

Chapter-16

JUVENILE JUSTICE IN INDIA: STATUS AND CHALLENGES

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ABSTRACT:

“A nation’s children are its supremely important asset and the nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow”. – Rabindra Nath Tagore

Children are the future of our country and to ensure them that they leap towards felicitous world, there should be more trajectory and transpicuous law. As no one wants to be criminal by itself, Children brains are like sand which can be molded in any shape. Children in conflict with the law are treated as adult criminals in justice systems that deny their basic human rights and do not respect juvenile justice standards. This paper starts describing the growth of juvenile justice legislation evolved from pre independence to post independence era in India. Despite of being such welfare law present in our constitution there has been a great hop in the rate of Juvenile crime in India. A State is the ultimate parent of child, as you know a child is like a seed as you sow as it reap; therefore it aims to ensure that children do not rammed with the law in the first place. The ambiance in which a child resides is main factor it can be socio-economic or physiological reasons, which are varied and often complex: It includes poverty, family disaggregation, and lack of education and employment opportunities, peer pressure, lack of parental guidance...

The paper also tries to find out Why historical aspect necessary to understand the reform? Why need juvenile system? Why need foster homes? Why need preventive programs? The concept of juvenile delinquency is to show the correct path from which they are strayed and further put impediments on their way to commit crimes which can be of any nature. The Constitution of India recognizes the right of children in Article 15(3) connotes, State can make any special provision for children and has the duty to provide compulsory education to all children below theage of 14 years. Article 45 connotes for early childhood care and education to children below the age of six years. And a new amendment has came into in light in The Juvenile Justice (Care and Protection of Children) Act, 2015, aims at ensure protection ,proper care, development, and social reintegration of children in difficult circumstances by establishing of Child welfare committees along with Juvenile Justice Boards in each districts. Apart from multiple laws governing children, there exist many other problems at the grassroots level which are waiting for amelioration. In the concluding part, some suggestions have been made for preventive measures of Juvenile Crimes.

Keywords: *Juvenile, Crime, Delinquency, Foster homes, Juvenile Justice Act, Heinous crime.*

INTRODUCTION:

“The Indian Jurisprudence of Juvenile Justice in the wayward victim of legislative chaos and statutory slumber . And even when a fine piece has been put on the statute book, meaningful execution is distances away”. --V.R. KRISHNA IYER, Former Judge of Supreme Court

A Crime is a stamp which makes a person criminal, abhorred by all sections of society. But when it comes to children the attitude of society changes a bit, they are often considered as *doli incapex* and at same time should be treated with proper care as it is a passage to adult crimes. The concept of Juvenile Delinquency is not a new one but it came into light in an effective manner after independence. The rationale behind to enact Juvenile Delinquency is that children and adults are different hence their criminal activities have different quantum. Therefore Juvenile delinquents are minors, usually defined as being between the ages of 10 and 18, who have committed some act that transgress the law. These acts aren't called “crimes” as in case of adults rather called “**delinquent acts.**” These delinquency acts have a nexus with social changes and mal-adjustments as a society in general is house of conflicts, tensions, adjustments which plays a role in the development of child. The Constitution of India, after independence provided various safeguards to protect the interest of children as Fundamental Rights and directions for the State contained in Directive Principle of State Policy. Judiciary also plays a vital role in giving these legislations a pragmatic effect. Apart from it Five Year plans emerges as a backbone for strengthening child rights such as First Five Year plan (1951-1956) open gates to the issues of health, nutrition, and education, Second (1956-1961), aimed at strengthening the child welfare systems... Juvenile Justice in the modern context organizes efforts to prevent and treat juvenile social mal-adjustments in keeping with the interest and rights of children.

Pre Independence India:

Concerned for the plight of children, Indians approached Lord Cornwallis, the then Governor- General of India, to establish a centre for destitute children in Calcutta, a major trading city. As a result, the first orphanage, “**Ragged School,**” was established in 1843. The Ragged Schools (special name given to orphanages) were charitable schools, dedicated to providing free education of destitute children.

