

UNIT- III

Constitution, Procedure and Powers of Board

4. Juvenile Justice Board.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this act.

(2) A Board shall consist of

a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and

two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare¹ and

no social worker shall be appointed as a member of the Board unless

he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.²

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if –

i. he has been found guilty of misuse of power vested under this act,

¹ . Rule 5(3)(ii) the Juvenile Justice (Care and Protection of Children) Rules, 2007. In case the Principal Magistrate with such special knowledge or training is not available, then, the State Government shall provide for such short-term training in child psychology or child welfare as it considers necessary.

Rule 3(1) the Juvenile Justice (Care and Protection of Children) Rules, 2016. A Magistrate with requisite experience of at least three years shall be designated as the Principal Magistrate of the Board and before taking charge as the Principal Magistrate of the Board, he shall undergo training as provided under Rule 121 of these rules.

² . Rule 6. (1) the Juvenile Justice (Care and Protection of Children) Rules, 2007, The Board shall have a tenure of three years and the appointment of members shall be co-terminus with the tenure of the Board. (4) A member may resign any time, by giving one month's advance notice in writing or may be removed from his office as provided in sub-section (5) of section 4 of the Act.

Rule 4(1) the Juvenile Justice (Care and Protection of Children) Rules, 2016, The members of the Board shall be appointed for a period of three years from the date of their appointment. (4) The Members may resign at any time by giving one month's notice in writing to the State Government.

ii. he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,

iii. he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

5. Procedure, etc. in relation to Board.-

(1) The Board shall meet at such times and shall, observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.³

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate, shall prevail.

6. Powers of Juvenile Justice Board.- (1) Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act, relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceedings comes before them in appeal, revision or otherwise.

14. Inquiry by Board regarding juvenile.- Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

³ . The Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 9. Sittings of the Board.— (1) The Board shall hold its sittings in the premises of an Observation Home or, at a place in proximity to the observation home or, at a suitable premise in any institution run under the Act, and in no circumstances shall the Board operate from within any court premises.

(2) The premises where the Board holds its sittings shall be child-friendly and shall not look like a court room in any manner whatsoever; for example, the Board shall not sit on a raised platform and the sitting arrangement shall be uniform, and there shall be no witness boxes.

(3) The Board shall meet on all working days of a week, unless the case pendency is less in a particular district and concerned authority issues an order in this regard.

(4) A minimum of three-fourth attendance of the Chairperson and Members of the Board is necessary in a year.

(5) Every member of the Board shall attend a minimum of five hours per sitting.

Rule 6: 2016 Rules has added some more provisions e.g.; sittings on holidays and Sundays for emergency purposes.

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

15. Order that may be passed regarding juvenile.- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home,-

i. in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

ii. in case of any other juvenile for the period until he ceases to be a juvenile :

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

2. The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

3. Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law :

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

4. The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security :

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit :

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

17. Proceeding under Chapter VIII of the Code of Criminal Procedure not component against juvenile.- Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code.

18. No joint proceeding of juvenile and person not a juvenile.-(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

(2) If a juvenile is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and

tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

Juvenile Justice Board

The Act creates a distinct and separate system to deal with a child in conflict with law. The former Juvenile Courts are now known as Juvenile Justice Boards. Thus the competent authority to deal with the "juvenile in conflict with law' is the "Juvenile Justice Board (Board)⁴. Section 4 of the Juvenile Justice Act deals with the appointment of members of the Board to discharge duties for a district or group of districts. The Board shall have the powers to deal with all proceedings under the Act. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman. Now no Magistrate can be appointed as a⁵ member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health education or welfare activities pertaining to children for at least seven years. All of them should have special knowledge of child psychology and child welfare. This provisions if implemented in letter and spirit has the potential to convert the legal and technical nature of the proceedings of the Board into welfare and care proceedings.

When the juvenile has been charged with an offence, he is produced before the Board. The Board shall hold an enquiry and complete the enquiry within four months from the date of commencement of the enquiry. If the enquiry is not completed within a period of four months reasons shall be recorded in writing for extending the rime for completing the enquiry. Interestingly again nowhere in the Act has the word 'trial' been used. Euphemistic use of expressions substantiates the intent of our legislators to bring about a change firstly in letter itself.

