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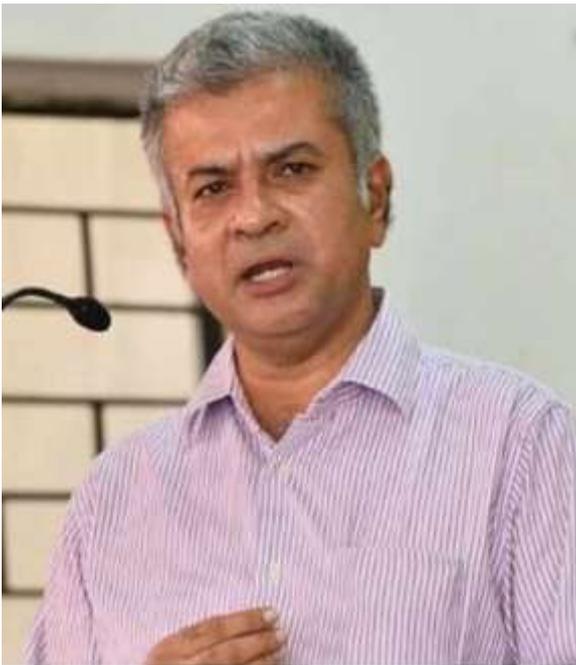
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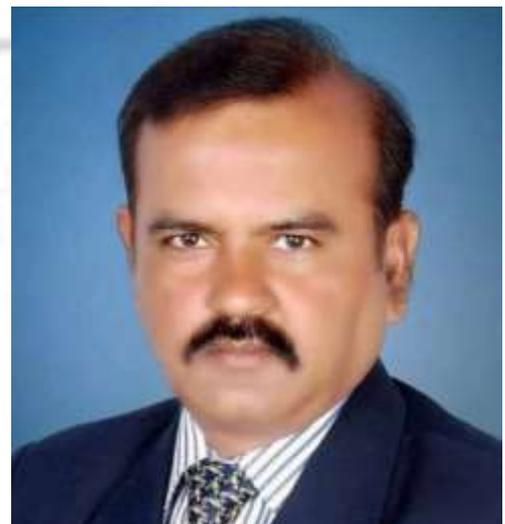


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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

# **JUVENILE JUSTICE: PAST AND PRESENT**

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## **Abstract**

Justice as it is, comprises all sects of society, one of the key ones being juveniles. Juvenile Justice concerns children below eighteen years of age. This is a relatively downtrodden section of society. The rights of juveniles need to be protected via special rulings and Acts. This is utmost necessary to grant them freedom and security in society. Juveniles tend to be a vulnerable group of society. Thus, ample protection is necessary to ensure their safe living in society. Juvenile justice has been a subject of importance since the ancient history. In Ancient India as well, laws regarding juvenile delinquency existed. This has translated into the modern era as well. Various Acts have governed juvenile justice in various times. Juvenile Justice is a subject of paramount importance in the field of law. This article delves deep into the nuances of juvenile justice in India in the previous times and the present ones. There have been various Acts passed by the british government to guarantee rights to juveniles in India. There have been multiple legislations in this regard in modern times as well. The laws framed during the pre-independence era have laid groundwork for the modern juvenile delinquency laws. Various Acts and rules have been given by the Indian Government at various times that this article delves deep into. This writing sheds light on the historical aspect of Juvenile Justice in India. It is a deep analytical study into the history of Juvenile Justice laws in India. The writing has been divided into three phases for a better understanding of time periods. It provides deep definitions of the key concepts such as juveniles, juvenile delinquency and juvenile justice. Thus, this writing provides a deep understanding of juvenile laws in various times of history in India; the Ancient India, British era and post-independence era.

## **Introduction**

The great sage Manu said that women and children are entitled to be taken care of, even after their hundred mistakes. the Juveniles should be dealt leniently because there exists a system of thought that says-Young folks generally have a habit to respond in a serious and prolonged frustration which is accompanied with aggressive approaches. The Hon'ble Supreme Court observed that children of the nation are a supremely important asset. Their nurture and

solicitude are our responsibility, Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development of all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.<sup>1</sup> Children are the future of our country and it is the responsibility of every one to provide a sustainable support and ensure that they have a dignified and a safe environment to live in, level of understanding of a 8 year old and an 18 year old. Various rights have been conferred on the children in our constitution. These include:-

- Right against discrimination (Article 15).
- Right to personal liberty and due process of law (Article 21).
- Right to being protected from being trafficked and forced into bonded labour (Article 23).
- Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A).
- Right to be protected from any hazardous employment till the age of 14 years (Article 24).
- Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A).
- Right to be protected from any hazardous employment till the age of 14 years (Article 24).
- Article 45 Provision for free and compulsory education for children. The State shall endeavor 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.
- Article 39 Certain principles of policy to be followed by the State. The state shall direct its policy towards securing
  - that the citizen, men and women equally, have the right to an adequate means of livelihood
  - that the ownership and control of the material resources of the community are so distributed as best to subserve the common good

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<sup>1</sup>Lakhmi Kant Pandey v. Union of India, AIR 1984 SC 469.

