



ANDHRA PRADESH

Judicial Services Exam

CIVIL JUDGE (Junior Division)

High Court of Andhra Pradesh

Substantive Law

Volume - 1



ANDHRA PRADESH JUDICIARY EXAM

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Juvenile Justice Act, 2015

Act (2 of 2016)

Consent of President, 31 December, 2015 and came into force in 15 January, 2016.

Object

- * To make law relating to children in conflict of law and children in need of care and protection.
- * Carter to the basic need of development (by proper care, protection, treatment & social integration)
- * By child friendly approach disposes of the matter which is in best interest of children.
- * Rehabilitation of children by institutions and body.
- * Article 15(3), 39(e), Art. 45(f), Art. 27 make law according to constitutions.
- * 11 December, 1992 according to UN convention.
- * Apart from this there were other convention according to which this law is made:
 - (i) Beijing Rules (UN convention for standard minimum rules for administration of Juvenile Justice), 1985.
 - (ii) Hague convention, 1993 (Protection of children and co-operation in respect of inter country adoption.
 - (iii) UN rules for protection of Juvenile deprived of liberty, 1990.

Juvenile

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2.	Ch: 2 General Principles Sec: 3
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5.	Ch: 5 Child Welfare Committee Sec: 27-30
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10.	Ch:10 Miscellaneous Sec: 90-112

Chapter - 1

Preliminary Sec. 1-2

Sec. 1: Applicable in India, Now in J&K also.

Sec. 2 (1): - Abandoned child= such child:

Who is deserted by his biological & adoptive parents and he is declared abandoned by committee after inquiry.

(5) - Aftercare = Means provisions of support financially or otherwise for the person who have completed the age of 18, but not 21, by which they can join the mainstream of society.

(9) - Best interest of child: means all provisions which related to basic rights like/such as needs, identically social well being physical, emotional & intellectual development.

(12) - Child: means a person who had not completed 18 years.

(35) - Juvenile= means a person who not attained the age of 18 years.

Child

Child in conflict of law	Child in need of care and protection
Clause 13 of sec 2	Clause 14 of sec 2
Such children who has not attained 18 years on the date of offence and has committed offence.	Clause 14: They are following children: <ol style="list-style-type: none"> a. Such children don't have home. b. Such children who is in contravention with labor laws or begs. c. Reside with such persons who (i) exploit and abuse the child (ii) threaten to kill or exploit (iii) kills, exploit or abuse other child. d. Such child who lives with mentally or physically

	<p>challenged person and he is incapable.</p> <p>e. In the opinion of committee parents are unfit.</p> <p>f. Such child who don't have parents or other person not ready to take care.</p> <p>g. Such child who is missing or has ran away from home</p> <p>h. Such child who can be exploited sexually or illegal acts.</p> <p>i. Such child who is in drug abuse, thus child who is abused for unconscionable gains.</p> <p>j. Such child victim of armed conflict, natural calamity etc.</p> <p>k. Such child who has danger of marriage, before attaining age of marriage.</p>
Clause 56: special home (permanent)	Clause 19: Children home
Clause 46: place of safety (permanent)	Clause 21: Child care institution
Clause 40: Observation home (temporary)	
Fit person- Clause 28- Such person who is ready to take the liability of child	Fit Institution-Such institution which is ready to take the liability of child

Offences		
Petty Offences	Serious Offences	Heinous Offences
Clause 45 (Punishment of 0-3 years)	Claus 54 (Punishment of 3-7 years)	Clause 33 (Punishment of 7 or more years)

(20) - Children Court = means special Court in POCSO, if there is no POCSO then Court of Session.

POCSO: Protection Of Child from Sexual Offences.

- * Non-resident Indian(Clause 38 of Sec 2)
 - Such persons who has Indian Passport and has been out of India for 1 year or more.
- * Overseas citizen of India(Clause 43 of Sec 2)
 - Such person who is registered in citizenship Act.
- * Person of Indian Origin (Clause 44 of Sec 2)
 - Any linear ancestor was Indian and he has card of person of Indian origin card.



