The special Marriage Act, 1954-** 21 years in R/O bridegroom and 18 years in R/O bride.

Relevant provisions of the Child Marriage Restraint Act, 1929

- Punishment for male adult below twenty-one years of age marrying a child (Section 3) punishable with 15 days simple imprisonment or fine of rupees 1000 or both.
- Punishment for male adult above twenty-one years of age marrying a child (section 4) 3 months imprisonment (SI) and with fine.
- Punishment for solemnizing a child marriage (Section 5) whoever, performs, conducts or directs any child marriage- 3 months imprisonment (SI) and with fine.
- Punishment for parent or guardian concerned in a child marriage) where a minor contracts a child marriage, any person having charge of the minor, whether as a parent or guardian, who permit or promote to be solemnized, shall be punishable with-3 months imprisonment(SI) and with fine.
- Offences to be cognizable for certain purposes (section 7)- The code of criminal procedure, 1973 shall apply to offences under this act as if they were cognizable offences.
- For the purpose of investigation of such offences, and
- For the purposes of matters other than-matters referred to in section 42 of the code, and arrest of a person without a warrant or without an order of a Magistrate.

Jurisdiction under this act (Section 8)-Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of or try any offence under this act.

The provisions of the Prohibition of Child Marriage Act, 2006.

Introduction:-

The child marriage Restraint act, 1929 was enacted with a view to restraint solemnization of child marriages. Subsequently it was amended in 1949 and 1978 in order to raise the age limit of the male and female persons for the purpose of marriage. In this particular act there was no provision for declaration of marriage as void or invalid.

As required by the society and to protect the child marriages more deterrent solutions were required to be provided in the Act to prevent and to eradicate the evil practice of solemnization of child marriages.

The present act, {The provision of child marriage Act, 2006 came into force on 1st November, 2007.}

- **Child marriages to be voidable at the option of contracting party being a child (Section 3)** – (A petition for annulling a child marriage by a decree of nullity may be filed in the District court only by a contracting party to the marriage who was a child at the time of marriage.)

- **Provision for maintenance and residence to female contracting party to child marriage (Section 4)-** (While granting decree U/s 3, the district court may also make an interim or final order directing the male or in case of his minority his parents or guardians to pay maintenance to the female contracting party to the marriage until her marriage.)
- **Custody and maintenance of children of child marriages (Section 5)-** An appropriate order by the district court for the custody of such children, keeping in mind the welfare and the best interest of the child.)
- **Legitimacy of children born of child marriage (Section 6)-** According to this section every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.)
- **Power of district court to modify orders issued under Section 4 or Section 6 (Section 7)-** (District court to add, to modify or revoke any order made u/s 4 and section 5 , either during the pendency of the case or after the final disposal of the petition.)
- **Court to which petition should be made (Section 8)—(provides for the territorial Jurisdiction of the district court.** - For the purpose of grant of reliefs under sections 3, 4, and 5 , the district court having jurisdiction shall include, where the defendant or the child resided, marriage was solemnized, the parties last resides together or where the petitioner resides at the time of foiling the petition.
- **Punishment for male adult marrying a child (Section 9) -** He shall be punished with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees or with both.
- **Punishment for solemnizing a child marriages (Section 10)-** who ever performs, conducts, directs, abets any child marriage shall be punishable with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees, unless proves that the he had no reason to believe that the marriage was not a child marriage.
- **Punishment for promoting or permitting solemnization of child marriage (Section 11)-** punishable with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees. No imprisonment to women only fine.
- **Marriage of a minor child to be void in certain circumstances (Section 12)-** where he is taken out of the keeping of the lawful guardian, or by forced compelled to go from any place and is sold for the purpose of marriage, etc. such marriage shall be null and void.
- **Offence to be cognizable and non-bailable (Section 15)-** As per the section an offence punishable under this Act shall be cognizable and non-bailable.
- **Child Marriage Prohibition Officers (Section 16)-** Provides for the appointment of child marriage prohibition officers by the state government. Their duties are to- to prevent solemnization of child marriage, to collect evidence for the effective prosecution of persons contravening the provisions of the act, to advice or counsel the concerned people, make awareness of the evils of the child marriage in the society and to file such returns as required by the government.
- **Child Marriage Prohibition Officers to be public servants (Section 17)-**section 21 of the I.P.S.
- **Protection of action taken in good faith (Section 18)-** Bt the child marriage protection officer.
- **Repeal and savings (Section 21) -**The child marriage Restraint Act, 1929 is repelled by section 21 of the Prohibition of child Marriage Act, 2006.

Short note on abandonment of child

Abandonment refers a parent's choice to have no role in his/her child's life. This includes failure to support the child financially, as well as failure to communicate with the child or have any type of active role in the child's life. Causes include many social and culture factors as well as mental illness.

Poverty is often a root cause of child abandonment.

