



# Need of Juvenile Justice (Care & Protection of Children) Act for Natural Disasters Victim Children

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## **Abstract**

Our Constitution has several provisions including clause (3) of article 15, clause (e) and (f) of article 39, articles 45 and 47 which impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. But it is seen that during occurrence of any Natural Calamities, the children become prey to the helpless situation, lose their all support systems, from our society. It is the duty of the state as the *parens patriae* to apply the legal support system of Juvenile Justice (care and protection of children) Act to save the future of helpless, dependent, natural disaster victimized children, from the ruined conditions, to keep the future of our nation safe and better.

## **Introduction:**

Children are the flower of a nation who needs social care, protection, affection, and facilities. A little hurt will ruin the future of the nation. Children need special protection because of their age, physique and mental illness. In Olden age every home was a child care home. Every home protected their child, every child cared for, looked after educated and made to live as a proud citizen of the country. Those were the days now petrified in the myths, folklores, and songs of the past.

When people started living low shrouded with mixture of ignorance, deprivation and subjugation every home suffered and children suffered most. Independent India inherited with its glorious past capabilities of decades and servitude and the responsibility to lit dark abyss of future. And who represented the future? Children who along go into it, live smoothen and stream roil the rough roads, through which the country has to march ahead.

Children are being considered as the supremely important national assets and the future of the country depends on the welfare and wellbeing of its children. Constitution of India has conformed sweeping power on the Govt. to make special provisions for the children and take appropriate measures for their wellbeing. A direction is also given to the Govt. under D.P.S.P, of the constitution to see that the tender age of the children should not be abused and children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth should be protected against exploitation against moral and material abandonment.

During natural disasters children become worse affected due to dependent nature. They become helpless and live in hopeless and despair condition.



### **Constitutional Aspect:-**

The framer of our Constitution also kept in mind the children welfare as supreme and had laid down special provisions for the care of children. Article 15 (3) enables the State to make special provisions for women and children. Article 24 of the Constitution provides that “No child below the age of 14 shall be employed to work in any factory or mine or any hazardous employment. Clause (e) of the Constitution of Article 39 says that “the health and strength of workers men and women and the tender age of children are abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age and strength”. Clause (f) of the Article 39 provides 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. In 1974 the Govt. of India adopted the national policy for the welfare of children. The resolution constituted a Children Board on 20<sup>th</sup> November 1959, the U.N made declaration of the Right of the Child”. The declaration mentions, inter alia, that “the child shall enjoy special protection and shall be given opportunities and facilities by law and other means to enable him to develop physically, mentally, morally, spiritually and socially in a normal manner and condition of freedom and dignity. The resolution proclaims that “mankind owes to the child the best, it has to give.”

The U.N.O declared the year 1979 to be the International year of the child. The pressing problems of juvenile delinquent in developed and developing countries attracted the attention of the United Nations.

In India the surveys of status reveal that there are more than 300 central and state

enactments on the subject of marriage regulatory, guardianship, maintenance and labour welfare etc. the first foundation in the field of welfare of child was put by moving the Reformatory Schools Act 1987 which treated the juvenile delinquent differently. The second attempt was the introduction of the Bombay Children Act 1928. During the end of 19<sup>th</sup> century 29 B of Cr.P.C. 1898 came into force and introduced a special judicial procedure in criminal cases in respect of child offenders. The new Cr.P.C also contains the somewhat similar provisions for the trial accused. The children Act 1960 was enacted for care, protection, maintenance, welfare, training, education and rehabilitation of neglected delinquent juvenile. To reform the condition of child and for the welfare of children, the Apex Court of India directed for the initiation of Uniform Code throughout the entire territories of India. Then the Parliament passed the bill and enacted the Act for the welfare of children. The act is called as the Juvenile Justice Act 1986.

The Apex Court of India held in a case *Hussainara Khatoon V. Home Secretary State of Bihar* AIR,1979 SC 1360 that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution with the above said point of view, it may be indicated some of the observations of the SC in the case of *Vikram Deo Tomar V. State of Bihar*, 1988 PLJR 93. Conjointly it will be better to quote the language of Hon’ble Supreme Court thus:-

“India is a welfare state governed by a Constitution which holds the pride of place in the heart of its citizens. It lays special emphasis on the protection and wellbeing of the weaker sections of social status on the basis of constitutional guarantees spelled out in its provisions”.

