



Research Paper

## A Short History of Juvenile Legislations in India: A Socio-Legal Perspective

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Juvenile justice is often considered as a set of legislations, policies and procedures that provide guidelines on managing young or non-adult offenders who violate existing laws. The Juvenile justice system prevalent in a particular society is reflective of ideas and the perception it has about children and their childhood. As perceptions about children change, so do the legislations to accommodate those changes. A historical overview of how juvenile justice has evolved in India reflects how children were understood and how society dealt with deviant children. Initially children were the sole responsibility of the families they belonged to. However, the traditional functions performed by families got transformed. Not all children received the care and protection that was expected from their families. This was when the state began to play a more crucial role in the process. Children initially were not provided with any agency as they were seen incapable of taking responsible independent decisions. This perception has also undergone a change. The juvenile justice system aims at making it as child friendly as possible and encourages input from children whenever it consider the child mature enough to take decisions in their best interest. The juvenile justice still places family at the centre of its policies but also provide alternative to it. The aim is to make the process non-stigmatizing with a focus on re-social integration and rehabilitation of children while keeping their rights intact.

The history of juvenile justice in India can be divided into 5 periods. <sup>i</sup>

1. Prior to 1773
2. 1773 - 1850
3. 1850 - 1919
4. 1919- 1950
5. Post 1950.

Prior to 1773, parents and family were responsible for the maintenance and protection of children. Children's criminal and noncriminal behaviour was regulated by Hindu and Muslim laws where the family did the maximum monitoring. During the period 1773 and 1850 under the East India Company, the reform movement in England also influenced India. The reform movement saw the abolition of slave trade throughout British Empire. Concern for the Children prompted the establishment of a centre for destitute children in Calcutta by Lord Cornwallis. The period between 1850 and 1919 saw the shaping of legislation for children. Some of the important laws passed during this period were the Apprentice Act (1850), the Indian Penal Code (1860), the Code of Criminal Procedure (1861), and the Reformatory Act (1876 and 1897). The focus of all these acts was on reformation than punishment.

Between 1919 and 1950 two important changes occurred in the juvenile justice policy in our country. The Indian Jail committee (1919 – 1920) suggested establishing of special courts and institutions for child offenders and it spoke against the imprisonment of such children. The Madras Children Act (1920) came up soon after this. The Juvenile court philosophy was introduced in this Act.

India became independent in 1947 and adopted the Indian Constitution in 1949. The years after 1950 witnessed the development of a more distinct juvenile justice system in the country. The Indian government passed a Central Children's Act in 1960 which was amended in 1978. The Act covered neglected, victimized and delinquent children. It introduced a separate agency (Child Welfare Board) for handling neglected children and leaving the juvenile court to handle delinquent children. Separate probation officers were entrusted to deal with children and provide proper after care to them.

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India declared its National Policy for Children in 1974 and National Children's Board was created in 1975 to assist in child development programs. By 1986, almost all states in the country had passed their own children's legislation. However, these acts were not consistent with one another while defining delinquency, court procedure and institutionalization of offenders. There was a need for an Act that could be applied throughout the country. This was when the Juvenile Justice Act was passed in 1986. This was further amended multiple times with the evolution in thinking about children and international documents to which India is a signatory— the Juvenile Justice (Care and Protection of Children) Act 2000, 2006, and finally in 2015.

The Juvenile Justice Act of 1986 provides a very legalistic definition of juvenile. The JJ Act of 1986<sup>ii</sup> defines a male juvenile as younger than the age of 16 and a female juvenile as younger than the age of 18. One of the reasons attributed to this difference in consideration of age is the patriarchal nature of the society where women have limited freedom to take decisions about their own lives and the degree of surveillance they are subjected to- it reflects an assumption that girls have less opportunity to become a juvenile. The Juvenile Justice Act of 1986 makes a fundamental distinction between those who commit offences and those who are victims. It defines clearly 'delinquent' and 'dependent' or 'neglected' children. It has a two tier system for delinquent children and neglected children. Separate institutions are created to house these two categories of children. The Act adopts a social welfare approach with a greater focus on the development of children. Very little work has been done to assess how legislations impact the treatment of juveniles in the country. Most of the research in the field has been primarily concerned with the incidence and prevalence of delinquency. Very little or no work had been done on the legal process that is carried out for juveniles in the country.