Political conditions, such as difficulty in adoption proceedings

The relevant provisions in Indian Penal Code, 1860 are as follows:-

- Section 317. Exposure and abandonment of child under twelve years, by parent or person having care of it
- Section 318 Concealment of birth by secret disposal of dead body

Various provisions regarding the custody of children under different Acts during matrimonial suit

Introduction

Child custody is a term used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings the issue of child custody often becomes a matter for court to determine.

Child custody is a used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings, the issue of child custody often becomes a matter for the court to determine.

In most cases, both parents continue to share child custody but one parent gains physical child custody. Family law courts generally take decisions on the best interest of the children.

Both parents continue to share legal child custody until the minor has reached the age of 18 or becomes legally emancipated. In legal custody both can decisions which affect the welfare of the child.

In general court tends to award physical child custody to the parent who demonstrates the most financial security, adequate parenting skills and the least disruption for the child.

In most cases, the non-custodial parent still has visitation right.

Provisions regarding Custody of Children in various Acts.

The Hindu Marriage Act, 1955: Section 26 of the Hindu marriage Act, 1955 provides for custody of children. That section reads as under

- **Section 26. Custody of Children.**- In any proceeding under this act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it deem fit with respect to the custody, maintenance and education of the minor children, consistently with their wishes.
- **Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.**
- **The Hindu Minority and Guardianship Act 1956: Section 13 Welfare of minor to be paramount consideration.**—while appointing or declaration of any person as guardian of a Hindu minor by a court , the welfare of the child concerned shall be the paramount consideration.

- **The Guardians and Wards Act 1890: Section 7. Power of the Court to make order as to guardianship.**-Appointing a guardian of his person or property or both.
- **Section 12. Power to make interlocutory order for production of minor and interim protection of person and property.**- At such place and time and before such as it appoints, and shall make such order for the temporary custody and protection of the person or property of the minor as if thinks proper.
- **Section 24. Duties of guardian of the person-** custody of the ward, to provide better health and education and all such other necessities as required by the law to which he is subjected.
- **Section 25. Title of guardian to custody of ward.**- In case of ward leaving or removed from the custody of a guardian of his person, the court may make an order for his return to the custody of his guardian, for this purpose the court may get the ward arrested and handed over to the guardian.
- **The Prohibition of Child Marriage Act, 2006: Section 5. Custody and maintenance of children of child marriages.**- The court by making an appropriate order securing the custody as well as his welfare to the best of his interest.
- **Special Marriage Act, 1954: Section 38. Custody of Children.**
- **Parsi Marriage and Divorce Act, 1936: Section 49. Custody of children.**
- **Indian Divorce Act, 1869:**
 - ❖ **Section 41. Power to make orders as to custody of children in suit for separation.**
 - ❖ **Section 42. Power to make such orders after decree.**
 - ❖ **Section 43. Power to make orders as to custody of children in suits for dissolution or nullity.**
 - ❖ **Section 44. Power to make such orders after decree or confirmation.**
- **Criminal procedure Code 1973 Section 125. Order for maintenance of wives, children and parents.**

Obligation to supply necessities to children by parents

Introduction: - Every parent has the duty to provide his or her children with the basic needs of the life-that is clothing, food and shelter. This duty usually terminates when the child is emancipated when he becomes major. But in fact the responsibility of parent goes on till the point child is unable to support himself and would become a public obligation without family support.

The law generally does not dictate the level of support that is provided when the children live with both parents, but when through divorce or other circumstances, the child is leaving with one parent, there are strict rules about the amount of financial support provided by the non-custodial parent.

While the law does not define in detail what parental responsibility is, the following list out the key roles:-

- Providing a home for the child
- Having contact with the child
- Protecting and maintaining the child
- Disciplining the child
- Choosing and providing for the child's education
- Determining the religion of the child
- Agreeing to the child's medical treatment
- Naming the child and agreeing to any change of the child's name

- Being responsible for the child's property
- Appointing a guardian for the child, if necessary
- Allowing confidential information about the child to be disclosed

The concept of 'maintenance' in India is covered both under Section 125 of the Code of Criminal Procedure, 1973 and the personal laws.

- Cr. P.C Section 125. Order for maintenance of wives, children and parents.
- Cr. P.C. Section 126 Procedure :- Proceedings under section 125 may be taken against any person in any district:-
 - a) Where he is, or
 - b) Where he or his wife resided, or
 - c) Where he last resided with his life or as the case may be, with the mother of the illegitimate child.
- Cr. P.C. Section 127. Alteration in allowance
- Cr. P.C. Section 128. Enforcement of order of maintenance
- The Hindu Adoptions and Maintenance Act, 1956 Section 20. Maintenance of children and aged parents

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UNIT IV

Protection of Child & Juveniles

Various Articles of Constitution which are directly or indirectly for the protection (safeguarding) the interest of the children are as follows:-

- Article 14. Equality before law.
- Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Article 21. Protection of life and personal liberty
- Article 21A. Right to education
- Article 23. Prohibition of traffic in human beings and forced labour
- Article. 24 Prohibition of employment of children in factories, etc.
- Article 39. Certain principles of policy to be followed by the State
- Article 41 Right to work, to education and to public assistance in certain case.
- Article.45. Provision for early childhood care and education to children below the age of six years.
- Article 51A. Fundamental duties.

