

JUVENILE JUSTICE SYSTEM ORDER IN INDIA: AN ANALYSIS

Manu Raj Tyagi

Scholar

School Of Law And Constitutional Studies
Shobhit Institute of Engineering & Technology

Ms. Neha Bharti

Assistant Professor

School Of Law And Constitutional Studies
Shobhit Institute of Engineering & Technology

ABSTRACT

"The greatest gifts we can offer to the children are the roots of responsibility and wings of independence". Denis Waitley

"Juvenile" not a word but a tender age where everything they look around affect their behaviour and provide different outcome which can be sweet but sometime turn into crimes. These crimes leading qualities can be because of certain physical, mental, social, and financial circumstances through which this tender age passes. Since this is an age where strict action can lead to devastation in their future life. Therefore, Juvenile justice system is developed which can rehabilitate these children without affecting their development. This act is a primary legal framework with an objective of prevention and treatment of justice for juveniles and also their protection and rehabilitation. It also protects children from law conflicts and cater their needs by child friendly and institutional mechanism. This article also focuses on the Juvenile justice system which is fairly progressive system, although it has certain gaps which need to be filled with effective reforming treatment and rehabilitation of juveniles.

An analysis on the individual and organization working in the interest of children across the country needs to be done so as to identify gaps and loopholes in law.

The act of 1986 was rewritten in 2000 by the name of Juvenile justice act which includes the roles and responsibilities of juvenile justice board and child welfare committee. According to this the maximum punishment was of three years and not more than that which lead to the formation of Juvenile justice (Care and protection of children) Act 2015 which raises the issue of whether the children aged 16-18 years should be tried as adults for heinous crime.

In this article, the author will have an analysis on juvenile justice legislation in India till date and what are the shortcomings in this particular law. The author will also highlight the role of Juvenile Justice Board and Child welfare Committee in tackling juvenile delinquents.

INTRODUCTION:

India has more than 45 million children, accounting for more than 30% of the population, the largest of any country in the world, which places great responsibility on state and national governments in guiding these minors become responsible and law-abiding citizens. The juvenile justice system deals with children who break the law and need care and protection. Children are considered as the greatest asset of any society or country, so children must become responsible citizens, mentally sound, physically and morally healthy to be able to contribute to their lives, contribute to a better society. For many reasons, children commit crimes. In India, a person under the age of 18 is considered a minor. The juvenile justice system is borrowed from Western countries. The earliest laws for the juvenile justice system were the Apprentices Act of 1850 and later the Indian Penal Code (IPC), the School Reform Act (1897), the Criminal Procedure Code (1898) and the recommendations of the Prisons Commission of India in 1920, which addressed the differential treatment of young prisoners compared to adult prisoners. After India gained independence, the constitution made a number of provisions according to fundamental rights and guiding principles of state policy for the protection

¹ <http://burnishedlawjournal.in/> by Ritu Raj , November 22,2022 12:15PM

and development of children. The Government of India passed the Juvenile Justice (Child Care and Protection) Act 2000. This law prohibits the imprisonment of children under all circumstances and

provides care, welfare, and training services., education, maintenance, protection and rehabilitation. The primary role of the Indian juvenile justice system is that children should not be tried in the ordinary courts, with juvenile laws being written to correct them in every way possible. Most children who commit crimes come from poor or illiterate families. The juvenile justice system focuses on educating children instead of punishing them. A child is born innocent and if raised with tender care and concern, it will grow up in a positive way. The physical, intellectual, moral and spiritual development of children enables them to reach their full potential. Conversely, a toxic environment, neglect of basic needs, bad friends, and other abuses can turn a child into a delinquent. With changing social trends, children today seem to have strong likes and dislikes and also display signs of maturity at a very young age. These qualities also make children more vulnerable to notions of criminals such as smugglers, peddlers, and traffickers. Furthermore, the influence of the media on children's psychosocial development is profound. With the recent advent of communication technologies, children's exposure to media, including television, radio, music, video games and the Internet, has increased significantly. Children make up about 40% of India's population and India has a National Children Policy that states that children are national property. Despite this, the majority of Indian children continue to live in difficult circumstances. India has signed the United Nations Convention on the Rights of the Child and has committed to work to ensure all of its children have all the rights set forth therein. India has seen an increase in both crimes committed by children and crimes against children. Crime committed by children increased by 97.9% between 2003 and 2004, with more children showing up for arson, theft, and 'underage' being a Latin term meaning young and to break the law means to leave. The establishment of special juvenile courts dating back to 1847 was initiated in the United States of America and the term "juvenile justice" was first used by the state of Illinois, United States of America. in 1899. Considering the situation in our country, India, the first law governing minors was enacted rehabilitation, this act was later replaced by two other statutes; The Correctional Schools Act of 1897 and the Children's Act of 1960 respectively. The Juvenile Justice Act is the main legal framework established in 1986 with the specific goal of not only preventing and dealing with juvenile delinquency, but also protecting and rehabilitating.

HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM IN INDIA:

The first juvenile justice law in India came into existence in 1850 with the Apprenticeship Act requiring children between the ages of 10 and 18 convicted by a court to receive vocational training as part of the rehabilitation process. This law was enacted under the Correctional Schools Act 1897, the Prisons Commission of India and later the Children Act 1960. The Juvenile Justice Bill was first enacted in Lok Sabha on the 22nd. August 1986. After independence, for the purpose of providing care to protect, develop and rehabilitate abandoned or delinquent minors, our Congress enacted the Act. Juvenile Justice 1986. It was an act that standardized the system across the country. Section 2(a) of the Act defined the term 'juvenile' as a "boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years". This Act was further amended in 2006 and 2011 and is now known as the Juvenile

Justice (Care and Protection) Act, 2000 which raised the age bar to 18 years for both girl and boy. The State of Jammu and Kashmir has repealed its existing juvenile law of 1997 and has³enacted the Jammu & Kashmir (Care and Protection of Children) Act 2013. This legislation is very similar to India's national juvenile law except that it does not contain any provision on adoption. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006)., states that: "Prohibition of publication of

² The Rights, Vol-1: Issue-II, 10, December, 2015 ISSN: CHILD RIGHTS PERSPECTIVE OF JUVENILE DELINQUENCY IN INDIA by *Dr. Sudarsan Raju Chandolu*, November 22, 2022 12:23 PM

³ "A Study on Factors Underlying Juvenile Delinquency" by *KAVITA SAHMEY* November 22, 2022 12:30PM

name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act(1) No report in any newspaper, magazine, newsheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. Section 2(a) of the Act defined the term juvenile' as a "boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years". This Act was further amended in 2006 and 2011 and is now known as the Juvenile Justice (Care and Protection) Act, 2000 which raised the age bar to 18 years for both girl and boy. The State of Jammu and Kashmir has repealed its existing juvenile law of 1997 and has enacted the Jammu & Kashmir (Care and Protection of Children) Act 2013. This legislation is very similar to India's national juvenile law except that it does not contain any provision on adoption. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006), states that: "Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act(1) No report in any newspaper, magazine, newsheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. (2) Any person who violates the provisions of paragraph (1) shall be liable to a fine of up to Rs.25,000. This is so outnumbered that the law becomes very important for children who need care and protection. Section 29 of the Act provides for her five members to constitute the Child Welfare Commission, a quasi-judicial body at district level (District in India). At least one of the members is appointed chairman. The Commission has the final authority to decide on cases of care, protection, treatment, development and rehabilitation of "vulnerable children" and to provide basic needs and human rights protections. The Supreme Court of India upheld the retroactive effect of the Juvenile Justice Act 2000 in its 2009 decision in the Hari Ram v. Rajasthan state case. This has previously been upheld by several Indian Supreme Courts, most notably the Bombay Supreme Court.

In recent years it has become very clear that juvenile delinquency is the most important aspect of the subject of criminology. The last few years have also required an objective assessment of the problem and the development of new techniques. Delinquency is taking serious forms among young people, a sign that society is sick.

JUVENILE JUSTICE (Care and Protection of Children) Act, 2015: Under⁴

Section 15, special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years. The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children's Court (Court of Session) after conducting preliminary assessment. The provisions provide for placing children in a 'place of safety' both during and after the trial till they attain the age of 21 years after which an evaluation of the child shall be conducted by the Children's Court. After the evaluation, the child is either released on probation and if the child is not reformed then the child will be sent to a jail for remaining term. The law will act as a deterrent for child offenders committing heinous offences such as rape and murder and will protect the rights of victim.

The JJ Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include: change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law', across the Act to remove the negative connotation associated with the word "juvenile"; inclusion of several new definitions such as orphaned, abandoned and

⁴ Press Information Bureau, Government of India-Ministry of Women and Child Development 15-January-2016 November 23,2022 01:11 PM

surrendered children; and petty, serious and heinous offences committed by children; clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC); clear timelines for inquiry by Juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year; separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions. To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in- country and inter-country adoption including declaring a child legally free for adoption. Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children.

