

- **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 necessaries 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 arraigned 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 Procuration 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

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 - a) Where he is, or
 - b) Where he or his wife resided, or
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- 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 ignition but agreements in favor of a minor for his benefit are not void, but enforceable.

- Section 68 Indian Contract Act, 1872: Claim for necessaries supplied to person incapable, or on his account.
- Testimony of children:- Anybody can give evidence in the court provided he is acquainted with the fact 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(1).

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
- Rehabilitation
- Rescue
- Restoration
- Repatriation

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

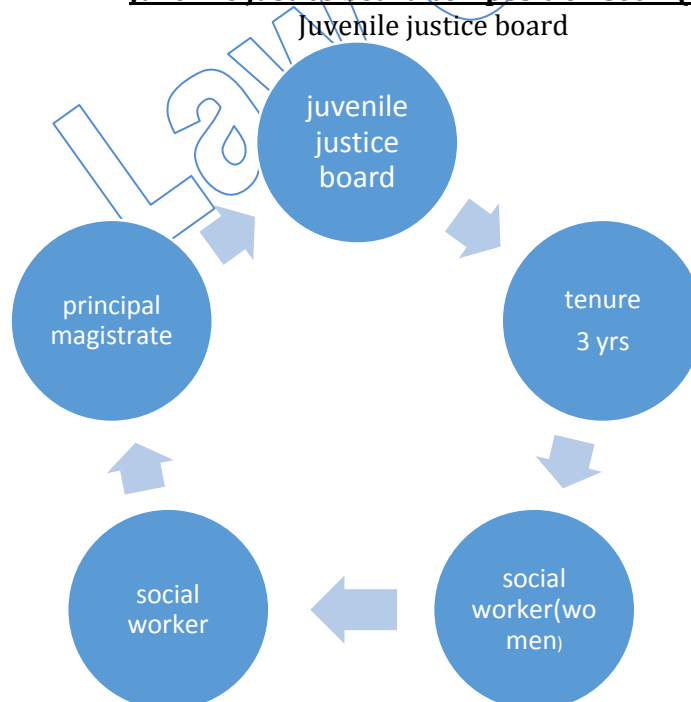
Fundamental principles [Rule-3(2), JJ Rules, 2007] to be followed in the application, interpretation and implementation of the JJ Act & JJ Rules by the competent authorities & agencies when dealing with children:-

- 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 – 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

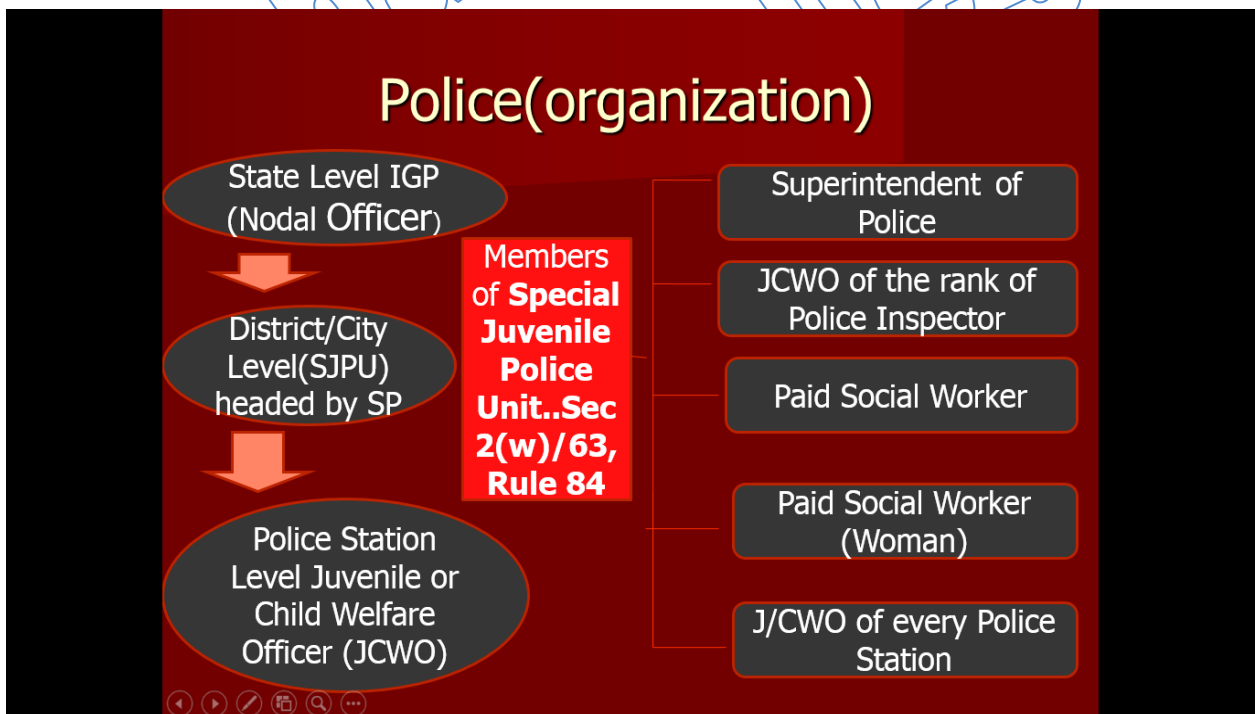
Sec 7A (1) read with rule 12(6) and 98

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.