Under Indian Penal Code 1860

- Section 82 and 83 of Indian Penal Code protect the interest of children for offence committed by them. Said Sections reads as under: - Section 82 Act of a child under seven years of age. Nothing is an offence which is done by a child under seven years of age.
- Section 83. Act of a child above seven and under twelve of immature understanding:- Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

The following Sections of Indian Penal Code protect the interest of children for offence committed against them:-

- I.P.C. Section 292. Sale, etc., of obscene books, etc.
- I.P.C Section 293. Sale, etc., of obscene objects to young person
- I.P.C. Section 294. Obscene acts and songs
- Section 299, Explanation 3:- The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicides to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.
- Section 305. Abetment of suicide of child or insane person
- Section 312 Causing miscarriage
- Section 313 Causing miscarriage without woman's consent
- Section 314 Death caused by act done with intent to cause miscarriage
- If act done without woman's consent shall be punished either with imprisonment for life, or with the punishment above mentioned.
- Section 315 Act done with intent to prevent child being born alive or to cause it to die after birth.
- Section 316 Causing death of quick unborn child by act amounting to culpable homicide.
- Section 317 Exposure and abandonment of child under twelve years by parent or person having care of it.

- Section 318 Concealment of birth by secret disposal of dead body
 - Kidnapping from lawful guardianship (Section 361)
 - Abduction (Section 362)
 - Punishment for kidnapping (section 363) punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.
 - Kidnapping or maiming a minor for purposes of begging (Section 363A)
 - Kidnapping or abducting in order to murder (Section 364)
 - Kidnapping for ransom, etc (Section 366A)
 - Kidnapping or abducting child under ten years with intent to steal from its person (Section 369)
 - Section 366A Procurement of minor girl
 - Section 372 selling minor for purpose of prostitution etc.
 - Section 373. Buying minor for purpose of prostitution, etc
 - Section 376. Sub-section (2) whoever
 - a) being a police officer commits rape
 - b) being a public servant, takes advantages of his official position and commits rape on a woman in his custody
 - c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantages of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
 - d) being on the management or on the staff of a hospital, takes advantages of his official position and commits rape on a woman in that hospital; or
 - e) commits rape on a woman when she is under twelve years of age; or
 - f) commits rape on a woman knowing her to be pregnant; or
 - g) commits gang rape,
- Shall be punished rigorous imprisonment for a term which shall not be less than ten years

Under Criminal Procedure Code 1973

- Cr. P.C Section 125. Order for maintenance of wives, children and parents.
- Cr.P.C. Section 126 Procedure :- Proceedings under section 125 may be taken against any person in any district:-
 - a) Where he is, or
 - b) Where he or his wife resided, or
 - c) Where he last resided with his life or as the case may be, with the mother of the illegitimate child.
- Cr.P.C. Section 127. Alteration in allowance.
- Cr.P.C. Section 128. Enforcement of order of maintenance

Under contract act 1872

Section 10 of the Indian Contract Act, 1872 lays down that the contracting parties should be competent to contract. Section 11 of the Indian Contract Act, 1872 expressly provides that a person, who has not attained the age of majority according to the law which he is subjected, is incompetent to enter into a contract.

- Ratification of Minor's Contract: - A minors-agreement being void has no existence in the eyes of law.
- Principal of Estoppels on minor S.115 of the Indian Evidence Act lays down the doctrine or estoppels
- Agreement for the benefit of a minor. Though a minor's agreement is void ab initio but agreements in favor of a minor for his benefit are not void, but enforceable.

- Section 68 Indian Contract Act, 1872: Claim for necessities supplied to person incapable, or on his account.
- Testimony of children:- Anybody can give evidence in the court provided he is acquainted with the facts of the case. The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath of affirmation.
- Section 118. Indian Evidence Act 1872: It reads:- All persons shall be competent to testify unless the court considers that they are prevented from understanding the question put to them or from giving rational answers to these questions, by tender years, extreme old age, disease, whether of body or mind, or of any other cause of the same kind.

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UNIT V

The Justice (Care Protection of Children) Act, 2000

Causes of juvenile delinquency

With the passage of time crime rates are increasing all over the world. There is no single root cause of crime. Crime is primarily the outcome of multiple adverse social, economic, cultural and family conditions. To prevent crime it is important to have an understanding of its roots.

The causes of crime are primarily related to:

- Economic Situation
 - Poverty and Inequality
 - Unemployment
 - Political Conditions
- Social Environment
 - School environment
 - Community environment
 - Peer Group and Neighborhood
 - Bad company
- Family Structures

Who is a juvenile?

“Juvenile” or “Child” means a person who has not completed eighteen years of age...Sec 2(l).

Whom does Juvenile Justice Act deal with?

It deals with two categories of children:-

1. “Juvenile in conflict with law/child in conflict with law” offender
2. “Child in need of care and protection.