No child is ever born as a criminal. It might be their surroundings, the peer group, improper socialization, and lack of parental care, which give raise to the delinquent behaviour among children. The child development is not only meant by taking care of the basic biological needs of the children but also providing them proper socialization and extra development for the child. Providing the children with protective cover through strict warning and rigid restrictions are not the solution to prevent the delinquent behaviour. The parents need to provide gentle guidance and create close communication to help the children to come under the protective cover. The Convention on the Rights of the Child (CRC) which was conscripted by the UN Commission on Human Rights, aimed at protecting and supporting the well-being of children.⁵ Concerning the child rights, it has laid down four rights, i.e., the right to survival (right to life with dignity, a high standard of health, nutrition, and hygiene), the right to protection (freedom from all sorts of abuse, exploitation), right to development (right to education), and right to participation. The Supreme Court's decision clarified that the Right to Life clearly implies Right to Life with Dignity and not mere survival.

SHORT COMING:

- **Lack of Age-specific Treatment Programmes-** Children in conflict with law or the child offenders are most commonly referred to as juveniles or juvenile delinquents. Covered under the JJ (Care and Protection of Children) Act, 2000, the number of such children has increased over the years, from 38,455 in 2016 to 40,000 in 2017. While part of this increase in juvenile crimes may be attributed to the inclusion of boys aged 16–18 years in the definition of child in the revised juvenile justice law of 2000, the fact remains that the rate of juvenile crimes is fairly high and more and more children in the 16–18 years category are coming in conflict with law. This clearly calls for more investment in infrastructure and administrative mechanisms to deal with the increased numbers. It also calls for age-specific treatment of children in special homes. In fact, some of the 16–18-year-olds have committed heinous crimes and therefore besides age-specific treatment, they may be in need for separate programmes, different from those who have committed petty crimes and are first time offenders (Ali and Ganguly-Thukral, 2006). The absence of interventions catering to such specific situations and

⁵ Source from article written by *Kellie Darbouze* on "effect of rehabilitation on juveniles"

Source from journal titled "Advantages of Group Therapy in Relation to Individual Therapy for Juvenile Delinquents" by Young, 1971, November 24, 2022 03:22 PM

groups of children further violates children's right to proper care and protection, including their right to participation, which is critical to the realisation of every other right.

- **Discriminatory Provision-** Section 48 of the JJ Act provides that if a child is found to have diseases like leprosy, sexually transmitted diseases, Hepatitis B, tuberculosis, or mental illness then he/she will be handled 45 Source from article written by Kelie Darbouze on "effect of rehabilitation on juveniles" 45 Source from journal titled "Advantages of Group Therapy in Relation to Individual Therapy for Juvenile Delinquents" by Young, 1971 separately through specialised referral services. This section, therefore, gives power to the government to test a child for HIV without his/her consent. Further, there are no safe- guards to protect medical records and the child can be isolated on the basis of his/her HIV-positive status. Human Rights Watch (2004) found several cases in which institutions had turned away children because of their parents' HIV status, and non-governmental organisations confirmed this practice.
- **Inhuman Conditions in Institutions-** The conditions prevailing in children's institutions undermine the very purpose of their existence. Children live in inhuman conditions. Not only are they meted out torturous treatment, but their basic needs for survival are also denied. These institutions must necessarily provide nutritious food and healthy conditions of living, both of which are mandatory for the physical and mental ⁶wellbeing of the inmates. The food served to the inmates is not meagre at best, nor is it nutritious. A recent study conducted by Child Rights and You (CRY) in 2009 revealed that a large proportion of children admitted they did not feel safe in the institutions. Children have no say over what food they eat. Over two-thirds of the adult respondents admitted that children were not consulted while deciding menus. Not surprisingly, only 33% of children stated that they like the food served. Children are often left without clothes to wear. Their living conditions are appalling. They are held in overcrowded and unsafe conditions and denied basic sanitary facilities also. There is complete deprivation of the right to liberty in total disregard of international juvenile justice and protection standards. Children face abuse and other human rights violations in these institutions also. Children are also sometimes labelled by the insensitive staff as 'thief', 'criminal', 'insects', among others. Children in the institutions report that most of the staff members are verbally and physically abusive. There has been a significant increase in the number of cases of child sexual abuse within the institutions. There is no procedure laid down to deal with such cases of abuse. In several cases the carers, that is, those who are supposed to take care of children in the institutions are the abusers. There are several cases which go unreported. Doctors who are first to come in contact with such victims are not equipped to examine victims of sexual assault. The medical reports are incomplete and vague in many cases. The staff in the institutions are not equipped or trained to deal with such cases. The guards fear the older boys, who are similar in size to the guards, but the younger boys receive beatings on regular basis (Human Rights Watch, 1996). Lack of supervision and limited staff, combined with a lack of training, strain relations between institutional staff and children. The sexual abuse even among the children is not rare. Senior juveniles demand sexual Community-based rehabilitation programmes are a move away from traditional confinement options, with an increased dependence on resources in the community. Community corrections include a wide variety of favours and younger ones have no choice but to perform the same.
- **Inadequate Social Investigation Reports-** Another hurdle in helping these children access their right to bail or be re- leased under other provisions in the law is the Social Investigation Report prepared by the probation officers for every child, which forms an important and significant basis for the Juvenile Justice Board's (JJB) decision to grant or deny bail. A social investigation report is meant to be based on home visits made by the probation officers and inquiry from the child's community and neighbourhood, child's friends, relatives, and so on. Given the increase in the number of cases of