Instead Sec. 14 provides for inquiry by Board regarding juveniles. The time limit for inquiry is four months⁶. Orders that may not be passed by the board include death penalty, life imprisonment, committed to prison in default of payment of fine or furnishing of security excepting the cases in which a serious offence has been committed by a juvenile who has attained the age of 16 years. When the Board is satisfied that sending him to a special juvenile rehabilitation centre shall neither be in his interest nor in the interest of other juveniles, he may be kept in protective custody with prior direction from the State Government after the matter has been reported⁷.

After inquiry if the Board is satisfied that the juvenile actually committed the offence following are the orders delineated under Sec. 15, which may be passed by the Board

Release after advice or admonition after counseling to parent/guardian/child.

Participation in group counseling.

Perform community service.

4 . Sec. 4. The Juvenile Justice (Care And Protection Of Children) Act, 2000 (Act No. 56 of 2000)

5 .ibid.

6 . Sec. 14 The Juvenile Justice (Care And Protection Of Children) Act, 2000 (Act No. 56 of 2000)

7 . Sec. 16 The Juvenile Justice (Care And Protection Of Children) Act, 2000 (Act No. 56 of 2000)

Pay fine if above 14 years and earning.

Release on probation under the care of parent/guardian/fit person executing a bond.

Release on probation under the care of fit institution.

In above three cases, in addition, place under the supervision of probation officer.

Send to special home.

1. for a minimum of two years in case of a juvenile above 17 but below 18 years of age.
2. in other cases till he ceases to be juvenile

No security for keeping the peace and good behavior as provided under chapter VIII of crpc⁸ shall be ordered to be taken from the juvenile.⁹ There will be no joint trial of a juvenile with a person who is not a juvenile notwithstanding anything contained in section 223¹⁰ of CrPC 1973.¹¹ If the juvenile has been charged and tried together along with other accused who is not a juvenile, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.¹²

Bail of Juvenile

12. Bail of juvenile.- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of

8 . SS. 106-110 CrPC.1973.

9 . sec. 17 The Juvenile Justice (Care And Protection Of Children) Act, 2000 (Act No. 56 of 2000)

¹⁰ . **Section 223 in The Code Of Criminal Procedure, 1973**

What persons may be charged jointly. The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course same transaction;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of

stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together

¹¹ . Sec. 18 jj(c&p) act 2000.

¹² . *ibid.*

1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Section 12 provides for bail of a juvenile. According to Section 12 when any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detainee, he can be released on bail also. Such person who either appears or is brought before a Board shall be released on bail with or without surety notwithstanding anything contained in the Code of Criminal Procedure or any other law in force. The Section also provides that if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to physical or psychological danger or his release would defeat the ends of justice he shall not be so released. For granting of bail no procedural wrangles like filing of bail application etc. are needed. Claim of juvenility By the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, a new Section 7-A has been inserted which lays procedure to be followed when claim of juvenility is raised before any court. Section 7-A says that whenever any claim of juvenility is raised before any court or a court is of the 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 as may be necessary (but not affidavit) so as to determine the age of such person and shall record a finding whether the person is a juvenile or a child or not stating his age as nearly as may be. Further, it was laid down in *Bhola Bhagat v. State of Bihar*(1997) 8 SCC 720., that if the accused raises the plea that he is a juvenile and if the Court entertains any doubt about his age, it has to hold an inquiry itself for determination of his age or cause an inquiry to be held and seek a report. If the court finds a person to be a juvenile on the date of commission of the offence, it shall forward the juvenile to the Board for passing appropriate order and the sentence if any shall be deemed to have no effect. In a developing country like India, the problem of juvenile delinquency is very serious. The impact of western civilization and temptation for luxuries and pompous life has greatly disturbed the modern Indian youth. Consequently, there has been a considerable growth in crimes committed by juveniles. Like any other country, India also seeks to tackle the problem of juvenile delinquency on the basis of three fundamental assumption:

- i) young offenders should not be tried, they should rather be corrected;
- ii) they should not be punished but be reformed; and
- iii) exclusion of delinquents i.e. children in conflict with law from the ambit of court and stress on their non-penal treatment through community based social control agencies such as Juvenile Justice Board, Observation Homes, Special Homes etc.