Who is the competent authority to deal with CCL/CNCP?

Juvenile Justice Board Sec 4 (Child in Conflict with Law)

Child Welfare Committee Sec29 (Child In Need of Care and Protection)

What are the objectives of the JJ Act?

Speedy disposal of cases

Five ‘R’s

- | | |
|-----------------|---------------|
| •Reform | •Restoration |
| •Rehabilitation | •Repatriation |
| •Rescue | |

What is the objective of the JJAct?

1. Stakeholders to act as a guardian/substitute parent to the juvenile/child.
2. Goal is not to punish the CCL but to counsel & reform the juvenile.
3. Safeguard and work for the best interest of the juvenile/child.
4. Improvement of mental physical health of the juvenile/child.
5. Guidance for academic & vocational training.
6. Rehabilitate the juvenile along with sustainable development.
7. Show them the right path of life.s

Stake holders

- The juvenile justice board/child welfare committee
- Police/ child welfare officers (cwos)
- Courts
- State legal aid authority/district legal aid authority
- Government observation/special homes/children's home/after care centers
- NGO's/community/family

The Juvenile Justice (Care & Protection of Children) Act, 2000

Fundamental principles [Rule-3(2), JJ Rules, 2007] to be followed in the application, interpretation and implementation of the JJ Act & JJ Rules by the competent authorities & agencies when dealing with children:-

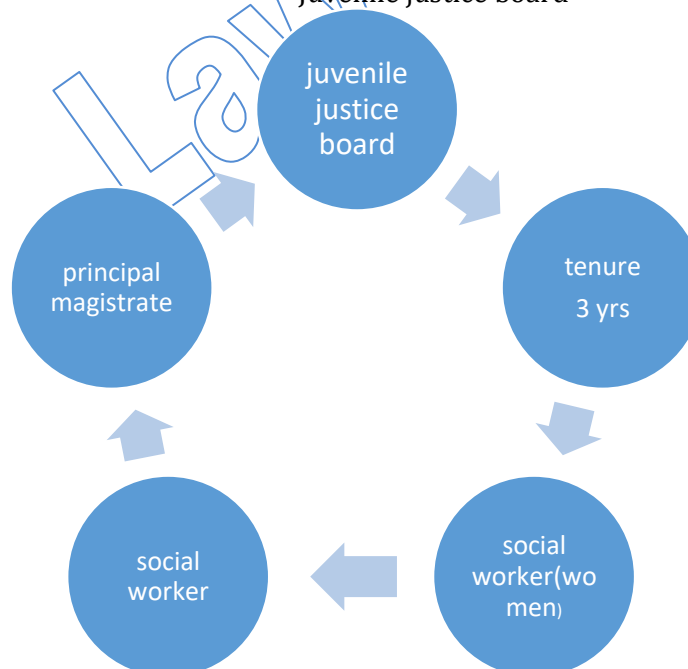
- Principle of presumption of innocence
- Principle of dignity and worth
- Principle of right to be heard
- Principle of best interest
- Principle of family responsibility
- Principle of safety

The Juvenile Justice (Care & Protection of Children) Act, 2000....

- Positive measures
- Principle of non-stigmatizing semantics, decisions and actions
- Principle of non-waiver of rights
- Principle of equality and non-discrimination
- Principle of right to privacy & confidentiality
- Principle of last resort
- Principle of repatriation & restoration
- Principle of Fresh Start
- Right to be produced before the JJB and not a court.

Juvenile justice board composition sec.4 (2)

Juvenile justice board



Juvenile Justice Board – Function.....Rule 10, JJ Rule, 2007

The Bench shall have the powers conferred by the CrPc on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

Board has exclusive jurisdiction to deal with CCL. Take cognizance of crime committed against the child Monitor Institutions for CCLs Liaison with Child Welfare Committee Liaison with other Boards for speedy disposal.

Direct District Authority & Police to provide infrastructure for minimum standard of justice send quarterly reports to State/District Child Protection Unit, State Government & CMM/CJM.

POST-PRODUCTION PROCESSES/INQUIRY BY THE BOARD.. RULE13, JJ RULE 2007

A. Orders on First Production of CCL –

- Dispose off the case, if trivial or evidence is unfounded
- Transfer the CCL to CWC if police report states that the juvenile is in need of care and protection
- Consider release of the child on bail
- Release in the care of Fit Person/Fit Institution/Probation Officer
- Send to Observation Home or Fit Institution pending inquiry

INQUIRY BY THE BOARD

B. Age Determination.. Sec 49 JJ Act/ Rule 12 JJ Rule, 2007

- Determine age of the child within 30 days
- Relevant date of juvenility- less than 18 yrs on the date of offence
- Procedure to be adopted-
- Physical appearance

Documentary evidence:

- Matriculation or Equivalent certificate
- Date of birth certificate from school (other than a play school) first attended
- Birth certificate given by Corporation / municipal authority/ Panchayat
- Medical opinion