⁶ Source from Global Youth Justice/ "Making the Time for Juvenile Crime"
Hindustime times/ "Juvenile Crimes: The new age of offence" by Poulumi Banerjee
November 24,2022 03:45 PM

crimes committed by children and shortage of probation officers, such in-depth inquiry has never been possible. As a result, there is no real assessment of the child's situation and circumstances and his/her family environment. Even a good case of bail gets rejected in the absence of a fair social investigation report.

- **NGO Involvement-** The present practice of NGO involvement in the institutions is quite ad hoc and there is a need to streamline this process. Although child welfare institutions are open to NGOs, they are only being allowed to offer some services such as education, health, vocational training and recreation and are not involved in the ⁷administration of the institution. Joint management of institutions is the need of hour, which may help to curb various malpractices that go on in institutions unchecked and unabated. Some experiments are, however underway. The Joint Management Model has been implemented in Andhra Pradesh where the state has introduced Home Committee with state and NGO representatives to manage the Homes. This model seems to have achieved the need for getting community participation without compromising on the state's responsibility for running the institution. In Delhi, Prays Juvenile Aid Centre manages the Juvenile Observation Home. The NGO involvement needs to be there not only in the management of institutions, but also at the helm of affairs that is in decision-making bodies, such as JJBs and CWCs. The JJ Act, 2000, provides that JJBs/CWCs should have at least two social workers as their members apart from a panel of Metropolitan Magistrate or Judicial Magistrate of the first class. The presence of an active social worker can go a long way in ensuring the best interest of the child. Here the author would like to mention Pratham's (an NGO based in Mumbai) model of involvement in JJBs and CWCs. While supervising students of social work placed in child welfare institutions in Mumbai, the author found that Pratham representatives play quite an important role in ensuring justice to the children and their family members. Students were also given status of the Voluntary Probation Officers, a concept which is quite prevalent in Japan and other countries. It is, therefore, advisable that more of community youth and students should be involved in the JJS to reduce the increasing workload of existing probation officers and also to ensure the speedy disposal of justice at least in cases of children in difficult circumstances.

JUVENILE JUSTICE BOARD AND CHILD WELFARE COMMITTEE:

Juvenile justice board:

- The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman.
- The police have 24 hours to produce a child before the court once he is arrested.
- JJB are meant to resolve cases within a four-month period.

As referred in section 4 of the Act, a special training program must be prepared and the officers of the Board including the Principal Magistrate should be given training of child psychology and child welfare.

- The atmosphere where the survey is conducted should be child-friendly. Avoid wearing black coats and using raised platforms or pedestals. The practice of having youth in front of the board should be stopped. The child should be comfortable and free from fear of people. Board meetings may be held in a surveillance home with basic infrastructure such as computers, typewriters, stenographers, furniture and buildings should also be made available for the smooth performance of the duties of the Board.
- Records and cases must be properly maintained.
- In the case of children, a home video link must be provided to facilitate inspection and oversight by the board and management of conduct contrary to the child's best interests.
- At least one of her two social workers on the panel must be a minimum legally qualified person.
- The Board must include a list of experts in psychology, counselling, clinical psychiatry, non-governmental organizations, advocacy panels, appropriate agencies and persons, care homes, special

⁷ <https://www.slideshare.net/hannahudhaya/child-welfare-committee-and-juvenile-justice-board-overview> by Hannah Udhaya, November 27, 2022 02:22 PM

institutions, and volunteer organizations dedicated to child welfare. Juvenile court personnel, in this case should be sensitive to the developmental needs of juveniles, flexible enough to respond to new findings in social science research, and willing to experiment with promising new interventions.