- that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment
- that there is equal pay for equal work for both men and women
- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength
- 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 material abandonment.

Every child deserves the shield of security of its nation. Thus, children are a valuable asset and all sorts of securities and safeguards have been provided to them.

### **Who is a juvenile?**

As per the section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 a juvenile means “a child who has not completed eighteen years of age.”<sup>2</sup> All the individuals below eighteen years of age are considered to be juveniles. The United Nations Conventions on Rights of Child have also set the age for juveniles to be below 18 years. Children are 'dole incapax' i.e. incapable of committing any offence. The Indian law provides that, nothing is as offence which is done by a child below seven years of age.

“Child in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence<sup>3</sup>.

### **What is juvenile delinquency?**

Juvenile was derived from two Latin words '*iuvenilis*' meaning 'of or belonging to youth' and from '*iuvenis*' meaning 'young person'. Delinquency was derived from a Latin word '*delinquentia*' meaning 'a fault or crime'.

Delinquency was defined by Coleman in 1981, 'behaviour of youth less than eighteen years of age which is not acceptable to society and is generally regarded as calling for some kind of admonishment punishment or corrective actions'. Juvenile delimited is defined as a 'conduct

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<sup>2</sup> Section 2(35) Juvenile Justice Act (Care and Protection of children) Act, 2015.

<sup>3</sup> Section 2(13) Juvenile Justice Act (Care and Protection of children) Act, 2015.

by a juvenile characterized by antisocial behaviour that is beyond parental control and therefore subject to legal action'.<sup>4</sup>

Juvenile delinquency is a social evil and is a socially unacceptable behaviour committed by minors or juveniles. The juveniles are kept in juvenile jail and correction homes. Then various corrective measures are taken to change their behaviour and develop positive direction. It is observed that delinquency is increasing with increase in population and complexity of culture<sup>5</sup>. According to Reckless (1956), the term applies to the 'violation of criminal code and pursuit of certain patterns of behaviour disapproved for children and youth adolescents'.

### **What is juvenile justice?**

The juvenile justice system of any country depends upon the judicial system of the nation. The system of juvenile justice, in fact, is a part and parcel of the larger system of justice.

It is a special type of legal justice specifically designed to protect and promote the interests of children. The first and foremost task of juvenile justice is to provide adequate opportunity so that a child may develop into a normal law abiding citizen.

Fundamentally based upon the Latin maxim 'parents patriae' referring to the State as a wise parent, the concept of juvenile justice has become quite significant and popular in the modern welfare society with emphasis upon the welfare approach and protection of mankind.<sup>6</sup> A child cannot be held entirely responsible for his anti-social behaviours because of his physical, mental and social immaturity. Therefore, it is primarily the age or level of understanding which separates juvenile justice from legal justice in general. Since a juvenile is incapable of having any criminal intent, a special procedure should therefore be followed for his trial and punishment should be given with a view to transforming him into responsible citizen. Thus, juvenile justice system represents an organized effort on the part of the State to restore children in situations of social maladjustment.<sup>7</sup>

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<sup>4</sup> Merriam Webster Collegiate Dictionary: Eleventh Edition, 2014.

<sup>5</sup> <http://docs.manupatra.in/newslines/articles/Upload/B4443CDC-5144-4816-946C-7C5EBE5122FC.pdf>

<sup>6</sup> Singh, Surendra and Chauhan, Balraj: Juvenile Justice in India, published in the book 'Children in India', edited by Bhatia S.C., 1990 p.92.

<sup>7</sup> Singh, Surendra and Chauhan, Balraj: Juvenile Justice in India, published in the book 'Children in India', edited by Bhatia S.C., 1990, p.93.

## **History of Juvenile delinquency in India**

The stages of juvenile justice in india can be divided into following categories:-

- Ancient period
- British period
- Post-Independence
- Modern period

Here is a brief explanation of all the above periods with further sub-categories.