INQUIRY BY THE BOARD

C. Bail.. Sec 12, JJ Act 2000

- Juvenile brought before the Board may be released on bail or placed under the supervision of a PO/fit person/fit institution

Bail may be denied:

- Release likely to bring him in association with any known criminal
- Release likely to expose him to moral, physical or psychological danger
- Release would defeat the ends of justice

Procedure for Inquiry

- Petty Offences may be disposed off by the Board through summary proceedings.. [Rule13(2)(d)]
- Non Serious Offences (less than 7 yrs imprisonment for adults) the Board shall follow the procedure of trial in summons cases... [Sec 54(1) read with rule 13 (2)(d)]
- Serious offences (punishable with imprisonment of more than 7 yrs for adults) the Board shall follow procedure of trial in summons cases.. [Sec 54(1) read with rule 13 (2)(d)(e)]
- The Board has to satisfy that the child has not been will treated by the police/lawyer/probation officer Rule13(2)(d)
The Board has to ensure that the parents/guardians have been –

- informed by the police about the apprehension and production of the CCL
- Supplied a copy of the police report
- Informed about the possible need of personal bond/surety in event of a bail granted, the need of identity proof and age verification documents of the CCL.
 - The Board shall ensure that the police has informed the probation officer about the apprehension of the juvenile and seek the social investigation report [Sec 50 & 65 read with sec 50A, CrPC]
 - The proceedings of the Board to be conducted in a child friendly atmosphere. [Rule 13(2)(b) & 13(4)]
 - Every child is given an opportunity to be heard and participate in his/her inquiry. [Rule 13(2)(c)]
 - The Board may dispense with the attendance of the child if not essential for the purpose of the inquiry. [Sec 47]
 - The Board may use the powers of questioning witnesses conferred by sec 165 Indian Evidence Act, 1872 [Rule 13(3)]
 - The Board shall ensure grant of free legal aid through State Legal Services Authority and right to counsel. [Rule 14]
 - No juvenile shall be charge with or tried for any offence together with an adult. [Sec 18]
 - Principle of non-stigmatizing semantics, decisions and actions to be followed. [Rule 3(VIII)]
 - Even if the juvenile ceases to be a child during the pendency of the inquiry the Board shall pass orders as if he is a juvenile [Sec 3]
 - The inquiry to be completed within a period of 4 months after the first summary inquiry. [Sec 14 (1) read with rule 13(6) and rule 15(1)]
 - In case of a foreign national the Board gives due protection to the child till he/she gets repatriated to the country of his/her origin at the earliest in coordination with the respective Embassy or High Commission. [Rule 79(4)(5)(6)]

Final Order passed by the Board

- Allow the child to go home after advice or admonition and counseling to the parents/guardians and juvenile
- Direct the juvenile to group counseling (arrangements to be made by the SCPU/DCPU)
- Order the juvenile to perform community service like cleaning the park; serving the elderly in nursing home; helping out a local fire or police department; helping out a local hospital or nursing home; serving disabled children
- Order to pay a fine by the parent or the juvenile if he is over 14 yrs of age and earns money. To be released on probation of good conduct and place him under the care of a fit person on executing a bond (maximum period of 3yrs) shall remain under the supervision of probation officer.
- Send the juvenile to a special home for a maximum period of 3yrs. All final orders shall include an individual care plan for the child concerned. No juvenile shall be sentenced to death or life imprisonment. [Sec 16(1)]
- In case of very serious offence or the conduct of the child not conducive to other children in special home, the juvenile might be sent to a place of safety. [Sec 16(1)(2)]
- Removal of disqualification attaching to conviction –
 - the juvenile shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.
 - the records in respect of a juvenile shall be destroyed after a period of seven years. [Sec 19]
- Any person aggrieved by the order of the Board may prefer an appeal to the Court of Session within thirty days from the date of such order. [Sec 52]

On a report of a Probation Officer/Government/social worker the Board may release a juvenile.[Sec59(1)]

