

JUVENILE JUSTICE SYSTEM IN INDIA

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ABSTRACT: This Article presents the situation of Juvenile Justice System in India and the need for a comprehensive, meaningful and effective policy for addressing the current problems of juvenile delinquency. There are many policies implemented by the Government of India for the care, protection, treatment and welfare of the children who is conflicted with the law. But the only major law dealing with the children in conflict with law is Juvenile Justice (Care and Protection of Children) Act, 2015. Owing to some practical difficulties the law is not properly implement in the Country. Therefore Parliament of India Passed the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. This Act was passed to amend various provisions of the Juvenile Justice (Care and Protection of Children) Act 2015. In this Article explain the reason behind this amendment of Juvenile Justice Act, 2015.

KEYWORDS: *Juvenile delinquency, juvenile offender, children conflict with law, child welfare committee.*

INTRODUCTION:

Juvenile Justice System is the most progressive and enlightened system adopted by the world citizenry with all round growth of children . The prime focus is to reform the deviants and provide care to the unprotected child. As far as practicable , a child to be rehabilitated and restored to the family. The special court to adopt the detained of *parens patriae* while adjudicating the matter of child in conflict with the law. The article evaluated the Juvenile Justice System in India in the light of constitutional philosophy and International parameters. Understanding the present state of the Juvenile Justice System in India requires recourse to history. The Juvenile Justice System in India originated during the British rule. Before the British regime in India, juveniles were treated by the family and society in general. Gone are those stormy days when the problems of juvenile were not considered as separate system. It can be witnessed from the past that the children were thrown into prison without trial . They were locked in the jail along with hardened criminals . In the nineteenth century penologists prescribed equal punishment for both adults and juveniles. History reveals that juveniles were hanged , transported and imprisoned like adult criminals.

Gradually the problem of youth offenders was given separate treatment . The constitution of India provided for the separate treatment for the children and women. The assumption that is reported in the social milieu is undertaken to make a strong Juvenile justice system in India. In this article an attempt is made to analyze the special treatment adopted by the India for juveniles in the light of its constitutional philosophy and the international conventions. The movement for special treatment of juvenile offenders started towards the end of eighteenth century. Prior to that, juvenile offenders were dealt with exactly like those of adults. They were prosecuted in criminal courts and were subjected to same penalties as adults. They also served their sentence in the same prison in which other hardened in the same prison , virtually turn the prison into breeding centers of criminality. The period of industrialization did not bring any remarkable change in the attitude of reformists towards the young offenders. The wave of liberalism and legislative reforms during the mid-eighteenth century brought in its wake a radical change in the attitude of law reformists towards young offenders. They drew the attention of penologists towards the fact that what a child requires is not so much of reformation as formation. The crusade against harshness towards young offenders began in 1772 when certain special concessions were granted to juvenile delinquents in civil matters. The principle of *Parans patriae* was evolved by Court of Chancery, in England. Similar concessions were later extended to children under the law of crimes and finally the problem of juvenile delinquency emerged as an independent movement. Today , the penal laws of most countries have adopted the principle that a child below a certain age is, incapable of committing a crime , and hence cannot be convicted; where as child between the age seven and twelve years can only be convicted if he has attained the sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. The age range , however , varies from country to country.

In the early history of law in India, section 29- B (as amended in the year 1923) of the Criminal Procedure ,1898 emphasized the need for a judicial procedure, to be used for the purpose of adjudication in criminal proceedings of child offenders. However the newly enacted Code of Criminal Procedure ,1973, streamlined the theme of adjudication by status and enhanced the age of juvenile delinquent from fifteen to sixteen years. Secondly, while under the Reformatory School Act, 1897, the magistrate could direct that juvenile convicted on the charge be admitted to a reformatory school , the newer legislation comprehend the development of measures of correction, treatment and rehabilitation of the children, sec.27 in the Code of Criminal Procedure, 1973 provides:

1. "Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by a chief judicial magistrate or by any court specially empowered under the Children Act, 1960 or any other law for the time being in force providing for the treatment , training and rehabilitation of youthful offenders.
2. The incorporation of the Children Act 1960 which was an union law in Criminal Procedure Code 1973 laid foundation for juvenile jurisdiction to follow a procedure in a judicial proceeding against the child offender. Various

States in India enacted their own Children Act. Those were Special Acts, which prevailed over the General Act. So where the Children Act had come into force the child was tried under the Special Act. Then the controversy arose whether the child facing a trial for an offence punishable with death or imprisonment for life will be tried by the juvenile court or by Sessions Court? This controversy was finally settled by a judgment of the Supreme Court where it is held that the child shall be tried under the provisions of Haryana Bal Adhiniyam though the offence is punishable with death or imprisonment for life. This view was further corroborated by another judgment of Supreme Court.

The Children Act, 1960 was preceded by the United Nations Declaration of the Rights of the Child in 1959. Thereafter, 113 Nations, by consensus, promulgated the Vienna Declaration and Program of Action where the right of the child in general and girl child particular received worldwide recognition. It was resolved that the member of States should integrate the convention on Right of the child into their national action plan. This provided a blueprint for juvenile justice legislation for developed and developing nations, India being a signatory to the convention, drew up a comprehensive uniform legislation to replace the Children Act, 1960 and the State enactments framed there under. The review of the working of the Children Act, 1960 and the States enactments framed there under, indicated that much greater attention is required to be given to children who were found in situations of social maladjustment, delinquency and neglect. The justice system as available for adults was not considered suitable for being applied to juveniles. It was deemed necessary that a uniform juvenile justice system should be introduced throughout India which would take into account all aspects of the social, cultural and economic changes in the country. There was also need for greater involvement informal systems and community based welfare agencies in the care, protection, development and rehabilitation of juveniles. Juvenile Justice (Care and Protection of Children) Act, 2015

Feature of Juvenile justice Act, 2015 –

The 2015 Act is a re-enacted of the 2000 Act, and it retains several essential features of the earlier act:

- a. There is a complete separation between children in need of care and protection and the juveniles in conflict with the law.
- b. The Juvenile/child has been defined as anyone who has not completed the age of 18 years.
- c. An attempt is made at decriminalizing the juvenile in conflict with the law through the introduction of the J.J. Board in place of the Juvenile Court.
- d. There is a provision for introducing a juvenile police unit and designation of at least one police officer in each station as a child friendly officer.
- e. It expanded the definition of child in need of care and protection with additional categories like victims of armed conflict, civil commotion or natural calamity.
- f. There is an exclusion of certain other categories like a child found begging, children who live in a brothel and uncontrollable children.
- g. The child may be before the committee by the police officer, public servants, childline a registered voluntary organization, social worker or public spirited citizen.
- h. The focus of the new law is the restoration of the child which means restoration to the parents, adopted parents and foster parents.
- i. The Children home or the State run institutions for orphans shall be recognized as adoption agencies for security and placement of children.
- j. The Children's home envisaged as a temporary stay during which schemes for adoption, foster care, sponsorship and aftercare to be worked out.

Additional new features of the Act 2015:

- a. Section 3 of the Act spells out certain general principles of care and protection which are to be followed in its implementation.
- b. Section 2 of the Act expanded with more definitions.
- c. The nomenclature used in the Act is further refined. The word "arrest" is replaced by "apprehension". The word "Crime" is replaced by "Offence". etc.
- d. Under the Act the offences committed by a juvenile are categorized into 3 classes:
 1. Petty offences: It includes the offences for which maximum punishment under the Indian Penal Code or any other law is imprisonment up to 3 years.
 2. Serious offences: It includes the offences for which Punishment under the Indian Penal Code or any other law is imprisonment between 3 to 7 years.
 3. Heinous offences: It includes the offences for which minimum punishment under the Indian Penal Code or any other law is imprisonment of 7 years or more.
- e. All the persons below the age of eighteen years were put in one class under the 2000 Act irrespective of the offence. While under the 2015 Act children in conflict with the law are put under two classes or groups:
 1. Those below 18 years of age in case of petty or serious offences and those below 16 years of age in case of heinous offences. This group is to be dealt with by the Juvenile Justice Board constituted under this Act.
 2. Those who have completed 16 years of age but are below 18 years of age in case of heinous offences and such offenders can be treated as adults.