### **Ancient period**

The evolution of juvenile laws can be traced back around 4000 years ago, around 1750 B.C.E. The king Hammurabi of Babylon was the first state to be known to be governed by a written legal code. The code of Hammurabi is a well preserved Babylonian code of ancient Mesopotamia dating back to around 1754 B.C. it is one of the old deciphered writings of significant length in the world. The sixth Babylon king, Hammurabi enacted the code, and the partial copies still exists on a human sized stone stable and various clay tablets. It consist of 282 laws, it propounded the theory of lex talionis or the law of retaliation implicating quite literally "an eye to an eye" "a tooth for a tooth, and "a limb for a limb". The code of Hammurabi also incorporated complex provisions of marriage, family of solidarity and family treatment. The provisions were enacted entirely for the preservation of Babylonian patriarchy. For example the code stated-"if a son strike his father, one shall cut of his hands".

'. The children and teenagers could be treated as a little more than a property. Less significance were given to juveniles as they were treated as an asset.

In ancient India, the society was governed as directed by "Dharma" and "Neeti." In this background, it is but natural, that specific mention for the treatment or punishment of the Children can be found in the 'Neeti Shastra' or in 'Dharma Shastra.' For example we find the following verse in Chankya Neeti "Children should be given love, affection and nourishment till five years, they should be kept under discipline and control for ten years, and when they attain the age of 16 years, they should be treated as friends". In ancient India here student had to spend his time in learning and performing Brahmacharya and they did not often come in contact with general Public. On these observations an inference can be drawn that in ancient India the juvenile got fair treatment and their offences were not equated with as the offences of adult persons, and parents were responsible for their delinquent behaviour, because parent had

the responsibility to teach their child discipline in life, to move on right path and observe moral behaviour.

Before stepping of common law, juvenile justice was governed by personal laws, i.e. Hindu or Muslim law. Historically, the concept of juvenile justice was derived from a belief that the problems of juvenile delinquency in abnormal situations are not amendable to the resolution within the framework of traditional process of criminal law.<sup>8</sup> Both Hindu law (Manusmriti) and Islamic law (Sharia) made provisions for maintenance and proper upbringing of the children. Under these, the sole responsibility to provide care and protection to children was of the parents. If in case the families were unable to protect and take care of the children then someone from the community took care of the children. The Hindu law and Islamic law have mentioned different punishments for the children for certain offences. In Muslim law, if a child is found throwing filth on the public road, there is a specific injunction which forbids execution of the children.<sup>9</sup> On the other hand, under Hindu law, the child has to clean the place and the adult has to pay the fine for the act.<sup>10</sup> Prior to adopting the English ideology, the Indian culture treated child in need of protection and care and if any offence is committed by him/her, they cannot be treated as per the adult laws.

### **British period**

In India, during the British period, their customary laws governed both Hindu and Muslim. However, there were no specific legal protections to the juvenile delinquents. They used to be governed under certain Hindu ethical codes concerning the treatment of children.<sup>11</sup> Most probably, the Apprentices Act, 1850, is the first legislation to create some beneficial provisions in the interest of juvenile delinquents.

#### **(1) The Apprentices Act, 1850:**

In nineteenth century, the need to enact separate legislation for the protection of children from the possible abuse was also felt in India in view of development of juvenile justice system in most of the western countries. In 1850, the Apprentices Act was passed as the first juvenile

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<sup>8</sup> Vedkumari, *The Juvenile Justice in India: from Welfare to Rights*, New Delhi: OUP. Pg. 1.

<sup>9</sup> Unnithan, N. Prabha (edited 2013). *Crime and Justice in India*; ch13, Kethineni Sessa & Braithwaite Jeremy, towards a compliance model: *The Indian Supreme Court and the Attempted Revolution in Child Rights*. New Delhi; sage publication, Pg. 306.

<sup>10</sup> Muller, M. F. (1886). *The Laws of Manu*. Oxford: Clarendon press.

<sup>11</sup> UN: comparative Survey on Juvenile Delinquency Part IV, Asia and Far East, p-5(1953).

legislation to deal with delinquent child. Under this Act, the Magistrates were empowered to commit children between the ages of ten and eighteen years as apprentices to employers, and provisions were made for controlling the relations between such children and the employers. Children, who were found to have committed petty offences or were destitute, used to be covered under this Act.

**(2) The Reformatory Schools Act, 1897:-**

The first special law dealing with delinquency on all India basis was the Reformatory Schools Act, 1897 which provided that a child below fifteen years of age, found guilty of any offence might, at the discretion of the Court, be ordered to be detained in such a reformatory school for a period of three to seven years. Under this Act, no boy over eighteen years of age could be detained in such an institution. This Act, even today acts as the basic law in those areas where no children's Acts or any other special laws dealing with juvenile offenders have been enacted. Thus, under this Act, a beginning was made for incorporating the rehabilitative techniques in the penal philosophy for juvenile offenders.

