



## Protection of Juveniles: A critical study in Indian and international perspective

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### Abstract

The provocation for selecting this topic for a detailed analysis is to present issues relating to the study of children under Juvenile Justice System in India. This paper gives the perspective in the light of which the detailed children right has to be made. The concept of the juvenile justice system was derived from the concept of juvenile delinquency. The young children fail to understand the abnormal situations of life. They are not easily amenable to the legal framework and the processes of criminal law. The Juvenile Justice System, therefore, is designed to fit the needs of care and protection of the children and the child in conflict with the law only. One principal role of the Juvenile Justice System has been to provide specialised and preventive treatment services for children. The nation's children are a supremely important asset. Their need and care are our responsibility. Therefore, it is imperative for us to uplift children. Children are forever innocent and they are unaware of good and bad. In addition, they are not physically and mentally fit than adults. Children became good 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.

**Keywords:** constitutional law, juvenile justice system, preventive treatment service

### Introduction

Juvenile Justice: The perception of children has changed over a period of time. Initially a child was recognized as a person, but merely as source of pleasure and joy. By the beginning of the 17th century the second idea of childhood emerged when the child was perceived as a miniature adult who could be groomed and trained because the belief was that the child was a miniature adult with all the inclinations towards evils and potential for a fallen human nature <sup>[1]</sup>. The Juvenile Justice (Care and Protection of Children) Act, 2000 <sup>[2]</sup>, passed to reform the 1986 Act, is designed as a comprehensive legal framework by which the Indian government has pledged to alleviate the devastating impact that underdevelopment, poverty, and crime have on children. The Act spells out the government's responsibilities in the care, the protection, and the development of neglected children, and also tackles issues related to crime prevention and the rehabilitation of juvenile delinquents <sup>[3]</sup>. The Act has been formulated in pursuance of the international obligations and standards regarding juvenile offenders. The basic principles under the Beijing rules are: (a) that the reaction to juvenile offenders should always be in proportion to the circumstances of both the offenders and the offence; (b) that the placement of the juvenile in an institution should be a disposition of last resort and for the minimum necessity period; (c) that detention pending trial should be used only as a measure of last resort and for the shortest

possible period of time; (d) that police officers dealing with juveniles should be specially instructed and trained <sup>[4]</sup>. Surprisingly, the Act has been unable to follow either of the abovementioned principles. Even with the passing of the enactment, child protection in India remains a low priority of the centre with an annual allocation of 0.027 per cent of the union budget in 2007-08. The recent Nithari killings, the increasing child trafficking, malnutrition, child labour, girl child neglect all seem to vindicate the hypothesis that the plight of children in India has remained largely neglected.

### Juvenile Justice System

To achieve this goal the Constitution of India under Article 15 (3) provided provision for make in special laws to provide Social Justice for women and children. On the basis of this provision, Government of India enacted the several laws to secure the care and protection of children. The Children Act, 1960 was a first central law relating to Juvenile Justice System. In 1986, Juvenile Justice (Care and Protection of Children) Act, the age of delinquent children was below 16 years for boys and below 18 years of girls. In the Act of 2000, the age of delinquent children was 18 years for both the sexes. In the Juvenile Justice Act, 2015, the age of the juvenile was fixed as 18 years for both sexes, however, for heinous crimes; the ages are fixed as 16 years for juveniles. Under International documents for Children's Rights, The Beijing Rules, 1985 is a vital document for the children in the whole world. The interest of children has been foremost regarded. This Rule is framed the standard minimum rule for every

<sup>1</sup> B.B. Pande, The Indian Juvenile Justice Jurisprudence and The Convention on the Rights of The Child, available at <http://www.workingchild.org/html/jj.htm>, (last visited on 9th April, 2011).

<sup>2</sup> Hereafter referred to as the Act.

<sup>3</sup> *Infra*, n.33.

<sup>4</sup> *Infra*, n.10, pp.54-55.