Even though the Act of 1986 differentiated between neglected and juvenile delinquents in reality it is difficult to differentiate between the two categories. The term juvenile has a stigma attached to it. The Juvenile Welfare board dealt with the neglected juvenile whereas the delinquent juveniles were brought before the Juvenile court. Once a neglected juvenile is apprehended by police or any organization authorized by state government, the juvenile is then either sent back to the parent or guardian or sent to the observation home. The delinquent juvenile is brought before the juvenile Welfare Board within a period of twenty four days of being apprehended. An inquiry is then conducted by the board. The board either directs the juvenile to be sent to a juvenile home or placed under the care of a parent or guardian provided they can exercise proper care. The Act moreover did not deal with child sexual abuse directly and mentioned it under the category of neglected children.

India is a state party to the CRC which promotes a holistic approach while dealing with juveniles in conflict with law. The focus is on their development, care and protection. The Juvenile justice system in the country emphasizes on rehabilitation of those brought before it. The JJ Act of 2000 was in sync with the recommendations made by CRC, the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 1985, the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) of 1990 and finally, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990. It covered all areas of interaction between children and the legal system. According to the Act, the rights of juveniles are similar to those who are accused under the Indian criminal procedure. <sup>iii</sup>Under the JJ Act of 2000, the proceedings should be held in an informal and child friendly manner. Keeping in mind the needs of children, separate Juvenile Justice Boards have been set up. Juvenile proceedings are different from criminal proceedings and the room usually has Board members hearing the case, probationary officers serving as courtroom clerks, a court reporter, a guard from the Observation home where such children are temporarily kept, police officers, possibly the victim and his or family, the child and sometimes the child's family as well . Some districts have even shifted their proceedings from the courtroom to these Observation Homes. One of the most important modifications made in this Act was considering that the child concerned had to be kept at the centre of all discussions. It recognised the importance of restoring children back to their families as long as it was in their best interest. In the absence of a suitable family, the alternative was observation or special homes, or the child would be put under foster care, sponsorship or adoption.

<sup>iv</sup>The Juvenile Justice Act of 2000 was amended and the Juvenile Justice Act of 2006 came into force. The Juvenile Justice Act of 2006 is also referred as the Principal Act. The Act differentiated between two categories of children. The two categories of children are those who need care and protection and those who come in conflict with law. Two separate systems were designed to cater the requirements of these two categories of children. The Child Welfare Committees were set up for children in need of care and protection and Juvenile Justice Boards for children in conflict with law. The Act also mentioned about the establishment of specialised facilities which would take care of these children. The Act mentioned the establishment of Children homes for children in need of care and protection, Special homes for children in conflict with law, observation homes were made for children who were housed only for a temporary period of time till their cases were pending with the Boards or Committees. Subsequently, the Juvenile Justice (Care and Protection) Rules of 2007 were introduced for the implementation of the Act of 2006.

<sup>v</sup>The Women and Child Development Ministry of the Government of India introduced the Juvenile

Justice (Care and Protection of Children) Bill, 2014 in the Lok Sabha in August of the same year. This was done in the aftermath of Nirbhaya gang rape case in Delhi and the increase of juvenile crimes especially within the age group of 16- 18 years. An important amendment was made to the Act pertaining to the crimes committed by children of this age group. It was clearly stated that if children within the age group 16-18 years were found to have committed heinous crimes, they could be tried as adults even if they were not adults. This decision could be made by the Juvenile Justice Board after having consulted social workers, psychiatrists and other specialists who would decide the maturity of the child and the seriousness of the offence committed. The child would then be tried in children's court. The Act also recognises that a child who has come in conflict with law may be a child in need of care and protection. As such the case can be transferred from the Juvenile Justice Board to Child Welfare Committees. Placing children under institutional care is seen as the last resort and must be placed for the minimum possible time period. The Act also made special provisions for abandoned children and foreign adopting agencies to place children through adoption. The law clearly laid down the conditions under which homes may be registered or de-registered. It introduced a mechanism of monitoring and effectively implementing the provisions of the law. It also provided children and their families with a grievous redressal mechanism. The Act has often been criticised for being retributive than reformative in nature.

