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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“DEVELOPMENT OF JUVENILE LEGISLATION IN INDIA”

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Introduction:

Historical development of juvenile legislation in India can be divided into different phases through reference to the treatment of children, legislative development, judicial intervention and other government policies. Both ancient Hindu law (Manusmriti) and Islamic law (Shariat) prescribed for maintenance and proper upbringing of the children and it was the sole responsibility of parents to provide care and protection to the children and if the families were unable or incapable to do so, someone from the community took care of the children. According to Islamic law, if anyone found an abandoned child and felt that child would be harmed then he was under a duty to take care of the child.

A close examination of Manusmriti and Shariat indicate that children were prescribed different punishment for the commission of certain offences. For example, under the Hindu law, if a child was found throwing filth in public place, he had to clean the place while an adult had to pay the fine.

Earlier young offender were treated by criminal law in India in the same manner as adult offenders. The governing them sentenced them to institutions like prisons where adult and juvenile offenders were dumped together. The situation remained the same even after the British takeover of the country. The first legislation concerning children came in 1850 when the Apprentices Act was passed. This act was earliest piece of legislation covering the children in the age group of ten to eighteen. In this act children convicted by courts were intended to be provided with some vocational training which might help their rehabilitation. In fact, this act was not primarily concerned with the delinquent behaviour of children but lay down, as the name of the act itself implies, the provisions relating to the relationship between employers and young persons learning a trade from them as apprentices.

The act contains some provisions wherein may be discerned some of principles and practices of the future juvenile courts and institutions. The act provides that the father or the guardian could bind a child between the ages of 10 to 18 years up to the age of 21 years. Magistrates were authorised to act as guardian in respect of a destitute child or any child convicted of vagrancy or the commission of a petty offence and could bind him as an apprentice to learn a trade, craft or employment.

I) From 1851 to 1920:

The apprentice act was followed by Reformatory Schools Act, 1876. It provides that a child below 15 years found guilty of an offence might at the discretion of the court be detained in a reformatory school for a period of three to seven years, under this act no boy over 18 years of age was to be detained in such an institution. It also provides that a boy over 14 would be released on licence. If suitable employment was found for him and the head of the institution was able to indicate certain conditions in regard to licensing if they were fulfilled.

Reformatory school Act, 1897, is a Landmark in juvenile legislation in India. Under this act a beginning was made for incorporating the rehabilitative techniques in the penal philosophy for juvenile offenders. The act provides that young offenders up to 15 years of age found guilty of offences punishable with imprisonment or transportation were not to be sent to ordinary prisons but to reformatory schools. The act even today acts as the basic law in those areas where no children's act or any other special laws dealing with juvenile offenders has been enacted.

As a part of the movement for a special law for children, some committees and commissions played important roles. The Indian Jail Committee (1919-20) brought to the force vital need for separate trial and treatment of young offenders. Its recommendations prompted the enactment of the Children Act in Madras in 1920. The Indian Jail Committee recommended, among other things-

- a) The definition of 'child' and 'young person' embodied in English Children Act (1908) and the Madras Children Act (1920) should be generally adopted in India which provides **“a child means a person under the age of 14”** and **“an young person means a person who is 14 but under 16”**.
- b) The commitment to prison of children and young persons whether after conviction or while on remand or under trial is contrary to public policy, and sentences of imprisonment in the case of 'children' and 'young persons' be made illegal as in England.

- c) Remand Homes should, as far as possible, be provided for 'children' and 'young persons' under remand or pending trial or inquiry.
- d) When there is no Remand House, the court should endeavour to make suitable arrangements for the custody of any 'child' or 'young person' who is under remand. If any court finds it unavoidable to commit a 'child' or 'young person' to prison for safe custody, it should at once submit a special report to the District Magistrate on the subject.
- e) The creation of the children's court for the hearing of all cases against 'children' and 'young persons' is desirable and procedures in such courts should be as informal and elastic as possible.

II) The period from 1921-1946:

The years from 1920 onwards saw legislation for juvenile courts and other institutions in the various parts of the country in the form of Children's Acts. The first children Act was passed by Madras in 1920. In the Madras Children Act (1920), a 'child' was defined as a person under 14 and 'a young person' belonged to the age group of 14 to 16. A 'youthful offender' meant a person convicted of an offence punishable with transportation or imprisonment and who at the time of such conviction was under 16 years of age.

It also provided for establishment of certified schools, junior certified schools for training of 'children' and senior certified schools for training of 'youthful offenders'. The Bengal Children Act was passed in 1922. The definition as given in the Madras act were also incorporated in the Bengal Children Act with insignificant changes. Certified school was described as Industrial school in the latter act.

