

## Socio Legal Approach with Children in Conflict with Law

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### Description of Module

Items	Description of Module
Subject Name	Criminology
Paper Name	Juvenile Justice.
Module Name/Title	Socio Legal Approach with Children in Conflict with Law
Module Id	
Pre-requisites<Expected to know before learning this module>	A basic understanding of the juvenile justice system and the children who come within its purview
Objectives	<ul style="list-style-type: none"> <li>• To understand the concept of socio legal approach while working with children in conflict with law</li> <li>• To gain an understanding about the different provisions within the juvenile justice act which focus on socio legal approach</li> <li>• To become aware about the need for socio legal approach while working with children in conflict with law</li> </ul>
Key words	Socio legal

### Module

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## **1. Module: Socio Legal Approach with Children in Conflict with Law**

### **2. Introduction**

Law does not function in a vacuum. It reflects the prevailing social realities and is expected to address the same through stipulated procedures applicable to all. Law is also effective when it is not only legally binding but the intent behind the law is accepted socially and culturally. For example, there are laws that prohibit dowry, child marriage, domestic violence, exploitative child labour, caste based atrocities, etc. Nonetheless these negative situations/practices continue in society as either the implementing machinery is weak or many people do not find these practices objectionable or a violation of law. This module explains about the close relationship between the social aspects and the legal approach within the juvenile justice system with particular emphasis on children in conflict with law. The Module examines the different provisions within the juvenile justice act which reflect the socio legal approach.

### **3. Learning Outcome**

By the end of this Module the learners are expected to know:

1. The meaning of socio legal approach within the context of children in conflict with law
2. Provisions of the juvenile justice act within the context of socio legal approach
3. Significance of socio legal approach while working with children in conflict with law

### **4. The Significance of Law in a Child's Life**

Laws have played a very important role in defining childhood and giving children a distinct place in society. There are laws which:

- prohibit children, for their own welfare and benefit, from engaging in certain behaviours (e.g. laws prohibiting drinking, watching 'adult' movies etc.),
- regulate certain life situations/activities of children for ensuring child protection (e.g. laws on child marriage, child labour),
- prohibit exploitation (e.g. laws related to child sexual abuse, trafficking, and exploitation),
- empower children (e.g. giving rights to participate, right to an identity, right to non-discrimination and other entitlements such as laws relating to food security, right to education) and
- reach out to vulnerable children in need of care and protection (e.g. law related to juvenile justice).

### **5. Juvenile Justice and the Socio legal Approach**

Juvenile justice system across the world have been inherently socio-legal as it was recognized that factors that lead to juvenile offence must be addressed while the child is within the juvenile justice system and this must be integrated within the broad ambit of the law. It is well established that factors such as poverty, lack of education and opportunities, mental health challenges, addiction, peer influence can lead children to situations of vulnerability and crime. It has also been largely accepted that children who commit crimes require a different kind of approach than adult offenders. The concept of juvenile justice evolved with this conviction that problems of juvenile delinquency cannot be addressed effectively by the criminal justice system. The first Juvenile Court, established in Chicago,

Illinois (USA) in 1899 was based on the principles of State becoming the guardian of the child and that children required correction and reformation and not merely harsh punishment. Thus, historically, across the world socio-legal approach has been largely the cornerstone of the juvenile justice system. The purpose of the socio-legal approach is not only to provide attention/care to children but also prevent them from getting into offences again. The socio legal approach is significant as it recognizes that while children need to take responsibility for their behaviour, they also require opportunities to steer their life towards socially constructive ways. For example, if a child has experienced domestic violence at home, had to leave school due to no parental support, and thereafter got into addiction and crime, then merely 'punishing' him will not yield much. Along with facing consequences of crime as per juvenile justice law, the child will also require education/vocation skills, de-addiction and work with family.

According to King and Piper (1990), when working with children within the legal framework, integration between "Justice" and "Welfare" become significant. "The traditional concerns of the law are procedural fairness, protecting the innocent against arbitrary decisions, and the punishment of wrong doers according to the seriousness of their offence" whereas "welfare is represented by the desire of the law to diagnose the underlying problems of children who commit crimes and to treat these problems in some therapeutic way" (p.4).

Given below are excerpts from different literature pertaining to socio legal approach and juvenile justice:

⇒ Schiff, D.N. (1976) has explained that in a socio-legal approach, "analysis of law is directly linked to the analysis of the social situation to which the law applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance, and/or change of the situation" (p.287). Thus there is a close relationship between law and societal conditions and realities.