Chapter - 3

JJ Board

Sec. 4-9

Sec 4: State government in every district makes J.J. Board.

It shall comprise of following person:

- a. Judicial magistrate class 1/ metropolitan magistrate who shall not be C.J.M./C.M.M. and have experience of 3 years (he shall be called principle magistrate).
- b. Apart from this there shall be two more members (2 social workers out of whom one shall be women) who shall have following qualifications:
 - (i) 7 years of experience in following thing;
 - * Health, education & welfare authorities related to children.
 - (ii) Profession and degree in the following-
Child Psychology, Sociology, law or Psychiatry.

Following members shall not be made members:

- a. Past record of violation of human rights or child rights.
- b. Convicted for moral turpitude.
- c. Removed or dismissed from service of central or state government.
- d. Indulge in child abuse or child labour.

All members shall be given training within 60 days.

In following circumstances can be removed:

- * Misuse of power.
- * Absent without reason for 3 months.
- * $\frac{3}{4}$ not present (75% attendance).
- * Ineligible by above reasons.

Sec 5: Wherever any child is brought and during inquiry he becomes adult then also he shall be considered as child.

Sec 6: Wherever any person is arrested but at the time of offence he was below 18 years of age, then he shall be considered as child and kept at place of safety during inquiry.

Sec 7: Board shall do following things:

- * Shall have child friendly atmosphere.
- * When board is not sitting then child can be taken at house of any member of board and interim measures can be taken but final order only when principal magistrate (Sunday).
- * Judgment shall be on majority, if there is no majority then decision of principal magistrate shall prevail.

Sec 8: Board has following powers:

- * In case of children exclusion rights
- * Children court and HC, have the same powers as Board.
- * Board shall do following things:
 - (i) Inform the parents.
 - (ii) It shall ensure rights of children.
 - (iii) Free legal aid.
 - (iv) If required then translator or interpreter.
 - (v) Shall appoint probation officer or social welfare officer who shall make social investigation report in 15 days.
 - (vi) Dispose all matters.
 - (vii) If required send the matter to CWC (Child welfare committee)
 - (viii) Can give final decision which includes rehabilitations also.
 - (ix) Enquire fit person.
 - (x) Inspect all the institutions once a month.
 - (xi) Order Police to file FIR.
 - (xii) Inspect jails.
 - (xiii) Any other act.

Sec 9: Wherever any matter comes before magistrate then he shall do following things:

- * Inquiry regarding age.
- * Take evidence but not on oath.
- * If person is child, then send the matter to board.
- * If required then place of safety during inquiry.

Sec 3:

Q. What are the general principles of care and protection of children?

Ans. Central Govt. State Govt. and other Board agencies shall be guided by following fundamental principles:

- a. Presumption of innocence.
- b. Principle of dignity and worth (equal)
- c. Principle of participation (opinion)
- d. Principle of best interest (full development of potential)
- e. Principle of family responsibility (whole family) shall be liable
- f. Principle of safety
- g. Positive measures (all resources shall be mobilized)
- h. Principle of non-stigmatizing semantics (fail-room for improvement)
- i. Principle of non-waiver of rights.
- j. Principle of equality and non-discrimination.
- k. Right of privacy and confidentiality (no name)
- l. Principle of institutionalizations as a measure of last resort.
- m. Principle of repatriation and restoration (camel race- Dubai)
- n. Principle of fresh start (erased)
- o. Principle of diversion (after than judicial proves)
- p. Principle of natural justice (fairness, hearing)

Chapter - 4

Q. What is the procedure in relation to children in conflict of law?

Sec 10: Wherever any child is arrested by Police then he shall be kept in special juvenile police unit or placed under designated child welfare police officers and produced before board within 24 hours (except time of journey)

- * In no case kept in Police custody or jail.

Can keep the person in following places:

- * In Govt. or Non Govt. Organization.
- * Observation home
- * Place of safety

Sec 11: The person in-charge if child he shall maintain as if parents.

Sec 12: The general rule is that child shall be given bail whether offence is bail able or not.

Except following conditions

- * Court is satisfied that child shall be in association with proven criminal.
- * Such child has moral, physical or psychological danger.
- * Defeat ends of justice.

