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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

“EVOLUTION OF JUVENILE JUSTICE LAWS IN INDIA”

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ABSTRACT

The evolution of juvenile justice laws in India has been a dynamic process marked by significant legislative reforms and societal shifts. This paper provides a comprehensive analysis of the developmental trajectory of juvenile justice legislation in India, tracing its evolution from colonial times to the present day. It then delves into post-independence developments, such as the Juvenile Justice Act of 1986, which established a separate juvenile justice system. The paper highlights the landmark Juvenile Justice (Care and Protection of Children) Act of 2000, which incorporated international standards and emphasized the rights and rehabilitation of children in conflict with the law. It also explores the subsequent amendments in 2006 and 2015, which aimed to strengthen child protection measures, introduce restorative justice principles, and address emerging challenges. Furthermore, the paper examines the impact of judicial interpretations and landmark judgments on shaping the implementation of juvenile justice laws in India. Drawing on historical and contemporary perspectives, this paper provides insights into the evolution of juvenile justice laws in India and underscores the ongoing efforts to uphold the rights and well-being of children in conflict with the law within the country's legal framework.

KEYWORDS: juvenile justice, juveniles, juvenile justice boards, observation homes, minor

CHAPTER 1

JUVENILE JUSTICE: MEANING AND CONCEPT

The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to develop its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.

Justice V. R. Krishna Iyer¹

Ensuring the welfare of children is a crucial endeavor in any civilized society because they represent the cornerstone of the nation's future. India, as the home to the world's largest population of children, holds a significant responsibility in this regard. With approximately 43 crore children aged 0-18 years, India hosts nearly one-fifth of the global child population. Unfortunately, a substantial portion of these children, around 40%, face challenging circumstances such as lack of family support, forced labor, abuse, and trafficking. Therefore, safeguarding the well-being of children is imperative for the nation's progress and prosperity.²

The term 'child' refers to an individual who relies on others to fulfill their needs and make decisions regarding right and wrong actions. Parents play a crucial role in protecting their children, and the overall development of children is influenced by the quality of their social and cultural surroundings.³

OBJECTIVE OF JUVENILE JUSTICE

Juvenile justice encompasses addressing issues related to the reformation, socialization, and rehabilitation of young offenders. It involves handling both juveniles in conflict with the law and children in need of care and protection. The juvenile justice system is specifically tailored to address the requirements of young offenders. Its primary objective is to offer specialized care, protection, and

¹ Jurisprudence of Juvenile Justice: A Preambular Perspective.

² The planning Commission Government in India, "Report of the working Group on Child Rights for the 12th Five Year Plan (2012- 2017) p. 15.

³ Kumari Ved: The Juvenile Justice System in India From Welfare to Right, 2004, Oxford University Press, New Delhi, p.11.

rehabilitation services to delinquent juveniles, with the aim of preventing crime, reintegrating them into society, and fostering their social development.⁴

The Sixth United Nations Congress on the prevention of crime and the treatment of offenders noted that this concept rarely has a legal interpretation; instead, it focuses on social and ethical justice. It involves assigning social responsibilities to children while also showing concern for their well-being.⁵

MODELS OF JUVENILE JUSTICE

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders has identified three juvenile justice system models aimed at preventing crime and rehabilitating young offenders. These models are based on modern approaches to handling juvenile delinquency,⁶

- *The Due Process Model*

The Due Process model is grounded in the principles of legality, the importance of law, the guarantee of due process, and the central role of legal professionals in decision-making. It focuses on safeguarding the substantive and procedural rights of juveniles within the framework of the legal system.

- *The Social Welfare Model*

The Social Welfare Model is founded on principles of social justice and economic fairness, focusing on the state's responsibility for welfare planning and decision-making services provided by administrators and professionals.

- *The Participatory Process Model*

This model addresses the issue by allowing juvenile justice to occur at smaller, community levels, with increased involvement from citizens in resolving or managing conflicts locally, and with minimal intervention from the official power structures of the modern state. It emphasizes the active participation of the community in addressing the harmful behavior of young people, integrating

⁴ Srivastava S.P: Juvenile Justice in India (Policy Program and Perspective), 1989, Ajanta Publications (India) Delhi, p. 5.

⁵ Report of the Six United Nation Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, August 25, September 5, 1980 at 41.

⁶ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Report of the Inter regional Preparatory Meeting on Youth Crime and Justice, Beijing, 14-18 May, 1984, pp. 13-14.

marginalized juvenile offenders back into mainstream social life, and reducing the need for formal legal intervention.