**(3) The Indian Jails Committee Report (1919-1928):-**

In India, actually it was the Indian Jails Committee Report that for the first time brought to the force the vital need for the separate trial and treatment of juvenile offenders for their reformation. The Committee observed that, "the commitment to a prison of child and young persons, whether after conviction or while on record or under trial, is contrary to public policy that the sentences of imprisonment should in cases of children and young persons, be made illegal as in England."<sup>12</sup>

**(4) Vagrancy Act, 1943:-**

This Act provided for the care and training of children below fourteen years of age, specifically who lived on begging; or were under unfit guardianship; or were under the case of parents of drinking or criminal habits; or frequently visited prostitutes; or were destitutes; or were subject to bad treatment

**(5) Children's Acts of Different States:-**

In pursuance of the recommendations of the Indian Jails Committee, Children's Acts of Madras,

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<sup>12</sup> Offences against Children and Juvenile Offence by Dr. S. K. Chatterjee.

Bengal and Bombay were enacted in the years of 1920, 1922 and 1924 respectively providing for the custody, protection, treatment and rehabilitation of children and youthful offenders. But after independence, these three Acts were amended extensively. Further, various other State also passed their Children's Acts. These were East Punjab children Act, 1949, Hyderabad Children Act, 1950, Uttar Pradesh Children Act, 1951 and Saurashtra Children Act, 1954. Before 1954, in India, no statutory definition of 'delinquency' was there, but in common practice that word had come to embrace young offenders or youthful offenders under Children Act. In the year 1954, the Saurashtra Children Act attempted for the first time to use the term 'delinquent' and under section 4 (K) defined 'Juvenile delinquency' making it clear that it applied to a child offender and none else. Since then this expression has been incorporated in place of 'youthful offender' in all Children's Acts passed subsequently. Thus, it was the Indian Jails Committee Report which paved the way for separate juvenile justice system in India.

The object of the Bombay Children Act, 1948, was to consolidate and amend the law for the custody, protection, treatment and rehabilitation of children and youthful offenders and for the trial of youthful offenders in the province of Bombay. According to this Act, child meant a boy or a girl who had not attained the age of sixteen years. The Act introduced Juvenile Court to deal with juvenile delinquent. On the other hand, it provide measures for the care and protection of the destitute and neglected children. The Act introduced certified schools, remand homes and other institutions including voluntary homes, fit persons, and fit institutions to house such children. The Act provided special offences in respect of children and youthful offenders.<sup>13</sup>

### **Post-Independence**

Various provisions were enacted in india after british rule in the matters of juvenile delinquency. Many legislations were brought about in 1958, 1960, 1966 etc.

#### **(1)The Probation of Offenders Act, 1958<sup>14</sup>:-**

The object of this Act is to prevent the conversion of youthful offenders into criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. Although, not much can be done for hardened criminals, still considerable stress has been laid on bringing about reform of young offenders

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<sup>13</sup> Offences against Children and Juvenile Offence by Dr. S. K. Chatterjee.

<sup>14</sup> Administration of Juvenile Justice in India (Juvenile in conflict with Law) by Dr. Krishna Pal Malik.

not guilty of serious offences and of preventing their association with hardened criminals.

When a person under 21 years of age is found guilty of having committed an offence, not punishable with imprisonment for life or death sentence, the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to release, the offender after admonition or on probation of good conduct, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

For the purpose of satisfying itself whether it would not be desirable to release him after admonition or on probation of good conduct, when an offender under 21 years of age has committed an offence punishable with imprisonment (but not with imprisonment for life or death, the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

### **(2) The Children Act, 1960:-**

The Government of India had enacted a Central Children Act in 1960 for the Union Territories, which was also supposed to serve as model legislation for other States, to deal with the destitute and delinquent children separately through specialised institutions. The Act was amended in 1978 to make it more efficacious. At that time almost all States had enacted their own Children Act.<sup>15</sup>

### **(3) Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960:-**

The Women's and Children's Institutions (Licensing) Act, 1956 was enacted to issue the licence to the institutes housing the women and children who were in need of care and protection, which was substituted by the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960. The Act was passed to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith. However, section 3 of the Act says that this Act shall not apply to—

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<sup>15</sup> Administration of Juvenile Justice in India (Juvenile in conflict with Law) by Dr. Krishna Pal Malik.

- any hostel or boarding house attached to, or controlled or recognised by, an educational institution; or
- any protective home established under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or
- any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.