⇒ The socio-legal response embraces the belief that children are responsible to themselves, their families and the community. It recognizes the relationship between the social needs arena and the legal domain. The juvenile justice system is unique because it integrates both. The jurisdiction of the *juvenile court* to prescribe services or consequences depends on children acknowledging their responsibility for their particular crimes. Therefore, society's response to the children is a socio-legal response. (Zaslaw & Jay, 1996)

⇒ The term Juvenile Justice is used to refer in social as well as juridical justice. India seeks to provide social and juridical justice to neglected and delinquent children. The legislations incorporating the juvenile justice system have been making provisions for the care, protection, treatment, development of delinquent juveniles. (<http://journal.lawmantra.co.in/wp-content/uploads/2015/08/73.pdf>)

⇒ The juvenile justice system performs the welfare cum criminal justice functions, in this duality of its roles; the system strives to achieve explicit social goals such as the provision of minimum standards of child care. The system also functions to safeguard the right of children as per the United Nations Declaration of the Rights of the child. (Agrawal, 2015)

⇒ The juvenile justice systems have been designed to respond to the needs of young offenders. One principle role has been to provide specialized preventive and treatment services for children and young persons as a means of secondary preventions, rehabilitations and improved socialization. (Agrawal, 2015)

### **5.1 Different Components of the Socio legal Approach**

Zaslaw, et. al (1996) have elaborated upon the different components of socio legal approach. They are:

- Assessing the areas of child vulnerability and preparing a plan of intervention
- Working with each individual child and guiding him/her to take responsibility for their behaviour/action
- Creating opportunities in the community to enable the juvenile to re-enter mainstream society (education, training, job, positive relationships with others)
- Addressing community risk and accountability to the victim and community
- Opportunities for the juvenile to lead productive and law abiding lives
- Working in collaboration with social workers, legal representatives and other experts

(Fig. 1)

In India, victims are not directly involved in any interaction with the juvenile as part of the rehabilitation process unlike some countries wherein one of the key features of “Restorative Justice” Model is the involvement of victims in an interaction with the juveniles as well as diverting the juvenile from the formal Court system.

## **6. Juvenile Justice System in India**

Agrawal (2015) notes that children ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, it has not been so. Despite the Constitutional vision of a healthy and happy child and a National Policy for Children, the majority of children in India continue to live without a cared, protected and meaningful childhood. Such children become vulnerable to abuse and exploitation. Some of them may become vulnerable to delinquency and offence.

In India, the juvenile justice system caters to two categories of children; children who are in need of care and protection and children who allegedly commit crimes or offences. There are separate mechanisms for both the groups of children. The overall objective of the juvenile justice system is rehabilitation and social reintegration. This is inherently a social goal to be fulfilled through the due processes of law.

### **The Juvenile Justice (Care and Protection of Children) Act, 2015: A Socio Legal Act**

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJAct) is the overarching legislation covering all children without family or family support, and children who allegedly commit offences. The JJ Act is inherently socio-legal as the overall objective of the Act is rehabilitation and social integration of each child who comes within the purview of the JJ Act.

The Juvenile Justice (Care and Protection of Children) Act, 2015 is based on:

- provisions of the Constitution of India (Clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State),
- Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child,
- Other Key United Nations Conventions pertaining to the child

#### *Child Rights and Socio legal Approach*

Child rights are integral to all children irrespective of whether the commit offences or not. Four overarching principles of child rights are:

- ✓ Best Interest of the Child
- ✓ Right to participation
- ✓ Right to Life
- ✓ Right to Non-Discrimination

All of the above focus on child rights, child protection, and measures to ensure justice for all children based on each child's unique needs and circumstances. Given below are highlights of specific provisions within the Act that highlight the socio legal approach. This section will specifically focus on children in conflict with law. Children in need of care and protection will be briefly discussed.

#### 6.1 Introduction to the JJ Act

The introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is significant as it emphasizes that both groups of children (Children in Need of Care and Protection and Children in Conflict with Law) are entitled to care and protection, best interest of the child and rehabilitation. The introduction emphasizes that children's basic needs will be catered through processes established within the law.