MEANING AND DEFINITION

- **JUVENILE:**

The term "juvenile" originates from the Latin word "juvenis," meaning youth, and is used to describe a person who has not yet reached the age of majority. However, the Committee on the Rights of the Child prefers to use the term "child" instead of "juvenile." A juvenile is typically defined as someone who has not yet turned eighteen years old.⁷

The definition of "juvenile" according to the Juvenile Justice Act of 1986 states that it applies to boys under the age of sixteen and girls under the age of eighteen. However, the Juvenile Justice (Care and Protection of Children) Act of 2000 broadens this definition to include both boys and girls under the age of eighteen. The 2000 Act eliminates the distinction between genders and requires that both boys and girls be treated as juveniles until they reach the age of eighteen.

- **DELINQUENT JUVENILE:-**

The term "delinquent juvenile" refers to young offenders who differ from adult criminals. The Juvenile Justice Act of 1986 defined a "delinquent juvenile" as a minor who had committed a crime, specifying that for boys, this referred to those under sixteen years old, and for girls, under eighteen.⁸ However, the Juvenile Justice (Care and Protection of Children) Act of 2000 replaced the term "delinquent children" with "juvenile in conflict with law." According to the 2000 Act, a "juvenile in conflict with law" is a minor who is accused of committing a crime and has not yet reached the age of eighteen at the time of the offense.⁹

- **DELINQUENCY:**

Delinquency refers to the behavior or actions of individuals, typically children, that are considered criminal or antisocial. The term carries a negative connotation and is often avoided due to its stigma

⁷ Ruth Cavan: Juvenile Delinquency (New York: Horper & Row Publishers 1981), at 26.

⁸ Section 2 (e) of the Juvenile Justice Act, 1986.

⁹ Section 2 (l) of the Juvenile Justice (C&P) Act, 2000.

when referring to juveniles. According to Sir C. Burt, delinquency can be defined as when a child's social behavior is serious enough to warrant official intervention or action.¹⁰

CHAPTER 2

HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE IN INDIA

The historical development of juvenile justice in India can be traced back to ancient times, where the concept of providing care and protection to children in need was prevalent in Indian society. However, the formal establishment of a juvenile justice system began during the British colonial period. During British rule, the Indian Penal Code of 1860 was introduced, which contained provisions for the treatment of juvenile offenders. However, these provisions were mainly punitive in nature, with children being treated similarly to adult criminals. There was little recognition of the unique needs and vulnerabilities of children in conflict with the law.

In the early 20th century, there was growing awareness of the need for a separate system of justice for juveniles. The first significant step in this direction was the enactment of the *Madras Children Act in 1920*, which aimed to provide for the care, protection, and rehabilitation of children in conflict with the law. This Act served as a model for subsequent legislation in other parts of India. The history of Juvenile Justice in India dates back to the Indian Constitution's efforts to protect citizens and impose duties on the state. The *Children's Act of 1960* was enacted to protect children and juvenile offenders, offering welfare, education, mentoring, and training. The Act also included observation homes and special educational systems. Juvenile courts in India were confined to youth under 16 years old who did not commit crimes punishable with death or life imprisonment.

The next significant development in juvenile justice came with the enactment of the *Juvenile Justice Act in 1986*. This Act represented a major shift towards a more child-centric approach to juvenile justice. Despite these advancements, there were still significant gaps in the juvenile justice system, including inadequate facilities and resources for the rehabilitation of juvenile offenders, and inconsistencies in the implementation of the law across different states.

In response to these challenges, the Indian Parliament passed the *Juvenile Justice (Care and*

¹⁰ Sir Cyril Burt, *the Young Delinquent* 4th Edn, pg. 4, (1996).

Protection of Children) Act in 2000, which repealed the Juvenile Justice Act of 1986. This new Act strengthened the legal framework for juvenile justice and introduced several key provisions, including the establishment of juvenile justice boards, child welfare committees, and adoption agencies. The Juvenile Justice (Care and Protection of Children) Act of 2000 also emphasized the importance of a child-friendly approach to justice, with a focus on the best interests of the child and the principle of rehabilitation and reintegration. It provided for the establishment of special homes, observation homes, and foster care facilities for the care and protection of children in conflict with the law.

Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2000 was superseded by the Juvenile Justice (Care and Protection of Children) Act, 2015, which now forms the primary legislative framework for India's juvenile justice system. This legislation, which covers the Juvenile Justice System in India, provides guidelines for the protection, care, and welfare of children who need to be protected as well as those who are involved in legal disputes. Additionally, it creates specialized organizations like child welfare committees, juvenile justice boards, and juvenile police divisions. A juvenile is defined by this law as a person who has not yet turned eighteen. In addition, it requires the creation of safe places, special houses, and observation homes with the intention of promoting children's welfare and security.