The Act also provides that all homes should be recognized under the Act.

However, no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under this Act.

The Act describes regulation of management of the recognised homes by constituting a management committee.

According to the Juvenile Justice (Care and Protection of Children) Act, 2000, a 'child in need of care and protection' may be discharged from the home, only after obtaining order or direction of Child Welfare Committee.

#### **(4) The juvenile justice act, 1986:-**

This Act replaced all the Children's Acts, formerly in operation in different States and Union Territories. It came in to force in the year 1987 on a uniform basis for the whole country. The Preamble of this Act reads that "the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and adjudication of certain matters relating to disposition of delinquent juveniles."<sup>16</sup>

As a result of the experience of implementing the law over a considerable period, it was felt that there was a lack of uniformity in the provisions of the State Acts. The Parliament of India has enacted Juvenile Justice Act in 1986 to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger

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<sup>16</sup> Juvenile justice act, 1986.

involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

The Juvenile Justice Act, 1986 defines a 'juvenile' as a boy who has not attained the age of sixteen years or a girl who has not attained the age of Act further classified a juvenile into two categories—

'neglected juveniles' and 'delinquent juveniles'. A 'neglected juvenile'<sup>17</sup> means who is found begging, or who has no home and a destitute, or who has unfit parents, or who lives in a brothel or with a prostitute, or who leads an immoral life, or a juvenile who is being abused or there is a possibility that in future he may be abused for immoral purposes. On the other hand, a 'delinquent juvenile'<sup>18</sup> is one who has committed an offence under any law of the land and comes in conflict with law. the Juvenile Welfare Board deals the neglected juvenile whereas the delinquent juveniles are brought before the Juvenile Court.

The 1986 Act has also provided for the classification and separation of delinquents on the basis of their age, the kind of their delinquency and the nature of offences committed by them. The four types of institutions under the Act are Observation Homes, Juvenile Homes, Special Homes and After-care Organizations.<sup>19</sup> Sections 13 and 14 deal with the procedure in case of a neglected juvenile and procedure in case of a delinquent juvenile is dealt with under sections 18, 19 and 20. Similarly, Sections 41 to 45 of the Juvenile Justice Act, 1986 provides for punishments for certain special offences in respect of the juvenile.

### **Modern period**

Several enactments have been passed in recent times concerning juvenile justice. This era includes the legislations passed post-2000s. Some of the key rulings are:-

#### **The juvenile justice (Care and Protection of Children) Act, 2000:-**

This replaced the juvenile justice act, 1986. The objective of the Act is to make effective provision in law for juveniles in conflict with law and children in need of care and protection, by providing proper care, protection 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

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<sup>17</sup> Section 2(l).

<sup>18</sup> Section 2(e).

<sup>19</sup> Sections 11, 9, 10 and 12.

interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

The term 'child-friendly' as used in the Preamble means any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child.<sup>20</sup> 'Best interest of the child' further means a decision taken to ensure the physical, emotional, intellectual, social and moral development of juvenile or child.<sup>21</sup>

From the very beginning this Act makes it clear that, "notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or , sentence of imprisonment of juveniles in conflict with law under such other law."<sup>22</sup>

The Juvenile Justice (Care and Protection of Children) Act, 2000 is a comprehensive legislation consisting of 70 sections divided into five chapters.

Chapter I contained only three sections and like various other legislations section 2 defines various terms used in the Act. Chapter II is titled as 'Juvenile in conflict with Law' which starts with Section 4 and ends with Section 28.

Under the repealed Juvenile Justice Act, 1986 the title was 'Delinquent Juveniles' which was provided in Chapter IV. Chapter III of the new Act in Sections 29 to 39 provide for constitution of child welfare committee, children's homes and shelter homes to look after the child in need of care and protection.

A separate chapter i.e. Chapter IV (Sections 40 to 45) is devoted to rehabilitation and social integration of children by implementation of various schemes, such as adoption, foster care, sponsorship, and sending the child to an after care organization. At the end Chapter V, Sections 46 to 70 deal with miscellaneous provisions.

This Act came into existence keeping in view the standards prescribed in the 'rights of the Child', the 'United Nations Standard Minimum Rules for the Administration of the Juvenile

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<sup>20</sup> Rule 2 (d) of Juvenile Justice (Care and Protection of Children) Rules, 2007.

<sup>21</sup> Rule 2(c) of Juvenile Justice (Care and Protection of Children) Rules, 2007.

<sup>22</sup> Section 1(4), Ins. by Act 33 of 2006, Section 3 (w.e.f. 22.8.2006).