They are to be kept in the place of safety until the age of 21 and thereafter may be sent to an adult jail to complete remainder of the sentence.

- f. There is a whole chapter (ix) which is devoted to offences against children .Many new offences are added to this chapter.
- g. There was a brief of sketchy provision relating to adoption in the 2000 Act. In the 2015 Act , chapter (viii) is completely devoted to the subject of adoption, in which elaborate provisions for adoption are made.
- h. There is a provision for creating public awareness on the provisions of the Act and also for monitoring implementation of the Act.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT ACT, 2021 :

In course of this research work on the Juvenile Justice (Care and Protection of Children) Act, 2015, the Parliament of India passed the Juvenile Justice (Care and Protection of Children) Amendment Act,2021. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 was passed to amend various provisions of the Juvenile justice act,2015, which received the assent of the President on 7th August 2021.The new law is more child friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. The amendment Act looks to reinforce the protection of children including the ones who require assurance under the law just as the individuals who struggle with law. The earlier Act 2015 comprises arrangements identified with the children in struggle with the law and needing care and protection and the new amendment bill tries to present measures for fortifying the children's protection arrangement.

REASON FOR AMENDMENT OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT,2015 :

KEY POINTS :

1. The National Commission for Protection of Child Rights (NCPCR) audit of Child Care Institutions (CCIs)in 2020, 90% of which are run by NGOs, found that 39% CCIs were not registered, even after the 2015 amendment was brought in.
2. It is also found that less than 20% CCIs, especially for girls, had not been set up in some States, 26% Child Welfare Officers were not there.
3. Moreover three fifths have no toilets, one tenth has no drinking water and 15% of homes don't have provisions for separate beds or diet plans.
4. Rehabilitation of children is not a priority for Childcare Homes and children are reportedly to kept in such institutions to get funds.

KEY AMENMENTS PROPOSED BY THE ACT 2021 :

Serious Offence: Serious offences 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.

Non-Cognizable Offences: The JJ Act, 2015 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 JJ Act 2021 amends this to provide that such offences will be no-cognizable.

Adoption: Presently the adoption order issued by the court establishes that the child belongs to the adoptive parents. The Act 2021 provides that instead of the court the District Magistrate (including Additional District Magistrate) will issue such adoption orders.

Appeals: This Act provides that any person aggrieved by an adoption order passed by the District Magistrate may file an appeal before the Divisional Commissioner, within 30 days from the date of passage of such order.

Additional Functions of the District Magistrate:

These include supervising the District Child Protection Unit and conducting a quarterly review of the functioning of the Child Welfare Committee.

Designated Court :

This Act proposes that all offences under the earlier Act be tried in Children Court.

Child Welfare Committees(CWCs) :

It provides that a person will not eligible to be member of the CWCs if he/she –

1. Has any record of violation of human rights or child rights.
2. Has been convicted of an offence involving moral turpitude.
3. Has been removed or dismissal from service of the Central Government or any State Government or a government undertaking.
4. Is part of the management of a Child Care Institution in a district?

Removal of Members:

The appointment of any members 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 reasons or if they fail to attend less than three fourths of the sitting in a year.

CONCLUSION:

In brief, it can be said that the Juvenile Justice System of India has gain a lot of success but attitude and perception towards juvenile need a change. On the legislative side a lot of work has been done in India but the implementation part still takes more time .The law enacted requires to be effectively implemented to achieve the desired goal of welfare of children.

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