The period between 1850 and 1919 was marked by social and industrial upheavals, resulting in enactment of several laws concerning various social issues. During this period among other laws

¹Rabab Khan, *Juvenile Justice In India - An Appraisal* (2013) (Unpublished LLM dissertation, Aligarh Muslim University). The **Apprentices Act, 1850** was an important legislation concerning juveniles especially orphans. This Act required that children between the ages of 10-18 convicted in courts, to be provided vocational training as part of their rehabilitation process. Then The **Indian Penal Code** was enacted in 1860, this code explicitly declared minority as a defense against criminal activities. Section 82, implicitly stated that a child below seven years of age is considered to be doli incapax and therefore cannot be held of any offence. Further Section 83 of the code deals with the cases of qualified immunity because a child above seven but below 12 years of age is presumed to be possessed with majority of understanding and capacity to commit a crime. However, this presumption is rebuttable. The concept of a reformatory school for delinquent children came to fruition with the passage of the **Reformatory Schools Act of 1876**. This policy of separate treatment of Juveniles was further bolstered by the Reformatory School Act of 1897, which dealt solely with the treatment and rehabilitation of young offenders. Major change was that individual provincial governments could choose to enact their own legislation. The first province to enact its own piece of juvenile legislation was Madras.

Post Independence India:

The first step to fulfill the rights of children can be found in the Constitution of India. There are number of articles that address various needs of children as has been outlined in Constitution:

Fundamental Rights:

- Article 14- The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.
- Article 15- The State shall not discriminate against any citizen. Nothing in this Article shall prevent the state from making any special provisions for women and children.
- Article 21- No person shall be deprived of his life and personal liberty except according to procedure established by law.
- Article 24- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.²

- The Constitution (86th Amendment) Act was notified on 13th December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years.

Directive Principles:

- Article 45- The state shall Endeavour to provide early childhood care and education for all children until they complete the age of six years.
- Article 47- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among as among its primary duties.⁴

Important Legislative Measures:

The most significant legislation in the area of juvenile delinquency was the Central enactment for Delhi and other Union Territories of the Year 1960. By 1960 many states had established separate systems and laws for juveniles which varied in terms of definitions, and other procedural requirements and their implementation also varied. In 1960 Union government enacted **The Children Act 1960**, which was applicable to union territories which were directly administered by the Union government. However, some lacunae were identified in the act of 1960 and amendment was, therefore desirable. This was done by the Children (Amendment) Act, 1978. The definition of the term “neglected child” was widened by including the cases where the parents are not able to exercise proper care and control over the child. Further a child could now be sent from the Juvenile Court to the Welfare Board and vice versa. Beside the observation home, a child could now also be sent to any other place of safety which may be better in terms of individual attention and personal warmth.

It was intended to serve as a model for the state legislations which did a groundwork for the National law passed as **Juvenile Justice Act, 1986** acted as uniform law throughout the country. Apex court Judgment in **Sheela Barse Vs. Secretary Children Aid Society**⁵ played a crucial role in passing the uniform law on juvenile justice where it acknowledged that the children in the jails are entitled to special treatment. The Hon’ble Supreme Court in Sheela Barse’s case observed that instead of each state having its own Children’s Act different in procedure and content from the Children’s Act in other states, it would be desirable if the Central Government initiates parliamentary legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to Children in the entire territory of the country. The

Children's Act which may be enacted by the Parliament should contain not only provisions for investigation and trial of offences against Children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic, and psychological rehabilitation of the Children who are either accused of offences or are abandoned, destitute or lost.

However, the **Code of Criminal Procedure, 1973**, streamlined the subject of adjudication of status. Section 27 of the new Cr.P.C provides that "any offence not punishable with death or imprisonment for life" committed by a person under the age of 16 years may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other for the time being in force providing for the treatment, training, and rehabilitation of youthful offenders (Code of Criminal Procedure, 1973). **The Juvenile Justice (Care and Protection of Children) Act, 2000**, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992. The main feature of act was the uniform age for both girls and boys any child who has not completed the age of 18 years fall within the jurisdiction of the act. This act was aimed at providing for proper care, protection, and treatment by catering to their development needs and by adopting a Child-friendly approach in the adjudication and disposition of matters in the best interest of Children and for their ultimate rehabilitation.⁶

The Juvenile Justice (Care and protection of children) Act, 2015 came into force from 15 January 2016. It was passed by lok sabha on 7th may, 2015; was passed by rajya sabha on 22nd December, 2015 and receive presidential assent on 31st December, 2015. In this Act under Section 15, special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years.

Observation Homes and Special Homes:

Children constitute valuable assets of any country and development is important as they hold the key to the future and India has the highest number of children in the world. The total population of India as recorded by Census 2011 is 1.2 Billion. Approximately 40% of the nation's population is children⁷.