The Bombay Children Act of 1924 was based on the English Children's Act of 1908. At the same time, three statutes were already in force in Bombay- the **Reformatory School Act** (Act 7 of 1907), the **Whipping Act** of 1909 and the **Criminal Tribes Act** (Act 6 of 1924). In 1940, the Bombay Children Act was made applicable to Delhi.

In Assam, the Assam students and Juvenile smoking Act was passed in 1923.

In 1930 and 1936, the suppression of Immortal Traffic Act and the probation of offenders Act were passed. By 1946 more statues on children were passed by different provinces. These were C.P. (1928), Bikaner (1931), Cochin 1936), Central province and Berar (1938) Mysore (1943) and Travancore (1945).

Vagrancy Act, 1943 provides for the care and training of children below 14 who,

- i) lived on begging or
- ii) were under unfit guardianship or
- iii) were under the care of parents of drinking or criminal habits or
- iv) frequently visited prostitutes or
- v) where destitute or
- vi) were subjected to bad treatment.

III) The period from 1947 to the present day:

The three pioneer statutes Madras, Bengal and Bombay were extensively amended between 1948 and 1959. The West Bengal Children Act, 1959 replaced the 1920 Act. The Central enactment, the Children Act, 1960 was passed later to the needs of the Indian territories. This was treated as a model Act on the subject. The Children Act, 1948 gives protective and preventive powers to the Juvenile Court. It provides required protection, care, treatment, training and after care of children.

In the constitution of India, Article 15(3) provides “Nothing in this article shall prevent the state from making any special provision for women and children.”

The welfare of children and women is of prime importance in a welfare state. Hence any special provision for their protection and upliftment would not offend against the guarantee or non-discrimination in Article 15(1).

Again Article 24 contain “prohibition of employment of children in factories etc.- No child below the age of fourteen years shall be employed to work in a factory or mine or engaged in any other hazardous employment.” This provision is available against the state whenever the employment, even by a private contractor, has been made for state. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 of the

constitution imposes upon the state an obligation to ensure that the health and strength of workers, men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.

Forty second amendment Act, 1976 inserted Article 39(F) in the part-IV of the Indian constitution with a view to emphasize the constructive role of the state with regard to children. This article provides that “children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

This clause would include legislation to protection of children and development of their personality, corrective measures relating to juvenile delinquents (Sheela Berse Vs Union of India 1986 SC 1773 paras 4,10).

Thus the article provides that the state shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and materials abandonment. Obviously the state legislatures have enacted the law on being satisfied that the same is necessary in the interest of the society, particularly of children.

Article 45 contains provision for free and compulsory education for children- “The state shall endeavour to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

In a landmark judgement in Uni Krishnan Vs State of A.P, the Supreme Court has held that the “right to education” up to the age of 14 years is a fundamental right within the meaning of Article 21 of constitution but there after the obligation of the state to provide education is subject to the limits of its economic capacity. “The right to education flows directly from right to life,” the court declared.

A number of other states passed Children’s Act. These were- East Punjab (1949), Hyderabad (1950), Uttar Pradesh (1951) and Saurashtra (1956), Mysore Children Act (1943) was replaced by a new statute in 1964.

The Women's and Children's Institutions (licensing) Act was passed in 1955. It made provisions for obtaining licenses by women's and children's institutions after fulfilling the norms and conditions and for penalty for breaches therefore. For having effective control on the orphanages and homes, the orphanages and other charitable homes (Supervision and Central Act, 1960) was passed. The Probation of offenders Act, 1958 empowered the courts to release certain offenders only on admonition or on probation of good conduct though they are found guilty. It imposed restrictions on imprisonment of offenders under 21 years of age. The probation officers are to keep watch on them and act as their friends, philosophers and guide to rehabilitates them as useful members of the society.

The Children Act, 1960 was amended in 1978 to widen the definition of the '**neglected child**' to include the children whose parents were not only '**unfit**' but also **unable to exercise proper care and control**. Under pre 1978 system, the 'neglected child' dealt with by the Child Welfare Board and the 'delinquent child' dealt by the Juvenile Court were kept together in the 'Observation Home' until the board or the court decided on the suitable disposal of the child when transfer from one custody to the other was not possible.

By 1960, many states have established separate system and laws for juvenile in terms of definition, their procedural requirements and so much so their implementation. The Children Act, 1960 was applicable to union territories and was directly administrated by the union government. The Children Act, 1960 was intended to serve as a model for the various state legislations as well as became the basis for the central law passed as Juvenile Justice Act, 1986. The Children Act, 1960 prohibited the imprisonment of children in any circumstances and provided care, welfare, training, education, maintenance, protection, rehabilitation. This act introduced three institutions- **Observation home**, **Children home** and **Special home**. The Juvenile Justice Act, 1986 came into force to provide uniformity of the Children Act and set the standard for protection of juveniles as per the 1959 United Nations declaration of the child.