##### **Introduction to the JJ Act**

**“An Act to consolidate and amend the law relating to **children alleged and found to be in conflict with law** and **children in need of care and protection** by catering to their **basic needs** through proper **care, protection, development, treatment, social re-integration**, by adopting a **child-friendly approach** in the **adjudication and disposal of matters** in the **best interest of children** and for their **rehabilitation** through **processes provided**, and **institutions and bodies** established, hereinunder and for matters connected therewith or incidental thereto”**

The introduction highlights the overall socio legal philosophy and objective of the JJ Act:

- ✓ The law will equally cater to the “basic needs” of both groups of children: those alleged to have committed an offence and those in need of care and protection
- ✓ The law will work towards meeting basic needs of children through “care, protection, development, treatment, social re-integration”

- ✓ Within the legal requirement of “adjudication and disposal of matters”, the approach towards the children will be “child-friendly” keeping in mind the “best interest of children”
- ✓ The socio legal framework will be achieved through “processes provided, and institutions and bodies established”

## 6.2 Principles of JJ Act

Chapter II of the JJ Act, “General Principles of Care and Protection of Children” provide the framework that governs the administration of the JJ Act. There principles include a general mandates that would apply to any person who come within the purview of the legal system such as “presumption of innocence” or “Principle of equality and non-discrimination”. There are also specific child specific provisions such as “Principle of family responsibility”, “Principle of institutionalisation as a measure of last resort” or “Principle of repatriation and restoration”

### ***“Chapter II- General Principles of Care and Protection of Children”***

#### **General principles to be followed in administration of Act**

- (i) Principle of presumption of innocence
- (ii) Principle of dignity and worth
- (iii) Principle of participation
- (iv) Principle of best interest:
- (v) Principle of family responsibility
- (vi) Principle of safety
- (vii) Positive measures
- (viii) Principle of non-stigmatising semantics
- (ix) Principle of non-waiver of rights
- (x) Principle of equality and non-discrimination
- (xi) Principle of right to privacy and confidentiality
- (xii) Principle of institutionalisation as a measure of last resort
- (xiii) Principle of repatriation and restoration
- (xiv) Principle of fresh start
- (xv) Principle of diversion
- (xvi) Principles of natural justice

## 6.3 Composition of Adjudicating Bodies

The JJ Act governs the juvenile justice system. The two main adjudicating bodies within the juvenile justice system are:

### 6.3.1- ***Child Welfare Committee (CWC)***

The CWC addresses the ‘cases’ of children in need of care and protection and takes the final decision about this category of children. The CWC comprises of an inter-disciplinary group of persons with expertise in both social, psychological, and legal knowledge. The CWC has a critical responsibility of initiating family tracing, restoring children to families, making provisions for non institutional care or alternative care, etc. The CWC has also the authority to inform the police and other authorities if they come across children where a crime has been committed against the child. The police/judicial authority can initiate inquiry against the adult perpetrator and follow up as per the criminal justice system.

### 6.3.2- *Juvenile Justice Board (JJB)*

One of the significant developments within the juvenile justice system in India has been the composition of the Juvenile Justice Board (JJB). The JJB comprises a bench of a Principal Magistrate and two Social Work Members. The Social Work Members and the Magistrate have equal powers in most matters concerning the child in conflict with law. Social workers can bring in the social work perspective within the legal framework. The JJB is expected to adopt a socio-legal approach right from first production of the juvenile to the Final “Order”.

### 6.4 The Socio legal procedures within the Juvenile Justice Board (Fig. 2)

The age of the child, family situation, current occupation of the juvenile, daily routine, relationships with family/peers/friends and other factors have to be assessed and understood along with the offence charges and the circumstances of the incident of offence.

The Board is expected to:

1. Interact with the child and assess the family background and other circumstances (thereby upholding child’s right to participation and initiating the process of rehabilitation)
2. All offences are bailable with or without surety. Only in a few specific situations can bail be denied (bail is not granted automatically. Reasons for denying bail are also in the best interest of the child.

Grounds of denying bail:

*“Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person’s release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision”.*

(Section 12 (1) of the JJ Act)

3. When the child is apprehended, there are procedures for seeking bail. Nonetheless the offence charge is not the sole criteria to decide upon bail. Other factors linked to the child’s life (education, family background, monitoring during bail) are taken into consideration too.
4. During bail period, the JJB has the option to impose ‘conditions’ of education, vocational training, counselling, monitoring by parents/family, etc. The objective of the ‘conditions’ is not to penalise the child. Rather it is to encourage, motivate, and guide the child towards constructive activities and at the same time supervise over the child to prevent further episode(s) of offence
5. JJB also can make provisions for free legal aid for the child as per need and

requirement

6. After the submission of the police Final Report ('Charge sheet'), the child and family are entitled to free legal aid or appoint a lawyer of their choice who will represent their case before the JJB
7. The child need not attend every hearing and can take permission from the JJB to remain absent on a few dates and continue with education, other activities etc.
8. The Final Order of the JJB has several socio legal options

