

EXAMINING THE TRANSITION OF JUVENILES FROM DELINQUENTS TO JUVENILES IN CONFLICT WITH LAW

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Abstract- Crime and delinquency are not merely legal or moral problems, they are the manifestations of domestic neglect and social apathy. Modern psychological studies have provided new insights into the cause of the aberrant behavior and involved new ways of treating mental illness. The present paper is based on empirical work. In this study, the behavior of delinquent juveniles is observed and studied by observational and researchable processes and case-study methods. The main object of this work is not only to explain the nature and concept of 'Juvenile in Conflict with Law' in a theoretical aspect but also in a practical aspect. Society expects children to develop into responsible citizens because they are the future of any nation. The way that the nation's children develop and grow will determine their future well-being. For better growth and development, children require the social safety net of society. Therefore, it is the paramount obligation of the State to attend to the children to make them appropriate citizens of tomorrow. It is hoped that this research paper will be welcomed by all those for whom it is meant.

INTRODUCTION

A child is born with innocence and purity. Every child needs nurturing, and if that nurturing is provided in the appropriate manner, the child will develop in a positive way.

Children do well when they are in an atmosphere that is favorable and encouraging to them. The physical, psychological, moral, and spiritual growth of children equips them to become conscious and recognize their capacities. On the other hand, a kid may become a juvenile delinquent due to adverse environmental conditions, a lack of basic necessities, inadequate parental supervision, and other causes. Juvenile delinquency is one of the social issues in India that impacts not only children with legal issues but also families, communities, and society. Family suffers because of a child's criminal behavior.

The National Crimes Records Bureau reported in 2015 that the rate of crime involving minors in trouble with the law climbed from 1.7 to 2.5% between 2005 and 2015. In 2015, there was an increase of 0.8% in the number of cases filed under the IPC against juveniles who broke the law. 33,526 incidents involving juveniles in legal trouble were reported in 2015. The total number of cases in 2005 was 18,939. (NCRB, 2015). These statistics have called attention to the psychosocial problems that children in India who are involved in legal disputes are facing.¹

Status of Juvenile Justice 2000-2015

The main legislative framework for juvenile justice in India is the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act establishes a framework for the protection, care, and rehabilitation of children under the jurisdiction of the juvenile justice system and calls for a unique approach to the prevention and treatment of juvenile delinquency. The former Juvenile Justice Act of 1986 was repealed by this law, which was made in line with the 1989 UN Convention on the Rights of the Child (UNCRC), when India signed and ratified the UNCRC in 1992. Additional amendments to this law were made in 2006 and 2010.

The Act is regarded as being an extremely progressive law, and the Model Rules of 2007 have strengthened this welfare law even more. Even in 2013, the application of this statute is a very severe matter, and the Indian Supreme Court has repeatedly examined it in the cases of *Sampurna Behrua v. Union of India*² and *Bachpan Bachao Andolan v. Union of India*³.

The Supreme Court, as well as the Bombay and Allahabad High Courts, are keeping an eye on how the Act is being applied in court cases. The Integrated Child Protection Scheme (ICPS), which combines several current schemes into one, was introduced by the Government of India in 2009–10 in order to modernize the juvenile justice administration system. The Act replaced, but did not entirely replace, the Guardians and Wards Act (1890), which was applicable to Muslims, and the Hindu Adoptions and Maintenance Act (1956), which was applicable to Hindus, Buddhists, Jains, and Sikhs. As of January 15, 2016, the Act is in force. The Lok Sabha passed it on May 7, 2015, despite fervent opposition from a number of lawmakers. The Rajya Sabha voted to pass it on December 22, 2015.

The current Central Adoption Resource Authority (CARA) has been given the status of a statutory entity to enable it to carry out

¹ Dey M. Juvenile justice in India. IJIMS. 2014;1(6):64–70

² COM562240 - MANU/SC/0104/

³ *Bachpan_Bachao_Andolan_-_SC_Judgment_2011.pdf*, last referred on June'2023

its duty more effectively and to speed adoption procedures for orphan, abandoned, and surrendered children. Details on adoption-related rules and penalties for violation are provided in a separate chapter on adoption. Timelines for both domestic and international adoption have been expedited, and this includes the declaration of a child's legal availability for adoption.