CHAPTER 3

INTERNATIONAL LEGAL REGIME ON JUVENILE JUSTICE

International agreements in the realm of juvenile justice aim to uphold and advance the rights of young individuals. These international instruments focusing on the care, protection, and development of children have been evolving since the early 20th century. The *League of Nations declared the Declaration on the Rights of the Child in 1924*, primarily addressing the economic, social, and psychological needs of children and their welfare. Following World War II, the international community established universal human rights through the *Universal Declaration of Human Rights in 1948*, asserting the entitlement of all individuals to these rights. The *Declaration on the Rights of the Child in 1959* marked a significant step in safeguarding children's rights, emphasizing their care, protection, and overall well-being. This declaration replaced the Geneva Declaration and laid the foundation for subsequent efforts in this area. However, it did not specifically address juvenile justice.

The *International Covenant on Civil and Political Rights of 1966* was the first to acknowledge the importance of segregating juvenile offenders from adults in legal proceedings. Similarly, the *International Covenant on Economic, Social and Cultural Rights* of the same year recognized the economic, social, and cultural rights of children. While these declarations and covenants are not legally binding on member states, they set important standards for the treatment of children.

The *Convention on the Rights of the Child in 1989* emerged as a comprehensive document in the protection of children's rights, with its provisions binding on all state parties. This convention encompasses a wide range of civil, political, social, economic, and cultural rights of children. Importantly, it includes provisions specifically addressing the administration of juvenile justice, marking a significant advancement in international efforts to safeguard the rights of young individuals.

- UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The United Nations Universal Declaration of Human Rights, adopted in 1948, is a landmark document that sets out fundamental human rights to be universally protected.¹¹ It was crafted in response to the atrocities of World War II and aimed to prevent future violations of human dignity and freedom. The Declaration proclaims the inherent rights of all individuals, regardless of race, color, religion, sex, language, political or other opinion, national or social origin, property, birth, or other status. It encompasses civil, political, economic, social, and cultural rights, including the right to life, liberty, and security, freedom from discrimination, torture, and slavery, the right to education, work, and social security, and the right to participate in government and enjoy cultural and religious freedoms. The Universal Declaration of Human Rights has served as a foundation for numerous international treaties, national constitutions, and human rights advocacy efforts, shaping the modern human rights framework and inspiring ongoing efforts to promote and protect human rights worldwide.

- UNITED NATIONS DECLARATION OF THE RIGHTS OF THE CHILD, 1959

The United Nations Declaration of the Rights of the Child, adopted in 1959, represents a milestone in the international recognition and protection of children's rights. This declaration, building upon

¹¹ Article 1 of Universal Declaration on Human Rights 1948 (UDHR).

earlier efforts such as the 1924 Declaration on the Rights of the Child by the League of Nations, focuses on the well-being, care, and protection of children. It emphasizes the importance of ensuring that children have access to the necessary resources and opportunities for their physical, mental, and emotional development. The declaration highlights the need for children to be protected from exploitation, abuse, and neglect, and calls for measures to promote their education, health, and overall welfare. While the declaration does not specifically address juvenile justice, it lays a foundation for subsequent international instruments that more comprehensively address the rights and protection of children, ultimately contributing to the ongoing global effort to ensure the well-being and rights of every child.

- **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966**

The International Covenant on Civil and Political Rights, adopted by the international community on 16 December 1966, is a comprehensive document primarily concerned with safeguarding the civil and political rights of individuals. State parties to the Covenant affirm the principles outlined in the Charter of the United Nations, acknowledging that the inherent dignity and equal and inalienable rights of all human beings form the basis of freedom, justice, and peace worldwide. In accordance with the Universal Declaration of Human Rights, which asserts the entitlement of all individuals to civil and political freedoms, freedom from fear, and economic, social, and cultural rights, states are obligated to promote universal human rights and freedoms. Furthermore, all individuals have a duty to uphold the rights enshrined in this covenant.

- **THE UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY, 1990**

The United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines, were adopted by the international community in 1990 with the aim of fostering the development of positive attitudes in young individuals to deter criminal behavior.¹² These guidelines emphasize that effectively preventing juvenile delinquency requires collaborative efforts from society as a whole to ensure the holistic development of juveniles and promote their personal growth from an early age.¹³ It is recommended that the implementation of these guidelines be tailored to the

¹² Article 1 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990.

¹³ Article 2 Riyadh Guidelines.

specific economic, social, and cultural contexts of each member state, in line with their national legal frameworks. The Riyadh Guidelines acknowledge the importance of implementing measures to prevent children from engaging in criminal activities, presenting various nuanced strategies for crime prevention and discouraging juvenile offending.

