

## Juvenile justice system in India: an appraisal

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### Abstract

The problem of juvenile delinquency is not of recent origin. It existed in societies through the ancient times. Rather it has become a global problem. To redress the issue of juvenile delinquency various declarations and conventions at the international level and laws were enacted by the respective governments at the national level. With the passage of time and advancement of information technology existing juvenile laws were proved to be ineffective to curb the rising incidents of juvenile crimes. The unfortunate incident of Nirbhay gang rape case in Delhi gave spark to the new legislation with strict punishments to control criminal activities by young children. Resultantly, Juvenile Justice (Care & Protection of Children) Act, 2014 came into existence with regular criminal trial and criminal sanctions. The research paper in hand briefly analyses the juvenile justice legislations from the Indian perspective.

**Keywords:** juvenile, juvenile delinquency, children's court, constitution, adult sanctions

### Introduction

Children because of their vulnerable nature are bound to go astray and bound to commit anti-social activities. Legally, commission of such anti-social activities by the children of young age is termed as juvenile delinquency. Juvenile delinquency from the past few decades has become a significant problem throughout the world at large which, if not cured and prevented would entirely shake the roots of any nation. In order to make the proper analysis of the juvenile delinquency, firstly it has to be understood who is a juvenile and what is the exact definition of juvenile delinquency. The term 'Juvenile' owes its existence from the latin term 'Juvenis' which means young and the word 'delinquency' has been taken from the latin word 'Delinquer' which means to omit. The word 'Delinquent' was used by the William Coxtton for the first time to describe a person who was found guilty<sup>[1]</sup>. Juvenile delinquency refers to the commission of such activities which are against the law and not accepted by the society<sup>[2]</sup>.

First time American Committee in New York used the term 'Juvenile delinquency' in the beginning of nineteenth century in cases of pauperism and vagrancy. It noticed the close relationship between 'juvenile delinquency and pauperism'. Thus, juvenile delinquency was interpreted broadly by including within its scope both the delinquent juvenile and those who are likely to commit offences<sup>[3]</sup>. Whereas in the Europe, 'Juvenile delinquency' was just confined to the commission of those acts which are explicitly defined by law. Ruth Shonle Cavan (USA) observed in the following words that "irrespective of legal definition, a child might be regarded as delinquent when his anti-social conduct inflicts sufferings upon others or when his family finds him difficult to control so that he becomes a serious concern of the community<sup>[4]</sup>."

However in India the term 'juvenile delinquency' is much narrow and limited to violation of penal statutes. Juvenile delinquents have been named as 'Child in conflict with law' and defined as a juvenile who is alleged to have committed

an offence and has not completed eighteenth year of age as on the date of commission of such offence<sup>[5]</sup>.

Various factors are responsible for the delinquent behavior of the juveniles. Moreover, these factors are inter-linked to each other. Industrial development along with its positive effect for boosting the economy has also adversely affected the social life of the people. The foremost impact is the disintegration of joint family which resulted into lack of parental control. In order to keep up with the changing scenario, women have to take up outdoor jobs leaving the children neglected and abandoned at home. Modern luxuries lifestyle attracts the children to a large extent to go beyond any limit in order to avail them. These factors led to the increase in rates of juvenile delinquency. Further, social media also has an adverse affect on the young minds. From the violence and criminal activities depicted by the social media children learns the method of committing criminal activities and also try to do the same things in their real life without considering any pros and cons. The purpose behind the discussion on the role of various factors of juvenile delinquency is to brought on notice that children although biologically mature enough but they are different from the adults. They lack the capacity to differentiate between right and wrong.

This being the nature of juvenile delinquency, it was not considered proper to treat the young juvenile delinquent through regular criminal justice system applicable to all the adult criminals. So, the particular need was felt to dealt with them in such a way that could bring the reformation and rehabilitation along with the element of punishment.

Accordingly, for their separate treatment, juvenile justice system in India came into existence which is considered as the integral part of the criminal justice system. This system is specially framed and established to extend special protections to children and young offender who have indulged into the criminal world. The protection extended to the children is in

nature of positive protection towards reforming and rehabilitating their lives.