Justice (1985)' (The Beijing Rules), the 'United Nations Rules for the protection of the Juveniles deprived of their Liberty (1990)" and other relevant international instruments.

### **The Juvenile Justice (Care and Protection of children)(Amendment) Act,2006<sup>23</sup>:-**

- The Juvenile Justice (Care and Protection of Children) Act, 2000, has undergone a major Amendment in 2006 (by Act No.33 of 2006). The summary of the Amendment Act are as follows-
- The Principal Act aimed to provide a juvenile justice system for children in conflict with the law and needing care and protection. Certain provisions of the Act were challenged in court which highlighted the need for amendments to the existing Act.
- This Act seeks to modify the Principal Act in order to offer a wider scope of rehabilitation for the child through not only institutional but also non-institutional approach. Therefore, the words "through various institutions established under this enactment" have been removed from the Preamble of the Principal Act.
- The Act clarifies that the Act would be applicable for all cases involving detention or criminal prosecution of juveniles under any other law.
- The Act amends the definition of juvenile in conflict with law' to make it more explicit that the relevant date for a person to be considered a juvenile would be the date on which the alleged offence was committed. The Act also lays down the procedure to be followed in case a person claims to be a juvenile in a court.
- The phrase "local authority" has been removed from the Act. It excludes them from authorizing the discharge or transfer of a 'child in need of care and protection' or a juvenile from a children's home or for sending a juvenile in conflict with the law to a special home or a fit institution.
- The Act lays down a maximum period of 24 hours within which a juvenile Should be produced before the Board, which is empowered to deal exclusively with all proceedings relating to a juvenile in conflict with the law. The 24-hour period excludes the time necessary for the journey from the place where the juvenile was apprehended.
- There is a provision to allow a fit institution to take charge of a juvenile in conflict with law as an additional alternative to detention in an observation home. A fit institution is defined as a governmental, registered non-governmental or a voluntary organization,

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<sup>23</sup> Administration of Juvenile Justice in India (Juvenile in conflict with Law) by Dr. Krishna Pal Malik.

which is prepared to own responsibility of a child and is authorised by a competent authority.

- The Act excludes any police officer from the inquiry process. It states that the Child Welfare Committee would conduct an inquiry in the prescribed manner. If the child has no family or other means of support, he can remain in a children's home established or recognised by the state Government) till he is rehabilitated or attains the age of 18 years.
- Along with single parent and parents with biological children, the Act extends the scope of adoption to childless parents and parents irrespective of their biological children.
- The Act adds a provision stating that a juvenile can be confined in a special home for a maximum period of three years or until he ceases to be a juvenile.

### **The Juvenile Justice (Care and Protection of Children) Amendment Act,2011:-**

Another amendment was introduced in the JJA in 2011 to provide for inclusive and non-discriminatory practices relating to children suffering from leprosy, TB, mental and other disabilities.

Despite enactment of two Central Acts governing the field of juvenile justice in 1986 and 2000 applicable to the whole of India expanding the scope of protection for children post Sheela Barse, the state of their implementation remained lackadaisical. The Supreme Court was approached again through two writ petitions filed in public interest, namely, Bachpan Bachao Andolan<sup>24</sup> and Sampurna Bebrua<sup>25</sup> seeking direction for implementation of the JJA 2000.

### **Nirbhaya Case:Need for Change**

On, 16 December 2012, there happened a brutal rape of a woman in a moving bus in Delhi. The rapists not only raped her but also molested her and even inserted the iron rods and their hands into her vagina and rectum and pull out her internal organs. The rectovaginal septum was completely torn.<sup>26</sup>

The 23-year-old woman failed to survive and died after battling for her life.<sup>27</sup>

It was found that one of the convicts was a minor. The intention of the accused persons was

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<sup>24</sup> Writ Petition( C ) No. 51 of 2006.

<sup>25</sup> Writ Petition (Civil) No.(s) 473 of 2005.

<sup>26</sup> State v. Ram Singh 2014 SCC OnLine Del 1138.

<sup>27</sup> Crime and Punishment: on Nirbhaya case convict Hanging.

not only to commit gang rape but also to rob and kill the woman and destroy all the possible shreds of evidence so that they could not be tracked by police<sup>28</sup>. After such a heinous offence Nirbhaya and her friend were thrown out of the bus in naked condition. Juvenile delinquency is seen in the Nirbhaya Gang Rape. This incident may be used as an illustration to mention the problem of half-hearted implementation of the Juvenile Justice Act.