- **GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM, 1997**

The Guidelines for Action on Children in the Criminal Justice System, adopted in 1997, serve as a significant framework for addressing the rights and needs of children involved in the criminal justice system.¹⁴ Developed by the United Nations, these guidelines provide comprehensive recommendations for ensuring the protection and well-being of children who come into contact with the law. They emphasize the importance of treating children in conflict with the law in a manner that upholds their dignity, rights, and best interests. The guidelines advocate for measures such as diversion programs, alternatives to detention, and rehabilitation services aimed at reintegrating children into society.

CHAPTER 4

LAWS RELATING TO CHILD PROTECTION IN INDIA

Numerous legislations pertaining to children have been put in place with the aim of safeguarding their well-being. These laws are designed to safeguard and advance the rights of children. According to these legal provisions, children are entitled to receive special care, support, and basic necessities, and they should be given utmost priority in resource allocation. Challenges such as child exploitation, abuse, trafficking, and labor primarily stem from issues of poverty and lack of education. In many cases, parents may feel compelled to have their children work in order to alleviate economic hardships.

CONSTITUTIONAL PERSPECTIVE

The Constitution of India includes various provisions aimed at the development, well-being, and protection of children, primarily found in Part III and Part IV, which pertain to Fundamental Rights and Directive Principles of State Policy respectively. Special provisions for children are guaranteed

¹⁴ Economic and Social Council Resolution 1997/ 30

under Article 15(3), which empowers the State to enact laws for their benefit without hindrance. Article 21 of the Constitution establishes the right to life for every individual, ensuring that the State cannot deprive anyone of their life without due process of law. This right encompasses the right to live with dignity, access to healthcare, and a clean environment, which are enjoyed by both children and adults. Furthermore, the 86th Amendment Act of 2002 introduced Article 21-A, recognizing the right to education as a fundamental right. This provision mandates free and compulsory education for children up to the age of fourteen, emphasizing the importance of ensuring access to education for all children in India.

The framers of the Constitution were aware of the risks of child exploitation, leading them to include specific provisions aimed at protecting children from such abuses. Article 23 of the Constitution prohibits various forms of exploitation, including human trafficking, forced labor, and begging, and mandates that these practices be punishable by law.

The framers of the Constitution acknowledged the widespread issue of child labor in India, leading them to include a specific provision aimed at its eradication. Article 24 of the Constitution prohibits the employment of children below the age of fourteen in factories, mines, or any other hazardous occupations.

Article 39 (e) of the Constitution outlines the State's obligation to prioritize the health and well-being of workers, regardless of gender, and to ensure that children of tender age are not subjected to abuse. It also emphasizes that individuals should not be compelled to engage in occupations unsuitable for their age or physical capabilities due to economic necessity. Similarly, Article 39 (f) underscores the State's responsibility to create conditions conducive to the healthy development of children, providing them with opportunities for growth in an environment of freedom and dignity while safeguarding them from exploitation and neglect. Furthermore, Article 45 mandates the State to strive towards offering free and compulsory education to all children until they reach the age of fourteen. In essence, the Constitution guarantees every child the right to health, education, and social protection, without discrimination based on factors such as caste, gender, religion, or socioeconomic status.

The 86th amendment to the Constitution, enacted in 2002, introduced Article 51A (k), which mandates that it is the fundamental duty of parents or guardians to ensure educational opportunities

for their children aged six to fourteen years. The aforementioned provisions of the Constitution guarantee the right to life, access to education, and specific safeguards against child trafficking, begging, and forced labor.

UNDER COMMERCIAL LAW

- **The Children Pledging of Labour Act, 1933**

The legislation stipulates that any agreement, whether oral or written, explicit or implicit, made by a child's parents or guardian to engage the child's labor under the age of fifteen is considered null and void.¹⁵ However, the Act specifies that an agreement which does not harm the child and is not made in exchange for any advantage other than reasonable wages for the child's work, and can be terminated with a notice period of no more than one week, will not be deemed unlawful.¹⁶

- **The Employment of Children Act, 1938**

The Employment of Children Act of 1938, which remained in effect until it was repealed and replaced by the Child Labour (Prohibition and Regulation) Act of 1986, aimed to prevent the exploitation of children in workshops and other specified occupations, and to regulate their employment in certain categories of hazardous occupations. The primary objective of this Act was to safeguard children from being engaged in work that could harm their health or well-being. Specifically, the Act prohibited the employment of children under the age of fifteen in occupations involving the transportation of passengers, goods, or mail by railway or airport authorities within airport limits. However, there was an exception for children employed as apprentices or trainees in any occupation. Furthermore, the Act stipulated that children between the ages of fifteen and seventeen could only be employed or allowed to work in these occupations if they were provided with a minimum rest interval of two consecutive hours per day. This rest period must include a designated consecutive time frame between 10 p.m. and 7 a.m. as prescribed by the appropriate government authorities.¹⁷

- **The Factories Act, 1948**

The Factories Act of 1948, an important piece of legislation in India, contains provisions aimed at safeguarding the rights and well-being of children in industrial settings. Under this Act, specific

¹⁵ Section 3 of the Children Pledging of Labour Act, 1933.