### Historical Genesis of the Juvenile Justice in India

The era of juvenile justice started from the enactment of The Apprenticeship Act, 1850 under which vocational training was provided to the children aged between 10-18 years for securing their rehabilitation instead of awarding punishment. Magistrates were authorized to act as guardian for the destitute children and also for the children convicted of vagrancy or petty offence and bind them to learn a trade, craft or employment so as to divert them from the criminal world to the civilized world<sup>[6]</sup>. Then came the Reformatory Schools Act, 1897 which gave wide discretion to the court to pass detaining orders for the children below fifteen years of age and found guilty of any offence to be detained in a reformatory school for a period of three to seven years<sup>[7]</sup>. A beginning was done under the Act to treat the juvenile offenders in a reformatory way and to mould the penal philosophy with rehabilitative techniques towards the juvenile offenders. The Indian Jail Committee report 1919-20 further added the force to reformatory movement towards juveniles. The report for the first time emphasized the need for separate trial of the juvenile from that of adult. The committee observed that, "the commitment to a prison, whether after conviction or while on record or under trial, is contrary to public policy that the sentences of imprisonment should in cases of children and young person be made illegal as in England"<sup>[8]</sup>.

According to the recommendations of Indian Jail Committee, Madras enacted its first Children Acts, 1920. Afterwards various states adopted their own Children Acts containing protective measures for children and youthful offenders on the basis of recommendations of the committee<sup>[9]</sup>. Another important legislation in this respect is the Probation of Offenders Act, 1958 which was enacted to prevent the youthful offender from converting further into criminals as a consequence of their association with hardened criminals if a sentence of imprisonment is awarded to them to be served in jails. Certain offenders as per the provisions of the Act are released on probation or after due admonition<sup>[10]</sup>. After this Act, The Children's Act, 1960 was enacted for Union Territories of India with a view to handle separately destitute and delinquent children through specialized bodies such as juvenile courts and child welfare boards. The sole aim of establishing such authorities is to make correction in the delinquent child rather than to punish them. Accordingly, the delinquent children were placed in observation home and in the children's home. For the first time this act introduced the complete prohibition of use of police station or jail under any circumstances for children covered within its purview and it was followed by all the Children Acts passed after 1960.

As stated earlier Children Act 1960 was applicable only to union territories, but in the States, juvenile justice system was operating according to their own enacted state laws. Some States even did not enact the juvenile justice laws and where the States have enacted the law they were not functioning properly. One major lacuna of all these State laws were that these laws have adopted different cut off age for defining the children and for specially treating the children. All these caused inconsistencies among the juvenile justice system of India. The emphatic condition of children lodged in jails in clear prohibition of law were highlighted by a journalist

Sheela Barse in her writ petition<sup>[11]</sup> of habeas corpus filed in Supreme Court in year 1983. This petition highlighted the mercy of conditions of children lodged in various jails in spite of prohibition stated in Children Acts that juvenile cannot be lodged in police lock-ups or jails under any circumstances. While hearing the petition, Supreme Court noticed the existence of arbitrarily limits in definitions of child and the gross violations of the fundamental right to equality enshrined under the Constitution. It also took notice of the inadequacies and incompetency of the Children's Act to deal with the problem of delinquency.

Hence, Supreme Court in its orders pointed out the need for a uniform legislation for children applicable throughout the India so as to uniformly treat all the children. It was also with the adoption of "United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985" by the United Nations General Assembly that it became necessary for India to legislate a particular uniform legislation for children in consonance with the rules laid down in the Beijing Rules. Accordingly, Indian Parliament enacted the Juvenile Justice Act, 1986 (For brevity "JJ Act, 1986") by replacing all the Children Acts of the State as well as of the Children Act, 1960 for the Union Territories. This Act replaced the word 'child' with 'juvenile' and defined 'juvenile as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years'<sup>[12]</sup>. Whereas, 'delinquent juvenile' means a juvenile who has been found to have committed an offence'<sup>[13]</sup>. The remarkable feature of the JJ Act, 1986 was that both delinquent as well as neglected juvenile has been dealt with under this Act. The institution of juvenile welfare board, juvenile courts for exclusively dealing with the delinquent juvenile was established. Other institutions like Juvenile Homes, Observation Homes etc. were established for the temporary placing the neglected juveniles and delinquent juvenile. A scheme of aftercare programmes was also introduced under the Act to rehabilitate the juveniles after they leave the institution in which they were placed.