Despite widespread opposition, the Ministry of Women & Child Development of the Government of India is currently working on bringing about an amendment that would primarily transfer control of the adoption process from courts to Executive Magistrates/District Magistrates and place Child Welfare Committees administratively and judicially under the District Magistrate. In 2011, a process of consultation with various interest holders was launched by the Ministry of Women and Child Development as it started to consider many desired revisions. The December 2012 Delhi gang rape case had a significant effect on the public's perception of the Act. A few months under the age of 18, one of the defendants in the 2012 Delhi gang rape was tried in a juvenile court in accordance with the Act.

The Supreme Court of India heard eight writ petitions that claimed the Act and several of its sections were unconstitutional, causing the juvenile court to postpone its decision. The Supreme Court dismissed the complaints in the second week of July 2013 and upheld the Act's constitutionality. When the Indian government stated that there is no proposal to lower the age of a juvenile, the Supreme Court also rejected requests to lower the age of juveniles from 18 to 16 years.

On August 31, 2013, the case was brought back before the juvenile court and a sentence of three years in a reform home was given. The victim's mother disagreed with the decision, claiming that the court was encouraging other youths to commit the same acts by not sentencing the juvenile.

Maneka Gandhi, the minister of women's and children's affairs, stated in July 2014 that a new law allowing 16-year-olds to be prosecuted as adults was in the works. She claimed that teenagers who believed they could get away with it perpetrated 50% of all juvenile offenses.

She continued by saying that they would be scared if the law were changed to allow them to face adult criminal charges for rape and murder. Maneka Gandhi presented the legislation to the Parliament on August 12. The final draught was approved by the Cabinet on April 22, 2015, with significant revisions.

The Lok Sabha approved a revised juvenile justice bill on May 7, 2015. If they commit serious crimes, the new measure will permit juveniles between the ages of 16 and 18 to be tried as adults. The Juvenile Justice Board will investigate the case to determine if it was done by a "child" or an "adult."

A Juvenile Justice Board, made up of psychologists and social workers, will be given the authority under the proposed legislation to determine whether a juvenile offender between the ages of 16 and 18 should be treated as an adult. Concepts from the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption were included in the law that was absent from the prior statute. The bill also aims to streamline the adoption procedure for orphaned, abandoned, and turned-in children.

Foster care is made official in India by the bill. Children who have been abandoned, orphaned, or are in trouble with the law will be placed with foster families who have signed up for the program. These households will be watched and given financial assistance by the state. Children who are physically and financially unable to care for themselves will be given preference when it comes to adoption. As opposed to the previous provision of one month, parents who are giving their kids up for adoption will now have three months to change their minds.

A person who provides alcohol or drugs to a youngster faces a 7-year prison sentence and/or a \$100,000 fine. The penalty for using corporal punishment is 50,000 or three years in prison. A person who sells a child faces a \$100,000 fine and a five-year prison sentence.⁴

The new JJ Bill 2015's adoption of the "Judicial Waiver System"—which permits treating juveniles as adults and punishing them as such—is one of the most criticized parts of the legislation. In India's history, this is the first time that such a clause has been prescribed. Bill received harsh criticism, and a Standing Committee of Parliament was consulted; this committee also rejected the provisions. Since the Standing Committee of Parliament's recommendations are not legally enforceable, the government moved forward and introduced the Bill into Lok Sabha, where it has since been approved.

The measure is also criticized for its poor draught and for establishing an ambiguous age determination system. After the Bill was released for implementation on January 15, 2016, several drafting errors have been discovered. Currently, the current administration is drafting an amendment to correct these mistakes.