child. Under this standard minimum rules, the State shall take care of children. UN CRC, 1989 strong commitment towards the care and protection of children in the whole world. In 1989, Secretary-General, United Nations emphasised that the State shall regard every child rights without discrimination of sex, birth, race, colour, caste, religion, ethnic, language etc <sup>[5]</sup>. India is the second largest country in the world from the viewpoint of the population. 19 per cent of the world's children live in India. Almost 44 per cent of the total population of India is children's population. In Census 2011, the population of 0-5 age group (29 per cent) followed by 6-10 (28 per cent), 11-15 (27 per cent) and 16-18 years age group (16 per cent) has been reported in India. Almost 50 per cent of these children need the care and protection <sup>[6]</sup>. A higher-than-average crime rate clearly means that children in the cities are not only victims of such violence, but are in danger of becoming a part of the organised crime racket, especially when faced with circumstances such as disruption of schooling, dysfunctional family, lack of parental care and exposure to substance abuse," the report said, highlighting the role of cities in increasing urban crime. According to the report, major crimes against children include trafficking, kidnapping, rape, and infanticide, while the girl child is affected the most due to the proliferation of sex work in cities. In 2012, Bengaluru (India) tops the list of 88 cities across the country with 551 cases of crime against children, Mumbai stands second with 570 and Delhi comes third with 363 cases, the report said citing NCRB data <sup>[7]</sup>. NCRB issued the report of a crime in India, 2015 in the month of 08th August 2016. According to this report, amongst 24 numbers of cases per million were registered under total cognizable Indian Penal Code crimes in India in which 0.7 numbers of cases per million people were registered against Juveniles in conflict with the law under Indian Penal Code during 2015. 0.2 cases per million were registered under POCSO Act, 2012 on this year. Juveniles in conflict with the law were apprehended the 5.2 per cent of a total number of cases of a crime under POCSO Act, 2012 <sup>[8]</sup>. The percentage shares of Juveniles apprehended under the age groups 7-12 years, 12-16 years, 16-18 years are 1.46 per cent, 26.70 per cent, and 71.84 per cent respectively. An increase has been observed in a number of juveniles apprehended in all the age groups in 2015 over 2014, and the highest percentage increase was in 7-12 age group (30.6 per cent) whereas the rise in crimes in 12-16 years and 16-18 years were 8.9 per cent and 12.5 per cent respectively <sup>[9]</sup>. About 57 per cent of juveniles belonged to the poor families whose annual income is up to Rs. INR 25,000. The share of juveniles from families with income between INR 25,000 and 50,000 is 27 per cent. The share of juveniles hailing from the middle-income group (INR 50,000 - 2,

00,000) is 11 per cent <sup>[10]</sup>.

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

The Juvenile Justice Bill was presented in the Lok Sabha (House of Representative) on August 12th, 2014, by the Minister of Women and Child Development, Ms. Maneka Gandhi. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Dr. Satyanarayan Jatiya) on September. 22nd, 2014. The Committee presented its report on February 25th, 2015. It was passed on 7th May 2015 by the Lok Sabha (House of Representative) in the midst of extreme dissent by a few Members of Parliament. It had been passed on 22nd December 2015 by the Rajya Sabha (House of State). Juvenile Justice (Care and Protection of Children) Act, 2015 is notified in the Gazette of India on 1st January 2016 and came into force in the whole of India from 15th January 2016 but this Act, the State of Jammu and Kashmir will not be adopted because of Article 370 of the Constitution of India.

### **Definition of Child**

Section 2 (12) defined the word 'child' that meaning, a child who is under 18 years. Section 2 (35) 'juvenile' means a child who is under 18 years of age. The word 'juvenile' is defined the first time in the Act, 2015. Section 2 (42) 'orphan' means a child who has no any biological parents or a guardian or an adoptive parent or a judicial guardian. Section 2 (60) 'surrendered child' means a child who is relinquished by a biological parent or a guardian or adoptive parents due to physical, mental or other disabilities or social factor which cannot be controlled by them and Child Welfare Committee is declared as 'surrendered child'. Section 2 (13) 'child in conflict with the law' means a child who has committed the petty, serious and heinous offences which are known as 'child in conflict with the law'. Section 2 (14) 'child in need of care and protection' means "a child who are destitute, downtrodden, deprived or oppressed in one way or the other." In case *Robert Heitkamp v. Bal Anand World Children Welfare Trust, Mumbai, India* <sup>[11]</sup>, the Supreme Court of India held that "judicial pronouncement can add to the definition any other type of children such as mentally ill or stunted children."

### **Definition of Best Interest of Child**

Section 2 (9) defined the 'best interest of child' which is a key principle of Juvenile Justice System in the International and National perspective. It is an objective of Juvenile Justice System through which concerned authorities provide to ensure fulfilment of their basic rights, i.e. elementary education, food, shelter, clothing, medical care, rehabilitations and a good practice with them, etc., Section 2 (15) 'child friendly' means any conduct, behaviour, good nature, good practices, attitude, environment that is made humane. This is an obligation of Principal Magistrate, its Social Worker of Juvenile Justice Board, Chairman and members of Child Welfare Committee, Special Juvenile Police, concerned persons of Institutions, etc.

<sup>5</sup> Guidance Note of Secretary-General of United Nations, UNCRC, 1989.

<sup>6</sup> Alok Kumar, A. P. (2012). The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011. J Indian Acad Forensic Med, pp 170.

<sup>7</sup> NCRB Report, Crimes in India 2012, Ministry of Home Affairs, Government of India

<sup>8</sup> NCRB Report, Crime in India, 2015, Ministry of Home Affairs, Government of India.