Wherever child in not given bail then he shall be kept in observation home or place of safety.

Sec 13: Wherever any child is arrested then

- * His parents shall be informed.
- * Probation officer/ social welfare officer shall be asked within 2 weeks give a report (Social investigating report)

Sec 14: Wherever any child is produced before board then board shall inquire the matter and give order under sec 17 & 18.

- * All inquiry shall be completed within 4 months; 2 months can be taken in addition or written reasons for extension.
- * Wherever matter is of heinous offence there shall be preliminary assessment within 3 months.

- * Wherever inquiry is not completed in time and matter is of petty offence then proceeding shall terminate.
- * Wherever heinous or serious offence then CJM/CMM can give extension of time.

The Board can do following things.

- * Ensure child is not ill-treated.
- * Proceeding shall be simple procedure and in child friendly atmosphere.
- * Opportunity of participation and chance of being heard.

If petty offence ⇒ Summary trial CrPC
If Serious offence ⇒ Summary trial CrPC
If Heinous offence ⇒ Child below 16= Summon trial
Child above 16= Sec 15 shall apply

Sec 15: Wherever there is any child, above 16 years and committed heinous offence then there shall be preliminary assessment.(refer Sec 14 of J.J. act)

Board shall do following things:

- * See mental & physical condition
- * Board shall take assistance of experienced psychological, Social worker & other expert
- * A report shall be made in which opinion shall be given:
 - (i) Matter should be seen by board only or
 - (ii) Matter should be sent to children Court.(refer sec 19 of J.J. Act)

Sec 16: In every 3 months CJM/CMM, shall review the matters.

In every 6 months high level committee shall sit in such high level committee executive chairperson of state legal authority shall be chairman & home secretary shall be the secretary.

Sec 17: Wherever it is found that child is not in conflict of law then court shall pass proper order. If required then child shall be sent to child welfare committee.

Sec 18: If child had committed offence and child is in conflict with law then following order can be given:

- * After advice or admonition child can be sent home.
- * Asked to participate in group counseling or similar activities.
- * Asked for community service.
- * Parents can be asked to give fine and if child is working then by him.
- * Child can be relived on the probation of good conduct (maximum 3 years with or without surety) to father or fit person.
- * Child can be released on the probation of good conduct (maximum 3 years with or without surety) to fit facility.
- * Such Child can be sent to special home not more than 3 years. In such place there shall be education, skill development, therapy etc.

If not in interest of child or not in interest of other child then he shall be kept at the place of safety.

Apart from above orders following orders can be given in addition:

- * Attend School
- * Vocational Training
- * Therapeutic Center
- * Prohibit from visiting few centers.
- * De-addiction program (re-hab)

Wherever there is preliminary assessment and person passed then his trial shall be as adult person in children court. (Refer Sec 19 of J.J. act.)

Q. What are the powers of children court?

Sec 19: Wherever matter is sent to children court:

If he can be satisfied that there is no need to try the matter as adult and it can sent back to the matter to board.	If court is satisfied that child has to be tried as adult then such child shall be kept in place of safety for ager of 21 years and after that sent to jail
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Children court shall make periodic report.

Sec 20: Wherever any child has completed 21 years but time period is remaining then on completion of 21 years there shall be a evaluation by:

- * Probation officer
- * By district child protection unit
- * Social worker
- * Court itself

It shall see whether there is any reform in child and whether he can become a contributing member to the society.

If satisfied with report then child must be released.
if not, then send him to jail.

Sec 21: Following order shall never be passed:

- * Death penalty
- * Life imprisonment in which there is no possibility of release.

Sec 22: Bonds of Ch 8 CrPC, not apply to children (parents)

Sec 23: Wherever there are adult person and children then in Sec 2(23) CrPC there shall not be jointer of person.

If any person during inquiry is adult then along with other children he shall not be tried.

Sec 24: Wherever any offence is done by any child then he shall not be disqualified and his record shall be destroyed; except:

- * Heinous offence (above 16 years) & trailed as adult by children court.