¹⁶ Section 2 of the Children Pledging of Labour Act, 1933.

¹⁷ Section 3 (1) (2) of the Employment of Children Act 1938.

regulations are established to protect children from exploitation and ensure their safety and welfare while working in factories. The Act prohibits the employment of children under the age of fourteen in any factory. Additionally, it mandates that children between the ages of fourteen and eighteen can only be employed in factories under certain conditions, such as providing appropriate working hours, rest intervals, and ensuring their education is not adversely affected

- **The Apprentices Act, 1961**

Before the passage of this Act, there was no comprehensive legislation addressing the training and service conditions of apprentices. To address this gap, the Government of India formed an expert committee to review these issues and propose a separate law to regulate apprenticeship training in industries. As a result, the Parliament enacted the Apprentices Act of 1961, which applies to the entirety of India.¹⁸

The primary aim of this legislation is to oversee and regulate the training of apprentices, thereby enhancing the availability of skilled technical personnel for industrial enterprises. It addresses various aspects related to apprenticeship, including eligibility criteria, apprenticeship contracts, contract termination, the maximum number of apprentices per trade, practical and theoretical training, compensation, health and safety provisions for apprentices, working hours, overtime, leave entitlements, holidays, behavioral expectations, and the responsibilities of both employers and apprentices.

- **The Child Labour (Prohibition and Regulation) Act, 1986**

The Child Labour (Prohibition and Regulation) Act of 1986 is a crucial piece of legislation in India aimed at addressing the issue of child labor. The primary objective of this act is to prohibit the employment of children in certain hazardous occupations and processes, while also regulating the working conditions for children in permissible employment sectors.¹⁹ The Act sets the minimum age for employment at fourteen years and prohibits the engagement of children under this age in any occupation, with exceptions for certain types of family-based enterprises and artistic performances..

¹⁸ Section 1 (2) of the Apprentices Act, 1961.

¹⁹ Asha Bajpai, *Child Rights in India*, New Delhi Oxford Press, 2006, p. 163.

UNDER CRIMINAL LAWS

Criminal laws in India also safeguard children due to their young age, physical vulnerability, and limited mental and emotional development. These laws are in place to ensure that children are protected from being held fully accountable for their actions under criminal liability.

- **Indian Penal Code, 1860**

The Indian Penal Code includes clauses aimed at safeguarding the well-being of children. According to the Code, actions carried out by a child under the age of seven are not considered offenses.²⁰ This protection stems from the principle of *doli incapax*, which asserts that a child of this age lacks the capacity to cause harm. Consequently, in India, children under the age of seven cannot be held responsible for any criminal activities. Simply establishing their age through evidence is sufficient to confirm the innocence of the child.

According to the Indian Penal Code, actions carried out by a child between the ages of seven and twelve are not considered offenses if the child has not yet developed the necessary understanding to comprehend the nature and consequences of their behavior.²¹ Essentially, a child within this age range is presumed to possess the capacity to commit a crime. However, this presumption can be challenged, and the burden of proof lies with the defendant to demonstrate otherwise.

The Indian Penal Code provides protection to underage girls from being involved in prostitution. This particular section addresses the act of procuring minor girls, stating that any individual who persuades or compels a girl under the age of eighteen to leave her location or engage in certain actions with the intention of subjecting her to illicit intercourse with another person, or with the knowledge that this is likely to happen, will face imprisonment for up to ten years along with a fine.

- **Criminal Procedure Code, 1973**

The Criminal Procedure Code outlines the procedural framework for handling criminal cases in courts. It includes provisions designed to safeguard the rights of children. It delineates the jurisdiction

²⁰ Section 82 of the Indian Penal Code, 1860.

²¹ Section 83 of the Indian Penal Code, 1860.

of courts in cases involving juveniles, stipulating that any offense not punishable by death or life imprisonment committed by an individual under the age of sixteen shall be tried by a Chief Judicial Magistrate's Court or by a court designated under the Children Act of 1960 or any other applicable law governing the treatment and rehabilitation of youthful offenders. Moreover, the Cr.PC outlines procedures for obtaining maintenance from parents and imposes an obligation on parents to provide maintenance for their children if they are unable to support themselves.