JUVENILE IN CONFLICT WITH LAW

The Juvenile Justice Act was passed by the Indian government in 1986. The Convention on the Rights of a Child was adopted by the United Nations and the UN General Assembly in 1989. In 1992, India ratified the UNCRC. The agreement specifies the child's right to reintegration into society outside of legal channels in circumstances where it is possible to prevent it. The government saw the necessity to reformat the law in order to comply with the standards of the time. As a result, the Juvenile Justice (Care and Protection of Children) Act was passed in 2000 to replace the previous legislation.⁵

The Juvenile Justice Act already recognizes the need for child care by stating that it is an Act to consolidate and amend the law relating to juveniles in conflict with the law and children in need of care and protection, by providing for proper care, protection,

⁴ Bhattacharya S, Bhattacharya S. Human rights violations of children in India: An overview. *International Journal of Child and Adolescent Health*. 2015;8(1):51–70.

⁵ Sharma R. Legal framework for children in conflict with law in India: problems and prospects. *Indian Journal of Social Work*. 2010;71(3):351–373

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 welfare. Recent comprehensive amendments from 2006 and the rules created in 2007 are commendable because they cover a wide range of juvenile-related topics. The 2006 amendments to the Juvenile Justice (Care and Protection of Children) Act of 2000

The Act is regarded as being an extremely progressive law, and the Model Rules of 2007 have strengthened this welfare law even more. In *Sampurna Behrua Versus Union of India*, where the Supreme Court of India held in 2018, that the State needs to ensure that the JJ Act is implemented in a proper manner in order to meet the needs of the children in the society, the Supreme Court of India is continuously looking into the application of this statute.⁶

Bachpan Bachao Andolan Versus Union of India

The Supreme Court, as well as the Bombay and Allahabad High Courts, are keeping an eye on how the Act is being applied in court cases. The Integrated Child Protection Scheme (ICPS), which combines several current programs into one, was introduced by the Government of India in 2009–10 in order to modernize the juvenile justice administration system.

According to a resolution adopted by the Conference of Chief Justices of India in 2006 and reaffirmed in 2009, some High Courts have established "Juvenile Justice Committees" that are led by sitting High Court judges. These committees oversee and keep an eye on how the Act is being implemented in their respective areas.

In terms of this law, a child or juvenile is someone who hasn't reached the age of 18. Teenagers in legal trouble and children in need of care and protection are listed as the two target populations. In addition to protecting current children's rights, this law also protects rights from childhood. In other words, if a crime or incident happened when the person was a kid, but during the hearing, the juvenile lost their legal capacity, the case would proceed as though the juvenile had not yet reached the age of 18.

Juveniles in Conflict with the Law (JCL) are covered in the second chapter of the Act. Juvenile Justice Boards (JJBs) must be set up in accordance with this section wherever the State Government deems it necessary. JJBs are required to have a woman social worker and two other social workers, one of whom must be a metropolitan or judicial magistrate. Either child welfare or child psychology experience is required of the magistrate. JCL cases may only be heard by the JJB; no other court may hear them. The act requires the state to establish several institutions where the needs and protection of juveniles may be met, and the JJB's authority may be used in a High Court or Court of Session when an appeal has been lodged. The state is required to establish Observation Homes and Special Homes in each area or group of districts for the reception and rehabilitation of JCLs. These houses may be established by the state on its own or through a contract with a non-profit. Institutions for young people during court processes are called observation houses. The JJB may find that the child's rehabilitation is not complete once the case's proceedings are over, in which case they may opt to place them in a Special home for a maximum of three years.

When a police officer interacts with a juvenile, the Special Juvenile Police Unit (SJPU) must be notified so that the youngster can be immediately reported to the board. Juveniles are always eligible for bail if the Board determines that their release won't put them in danger or under the influence of criminals. Only if the child is not released on bond will he be transferred to the care of an observation facility. The SJPU oversees notifying the juvenile's parents of the arrest as well as the probation officer, who will contact the juvenile to conduct the appropriate inquiries.

