

JUVENILE JUSTICE SYSTEM IN INDIA

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INTRODUCTION

It was correctly said by Margaret Mead¹, "Children must be taught how to think, not what to think."

A child will always carry what you have initiated, the destiny of mankind is in his hands. There always exist a pre conceive notion for everything in the world, hence the same was for the juveniles that they should be dealt calmly and leniently as young folks have a tendency to adopt aggressive approaches to handle a chaos.

There are many reasons which effect the physical, mental as well as the overall development of a child such as poverty, family tensions, parental care, faulty education system, social values and so on. In a developing country like India the youngsters which are assets for the society are becoming liability. Crimes committed by Juveniles are also increased in the past few years. Nowadays children are also used as a measure to do unlawful or illegal acts because of their innocent and manipulative behaviour, they can be lured easily.

HISTORY

The term 'Juvenile justice' was used for the first time by the legislature by the state of Illinois, USA (1899), while passing the juvenile court Act.

A moment for the special treatment if juvenile offenders has been started around the 18th century. Prior to this, they were treated as other criminals. General Assembly of United Nations has adopted a convention on the Rights of child on 20th November 1989 which includes four sets of civil, political, social, economic and cultural rights of every child. These are:

- 1) RIGHT TO SURVIVAL
- 2) RIGHT TO PROTECTION
- 3) RIGHT TO DEVELOPMENT
- 4) RIGHR TI PARRICIPATION

The convention states there should be no legal proceedings and court trials against the little ones. The convention leads the Indian legislation to nullify the Juvenile Justice Act 1986 and to make a new law i.e., THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000².

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https://www.google.com/search?q=child+quotes&rlz=1C1CHBF_enIN923IN923&sxsrf=AOaemvKtBRakyxho4Mmo9ZIFwVHcTgfdxQ:1632485986195&source=lnms&tbn=isch&sa=X&ved=2ahUKEwjLu

² <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

The Act 1986 (63 sections and 7 chapters) which repealed the earlier Act 1960 focused on giving effect to the guidelines contained in the standard Minimum rules for the Administration of Juvenile Justice adopted by U.N. countries in November 1985. The goals of this Act were:

- 1) To protect the right and interest of juvenile.
- 2) Development and Rehabilitation of the offenders -structure for the care, protection treatment.
- 3) Proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

JUVENILE AND CHILD

Both the term has same meant but the difference is in the implications in the eyes of law. A child below the legal age of 18 is a minor, he can be accused of a crime but will not be tried as an adult and is sent to the child care centre (only child between the age of 7-12 can be convicted provided that, the act they committed is a heinous crime and they have attained sufficient knowledge to understand the consequences of their act) whereas Juvenile is a person between the age group of sixteen and eighteen years who can be accused of crime and can be tried as adult in court proceedings.

According to sub-section 12 of section 2 of the juvenile Act 2015, it classifies the term "child" into two categories:

- 1) CHILD IN CONFLICT WITH LAW (under age of 18 committed an offense)
- 2) CHILD IN NEED OF CARE AND PROTECTION (child needing open shelters)

JUVENILE JUSTICE ACT, 2000³

It was enacted with the aim of protecting children. It was amended twice - 2006 and 2011. The amendment was to cover the gaps and loopholes.

After the threatening incident of DELHI GAND RAPE CASE, the law makers were forced to come up with an essential legislation which led to the formation of THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2015. Some of the features of the same are as follows:

- 1) Section 2(12) gives the definition of the child, meaning thereby that a child is a person who hasn't completed the age of 18. The act has given the classification namely " child in need of care and protection " and section 2(13) " child in conflict with law".
- 2) The categories were made terming the offences as heinous, serious and petty and if a heinous crime is committed by a child between the age of 16-18 due perusal of their mental capacity, they can be tried as an adult.
- 3) Special Courts were established that will be trying the juvenile offences only, like Juvenile Courts, NDPS Courts, POSCO courts, etc.
- 4) The scope of 'Child in need of care and protection' was enhanced -section 2(14):
 - Those whose guardians or parents are/ were unfit or uninterested in taking care of the child.
 - Those who are/ were found performing works that are in contravention to the labour laws.

³ <https://blog.ipleaders.in/critical-analysis-of-juvenile-justice-act-2000/>

- Ones who have the imminent threat of marriage before attaining the specified lawful age.
- The meaning of adoption has also been specified in the Act through which the rights and adoption child stands recognized.

JUVENILE JUSTICE AMENDMENT BILL, 2021

Key amendments:

1) Serious Offences - It will also include offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is of less than seven years.

Serious offences are those for which the punishment under the Indian Penal Code or any other law for the time being is imprisonment between three and seven years.

Juvenile Justice board inquiries about a child who is accused of a serious offence.

2) NonCognizable Offence - The present act provides that an offence which is punishable with imprisonment between three to seven years to be cognizable (where arrest is allowed without warrant) and non-bailable. The bill amends this to provide that such offences will be non-cognizable.

3) Adoption - The bill provides that instead of the court, the District Magistrate (including Additional DM) will issue such adoption orders.

4) Appeals - The bill provides that any person aggrieved by an adoption order passed by the DM may file an appeal before the Divisional commissioner, within 30 days from the date of passage of such order. Such appeals should be disposed within four weeks from the date of filing of the appeal.

5) Additional Functions of the DM - These include Supervising the District child Protection unit, Conducting a quarterly review of the functioning of the child welfare committee.

6) Designated Court - The Bill proposes that all offences under the earlier Act be tried in children's court.

7) Child Welfare Committees (CWCs) - It provides that a person will not eligible to be a member of the CWC if he/she

- has any record of violation of human rights or child rights.
- has been convicted of an offence involving moral turpitude.
- has been removed or dismissed from service of the central government, or any state government, or a government undertaking.
- is part of the management of a child care institution in a district.