Procedures to be followed by Court Magistrates

Sec7 – JJ Act, 2000

Sec 7A – JJ Act, 2000

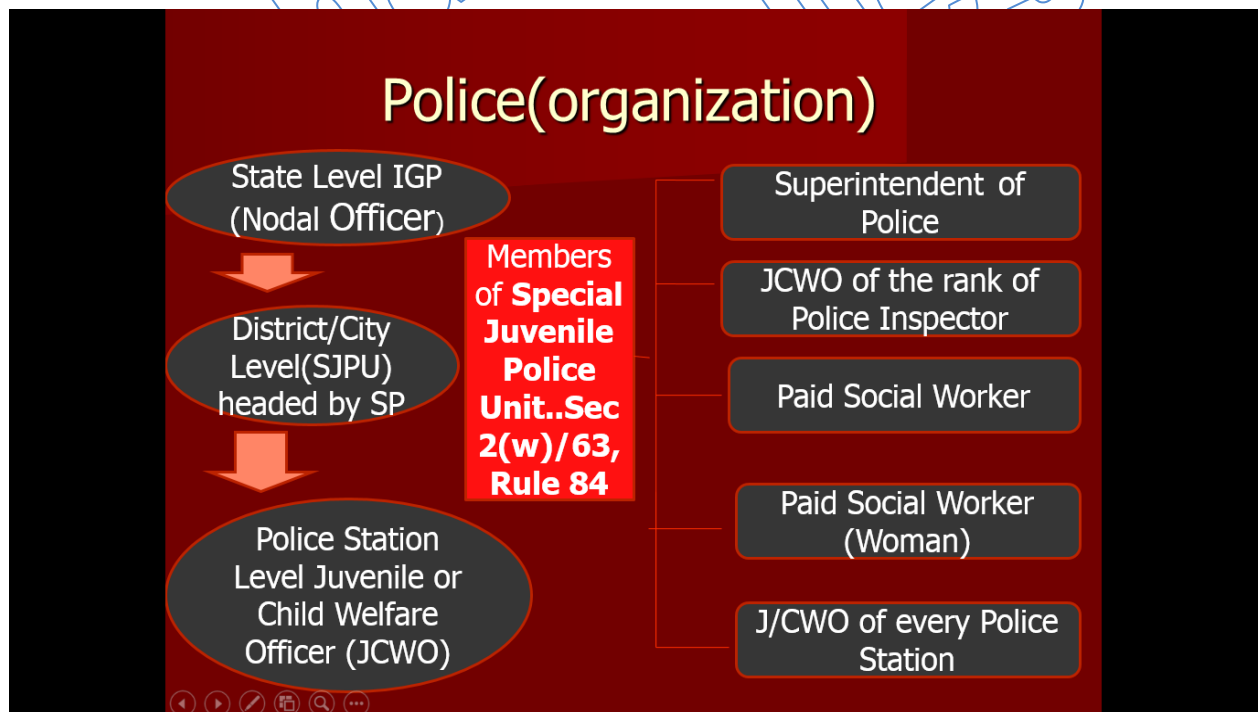
Sec 7A (1) read with rule 12(6) and 98

Sec 7 – Procedure to be followed by a Magistrate not empowered under the Act...if he is of opinion that a person brought before him under any of the provisions of the Act is a juvenile/child he shall without any delay record such an opinion and forward the juvenile/child to the competent authority

Sec 7A – Procedure to be followed when claim of juvenility is raised before any court...when acclaim is raised or the court is of opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence to determine the age and record a finding and forward the juvenile to the Board and the sentence if any shall be deemed to have no

Sec 7A (1) read with rule 12(6) and 98 -Claim of juvenility can be raised before any court and at any stage, even after final disposal of the case.

Sec 64 read with Sec15 & Rule 98 - If the person is found to be a juvenile on the date of offence, he shall be transferred to a special home for the period of sentence or released if the period of detention has exceeded 3 yrs.



What is the role & responsibility of Police/CWO in the Juvenile Justice system ?

1. Initial contact point with the juvenile give first-hand knowledge as to the circumstances of apprehension alleged offence committed by the juvenile.
2. Categorize the offence as per the section/ sections of Indian Penal Code.
3. Counseling of the juvenile begins at the police station.
4. After interviewing the child and delving into his background, make the social investigation report.

Their child-friendly approach wins the juvenile's trust and with it, the initial step in reforming the child begins.

5. It is again the police that provide the details of the case to the JJB in form of GD/FIR/Complaint Report and the social investigation report.

To whom do the Police take these children after apprehension?

If the child is a child in conflict with law (an offender) the police have to produce the juvenile before the Juvenile Justice Board but if the child is in need of care and protection (a victim) the police shall produce the child before the Child Welfare Committee.

At the time of apprehension what are the most important things that the Police must do?

Protect the child if he/she is being assaulted by the public or otherwise; Hand over the child to the Special Juvenile Police Unit/ designated police officer/Child Welfare Officer in the nearest police station; The police at the time of apprehension must decide whether a child is a juvenile in conflict with law (JCL) or child in need of care and protection (CNCP).

Further -

At the time of arrest/apprehension the police must ensure the age of the person arrested/apprehended by:

- Physical appearance
- Claim of the person to be a juvenile
- The documents produced by the parents/guardians
- In the absence of any documents it is mandatory for the police to produce the person before the Juvenile Justice Board on the basis of his physical appearance/ person's claims to be a juvenile.

Is there any time limit as to when the JCL or CNCP should be produced?

Yes, the JCL/CCL or CNCP should be produced before the JJB or CWC within 24hrs of his apprehension excluding the time taken to bring the juvenile from the police station or place of safety to the Board/CWC as the case may be. Sec 10. If the Special Juvenile Police Unit/Child Welfare Officer is not present due to official reasons, the Police Officer who had apprehended the juvenile shall produce him before the Board/CWC as the case may be.