It shows a particular regard for women and children and notwithstanding the pervasive



ethos of the doctrine of equality in contemplates special provisions being made for them by law. We live in an age when this court has demonstrated while interpreting Article 25 of the Constitution that every person is entitled to a quality of life consistent with his human personality. We are fully endorsing the cherished view expressed by the Hon'ble S.C. These neglected Juvenile must be given proper care required under the Juvenile Act, as stated in the case H.B.Singh Arsi V. State of Bihar 1991(1)CRIMES,535.

It is significant that Article 39 relates to "Directive Principles" of State Policy under part IV of the constitution. Article 29 particularizes certain objectives clause (e) of Article 39 and Clause (f) of the said Article 39 has certain relevant objectives. One of the objectives under the clause (e) of Article 39 is that the state should, in particular direct its policy towards security that the tender age of children are not abused. Under clause (f) one of the objectives is that childhood and youth are protected against exploitation and against moral and material abandonment. These objectives reflect the great anxiety of the Constitution makers to protect and safeguard the interest and welfare of the children of our country. The Govt. of India has also in pursuance of these Constitutional clause (e) and (f) of Article 39 evolved a national policy for the welfare of the children stated in a case, Vishal Jeet V. Union of India. 1990(3)SCC318.

It is also the settled legal provisions that only when the provisions of the statute are not clear preamble can be looked to find out the real object of an enactment, it was stated in the Muniswar Dutt Pandey V. Ranjeet Tiwari 1997,UP.LB.E.C 199. The settled principles required to be kept in view while interpreting the statutory provisions enacted for the

protection of public at large and not only the individuals alone.

It was held by the S.C in Gaurav Jain V. Union of India AIR 1997 SC3021 that every child who is found to be neglected juvenile should be dealt by the board and should be brought within the protective umbrella of the juvenilia home. The court also observed that neglected juvenile should be interpreted broadly which is an important function for the purpose of identifying the groups of children who need care and attention and protection for rehabilitation. Now it is clear that the definition of child in need of care and protection is an ample designation encompassing children found begging in streets, those who have suffered physical or sexual abuse and those who are believed to be at high risk of being abused in the future, virtually all streets children, natural disaster victims children fall into this category.

#### **Need of this Act:**

The Juvenile Justice (care and protection of children) Act 2000 took a broader view and came out with protectionary measures for juvenile in conflict with law and "child in need of care and protection" instead of the two types of children as provided in the earlier Act. This Act was further amended in 2006 to make it more vibrant to protect the rights of the children at large.

Although juvenile in conflict with Law to a larger extent is similar with the delinquent juvenile, the provisions for the children in need of care and protection are very broad and cover wide ranging aspects of neglect which the children are facing and hence are drawn into this category. A child in need of care and protection means a child

i. who is found without any home or settled place or abode and without any ostensible means of subsistence.



- ii. who resides with a person (whether a guardian of the child or not) and such person.
  - (a) has threatened to kill or injure the child and there is a reasonable likelihood.
  - (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.
- iii. who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after.
- iv. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.
- v. who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry.
- vi. who is being or likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.
- vii. who is found vulnerable and is likely to be inducted into drug abuse or trafficking.
- viii. who is being or is likely to be abused for unconscionable gains.
- ix. who is victim of any armed conflict, civil commotion or natural calamity [(Sec-2 (d)]

The Act purports to mean a juvenile or a child a person who has not completed eighteenth year of age, Sec-2 (k). The Act envisages the constitution of 'Juvenile Justice Boards' or 'Child Welfare Committees' for every district or group of districts to exercise powers and discharge duties as conferred and imposed by the Act in relation to juveniles in conflict with law and the children in need of care and protection respectively.

The Board and Committee are to function as a Bench of Magistrates and enjoy the powers as conferred by the Cr.P.C. The Child Welfare Committee has been empowered to have power to deal exclusively with all proceedings under this Act relating to children in need of care and protection respectively [sec6(1)] and [31(2)].

The committee shall final authority to dispose of cases as for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. [sec31 (1)].

This Act also provides for punishment for any person who has been found to be cruel towards a juvenile. [sec23]; employs a juvenile for begging [sec24] or whoever gives, to any juvenile, or the child any intoxicating liquor in a public place or narcotic drug or psychotropic substance or exploits or process ostensibly a juvenile or child for the purpose of any hazardous employment.

As regards the children in need of care and protection, such children may be produced before the child welfare committee by one of the following persons.