The Juvenile Justice (Care and Protection of Children) Act of 2021 was brought about to initiate amendment to the JJ Act of 2015 and was passed in the Lok Sabha on the 15<sup>th</sup> of March, 2021 and Rajya Sabha on the 28<sup>th</sup> of July, 2021. Consistent high percentages of crimes by adolescents have been observed in the successive National Crime Record Bureau Reports. This is indicative of the fact that children are continuing to engage in crimes. The Juvenile justice system requires additional support including infrastructural and skilled personnel to effectively implement the existing Act. The National Commission for the Protection of Child Rights has observed that Child Care Institutions were not functioning effectively even after the 2015 Act. It is found that most non-governmental homes housing children were not registered and did not meet the criteria for registration. Social re-integration of children and their rehabilitation are seldom the concern of these homes. As such, several important amendments have been initiated, District Magistrate including Additional District Magistrate are given additional duties over the existing ones. They are authorised to issue adoption orders to ensure speedy disposal of cases and to foster accountability. This is due to the fact there is a large number of adoption cases pending in various courts. They have the responsibility of evaluating the various institutions under the act. The eligibility criteria for members of the Child Welfare Committees have been altered. The categories of offences has been revised. Offences are usually categorised into petty, serious and heinous offences. It has been observed that in some cases the offence may not fall into any of these categories. In such cases, if the maximum sentence is more than seven years but no minimum sentence has been given or is less than seven years, such offences would be treated as serious offences. The new provisions in the amendment have also been questioned especially those under Section 86. Offences under this Section call for punishment that ranges between three to seven years. Such offences have been re-classified as non-cognisable. Children seldom report crimes to police and it is usually their parents, child right bodies or Child Welfare Committees who do it. Considering the socio-economic background of most children, their parents are least likely to approach the police for the same. When Child Welfare Committees hear of such offences, they are most likely to call parents and arrive at a settlement before approaching the police with a formal complaint. Categorising these offences as non-cognisable make reporting difficult and perpetuate the existing power imbalance present within the juvenile system.

To conclude it may be noted that the Juvenile Justice System has evolved in the country in response to both international and domestic understanding of children and their deviancy. Quantitative estimates have provided a backdrop against which changes have been initiated. The nature and incidence of crimes committed by children have undergone a change. The Juvenile Justice system has taken this into consideration and altered the provisions of legislations. The system has over time given emphasis on monitoring and implementation of the provisions and recognised its limitations which have further led to amendments. The main aim of the system is to rehabilitate children who are either deprived or have come in conflict with law. Very often children fall under both these two categories. So it becomes crucial that children are handled with care to avoid recidivism and that they become responsible citizens of the country.

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<sup>i</sup> Bajpai, A. (2003), *Child Rights in India: Law, Policy and Practice*, Oxford University Press.

<sup>ii</sup> <http://www.bareactslive.com/ACA/ACT2805> accessed on 07.10.2020.

<sup>iii</sup> <https://wcd.nic.in/juvenile-justice-care-and-protection-children-act-2000-56-2000> accessed on 09.10.2020.

<sup>iv</sup> <https://dwcd.goa.gov.in/the-juvenile-justice-care-and-protection-of-children-act-2000-and-amendment-act-2006> accessed on 10.10.2020.

<sup>v</sup> <https://cara.nic.in/PDF/JJ%20act%202015.pdf> accessed on 12.10.2020.

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