After apprehending the child and before producing him/her before the Board -

The Police Officer must -

- ☑☑the parent or guardian of the juvenile about the apprehension;
- ☑☑them about the address of the Board, place, time & date when the parent or guardian should be present before the Board; about the need of surety & bail bond; give copy of police report; ask them to bring proof of juvenility; identity proof (voter ID card, ration card)
- ☑☑the concerned Probation Officer about such apprehension.. sec13

**FAMILY MEMBERS / PO INFORMED ABOUT
THE APPREHENSION**

What information should be collected before producing the juvenile before the JJB?

Circumstances of apprehension of the juvenile Offence alleged to have been committed. Record information about his social background

The information may be collected through personal interviews, from the members of the family and locality where they are residing, from the social agencies and other sources. This information shall be recorded in the case diary of the juvenile and forwarded to the Board at production of the CCL [Rule-11 (6),(9),(11)]

How does a police produce a juvenile before the JJB during long vacations and government holidays?

The juvenile can be produced by the police-before a single member of the Board.. Sec5(2).The concerned PS may ring up the member/members of the Board and produce the child at a mutual convenient place and receive order regarding the juvenile which shall be ratified in the next meeting of the Board.

How shall the juvenile be treated in the Police Station?

While in the police station or otherwise the child should not be mentally or physically abused/assaulted .The care & protection of the child begins from the PS Counseling of the child begins as soon as the child is apprehended and brought to the police station Police officer shall be in plain clothes and not in uniform (except at the time of apprehension)while dealing with the juveniles.. Rule 75.No handcuffs or fetters shall be used while dealing with the juveniles... Rule 76

When shall the police apprehend a juvenile?

Petty Offences – (punishable with fine up to Rs. 1000 only), police may dispose off the case at the police station itself.[Rule 13(2)(d)]

Non-Serious Offences – (punishable with imprisonment upto 7yrs), juvenile may be apprehended only if it is “necessary in the interest of the juvenile.” [Rule 11(7)(9)]

Serious Offences – (punishment with imprisonment for more than 7yrs), juvenile can be apprehended. [Rule 11(7)]

When the name etc.of the CCL/CNCP be published?

No! No report of any inquiry regarding the name, address, school particulars or any other particulars leading to the identification of the juvenile in conflict with law or child in need of care and protection shall be disclosed in any newspaper, magazine, news-sheet or visual media.

Any person who contravenes this provision shall be liable to a penalty which may extend up to twenty-five thousand rupees.

Only the authority holding the inquire JJB/CWC may allow such disclosure in the best interest of the juvenile or child, which shall be recorded.

What is the punishment?

Sec-23 (JJAct) : A person who is in actual charge of and control over a juvenile or child, assaults (any physical, sexual or emotional abuse), abandons, exposes or willful neglects the juvenile or child; or causes (be the cause of the reason for); or procures (bring about) him to be assaulted, abandoned, exposed or neglected

in a manner that may cause or likely to cause unnecessary mental or physical suffering, shall be punishable –

- a) Imprisonment up to six months;
- b) Fine;
- c) or both.

Cruelty to juvenile

If the juvenile or child has been physically, sexually, or emotional y abused or neglected in an institution by those responsible for care and protection, the Board/Committee shall –

- a) direct the local police station or the SJPU to register a case
- b) Take due cognizance of such occurrences
- c) Conduct necessary investigations

Cruelty to juvenile

Sec- 24 JJAct...Employment of juvenile or child for begging

Sec- 25 JJAct... Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child

Sec- 26 JJAct...Exploitation of juvenile or child employee

Sec- 27 JJAct... Special Offences: - The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.



POWERS OF CWC.....Sec-31

- Final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children;
- Provide for their basic needs and protection of human rights
- Have the power to deal exclusively with all proceedings under the JJAct relating to CNCP.

PRODUCTION BEFORE THE COMMITTEE Sec-32

Any CNCP may be produced before the Committee by:-

☑☑Any police officer or SJPU or a designated police officer

☑☑Any public servant

☑☑Child line, a registered voluntary organization or other voluntary organization or an agency recognized by the State Government

☑☑Any social worker or public spirited citizen

☑☑By the child himself/herself

Production of the child before the Committee within 24hrs excluding the time necessary for the journey

INQUIRY BY THE COMMITTEE Sec-33

On receipt of a report the committee shall hold an inquiry. The committee on its own or on the report from any person or agency may send the child to children's home for speedy inquiry by a social worker or CWO. Inquiry shall be completed within four months of the receipt of the order. State Govt shall review the pendency of cases of the Committee every six months. On completion of the inquiry it

is the discretion of the Committee to allow the child continue to remain in the children's home till suitable rehabilitation is found or till he attains the age of 18yrs

The Police should have readily available list of:-

Various governmental & nongovernmental organizations (NGO's) working with children in the area shelter homes/children homes/fit institutions/child help lines, recognized and certified under the JJAct (as amended up to date)of government hospitals, with pediatric unit Should be conversant with the provisions of The Child Labour (Prohibition & Regulation) Act, 1986 & The Bonded Labour System (Abolition).

CNCP?

An officer while dealing with CNCP should always be in plain clothes. All basic amenities & food requirements of child should be taken care of by the officer during the period child remains in his/her charge. Should be fully aware of the CWC(s), its place and days of sitting, names, addresses & Phone numbers of its individual members.