2000<sup>29</sup>. The delinquent juvenile who was involved in that crime had spent his life on the streets as he was separated from his family at the early age of thirteen it was a question that whether the convicts of such heinous crimes shall be treated as juveniles or not? This further paved the way for the JJ (care and protection) act of 2015.

### **The Juvenile Justice (Care and Protection of Children) Act, 2015:-**

JJA 2015 was signed and made into a law by the President of India on 31<sup>st</sup> December 2015. It came into force on 15<sup>th</sup> January 2016 with its publication in the Gazette of India.

#### ***Salient features of the Act:-***

- **Definition of ‘child in need of care and protection’ expanded-** Under the new law, the definition now also includes a child caught working in violation of labour law, with imminent risk of marriage before reaching the legal age for the same resides with a person who has threatened or threatened to hurt, exploit, abuse or neglect the child or to violate any other law, or whose parents or guardians are unable to care for him.
- **Child Welfare Committee is no longer the final authority in cases of children in need of care and protection** - Anyone related to the child may apply to the district judge, who will review and make appropriate orders as a district judge. the authority of the Child Protection Committee.
- **Procedure for inquiry** - Unlike children for whom production reports have been received, the Child Protection Committee must now investigate any child produced before it. Orphaned and delivered children are also included in the procedure.
- **an extensive definition of ‘adoption’ provided** - The rights of the child have been recognized and a detailed definition of adoption has now been provided.

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<sup>28</sup> State v. Ram Singh, 2014 SCC OnLine Del 1138.

<sup>29</sup> Kumar Aksand Pandey, Brain Science, Juvenile Delinquency and the Juvenile Justice(Care and Protection of Children) Act, 2015:A Critique.

### **The Juvenile Justice (Care and Protection of Children) 2021:-**

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 was passed to amend the various provisions of the Juvenile Justice Act, 2015. The changes introduced

- **Serious offences:** one of the significant amendments got the incorporation of the classification of serious offences or serious wrongdoings. Which is ordered now into two classifications of wrongdoing; named Heinous Offenses and Serious Offenses.
- **Adoption:** The adoption orders usually issued by the courts establish the child belongs to the adoptive parents but now after the amendment in the Juvenile Justice Act 2021, the District Magistrates and the Dumpty District Magistrates have the power to sanction the adoption mechanism.
- **Appeal:** If a party is aggrieved by the adoption order, the party can go to the divisional official to have to take a passage at that section to settle the complaints however the allure ought to be made under 30 days after the District Magistrate and Additional District Magistrate passed the request.
- **Designated Courts:**Assigned courts are the exceptional court uniquely set up for the reason to attempt every one of the offences submitted by the Juveniles and named as Children's Court.
- **Child Welfare Committee (CWCs):** The Bill referenced that no individual will be designated as an individual from CW except if they have been effectively engaged with any record of human rights or child rights has been indicted for an offense including moral turpitude has been eliminated or excused from administrations of the focal government or any state government or any administration undertaking and if a part of the administration of a child care institution in a locale.
- **Termination of Members:** The appointment of any individual from the board of trustees will be ended by the state government after a request if they neglect to go to the procedures of the Child Welfare Committees, therefore for three months with no substantial reasons or then again on the off chance that they neglect to go to under three fourth of the seating in a year.

### **Case Laws**

#### ***1. Arnit das Vs The State of Bihar (2000) 5 SCC 488***

in this case, the plaintiff was convicted for the charges of murder under section 302 of IPC. The murder was committed on 05.09.1998, the plaintiff claimed that his date of birth is

18.09.1982.

Therefore, he is a juvenile and is entitled to protection under Juvenile Justice Act. He was thus sent to a Juvenile home, Patna by Add. Chief Judicial Magistrate, Patna.

But after the examination of the Medical Board, it was, later, came into consideration that the boy was above 16 years. The question before the supreme court was that what will be the determining age of the juvenile for care and custody. Either it will be the age of committing the offence or it will be the present age.

There hon'ble Supreme Court said that Juvenile Justice involves social justice. The check of delinquency falls within the scope of social justice and therefore great care shall be taken at the time of investigation, inquiry, and trial of a juvenile. There, for being a juvenile the age prescribed under the act was 16 for boys and 18 for girls. The court said that it is irrelevant to take the date of commission of the crime for care and custody.<sup>30</sup>

## **2. *Raju Vs State of Haryana (2019) 14 SCC 401***

In this case, on dates 14 Sep 2000, a woman aged fifteen years was passing by the fields along with her one-year-old brother. There, the appellant Raju and two other persons Raju and Raja intercepted her and taken her to a nearby field where the other two persons engaged in gang rape with the woman, and the appellant was standing outside the field and didn't involve in the act of gangrape.