- In order to provide adequate services to young people and parents of children, they should consult with a psychiatrist and receive psychological treatment. For this purpose, it is necessary to appoint a psychologist and a social worker familiar with the relevant laws to the juvenile court.
- The Juvenile justice board may seek cooperation with juvenile police special forces and probation officers, as well as NGOs and other social organizations. Probation officers should be properly trained in how to prepare social research reports to support JJB. A probation officer is appointed on behalf of the state probation officer to prepare the social research report. 8. Government officials should be appointed by the Government to act as liaison officers between NGOs and the Youth Welfare Commission of the Juvenile Justice Commission. In this connection, state government welfare departments can organize seminars, awareness and orientation programs inviting all possible civil servants and police officers responsible for better law enforcement towards children.

Child Welfare Committee is a statutory body appointed as a competent authority for all children in need of care and protection by the Juvenile justice Act.

- The Child welfare committee normally send the child to an orphanage while the child's protection case is investigated.
- Child welfare committee usually meet and interview the child to obtain background information and understand the issues the child might be facing. The Probation Officer (PO) in charge of the case must also provide regular reports regarding the child. The purpose of the CWC is to determine the best interests of the child and to find a safe home and environment for the child in the original or adoptive parents, foster homes or institutions.
- A final order must be made within four months of your child's enrolment in CWC.
- The CWC also has powers to hold people accountable for the child such as in the case of child labour, the employers are fined or made to give bonds to the children.

CONCLUSION:

A main conclusion from this inquiry is that there has been an increase in juvenile crimes in India which is the product of different variables like family background, socialization process of an individual, the social environment in which he resides and many more. In the present study all the offenders are in the age group of 15-18 years, which is categorized as the adolescent age. In a community the adolescent age is between 14-18 years, and it is the age in which the children have committed the offences such as theft, murder, rape, smoking, and drinking. The socialization process reflects an individual's sense of right and wrong, and what model they search for themselves which reflects the instable personality of a teenager. Through this inquiry, research finds that substance abuse like drug addiction or tobacco addiction, taking liquor or smoking is not an important factor in juvenile delinquency, though it may play a part in the causation of crime in later adolescence and more particularly in adulthood. It is a delinquency in itself, but, like truancy, it may also be a causal factor in other delinquency, such as stealing, sex offenses, or disturbing the peace. A great variety of mental, physical, and environmental factors contribute to substance abuse as to any other form of undesirable behaviour. The most fundamental challenges for today's juvenile justice system are to judge the intension of a juvenile for committing a particular offence, whether he did it intentionally or something made him to do that. In several cases analysed by the researcher, it has been found that some particular condition like poverty due which a juvenile could not get adequate food and preferences which make them to commit wrongful act like theft. Socialization process also has a large impact on an individual's behaviour. In India, juvenile justice system is making so much effort and implementing new rules and amending previous one to help juvenile delinquents to move on in his life by forgetting their past and lead a more positive life and oppose committing a delinquent act. Juvenile delinquency can be minimized by looking into new points of juvenile like psychological, sociological and individual factors. To rehabilitate juvenile firstly one should know the reason behind the commission of the wrongful act and what made him to commit that act, is it was intentional or there was some compulsion for doing that act and the what can be done to overcome that compulsion. Laws are made every

day, amendments follow, but the major problem with us country is the implementation of the same. Not just mere implementation, but effective implementation is the need of the hour. But it can be observed that the legislature and the judiciary have made tremendous efforts to provide maximum benefit and relief to the juveniles who deserved it. Some recommendations as to avoid juvenile delinquency itself include education, awareness regarding anti-social behaviour, increase in awareness about the existing laws governing the juveniles, educating the parents about these laws as well, providing a healthy and safe environment for their living and building proper and child friendly rehabilitation centres increasing their availability. Crimes are committed by children but they should be punished according to the crime they've committed. Juvenility should not be accepted as a defence against heinous crimes committed like rape and murder. Hence, this requires an amendment. The community government, as well as the parents are responsible for the execution of this legislation. Therefore, it can be concluded that there exists a strong legal framework to curb juvenile delinquency but needs effective implementation.