- **The Juvenile Justice Care and Protection of Children Act 2000**

The Juvenile Justice Act of 2000 represents a forward-looking and compassionate legal framework. It contains various provisions aimed at safeguarding the welfare of juveniles. According to the Act, individuals who are responsible for the care or supervision of a juvenile or child and engage in acts of assault, abuse, abandonment, or deliberate neglect towards them, resulting in harm, will be subject to imprisonment for up to six months, a fine, or both.²²The legislation also stipulates that individuals who employ or exploit juveniles for begging purposes may face imprisonment for a duration of up to three years.²³The Act reiterates that individuals who provide any intoxicating liquor or narcotic drug to a juvenile will face punishment, which may include imprisonment for up to three years.²⁴The legislation specifies that it is illegal to involve any minor in hazardous employment, and anyone found employing a juvenile in such conditions will face imprisonment for up to three years and may also be subject to fines.²⁵

CHAPTER 4

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 & 2015

- *The Juvenile Justice (Care and Protection of Children) Act, 2000:*

The JJ Act 2000 is the primary body of law that governs issues pertaining to juvenile justice in India. The Act calls for a special method of treating and preventing juvenile delinquency and creates a framework for the protection, care, and rehabilitation of children within the juvenile court system's

²² Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

²³ Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

²⁴ Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

²⁵ Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

jurisdiction. This law replaced the Juvenile Justice Act of 1986, bringing India into compliance with the UN Convention on the Rights of the Child (UNCRC) of 1989, after India joined the UNCRC in 1992. Further amendments to this Act were made in 2006 and 2010.²⁶

A. Child in need of Care and Protection

○ Child Welfare Committee

For any district or set of districts specified in the notification, the State Government may create one or more Child Welfare Committees by publishing a notice in the Official Gazette. These Committees shall be in charge of carrying out their assigned duties and using their authority in relation to children who fall within this Act's category for protection and care. The State Government may appoint up to four members to the Committee, including a minimum of one woman and one kid specialist. The Committee will also have a chairperson.

○ Inquiry:

The Committee, any police officer, special juvenile police unit, or designated police officer shall hold an inquiry in the manner prescribed by law upon receiving a report under section 32. A social worker or child welfare officer may be assigned by the Committee to conduct a timely inquiry on the child's behalf, based on the Committee's own findings or the report from any individual or organization specified in paragraph (1) of section 32.

○ Children's homes

In any district or group of districts, as the case may be, the State Government may also establish and maintain children's homes for the purpose of receiving children in need of care and protection while an investigation is ongoing and for their continued care, treatment, education, training, development, and rehabilitation. It could work with volunteer organizations or on its own to accomplish this. Furthermore, they can delineate the administration of children's homes, including the prerequisites and categories of services that must be provided by them, along with the terms and processes for bestowing certification upon or withdrawing recognition from a volunteer organization.

²⁶ SARKAR, Chandana: Juvenile Delinquency in India: An etiological Analysis. (Daya Publishing House, Delhi, 1987)

B. Juveniles in conflict with law

The second chapter of the Act addresses Juveniles in Conflict with the Law. This provision establishes juvenile justice boards whenever the State Government considers appropriate.²⁷ Juvenile Justice Boards must consist of two social workers, one of whom must be a woman, and a metropolitan or judicial magistrate. The magistrate must possess prior experience in child welfare or child psychology. Only the Juvenile Justice Board may hear cases involving adolescents who are in legal trouble; other courts may not hear them²⁸. The **creation of observation homes**²⁹, which are facilities for minors while their legal actions are pending, is another topic covered in this chapter.

A police officer who comes into contact with a juvenile is required by statute to report the child immediately to the Special Juvenile Police Unit (SJPU). As long as the Board finds that releasing the youngster won't put him in danger or expose him to criminal influence, juveniles are always eligible for bail. If the child is not released on bond, he will only be placed in the care of an observation home.

- JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Act aims to fulfill the goals of the UN Convention on the Rights of the Child, which India adopted on December 11, 1992. It outlines the procedural protections that apply when minors are involved in legal disputes. It aims to resolve issues with the current Act, including lengthy case backlogs, delays in adoption procedures, institutional accountability, etc. The Act also aims to target minors in the 16–18 age range who are in legal trouble, as there has been a rise in the number of these offenses documented in recent years. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, which went into effect on January 15, 2016.