The aim of such homes is to separate juvenile from adult offenders and to provide an ambiance which can help them in rehabilitation and amelioration their condition, these homes are like water for a shrivel flower. By the presence of two

social workers an attempt is made to bring change in the nature of the inquiry and decriminalize the administration of juvenile justice⁸.

OBSERVATION HOMES as the name depicts established for the observation of any child who is alleged to be in conflict with law, for temporary reception, care and rehabilitation, during the pendency of any inquiry under this Act. This provision is mentioned in Section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2015 whereas **SPECIAL HOMES** are used for rehabilitation of those children who are found to be committed an offence and placed under here by the order of Juvenile Justice Board provided in Section 48. These Homes shall be registered as provides under Section 41 of the said Act and the State Government shall establish and maintain these homes in every district or a group of districts, either by itself, or through voluntary or non-governmental organizations.

⁶ Juvenile Justice (care and protection of children) Act 2000

⁷Information Technology Act, 2000, India, available at: <http://nipccd.nic.in/reports/dsmdata.pdf> Moreover where State Government is of the opinion that any registered institution other than a observation home if fit for the purpose of temporary reception of such child, may register such institution as an observation home. A juvenile who has been sent to an observation home must initially be kept in a reception unit of such home. Once the inquiry has been made as to his/her age, his/her physical and mental status, and the nature of the offence committed, the juvenile can then be admitted into the observation home and segregate on the basis of their age and gender.

The State Government has also authority to

- (a) Made rules for management and monitoring of these homes;
- (b) Mention the standard and kinds of services to be provided for rehabilitation and social integration of a child;
- (c) Grant or withdraw the registration of observation and special homes.

The objectives of the special home are⁹:

- (a) Vocational training to the child;
- (b) Emotional stability in the child
- (c) All round development of the child

- (d) child becomes self-reliant on his or her discharge from the Special Home
- (e) continuing the education, vocational training etc., after leaving the Observation Home

Presently approx 293 Observation and 47 Special Homes are functioning in States/UTs¹⁰.

Social Influences:

According to **GLUECK**, after conducting intensive research on the causal factors of delinquency, concluded: "Among the forces that court appreciate most in determining whether or not a boy will be conditioned to anti-social behavior, is the home atmosphere. It is clear from the evidence that in the home and in the parent-children relation, are to be found crucial roots of character which make for acceptable or unacceptable adjustment to realities of life in society."¹¹

By this statement it is very clear that impact of parents on a child has vital role in the development of his personality. As children spend most of their time with family, they are the first teacher of a child.

⁹ Information Technology Act, 2000, India, available at:
<http://wcdsc.ap.nic.in/jwacts/chapter5.html>

¹⁰ Information Technology Act, 2000, India, available at:
<http://pib.nic.in/newsite/PrintRelease.aspx?relid=132983> Some of the SOCIAL influences are mentioned below¹²:

- Family members or relatives or being criminal, alcoholic, immoral
- Absence of one of the parent by reason of divorce, death, desertion which often lead to lack of care
- Lack of parental care through ignorance, blindness or other sensory defect of illness
- Home un congeniality, as evidenced by domination by one member, favoritism, over solicitude, over security, neglect, jealousy, crowded housing conditions, interfering relatives,

- Racial or religious differences, differences in conventions and standards, foster home or institutional home,
- Economic pressures, such as unemployment, insufficient income, mother working out.
- Temptation for modern luxuries of life

¹² Supra note 1.

CONCLUSION:

We are all aware of the fact that modern societies throughout the world are facing social problems; Juvenile delinquency is being one of them. The established standard of social norms and values has also undergone a perplexed transformation. It is an undeniable fact that juvenile delinquency like other countries has become a living social menace in India, particularly after the post-independence. As serious crimes like rape and murders also go unpunished with the offender wearing the garb of juvenility. So, an amendment in the act was definitely necessary. But juvenile crimes cannot be stopped only through the proper implementation and amendments of Juvenile Justice Act. It is vital to make aware of civil society about this disease that exists in our sick society. Juveniles involved in crimes are not criminals, in fact, they are victims of society. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home and in school. Parents and teachers should take care of the children. There should be no labeling of criminal or delinquent on young offenders as the society also has a role to rehabilitate the thinking of children.