Again with the ratification of United Nations Convention on the Rights of Child, 1989 and other United Nation Instruments adopted by the General Assembly, it became necessary for India to enact a new legislation with uniformity in age for both boys and girls in consonance with the definition of 'child' laid down in the United Nation Convention on the Rights of Children. Ultimately, Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity "JJ Act, 2000") was enacted. It adopted the uniform age of 18 year for defining the juvenile. Under the Act, in the composition of juvenile justice board two social workers were included to deal with the juveniles more sensitivity as per their circumstances. The Act was enacted with much safeguarding provisions and cherished principles enunciated at the international level. But, still the overall conditions of the children in jails and lock-ups continue to remain the same due to non-implementation of the machinery of juvenile justice system.

Afterwards, the incident of brutal gang rape on 16<sup>th</sup> December 2012 changed the entire regime of the juvenile justice system in India. The award of only 3 years maximum period of detention to one of the accused who was 17 years and few months among the culprits of gang rape in Delhi in spite of the gravity of offence raised wide protests in all over the country against the liberal and soft approach of the JJ Act, 2000. In view of the increasing incidents of serious and

heinous offences committed by the children of young age, a demand for stern action against such juvenile criminals was pushed up. A committee with J.S.Verma its head was set up to review the sexual offences under the Indian Penal Code, 1860 and the provisions of JJ Act, 2000. Considering the aim of reformation and rehabilitation of the juvenile justice system and the protection of society the J.S.Verma committee made the classification of offences on the basis of doctrine of proportionality of sentence and made a separate category of heinous offences by young children aged between 16-18 years. Accordingly on the recommendations of the committee on 8<sup>th</sup> August 2014 Juvenile Justice Bill 2014 was introduced in the Lok Sabha by surpassing all the international standards and all legislative enactments passed since 1850 to the Act of 2000. To increase the horizon of sexual offences various aggravating sexual offences like Stalking, Voyeurism, sexual harassment etc. has been introduced in the IPC, 1860.

### International Regime for the Juvenile Justice

At the same time international developments in the sphere of child rights were taking place which put the world on the path of recognition of child rights and adoption of such safeguarding procedures which ensures the best interest of the child. A wave of child welfare declarations started with the adoption of the first declaration on the rights of child held in Geneva in the year 1924 which set the basic parameters for the overall development of the child. The Universal Declaration of Human Rights, 1948 adopted on the basis of Geneva Declaration on the Rights of Child recognized as the charter of human rights specified the various rights of the children as applicable universally to all the children on the basis of equality without any kind of distinction. It provides that like other human beings children are also entitled to all the basic human rights which are essential for their survival and for maintaining their human dignity. The United Nations Convention on the Rights of Child, 1989<sup>[14]</sup> defined and recognized the basic rights of the children. It recognized four core principles such as principle of non-discrimination, the best interest of the child etc. India had signed aforesaid Convention and took the commitment to make applicable every recognized right to the children as per the Convention. The United Nations Guidelines for Prevention of Juvenile Delinquency 1985<sup>[15]</sup> known as Riyadh Guidelines have been framed to guide the worldwide nations for the prevention of juvenile delinquency. These guidelines requires the nations to set up the comprehensive prevention plans at every level of the government and community which includes the detailed analysis of the problem of delinquency and the establishment of programmes and resources to cure and prevent the juvenile delinquency. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985<sup>[16]</sup> obliged the member countries to establish the minimum age of criminal responsibility for juveniles which may be suitable as per their emotional and intellectual maturity. These rules represent the aims of establishing the juvenile justice system and require the member states to adhere to the same principles and purposes in establishing their own juvenile justice structure. Another landmark contribution towards the child development is the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990"<sup>[17]</sup> which sets the fundamental perspective of child's rights, safety and their over-all well-being. The sole aim of the rules was to set certain parameters within which the liberty of the juveniles

can be curtailed putting arbitrary restrictions on the curtailment of their liberty. Thus by adopting various important declarations and conventions in the perspective of children, United Nations has led the entire world on the path of protection, reformation and development of the children. India being a member of international comity could not remained unaffected with the developments going on at the international level. In other words, juvenile justice system of India has been largely influenced by the developments took place at the international level and in western countries. It has already been mentioned that after the Children Act 1960, JJ Act, 1986 and the JJ Act, 2000 has been passed in pursuance of various United Nations Conventions.