- (i) Any police officer or special juvenile police unit or a designated police officer.
- (ii) Any public servant
- (iii) Children, a registered voluntary organization or by such other voluntary organization or an agency as may be recognized by the State Government.
- (iv) Any social worker or a public authorized by the State Government.
- (v) By the child himself

After receiving the report, inquiry will be conducted either by the committee or the



police officer and order may be passed for sending the child to the children's home for speedy inquiry and after completion of the inquiry, if the committee is satisfied that the said child has no family or ostensible support, it may allow the child to remain in children's home or shelter home till suitable rehabilitation is found for him, or till the child attains the age of eighteen years [sec33].

This Act also envisages the establishment of children's home by the State Govt. itself or in association with the voluntary organizations in every district or a 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 [sec34].

The State Govt. may also by rules made under the Act, provide for the management of children's homes including the standard and nature of the services to be provided by them and the circumstances and manner under which the certification of a children's home or reorganization to a voluntary organization may be granted or withdrawn.

Besides, the State Govt. may be recognized, reputed and capable voluntary organizations and provide them assistance to set up and administer as many shelter homes for juveniles or children as the case may be [sec37]. Mainly the shelter homes will be required to function as the drop in centers for children who have been brought to such homes by the reference of the committee. The prime objective of such children and shelter homes is to restore and protect the child and they shall take necessary steps for the restoration of and protection to a child deprived of his family environment temporarily or permanently [sec39]. In *Sheela Barse V. Union of India*, the

S.C again declared the admission of non-criminal, mentally ill children and adults to jail, illegal and unconstitutional.

### **Protection Measures:**

Sec 40 of the J.J. Act envisages for the rehabilitation and social reintegration of the children and as per the provision of the act such a process should begin during the stay of the child in the children's home or the shelter home which shall be carried out alternatively as per Sec 39. Restoration of and protection to a child shall be the prime objective of any children's home or shelter home. The children's home or shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care protection of a children's home or a shelter home, as the case may be. The committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person, or fit institution as the case may be, and give them suitable directions. For this purposes restoration of child means restoration to (a) parents, (b) adopted parents, (c) Foster parents, (d) guardians, (e) fit person, (f) fit institution.

1. Adoption (Sec 41);
2. Foster care (Sec 42);
3. Sponsorship Programme (Sec 43);
4. Sending the child to an after care organization (Sec 44);
5. Linkages and Co-ordination (Sec 45).

### **1. Adoption**

As regards adoption Act clearly states that it is the primary responsibility of the family to provide care protection to the children. The Juvenile Justice Board is empowered to give



the children in adoption taking into consideration various guidelines issued by the State Govt. relating to adoption and also the board can carry out investigations as are required for giving children in adoption as per the guidelines framed by the State Governments. [sec 41 (5)]. The children's homes or the institution for orphans run by the State Govt. shall be recognized as adoption agencies both for security and placement of such children for adoption and a child can be offered for adoption only when,

- (i) two members of the child welfare committee declare the child legally free for replacement in case of abandoned children;
- (ii) two month period for reconsideration by the parent lapses in case of surrendered children; and
- (iii) the child who is capable of understanding and expressing has consent gives consent to that effect. [sec41(5)] .Then only the board may allow a child to give in adoption.
  - a) To a single parent (irrespective of marital status); or
  - b) To parents to adopt a child of same sex irrespective of the number of living biological sons or daughters. [Sec 41(6)]. The Bombay High Court in Robert Heijkamp and another V. Bal Anand World Children Welfare Trust, India (Mumbai) AIR 2008(NOC)1054 Bom, held that child of mentally ill person would be deemed to be abandoned within the meaning of sec41 and it may be declared to be fit for being given in adoption.
  - c) Childless couples.

## 2. Foster care

It may be used for temporary placement of those infants who are ultimately to be given from adoption and in such situation the child

may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes [sec42].

## 3. Sponsorship programme:

The sponsorship programme may provide supplementary support to families to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life. In both the above cases the Govt. of the concerned States are employed to make rules for the purpose of carrying out the foster care programmes and various schemes of sponsorship of children, such as individual to individual sponsorship, group or community sponsorship. (Sec 43).

## 4. Sending the child to an after care organization

For furthering objective for rehabilitation and social reintegration of children and to look after their care, the State Govt. may

- i. establish or recognize after care organization and provide for their functions,
- ii. prepare a scheme of aftercare programme to be allowed by such organization for the purpose of taking care of juvenile or children after they leave the special homes, children's homes and for the purpose of enabling them to lead an honest, industrious and useful life,
- iii. provide for the preparation or submission of a report by the probation officer or any other officer appointed by that Govt. in respect of each juvenile or the child prior to this discharge from a special home, children's



home regarding the necessity and nature of after care of such juvenile or of a child, period of such aftercare, supervision thereof and submission of a report on the progress of each juvenile or the child by the concerned officer.