- KEY PROVISIONS

1. The term "juvenile" will be replaced with "child" or "child in conflict with law" throughout the Act in order to eliminate the negative connotation attached to the term.
2. The addition of many additional definitions, including those pertaining to orphaned, abandoned, and surrendered children as well as minor, grave, and horrible offenses committed by children;
3. Unambiguity regarding the roles, duties, and authority of the Child Welfare Committee (CWC) and the Juvenile Justice Board (JJB); precise deadlines for the JJB's investigations; the Act's

²⁷ Section 4 of the Juvenile Justice (Care and Protection of Children) Act 2000.

²⁸ Section 4(2) of the Juvenile Justice (Care and protection of children) Act, 2000

²⁹ Section 8 of the Juvenile Justice (Care and Protection of Children) Act 2000.

requirement that Child Welfare Committees and Boards be established in each district. Each must include a minimum of one female member.

4. Particular provisions for horrific offenses perpetrated by minors over sixteen - Pursuant to Section 15, particular measures have been implemented to address child offenders committing heinous offences in the age group of 16-18 years.

After conducting a preliminary evaluation, the Juvenile Justice Board may choose to transfer cases involving such children that have committed heinous offenses to a Children's Court (Court of Session). The requirements stipulate that minors must be placed in a "place of safety" during and after the trial until they turn 21 years old, at which point the minors's Court will evaluate them. Following the evaluation, the kid is either placed on probation or, if they don't change, they spend the remainder of their time in jail. The law will safeguard victim rights and serve as a deterrent to juvenile criminals who commit horrible crimes like rape and murder.

- *Separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children –*

The current Central Adoption Resource Authority (CARA) is granted statutory standing in order to enhance its capacity to expedite adoption procedures for orphan, abandoned, and surrendered children. A separate chapter (VIII) on adoption contains comprehensive adoption-related laws as well as sanctions for noncompliance with the established protocol. Timelines for domestic and international adoptions have been expedited, and this includes the declaration of a child's legal suitability for adoption. The rules state that a single male cannot adopt a girl kid, but a single woman or a divorced person may adopt as well.

- *Inclusion of new offences committed against children –*

The Act includes a number of new offenses against minors that are currently inadequately addressed by previous laws. These include the following: kidnapping and abduction of children; sale and procurement of children for any reason, including unlawful adoption; physical punishment in child care facilities; use of children by militant groups; and offenses against disabled children. There are established penalties for abducting or selling children, giving narcotics to children, and abusing children. An official faces up to six months in jail, a fine of Rs. 10,000, or both if they fail to notify an abandoned or orphaned child within 24 hours.

Failure to register child care facilities may result in a fine of one lakh rupees, a year in jail, or both. Giving alcoholic liquor, drugs, or psychotropic substances to a kid carries a maximum seven-year jail

sentence, a fine of one lakh rupees, or both.

Mandatory registration of Child Care Institutions –

Regardless of whether they receive funding from the government, all child care facilities—whether they are operated by the State Government, nonprofits, or voluntary groups—that are intended to house children either fully or partially must register as required under the Act within six months of the Act's implementation. The law stipulates severe penalties for noncompliance.

Children who are in legal trouble or who require care and protection have access to a number of rehabilitation and social reintegration programs. In order to help children in institutional care play a positive part in society, a range of services are offered to them, including education, health, nutrition, addiction treatment, disease prevention, vocational training, skill development, life skill education, counseling, and more. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children.

- *Role of State Governments*

Within two months after their appointment, members of the Juvenile Justice Board and Child Welfare Committee are required by law to undergo induction training (Sections 4 and 27). According to Section 16, the Chief Judicial Magistrate or Chief Metropolitan Magistrate is responsible for reviewing the status of cases before the Juvenile Justice Board once every three months and directing the Board to hold more sessions or suggest creating a new board. A clause exists that calls for the creation of a High Level Committee to examine the cases that are pending before the Juvenile Justice Board.

CHAPTER 5

ROLE OF JUDICIARY IN THE PROTECTION OF JUVENILE JUSTICE

The judiciary, including the Supreme Court and High Courts, has played a significant role in shaping the juvenile justice system by interpreting legislative enactments aimed at aiding juvenile offenders. While laws such as the Children Acts, the Juvenile Justice Act of 1986, and the Juvenile Justice (Care and Protection of Children) Act of 2000 primarily address juvenile justice in India, the judiciary has

expressed deep concern regarding the effective implementation of these laws' beneficial provisions for children on numerous occasions.

In the case of **Smt. Prabhati v. Emperor**³⁰, it was ruled that whenever feasible, children should be released under the supervision and care of their parents or guardians. The court must be provided with clear evidence of a person's age before considering sending them to a reformatory school. It was emphasized that a child cannot be sent to a reformatory school unless an order for institutionalization, equivalent to imprisonment, is issued.