The JJB must investigate, and if they find the child to be guilty of the offense, they may release the child after giving them advice and counseling.⁷

With or without a bond, the youngster may be released to his parents or legal guardians or placed in an institution. If the youngster is older than fourteen and has a job, the Board may additionally require him to pay a fee or perform community service. The probation officer must submit a social investigation report before the child can be released. Probation authorities may still be required to keep an eye on the child after they have been released. A child cannot be sentenced to death, receive a punishment that could result in life in prison, or be imprisoned because they are unable to pay a fine or post bail security.

Under this law, juvenile and adult cases cannot be handled concurrently. A minor cannot be declared ineligible or "disqualified." Since magazines, newspapers, and other visual media are not allowed to publish material on minors, children are not exposed to the media.

Children who escape the Observation or Special homes may be returned without a warrant or be punished. The law makes it illegal to treat children cruelly at home or by anyone who has custody of them. Examples of this include assault and neglect. This law also includes measures for punishing those who use children as tools of crime. A person who uses a youngster as a beggar, as a worker in a hazardous business, or who gives them drugs or alcohol faces jail time and fines.⁸

Children in Need of Care and Protection (CNCP) is the topic of Chapter III. CNCP matters are tried by the Child Welfare Committee (CWC) rather than a JJB. A chairperson, four additional members—at least one of whom must be a woman and one of whom must be an expert on children's issues—and a chairperson are required for the committee. The CWC's mission is to safeguard children's rights by offering the care, treatment, protection, rehabilitation, and development of the child. A police officer, public employee, social worker, CHILDLINE, the kid, or any other member of the public may present the child to the CWC. If a kid does not have an immediate family or support network, the committee may commit the child to a home for children or a shelter.

⁶ <https://www.lawyersclubindia.com/judiciary/sampurna-behura-v-uo-i-ors-2018-implementation-of-j-j-act-4792.asp>

⁷ Jain K A. *Study of juvenile delinquents in India: A Burning Issue*.

⁸ Bhattacharya S, Bhattacharya S. *Human rights violations of children in India: An overview. International Journal of Child and Adolescent Health*. 2015;8(1):51–70.

JCL and CNCP both offer Children's Homes and Shelter Homes. These houses may be established by the state on its own or through a contract with a non-profit. Children whose families cannot be found or whose cases have been resolved are placed in shelter homes. Children who move to a different area or state should be placed in the institution and CWC that is closest to their new home. The system's main objective is to get the kid back to his or her family or other familiar surroundings after determining the setting's safety.

The significance of rehabilitation and social integration as the goal of this act is covered in the following research work. Adoption, foster care, and sponsorship are a few examples of non-institutional alternatives that are covered in this section. Children who have been abandoned or orphaned are eligible for adoption. A child may be referred to a government-run adoption agency for placement if the CWC determines that the child is suitable for adoption. This act solely permits the care of newborns in foster care prior to adoption. Through sponsorship programs, more educational, nutritional, medical, and other services can be made available to families, guardians, and homes. To take care of kids when they leave their homes, after-care organizations will also be established.

Many supplemental provisions are found in the act's last chapter. The following provisions need special mention. The law permits facilities that focus on the type of care to accept kids with special needs, like those brought on by a mental or physical illness, and give them the care they need. This Act authorizes the establishment by the Government of advisory boards at various levels to advise on the various aspects of the Act's implementation. In response to a death in the family, a wedding, a school exam, etc., the JJB or CWC may release a child to his or her parents or grant leave.

After receiving the President of India's approval on December 31, 2015, the Juvenile Justice (Care and Protection of Children) Act, 2015 went into effect on January 1, 2016. The Juvenile Justice (Care and Protection of Children) Act, 2000 is repealed and replaced with the 2015 Act. The new legal position, which has been attacked by child rights campaigners, calls for treating adolescents between the ages of 16 and 18 who are accused of horrific crimes as adults.

The Juvenile Justice (Care and Protection of Children) Bill 2014 was presented to the Lok Sabha by the Ministry of Women and Child Development on August 12. It aimed to provide a stronger, more efficient, and responsive legal framework for kids who needed care and protection as well as kids who were in legal trouble. Its provisions were a response to the perceptions of a large cross-section of society that a system of administration of juvenile justice, care, and protection needed to be enhanced and made more effective.