Duties of Probation Officer

Upon information of apprehension obtain information regarding his antecedents and family background Prepare Social Investigation Report (SIR) Supervise juvenile/child when placed under her/him at

Three stages –

- (a) Bail
- (b) Final Order
- (c) Post Release

Assist institutionalized juvenile – communicating with family; attend Board proceedings and submit reports;

- Clarify problems of juvenile; participate in
- Rehabilitation programmes of juveniles
- Prepare Individual Care Plan
- Prepare restoration and follow up plan.

State Government

Constitution of Statutory Bodies – Selection Committee; JJB;

CWC; Advisory Board;

Child Protection Unit.

Establishment of Homes

Observation Homes; Special Homes;

After Care Organization;

Children Homes; Open Shelters Training of personnel – members JJB/CWC; Police; Staff of Homes & Institutions preparation of Schemes & Programmes – Sponsorship; Grants-

In-aid; Linkages & Co-ordination; social auditing; guidelines for prevention of sexual abuse; after care programme; adoption; foster care. Creation of Juvenile Justice Fund .Frame Rules. Transfer juvenile outside State; arrange counseling & community service; set up de-addiction centers & centres for treatment of dangerous diseases

Legal Services Authority & Advocates

Provide free legal service to al CCLs/CNCPs through State/District

Legal Aid Services Authority

Institute Legal Aid Clinic in the JJB (State Capital) ; provide name, addresses of panel lawyers to JJB and Para-legal volunteers

To provide moral, social and learning assistance to the CCL. Ensure that CCL are not made victims of overly harsh criminal procedure and that their rights are protected. The legal practitioner should bring all those relevant facts before the Board which may be useful for treatment and rehabilitation. Understanding the psyche of the child is necessary. Explain the morality of his action not the intricacies of the law and

Legality of a act Can offer information and referral, training and education, negotiations, legal services and monitoring.



Rehabilitation of juveniles

The very Nature of the Act is curative not punitive. Delinquent juvenile due to their immature understanding or unfavorable environment use to commit offence, but they have a long road to go and hence it's a moral duty on court and society to provide them with a chance to live healthy live and to bring them in main stream of development. There are very efficient and effective measures of rehabilitation for juvenile delinquent.

Observation homes:

The state govt. may establish and maintain either by itself or in association with voluntary organizations children's homes, in every district or group of district. Children's homes are constructed for the reception of child in need of care and protection during the pendency of an inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

Shelter Homes: shelter is a registered, voluntary welfare organization for children and teenagers who have been abandoned, neglected, orphaned or abused. Guided by the vision to give children at risk a childhood and future by protecting, guiding and healing them, and by building strong communities and loving families, Shelter's services and initiatives are aimed at:

- Providing care or children at risk through our residential homes, counseling, therapy and other services.
- Proactively raising public awareness on child abuse, child protection, parenting and youth issues, and equipping individuals with relevant skills to detect signs of abuse and to take action.

Prayas is one of India's largest Non Profit Organization dedicated to child rehabilitation.

Children's homes.-(1) The State Government may establish and maintain either by itself or in association with voluntary organizations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organization may be granted or withdrawn.

35. Inspection. - (1) The State Government may appoint inspection committees for the children's homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

(2) The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, Local Authority, Committee, voluntary organizations and such other medical experts and social workers as may be prescribed.

Setting up child welfare committee:

It is a sole authority to deal with matters concerning children in need of care and protection established by state govt. A committee to be constituted in each district, and consist of a chairperson and four other persons one of whom at least should be a woman.

The committee has final authority to deal with matters concerning children in need of care, protection, development and rehabilitation of the children as well as to provide for their basic needs and human rights. Children in need of care and protection are sent directly to the children's home by the CWC that passes necessary orders for their rehabilitation, restoration and social re-integration.

Rehabilitation of Juvenile after being Released or Acquitted:

When any child in conflict with law is released or acquitted and in the opinion of child welfare committee, he is in need of rehabilitation and social integration to come in the main stream of the society as an alternative by:

Adoption:

It is the primary responsibility of the family for providing care and protection to the child. The child shall be adopted for the purpose of rehabilitation of such children as are orphaned, abandoned, neglected or abused by means of institutional or non-institutional method. Children's and the state govt. owned institution shall be recognized as adoption agencies and these agencies are subjected to scrutiny and placement for adoption.

Foster Care:

Is the term used for a system in which a minor who has been made a ward is place in the private homes of a state certified caregiver. The state by the family court and child protection agency stand in loco parents to the minor, making all legal decisions while the foster parents are responsible for day to day care of said minor. Foster care is intended to be a short term situation until permanent placement can be made.

Setting up After Care Organization:

The state govt. is under statutory obligation to lay down the scheme and guidelines for setting up care organization, when the juvenile leaves special homes. The provision is incorporated by the legislature with a view of enabling the juveniles to lead an honest, industrious and useful life.