Sec 25: Wherever there is any old pending case then it shall continue as if there is no amendment/act.

Sec 26: Wherever any child runs away then no proceeding shall take place.

- * Officer later on can pass appropriate order.

Chapter - 9

Q. What are the various offences against children?

Sections	Offences	Punishments
Sec 74	Wherever there is any person who discloses the identity of child; except a. Consent of Board b. Consent of Committee	Imprisonment of 6 months or penalty of 2 lacs or both
Sec 75	a. Wherever does cruelty towards child b. If done by institutions then c. If any physical or mental deformation due to cruelty	a. 3 years/ 1 lac or both b. Rigorous imprisonment for 5 years or 5 lacs c. Rigorous imprisonment for 3-10 years and 5 lacs fine.
Sec 76	a. Employment of children for begging. b. If maiming (cut) child c. If abettor who has custody of child	a. 5 years jail and 1 lac fine. b. Rigorous imprisonment for 7-10 years and 5 lacs fine c. Same as offender
Sec 77	Whoever gives child liquor or NDPS, except prescription of medical practicer	Rigorous imprisonment 7 years and 1 lac fine
Sec 78	Whoever uses children for NDPS/liquour	Rigorous imprisonment 7 years and 1 lac fine
Sec 79	Whoever explicit child employ	Rigorous imprisonment 5 years and 1 lac fine
Sec 80	Whoever gives adoption without rules	Imprisonment of 3 years or 1 lac fine or both For 1 year registration will be suspended
Sec 81	Whoever sale or procure children	Rigorous imprisonment 5 years and 5 lacs fine

		If hospital or nursing home than rigorous imprisonment 3-7 years and 1 lac fine
Sec 82	<p>a. Whoever gives corporal punishment</p> <p>b. If by any institutions</p> <p>c. If institutions don't cooperate in inquiry</p>	<p>If, first time Rs 10000 fine</p> <p>If, second time 3 months, fine or both</p> <p>Above punishment and person shall be dismissed.</p> <p>3 year jail and 1 lac fine to incharge.</p>
Sec 83	<p>a. If any militant group uses children</p> <p>b. If child in gang</p>	<p>Rigorous imprisonment for 7 years and 5 lacs fine</p> <p>Same as above</p>
Sec 84	Kidnapping or abduction of children	IPC shall apply
Sec 85	If child is disabled then	Twice as above
Sec 87	If abetment of offence then	Same as offence
Sec 88	If punishment in after law then	Whichever is severe shall be given
Sec 89	If above offence is committed by child only	Juvenile Justice Act, shall apply

Sec 86:

Offence	Cognizable/Non-cognizable	Boilable / Non-Boilable	Trial
0-3 years	NC	B	Any magistrate
3-7 years	C	NB	JM1
7 + years	C	NB	Children court

Chapter 5

Child welfare committee

Q. What is the difference between CWC & J.J.Board?

Child welfare committee	Juvenile Justice Board
For child in need of care & protection	Child in conflict of law
5 members, 1 chairperson & 4 members	3 members, 1 PM & 2 members
Qualification of members health, education & welfare activities pertaining to children for at least 7 years experience or practicing professional with degree in child psychology or psychiatry or law or social work, sociology or human development	Qualification of members is same except human development
Chairman has the same qualification as members	Chairman=PM JM= 3 years experience but not CJM/CMM
Time period of 3 years	No time period
District magistrate shall review	CJM/CMM will review (sec 16)
Appeal of CWC to DM	Appeal to children court
Shall work for 20 days	No time period
For finally decisions 3 members atleast in which 1 chairperson	2 members necessary out of which principal magistrate in necessary

Q. What do you understand by child welfare committee?

Sec 27: State govt. in every district shall make a CWC.

- * in this committee there shall be 1 chairman and 4 members out of which 1 woman and 1 expert from those 4 members.
- * Training within 2 months.
- * District child protection unit shall provide secretary and other staff.
- * The members shall have following qualifications:- actively involved in health, education or welfare activities pertaining to children for atleast 7 years or prevailing professor degree in child psychology or law or social work or human conduct.