According to the Act, the Juvenile Justice Board will review any heinous crimes perpetrated by someone between the ages of 16 and 18 to determine whether they were committed by a "child" or an "adult." The fact that this evaluation will be conducted by the Board, which will be made up of psychologists and social experts, will guarantee that the juvenile's rights are properly protected if he committed the offense as a child.

The Act simplifies the adoption process for children who have been abandoned, orphaned, or turned over. It gives the Child Adoption Resources Authority (CARA) a statutory status. For both institutionalised and out-of-institutionalized children, the legislation also included several measures for rehabilitation and social integration. Additionally, it included sponsorship and foster care as brand-new policies. It stipulated that all childcare institutions must register in order to operate. The proposed legislation also included new charges such as illegal adoption, physical punishment in childcare facilities, the use of children by terrorist groups, and violations against disabled children.

The major changes include the removal of Clause 7, which deals with trying someone over the age of 21 as an adult for committing a serious or heinous crime while they were between the ages of 16 and 18, lengthening the time for the Juvenile Justice Board to conduct a preliminary investigation in cases where children between the ages of 16 and 18 commit heinous crimes, and lengthening the period of time parents or guardians have to reconsider turning over a child. The National Commission for the Protection of Child Rights will serve as the designated authority to oversee the Bill's implementation, and the Central and State Governments will be responsible for raising public awareness of its provisions. This will extend the window for international adoption in the event that a child cannot be placed for domestic adoption.

There are some special provisions for children in Parts III and IV, which deal with fundamental rights and directive principles of state policy, respectively.

The State may create specific arrangements for children and women under Article 15.3 of the Constitution.

Article 24 forbids the employment of children under the age of 14 in factories, mines, and other hazardous industries. Article 23 prohibits the trafficking in human beings and the use of forced labor.

Article 39(e) instructs the State to prevent minors under the age of 18 from being forced into jobs that are not appropriate for their age and physical capacity.

Article 39 (f): Requires the State to provide facilities for children's healthy development and to safeguard children and young people from exploitation and material and moral abandonment.

Article 45: Requires the State to give all children up to the age of 14 free and required education.

According to **Article 47**, it is the responsibility of the state to improve living conditions and nutritional standards. The Right to Education is now a Fundamental Right as a result of the 86th Constitutional Amendment passed by Parliament in 2002.

CONCLUSION

From the above discussion, it is evident that terrible crimes like rape and murder also go unpunished when the perpetrator is a young person. Juvenile Justice Act implementation and changes alone will not be sufficient to stop juvenile criminality. It is crucial for parents and guardians to educate children about the various causes of criminal involvement. Children who commit

crimes are not criminals; in certain instances, they are the victims of society. If extra care is taken at home and in school, juvenile delinquency can be stopped at an early stage. The development of a child's intellect is largely the responsibility of parents and instructors. Instead of classifying them as criminals or delinquents, it is important to understand children's needs and give them the opportunity for modification. Like many other social issues, the issue of child crime is related to the flaws and social maladjustments in our society.

Juvenile delinquency is a long-standing issue. It was also present in the past. The social fabric was quite solid and, in some ways, impermeable by antisocial elements. As a result, there was no clear law to address the issue of juvenile delinquency. Children are regarded as God's gifts and are the greatest assets for both individuals and nations. It is our responsibility as individuals, parents, guardians, and society at large to allow and give opportunities for children to grow up in a healthy sociocultural environment⁹ so they can become morally sound adults who are also physically fit and mentally aware. Children are supposed to be respectful, obedient, and to possess good qualities. However, a certain percentage of kids do not adhere to established social and legal norms for a variety of reasons. These kids frequently engage in criminal activity, also referred to as juvenile delinquency or juvenile criminality. In order to eliminate inequality and ensure social justice, it is the responsibility of the State to offer all children during their growth period equitable opportunity for development.

⁹ Shastri PC. *Promotion and prevention in child mental health. Indian J Psychiatry.* 2009;51(2):88–95, last visited on June'2023.