8) Removal of members - The appointment of any member of the committee shall be terminated by the state government after an inquiry if they fail to attend the proceedings of the CWCs consecutively for three months without any valid reason or if they fail to attend less than three fourths of the sittings in a year.

CLAIM OF JUVENILITY

According to the Rule 12 of Juvenile Justice Rules 2007, the claim of juvenility is to be decided by juvenile justice board before the court proceedings but the claim can be raised before the court at any stage of proceedings and even after the disposal of the matter by the board.

In the case of Kulaibrahim v. state⁴ of coimbatore it was stated by the court that the accused has the right to question Juvenility at any point of time during or even after the disposal of case (section 9).

In the case of Deoki Nandan dayma v. state of Uttar Pradesh⁵ and satbir singh and others v. state of Haryana the court held that the date of birth which is recorded in the school can be taken into consideration in order to determine the age and is also admissible evidence in the court.

In the case of krishna bhagwan v. state of bihar⁶ the court stated that for the purpose of trial the relevant date for considering the age of juvenile should be on which the offence has been committed but then in the case of Armit Das v. state of Bihar⁷, the Supreme Court overruled its previous decision and claimed that the date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.

JUVENILE JUSTICE BOARD

It is a constitution of board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.

The board shall consist of Principal Magistrate and two social workers (one should be women).

The decision taken by the principal Magistrate shall be final.

Main Special Procedures:

- 1) The proceedings cannot be initiated on a complaint registered by the police or citizen.
- 2) The hearing must be informal and should be strictly confidential.
- 3) The offenders should be kept under Observation home after detention.
- 4) The trial of juvenile in conflict with law shall be conducted by lady magistrate.
- 5) A child in conflict with law may be produced before an individual member of the board when board is not sitting.

JUVENILE JUSTICE AND CONSTITUTION OF INDIA

⁴ Kulaibrahim v. state⁴ of Coimbatore 2014 (142) AIC 144

⁵ 1996 CriLJ 61

⁶ AIR 1989 Pat 217, 1991 (39) BLJR 321, 1991 CriLJ 1283

⁷ Armit Das vs State Of Bihar on 9 May, 2000

Constitution⁸ has provided some basic rights and provisions especially for the welfare of children:

- 1) Article 21A: Right to free and compulsory elementary education for all the children under the age of 6 to 14 years.
- 2) Article 24: Right to be protected from any hazardous employment under the age of fourteen years.
- 3) Article 39e: Right to be protected from being abused in any form by an adult.
- 4) Article 39: Right to be protected from human trafficking and forced bonded labour system.
- 5) Article 47: Right to be provided with good nutrition and proper standard of living.
- 5) Article 15(3): provides special powers to state to make any special laws for the upliftment and betterment of children and women.

DOLI INCAPAX

The doctrine of 'Doli Incapax' means the inability of committing a crime. It finds its basis on article 40 (3) (a) of the United Nations Convention on Rights of Child, that states that every country must mention the minimum age for the children who should be exempted from any kind of criminal liability because of their inability to decipher the nature and consequences of the act.

For juveniles falling under the age of 8 to 14 years, the prosecution has the liability to prove the offence of the concerned child.

The main aims of this doctrine can be interpreted in the following points:

- A child should be protected from the consequences of punishment inflicted upon him to his act. A reformatory approach should be adopted to make the child overcome his paranoia.
- A child that belongs to the age group of below 7 years, doesn't possess the mental capacity to analyse the consequences of his acts, he/ she may lack the knowledge as well as the intention to commit a crime and mere 'actus reus' cannot be a ground for prosecution unless accompanied with 'mens rea'.

Penal provisions and related judgements:

- Section 82 and 83 of the Indian Penal Code, 1860 talks specifically about the exemption from prosecution of the Juveniles.
- The Supreme Court in the case of *Kakoo V. State of Himachal Pradesh*⁹ reduced the punishment of a 13-year-old boy who had raped a 2-year-old girl. The court took into consideration sec. 83 and 84 of the IPC that Juveniles can't be treated as that of the adults. Thus, it is a very well-settled law that while dealing with the Juveniles the court should consider reformatory and humanitarian approaches.

⁸ <https://www.haqrc.org/child-rights/constitution-of-india/>

⁹ AIR 1976 SC 1991, 1976 CriLJ 1545, (1976) 2 SCC 215

- But in the case of Heeralal V. State of Bihar¹⁰, a child threatened an adult that he'll chop him into pieces and subsequently the child stabbed a person till his death. He was sentenced by the trial court with a reasoning that the child was mature enough to understand the ramifications of his act. The Supreme Court also dismissed the petition.

CONCLUSION

The increasing rate of juvenile crime in India is very pathetic and is shattering the economy, it is need to be focused upon as the national capital registered an 11.5 per cent increase in the number of crimes committed by juveniles in 2017, according to the report. At 35.2 per cent, Delhi also had the highest percentage of the crimes committed by juveniles in 2017, among 19 metropolitan cities with a population of more than 2 million. Although the government is taking all the necessary steps in order to prevent such chaos but on our part, we should also keep a healthy check on the mental health of a being specially during this ongoing pandemic. Also, we should keep the fantasy social media world out of our sight in order to prevent the reduction of the youth's self-esteem, self-confidence which can make them sink into the world of crime by inculcating themselves in unfair means of trade. For the kids who are passing the harsh times of their life should not be discouraged by the hardships instead they should keep working hard and make sure to left no stone unturned.

¹⁰ 1977 AIR 2236, 1978 SCR (1) 301