All the three accused were punished for the imprisonment of 10 years after being convicted under sec. 376(2)(g) IPC. After this punishment, the appellant moved to the High Court saying that he was less than 18 years of age at the time of the commission of the offence and therefore he is entitled to take benefit of JJ act 2000.

Hon'ble high court enquired and checked the age of the appellant and found that the actual date of birth of the man is 12 July 1984 and he was of 16 years 2 months and 2 days old at the time of the commission of the offence. Thus, the appellant satisfies the conditions under sections 2(k) and 2(l) of the JJ Act 2000.

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<sup>30</sup><https://blog.ipleaders.in/landmark-juvenile-supreme-court-cases-in-india/>

Also, section 7-A and section 20 apply to the man. The court found that the juvenile has already been spent 6 years in imprisonment wherein section 15(1)(g) of JJ Act 2000a juvenile may be sent to a special home for 3 years. The appellant was therefore released.<sup>31</sup>

### **3. *Jarnail Singh Vs State of Haryana (2013)***

In this case, the accused was charged with taking the prosecutrix away from her parents and committing forceful sexual intercourse with her. During the investigation, she was found in his house, as a result of which he was sentenced to ten years of rigorous punishment along with a fine by the sessions court. The accused, being the aggrieved party, appealed the decision and alleged that the prosecutrix allured him to do so and stayed with him with his consent. Moreover, he argued that it was proven that the accuser was a minor. The Supreme Court in this case held that the rules determining the age of a juvenile under the Juvenile Justice (Care and Protection of Children) Rules, 2007, can be applied in cases related to the Protection of Children from Sexual Offences Act, 2012, as well.<sup>32</sup>

### **4. *Shah Navaz Vs State of U.P. & Anr. AIR 2011 SC 3107***

Juvenile Justice (Care and Protection of Children) Act, 2000-Section

7. Juvenile Justice (Care and Protection Of Children) Rules, 2007-Rule 12. Age of juvenile - How to be determined? According to Rule 12(3) (a), matriculation or equivalent certificate has been given first preference and in the absence of it, the date of birth certificate from the school (other than play school) first attended and in its absence, the birth certificate given by a Corporation of a Municipal Authority or a Panchayat and only in the absence of all the above, medical opinion will be sought from a duly constituted Board.<sup>33</sup>

### **5. *State of MP Vs Dilip and others 2002(2) MPHT 564 J***

S.7-A of the JJ Act makes it apparent that no court should waste time once the question of juvenility crops up and after making the requisite inquiry.

It has been held in this case:-

"that if the juvenility is determined in the affirmative, return the charge sheet to the police for being submitted before the Board".<sup>34</sup>

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<sup>31</sup><https://blog.ipleaders.in/andmark-juvenile-supreme-court-cases-in-india/>

<sup>32</sup><https://blog.ipleaders.in/landmark-juvenile-supreme-court-cases-in-india/>

<sup>33</sup>[https://mphc.gov.in/PDF/web\\_pdf/JJC/UPLOADED/Compilation%20of%20Important%20Cases%20on%20Juvenile%20Justice.pdf](https://mphc.gov.in/PDF/web_pdf/JJC/UPLOADED/Compilation%20of%20Important%20Cases%20on%20Juvenile%20Justice.pdf)

<sup>34</sup>[http://mphc.gov.in/PDF/web\\_pdf/JJC/UPLOADED/Compilation%2520of%2520Important%2520Cases%2520](http://mphc.gov.in/PDF/web_pdf/JJC/UPLOADED/Compilation%2520of%2520Important%2520Cases%2520)

## Conclusion

Juvenile delinquency is a socio-legal issue. Sociologists like Robert Merton in his Anomic theory of deviant behaviour describes the exertion of definite pressure by various social structures over an individual. This pressure makes him delinquent. Edwin Sutherland makes the company of a person responsible for his deviance. Carl Marx says that the unequal distribution of wealth and resources is responsible for such delinquency. Juvenile delinquency has been viewed with much concern through all ages.

Various rulings and legislations have been brought about concerning juvenile delinquency at different times in history. Juveniles have been treated with special care as per their needs.

Juvenile Justice has been a matter of great importance from a legal point of view.

It is part of social life and as such can neither be treated lightly nor can it be neglected. It is a significant problem, which if allowed to develop unchecked would sap the very vitality of a nation.

*"No child is born a criminal: no child is born an angel: he's just born. It sometimes happens that due to compulsions economic or otherwise, the children swerve from the proper path and get carried away." - John Ruskin (1867)*