### Post Nirbhay Law

Presently, juvenile justice system in India is being governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (For brevity "JJ Act, 2015"). New JJ Act, 2015 came into force on January 15, 2016. The Act has incorporated several provisions for the development and social reintegration of the children in-conflict with law as well as for the children in need of care and protection. All the basic provisions of the Act of 2000 have been substantially adopted by the new JJ Act, 2015. But, unlike any proceeding legislation, JJ Act, 2015 has introduced the classification of offences committed by children with special reference to special procedure for their trial and punishment. Thus, offences under the Act have been classified into petty, serious and heinous offences. "Petty Offences have been defined as offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years<sup>[18]</sup>". "Serious Offences has been defined as offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years<sup>[19]</sup>". Whereas "Heinous Offences has been defined as offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more<sup>[20]</sup>".

This is worth noting for this Act that it has not lowered down the age of juvenile from 18 years to 16 years as demanded in the public protest rather it introduced the separate category of juvenile between the age group of 16-18 years accused of committing the heinous offences for their adult and regular trial. Such children if proved to have committed the heinous offences may be tried in regular criminal courts like the adult criminals and may also be sent to adult jails. Thus, with this provision a possibility of sending the children of young age to regular jails is increased by surpassing all the international and constitutional commitments to save the young children. Under the JJ Act, 2015, Juvenile Justice Board like the previous Acts continues to have the exclusive jurisdiction to try the child alleged to have committed any offence specified in the categories of offence. The Board so established under JJ Act, 2015 has to take the wide responsibility towards the children produced before it for ensuring that child is not ill-treated and tortured by any authority and safely placed in any institution whatever it deserved.

Apart from the above mentioned role of the Board, the new JJ Act, 2015 entrusts the board with special task that is to conduct the preliminary assessment of child in conflict with law. The preliminary assessment is required to be conducted in case of children aged sixteen to eighteen years and accused of committing heinous offence<sup>[21]</sup>. The purpose behind this

is just to access the level of maturity. The Board has to determine the capacity of the child with which he/she committed the offence i.e. at the time of commission of offence, it is to determine whether the juvenile occupies the mind like child or as an adult. The determination of assessment has serious implication for such children as it has the tendency to transfer the children to children's court to be tried as an adult.<sup>[22]</sup> It is clear that the Act gave much importance to the preliminary assessment of the board, yet no parameters and guidelines have been adopted in the act regarding the manner of conducting the preliminary assessment.

If the assessment reveals the sufficient maturity of juvenile alleged to have committed a heinous offence as that of an adult then, the juvenile is referred to the Children's Court<sup>[23]</sup>. Thereafter the entire proceedings of the case shall take place in Children's Court. Accordingly, Children's Court has the power under the Act to try and impose any punishment except Capital Punishment and Life Imprisonment without the possibility of release. But before trying it has to re-assess the capacity of juvenile and the need for his adult trial. The provision of this re-assessment makes the entire exercise of juvenile justice board in conducting the preliminary assessment vague and useless and moreover makes the trying procedure lengthy and technical. In case, it does not consider it necessary to try the juvenile to adult trial then it has to try the juvenile itself as a juvenile according to provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. There is no provision of remanding the case to the juvenile justice board. Adult trial and imposition of harder sentence has also the serious impact on the life of a juvenile ahead. It would leave the young children without any future in his prime age. Such a convict would remain in a place of safety until the completion of 21 years of age after that if sentence awarded is not completed yet then he will be transferred to the regular jail. But his further transfer to the regular jail is depended on the evaluation conducted by the Children's Court that how much reformatory changes he has undergone. If the evaluation is positive he will be released forthwith. Otherwise he will be transferred to the regular jail to complete the remainder term of sentence.