### 6.5 The Final Order of the Juvenile Justice Board

After the process of inquiry, if it is found that the child has committed an offence, the JJB passes the Final Order. The JJ Act has given a range of options to address those juveniles who are found to have committed an offence. The options are broad so that the JJB can take into consideration each individual child's context and decide an individualized plan accordingly. The final Orders of the JJB are not dependent solely on the kind of offence the child has committed. The objective is to reintegrate the child into mainstream society. Depending on the age of the child, nature and circumstances of offence, family situation, and future goals, the JJB passes the appropriate Order. There is no death sentence for all children. There is no imprisonment for majority of the children (excepting those children who are transferred to the Children's Court and may get sent to jail)

There are different options for Final Order; one set of Orders for all children below sixteen years of age irrespective of the nature of offence, for children above sixteen years, in case of "heinous" offence, upon preliminary "assessment" such a child can continue with the juvenile justice system or get transferred to Children's Court.

The Final Order is closure of the 'case'. The JJB can identify one single option or a combination of the following options in the Final Order (Section 18 of the JJ Act):

- (a) The child can be released from the case after 'Advice' or 'admonition',  
*For example, if the child has family support and family members willing to supervise the child, or if the child has committed offence for the first time, or the child unknowingly got involved, the JJB may 'advise' or 'admonish' the child and close the case*
- (b) Child can be directed to participate in 'Group counselling' and 'similar activities',  
*For example, if the child has got into the habit of stealing, then the child may be directed for group counselling or group work to overcome the behaviour of stealing*
- (c) Undertake 'Community service'  
*For example, the child may be directed to provide voluntary service in a school, hospital, undertake activities with the elderly, teach children, work with the traffic police, take sessions with other children, etc. Community service*



*enables the child to learn about responsible behaviour. Community service also increases the confidence of the child that he/she too can contribute productively to society and do 'good' work*

- (d) Pay fine (child/parent/guardian)
- (e) Child can be 'released on probation of good conduct and placed under the care of any parent, guardian or fit person',

*Parents/guardian can be asked to sign an undertaking and child can be on "probation of good conduct" for a certain period of time.*

- (f) Child can be 'released on probation of good conduct and placed under the care and supervision of any fit facility'

*For example, in certain situations the child may require 'supervision' for some time to ensure that he/she is meeting the goals*

- (g) Admitted in a 'Special home' (residential closed Institution for children)

*For example, if the child has no family/family support or requires opportunities for education, training, de-addiction, mental health assessment or the family/guardian is not willing to accept child, the child may be directed to stay in a Special Home for a stipulated period of time. The objective of the admission is to ensure that the child receives the opportunities to enhance his skills and future prospects and not get into offences again*

Additionally JJB can also pass Orders [18 (g), 18 (2), (3) of the JJ Act] directing the child to be sent to a place of safety, attend school, attend a vocational training centre, attend a therapeutic centre, prohibit the child from visiting, frequenting or appearing at a specified place, undergo a de-addiction programme. All of the above options are socio legal in nature. Children are motivated to take responsibility for their behaviour as well as work towards future goals constructively.

If during inquiry it is found that child is not in conflict with law, child will be "acquitted" of offence charges. If such a child is found to be in "need of care and protection", the JJB can transfer the child to the Child Welfare Committee for further action and rehabilitation.

It is the responsibility of the JJB to do a detailed assessment of the child in coordination with the probation officer and other experts, ascertain his/her needs and plan accordingly. Some children may require counselling or other long term therapeutic care too.

## **7. Critical Requirements of a Socio Legal Approach**

To ensure that the socio legal approach is being implemented, the State has the mandate and the critical responsibility to create the necessary infrastructure, facilities, and appointments of key functionaries (CWC, JJB, Probation Officer, free legal aid lawyer, Institutional staff,

etc.). Adequate budget, use of upgraded technology, and regular training/capacity building is also required to optimally operationalize the Act.

## **8. Conclusion**

This Module explained about the socio-legal approach of the juvenile justice system and highlighted some of the socio legal provisions of the Juvenile Justice (Care and Protection of Children), Act 2015. Socio legal provisions have been introduced in the juvenile justice system since its inception. The socio legal approach recognizes the unique needs of children. If the socio legal approach is followed effectively recidivism can be prevented. Children in conflict with law can lead happier and productive lives. Lesser offences also means a safer society.