**iv.** provide for the standards and the nature of services to be maintained by such aftercare organization and

**v.** provide for such other matters as may be necessary for the purpose of carrying out the scheme of aftercare programme for the juvenile or the child (sec 44).

Further this act also provides for certain other welfare measures that can be taken for wellbeing and rehabilitation of juvenile such as releasing them and placing them under the guidance of their parents or authorized guardians for their education, training for some useful trade or look after him for rehabilitation and seeking the contribution of parents for their maintenance, certain of fund by the Govt. establishment of central / state, District and City Advisory Boards for advising the Govt. for their care and rehabilitation etc. the juvenile Justice (care and protection of Children) Act amended 2006 finally calls upon the central Govt. to remove all such difficulties which may arise while giving effect to the provisions of this act.

The State Govt. may rule to ensure effective linkage between various governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child (Sec 45). There are a very few cases reported in relation to neglected children and most of the issues relating to nature of the committee and its proceeding. Such as the right to a lawyer, burden of proof, standard of proof, standard of proof remain unaddressed. The proceedings before the committee continue to be conducted without a lawyer. The definition of deprivation

of liberty under the UN Rules II (6) for protection of juveniles and child deprived liberty reads: "The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting. From which this person is not permitted to leave at will, by order of any judicial administrative or other public authority".

It is clear from this definition that children kept in children homes pursuant to the order of the committee fall squarely in this definition as they cannot leave the home at will. All those children should have a right to legal counsel. The Indian Constitution in Article 22 (1) recognizes the right to a lawyer in case of deprivation of liberty for all. All children are entitled to free Legal aid U/S 12 (c) of the legal Services Authority Act also. The Child Right Convention and the Beijing Rules direct that children should be provided with legal representation against deprivation of liberty. However no provision made for providing lawyer in the proceedings before the Child Welfare Committee.

The argument is that the CWC is a welfare body and the proceedings before it are welfare and not judicial proceedings and hence, there is no need for a lawyer. But the reality is that they remain deprived of their liberty without legal assistance and their fundamental rights are thereby violated. The Commission for Protection of Child Rights Act 2005, in short CPCRC Act has been enacted with two objects, one, to establish commission for child protection at the national and state level and second to establish children courts to expeditiously deal with case of offences against children. Pursuant to the coming into force of the CPCRC Act, the National Commission for Protection of Children Rights has been long established. But State Commission of



Protection of Child Rights has not been established in most cases. There is also no establishment of children courts under it. There are certain sections like 48, 50, 56, 57, 58, 59, 62 and 62 Act under miscellaneous provisions of the Juvenile Justice (Care and Protection of Children) Act 2006. Those said sections protect the rights and interest of the natural disaster victim's children.

### **Conclusion:**

From the above analysis, it is clear that the Advocates, NGOs and Judges should apply this law properly and correctly while dealing with J.J (care & protection) Act 2006 to protect the delicate life of natural disasters victim children. The Govt. appears to lack interest in implementation of the provisions in the letter and spirit to achieve the objectives behind the Act focused by the constitutional in and objective. The sovereignty lies with we the people of the India and the juvenile or child is the future of the nation. The Rule of law prevails. In order to discharge the responsibility the State and its instrumentalities and authorities must take the positive view on the matter to protect the juveniles or children of Natural Disasters Victim to construct a healthy and talented India by eradicating evils in society after occurrence of any natural calamities. Juvenile Justice Act is based on two philosophical objectives – Parens Patriae and individual treatment. The Parens Patriae doctrine allows the court to conduct the proceedings principally to determine what should be done in the based interest of the child and not as trials to determine criminal guilt and give sentence. The individualized treatment doctrine views the disposition decision in view to inherently rehabilitate. It seeks to prescribe a treatment programme fitting the needs, personality, physiological develop and social circumstances of a youth.

To mete out justice is a grave and critical responsibility and it becomes graver when the person in question is a juvenile. The Juvenile Justice (Care & Protection) of Children Act 2006 was passed promising to usher in a new era of Juvenile Justice, keeping in mind various international instruments ratified by the Government of India. However the Act has paid mere lip – service to many issues which required immediate attention. Not merely a legislative, but a multipronged approach of logistic support by the State and a sensitized system are needed to deal with the problems of juveniles to fulfill the objectives of law.

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