However under the JJ Act, 2015, no criteria have been laid down to assess their behavioral changes. Thus, it left the children's court with wide discretion to determine them. It is not to be forgotten that absolute discretion is open to arbitrariness thereby violating the principle of equality given under Article 14 of the Constitution as well as the violation of the principle of non-discrimination as provided in the Convention on the Rights of Child, 1989. Aforesaid Convention also mandates all the State parties to this Convention to treat all children in conflict with law equally and without any discrimination.

### Conclusion

Thus, from the brief analysis of all legislative enactments passed since 1850, it reveals that apart from the new JJ Act, 2015, all the Children Acts proceeds on one platform of extending the scope of juvenile justice to cover all the children in conflict with law and thereby protecting them from the rigour of the law. Whereas, the JJ Act, 2015 has widely reduced the scope of protection to juveniles by engraving the category of 16-18 years old children accused of heinous offences from the one category of juveniles. It has also violated the principle of equality under

Article 14 of the Constitution of India. It is also to be observed that punishment provided for the heinous offences ranges between seven years to life imprisonment. Interpretation of the provision leads to an inference that in case a child is tried by Children's Court as an adult and awarded the harsher punishment provided for the commission of heinous offence it would mean that he has to spent the formative years of life in the association of hardened criminals leaving a long time negative effect on his/her entire life ahead. Also instead of reforming and rehabilitating, it is sure that he would become a criminal like other adult criminals. Such stringent provision will expose the juvenile to more criminal world thereby increasing his/her chances of becoming a hardened criminal. It is here that the entire purpose of juvenile justice system fails or frustrated for which there have been numerous United Nations Declarations and Conventions which obliges all the member States to recognize the sound juvenile justice principles globally that children of young age requires to be reformed and rehabilitated within the juvenile institutions meant for them instead of punishing them in a jail. Primarily, the mechanism of transfer to adult system and awarding adult punishment provided under the JJ Act, 2015 seeks to deter the juveniles from committing crimes. But in reality, awarding long term sentence is not the real solution to the problem of juvenile delinquency in India.

However it is also to be observed that nobody is born criminal from the womb of mother. Criminality is the product of various social factors prevailing commonly in all the societies. Poverty is the curse for poor people to survive and most importantly the root cause of all the problems. Inability of the poor people to fulfill even the basic needs drives them to commit the offence of theft, robbery and dacoity. Present scenario is the scenario of information technology which makes everything available on the internet. More importantly, children of young age remains more engaged on the internet for entertainment. Such entertainment includes visiting the pornographic sites which lures the young mind to do the same things in their practical life. All these factors have the negative impact on their minds. Consequently, Sexual offences by the young delinquents are increasing day by day. Awarding the harsher sentence to such kind of young preceptors is the demand of the present time as it satisfies the conscience of victim as well as of the society. But viewing long term justice this is not the solution to prevent juvenile crimes. Instead of awarding harsher punishments much emphasis should be laid on making the infrastructure of juvenile justice system strong as mandated in the aims and objectives of the juvenile justice legislations as well as in international declarations and conventions. Juvenile justice personnel must be given special training and orientation in field of behavior therapies and skill development techniques so that the juveniles be reformed and rehabilitated to become a useful member of the society. Apart from the mechanism of law, much has to be done in socialization of the children from the very young age.

The problem of juvenile delinquency is not the problem of just one society. It existed in all the societies be it a poor society or a rich society. It can be said that it is a burden on the society and spreading like a plague ruining the future of a country. So, it cannot be solved by just making the legislations only. Certain collaborative efforts are required both on the part of government and private agencies to think out an effective solution to the juvenile delinquency.

As children are the national asset, the government has to strengthen the social policies such as educational policies for the children, employment schemes and some kind of financial policies for financial support of the poor children. Making policies are not only sufficient government has to ensure their effective implementation. As far as victim is concerned, an effective scheme of rehabilitation and financial justice should be enforced to enable the victim to start a fresh life. If possible, victim offender mediation programs can be implemented.

**Preventive Measure to Curb the Juvenile Delinquency-** the following preventive measures can prove to be effective in controlling the juvenile delinquency if implemented with seriousness and responsibility.

- Making basic education compulsory
- Community involvement in making the policies
- Parent-child interaction training programme
- Creation of special programme
- Recreation

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