The Supreme Court in its judgement in Sheela Barse's case played a pivotal role in passing the uniform law on juvenile justice, as it statues that children in jails are entitled to special treatment and recommended that the parliament enact a uniform law which is applicable throughout the country.

Parliament invoked its power under Article 253 of the Constitution of India in making the juvenile justice law in India, in conformity with the United Nations standard minimum rules for the administration of the juvenile justice (Beijing Rules, 1985) and abided with other international obligations which India has ratified.

A review of the working of the Juvenile Justice Act, 1986 would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system available for adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organisations, social workers, or parents and guardians throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organisations and the community.

With an aim in view, the new **Juvenile Justice (Care and Protection of children) Act, 2000** was passed in December, 2000 to make it compatible with the United Nations convention to the right of child (UNCRC) standards and respond to emerging needs. This act also segregated “juvenile in conflict with law” and “children in need of care and protection”. The age of juvenile was set as 18 years for both the sex. This act was again amended in 2002 and 2006 aiming to protect, care, rehabilitate and educate the juvenile and to provide them with vocational training opportunities.

The tragic Delhi gang rape (Nirbhaya case) of 16 December, 2012 sparked a nationwide debate on the reduction of the age of juveniles in conflict with law.* In its aftermath, the Justice Verma committee was constituted for suggesting amendments to criminal laws for making them more stringent inasmuch as protection of women is concerned. However, the Verma committee did not agree that lowering the age of criminal responsibility from 18 to 16 is desirable. It noted that in the light of recidivism being 8.2% in the year 2010, as against 6.9% during 2011, one case cannot be the reason for changing the law.* However, with the enactment of the juvenile justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), Parliament permitted trial of children in conflict with law in the age group of 16-18 as adults for certain offences such as rape and murder, etc. Even though this move was criticised widely for being in contravention to the principles of juvenile reformation and the UNCRC, it is till date considered the most comprehensive law on the subject in India.

Recently, parliament passed the Juvenile Justice (Care and Protection) Amendment Act, 2021 to provide strength to the provisions of protection and adoption of children. There are many adoption cases pending before the court and to make proceeding of the court faster, now the power is transferred to the District Magistrate. The main role of Juvenile Justice System is that children should not be tried in regular courts, law for juveniles made in a way that correct them in all possible ways. Most of the children who committed any crime come from poor or illiterate families. The Juvenile Justice System focus on the education of the children instead of punishing them. The trial of the children is based on non-penal treatment through social control agencies such as Observation home, special home, special school etc.

Comparison of the Juvenile Justice Act 2000 and Juvenile Act, 2015:

Provision	The Juvenile Justice Act, 2000	The Juvenile Justice Act, 2015
Treatment of juvenile	All children under the age of 18 years treated equally. Maximum penalty for juvenile in conflict with law is three years.	Juveniles aged between 16-18 years committing serious on heinous offences could be tried as adult. However there will be no death penalty or lifeimprisonment.
Juvenile Justice Board	Conducts inquiry and directs the juvenile to be placed in any fit institution for a period not exceeding three years.	Adds preliminary inquiry, conducted in certain cases by JJBto determine whether a child is placed in a home or sent tochildren’s court to be tried.

Child welfare committee	Disposing of cases for children in heed Of care and protection frequency of meeting not specified.	Functions are same as in the act, training of members to be done within torments & Bill becoming law, committee to meet at least 20 days in a month.
Appeals	Appeal to the session court within 30 days of JJB order, further appeal to the high court.	Appeal JJB/CWC order within 30 days to children's court further High court
Foster Care	Temporary placement of a child to be given for adoption, wish a family for a short/extended period of time, biological family may be allowed to visit.	Same as the act, adds new provision for monthly checks on foster family by CWC.
After care	Monetary and continued support for children after they leave special or children home for a period of three years or till 21 years of age.	One time financial support to children leaving child care institutions after completing 18 years of age.

Conclusion:

Law is dynamic, not static. There will be changes from time to time according to the necessity of society. The main aim of juvenile legislation is that children should not be tried in ordinary courts. The basis of juvenile legislation is draft in a way that corrects them in all possible ways. The juvenile justice system focuses on the education, rehabilitation of the children instead of punishing them. The trial of the juvenile is based on the non-panel system through social control agencies such as observation home, special home, vocational training etc.