In the case of **Sheo Shankar Singh v. State of Bihar**³¹, the Supreme Court examined the principle of safeguarding and promoting the interests of children who have committed offenses. The appellant argued that he qualified as a child under the Bihar Children Third Ordinance, 1979. According to a report from the Civil Surgeon, the appellant's age was estimated to be between 18 to 20 years on February 14, 1980. However, since the offense occurred approximately five years prior to the Surgeon's examination, the appellant must have been under 16 years of age at the time of the offense, thus falling within the provisions of the Ordinance. The prosecution against the appellant was ongoing when the Ordinance came into effect. Clause 26 of the Ordinance stipulates that if any proceedings involving a child are pending in court, they shall continue in that court. If the court determines that the child has committed an offense, it shall record a finding instead of imposing a sentence, or it shall refer the child to a children's court. The children's court will then issue orders concerning the child in accordance with the provisions of the Ordinance, as if it had conducted an inquiry and determined that the child committed the offense.

In the case of **Supreme Court Legal Aid Committee v. Union of India and others**³², which followed the Sheela Barse (I) case, the court acknowledged the implementation of the Juvenile Justice Act. Each District judge was consequently instructed to provide a report to the Supreme Court Registry detailing the establishment of juvenile homes, special homes, and observation homes as mandated by sections 9, 10, and 11 of the Juvenile Justice Act, 1986. Additionally, the court observed that the highest number of children in regular jails was recorded in West Bengal and Bihar.

³⁰ AIR 1921 (Oudh) 190

³¹ (1982) 1 SCC 480

³² (1989) 2 SCC 325

In the case of **Mohd. Feroz and Bhola v. State**³³, it was ruled that Section 12 mandates the release of a person if they appear to be a juvenile, unless there are reasonable grounds to believe that releasing them would lead to their association with known criminals or expose them to moral, physical, or psychological risks, or if their release would obstruct the course of justice. Furthermore, it was clarified that the issue of bail under this provision is not a matter of leniency; rather, it is obligatory and specifies that a person who appears to be a juvenile must be released.

In the case of **Bandhua Mukti Morcha v. Union of India**³⁴, a Public Interest Litigation was initiated, alleging the employment of children under the age of 14 in the Carpet Industry in the State of Uttar Pradesh. Reports from a Committee appointed by the Supreme Court substantiated claims of widespread forced labor, primarily affecting children from economically disadvantaged families, many of whom were brought from Bihar to work in carpet weaving centers in the State. The Court determined that it is the responsibility of the State to ensure socio-economic justice for children and to offer them facilities and opportunities for their proper personal development.

CONCLUSION

The evolution of juvenile justice laws in India has been marked by a gradual progression towards a more comprehensive and child-centric approach aimed at ensuring the protection, rehabilitation, and reintegration of young individuals in conflict with the law. Historically, the early legislative efforts during the colonial period, such as the Madras Children Act of 1920, laid the groundwork for recognizing the unique needs and vulnerabilities of juveniles within the legal system. However, it was not until the enactment of the Juvenile Justice Act of 1986 that significant strides were made in codifying specialized laws specifically tailored to address juvenile offenders.

The Juvenile Justice Act of 1986 represented a landmark shift in India's approach to juvenile justice, emphasizing rehabilitation and reintegration over punitive measures. This Act established special juvenile courts and welfare boards, along with provisions for observation homes and rehabilitation facilities for juvenile offenders. Subsequent amendments and revisions, including those in 2000 and

³³ (2005) 3 JCC 1313

³⁴ (1997) 10 SCC 549

2015, further strengthened the legal framework for juvenile justice, aligning with international standards and principles.

Key judicial decisions, such as in the case of *Bandhua Mukti Morcha v. Union of India*, have also played a crucial role in shaping the evolution of juvenile justice in India. Such decisions underscore the State's obligation to ensure socio-economic justice and proper development for children, particularly those from marginalized communities.

Despite these advancements, challenges persist in effectively implementing and enforcing juvenile justice laws across the country. Issues such as socio-economic disparities, inadequate infrastructure, and limited access to rehabilitation services continue to pose significant obstacles to the proper functioning of the juvenile justice system. Additionally, there is a need for greater emphasis on preventive measures, community-based interventions, and addressing root causes of juvenile delinquency.

While significant progress has been made in the evolution of juvenile justice laws in India, there is still much work to be done to ensure the rights and well-being of all children in conflict with the law. Continued efforts to strengthen the legal framework, enhance infrastructure and resources, and promote a holistic approach to juvenile rehabilitation are essential for the effective functioning of the juvenile justice system in India.

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