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> AIR 2008 (NOC) 1024 (Bom.)

These concerned persons are directed to underlie the friendly relationship with children in need of care and protection and child in conflict with the law.

### **Definition of Offence**

The Definition of 'offence' is not defined in the Act. Section 40 of the Indian Penal Code, 1860 defines 'offence which denotes a thing made punishable by this code.' The word 'thing' has been considered a rather unhappy substitute. However, petty offence, serious offence and heinous offence are defined in the Act. The offence is classified on the basis of punishment. Section 2 (45) 'petty offence' includes an offence is committed by the child in conflict with the law under IPC or SLL for which punishment is up to 3 years. Section 2 (54) 'serious offence' includes an offence for which punishment is between 3 to 7 years. Section 2 (33) 'heinous offence' includes an offence for which punishment is 7 years and more. The definition of 'heinous offence' is inserted in the Act. Section 15 (1) provides for it. A child who is among the age group of 16 and 18 years and committed the heinous offence, then the Children's Court will be treated as an adult.

### **Definition of Child Care Institution**

Section 2 (21) 'Child care institution' includes observation home, special home, open shelter, place of safety for child in conflict with the law and children home, fit institution, SAA wherever, "child in need of care and protection housed for providing care and protection of children who are in need of services." Section 2 (40) 'observation home', Section 2 (56) 'special home', Section 2 (41) 'open shelter', Section 2 (29) 'foster care' and Section 2 (5) 'after care' are defined in the Act for child in conflict with the law. Juvenile delinquents who are kept in observation home under trial, wherever a convicted child who is kept in the special home. A child who has committed a heinous offence in the age of 16-18 years, they kept in open shelter. The Neglected child, an Orphan and Abandoned child who are housed in children home. "Aftercare means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society".

### **General Principles of Care and Protection of Children**

The first time, 'General Principles of Care and Protection of Children have been inserted in Section 3 of chapter-II of the Act, 2015. There are 16 General Principles which are based on UN CRC, 1989 which was known as fundamental principles of care and protection of children. These principles were provided in the Juvenile Justice (Care and Protection of Children) Rules, 2007. While implementing the Act, 2015, Central Government, State Government and their Agencies will be guided by these General Principles. The Principle of Best Interest of the child is key elements of the general principles. All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. This principle is one of the important objectives of Juvenile Justice System. The Government guarantees the best interest of the child in the sphere of the child rights. The principle provides to ensure the physical, emotional, moral, intellectual, social

development of a child or juvenile or child in need of care and protection, a child in conflict with the law. Draft Model Rules, 2016 under the Juvenile Justice (Care and Protection of Children) Act, 2015: The Government of India, MWCD has released the Draft Model Rules, 2016 of Juvenile Justice Act, 2015 on 25th May 2016 for effective implementation of Juvenile Justice Act. The old Rules, 2007 are repealed. Section 110 of the Act, 2015 empower to make the rules for Juveniles. The Rules are based on the basic principles, i.e. the best interest of the child, well-being of the child, rehabilitation, social reintegration and reformation rather than punishment. The Rules provide the constitution, composition, functions, procedure to be followed in the determination of the age of the Juvenile Justice Board. Besides, the rules also provide in relation to adoption, rehabilitation, social reintegration.

### **Main Features of the Rules, 2016**

1. No child in conflict with the law who are between the age of 16-18 years, shall be handcuffed or sent to police lock-up and any type of jail.
2. The child in conflict with the law will be provided the basic needs, i.e. food, clothing and shelter, proper medical care, treatment, and securities. When the Special Juvenile Police Officers apprehend to the child in conflict with the law, they will be duly informed to their parents, guardians, and relatives.
3. The Rules directed to the State Government to establish at least one 'place of safety' in the State for providing their rehabilitation.
4. The determination of the age of the child in conflict with the law is time bound within 30 the date of submission of application in the JJB.
5. The Rules directed to the State Government to constitute a permanent medical board in every government hospital for the determination of the age of the child.
6. If every medical board determines the range of the age of a child, the child will be benefited the lower age.
7. The Rules present that a 'Child Welfare Officer' will be appointed in every rehabilitation institution for ensuring the child development.
8. Identifying the skill and aptitude of the child, the government will provide the sufficient finance to develop the self-employment of the child.
9. The Rules provide that every child welfare officer will have to maintain the 'rehabilitation card' which is a report on the monitoring of the child. The details of a child will be registered in this card.
10. The Rules provide regarding the aftercare scheme. The State Government will ensure to facilitate the educational, vocational programs, accommodation and employment when they turn 18 years and left child care institution

### **Judicial Trends on Juvenile Justice System**

The Indian Parliament showing its solidarity with the International Community and in compliance with its commitment to International Obligations has enacted the Juvenile Justice (Care and Protection of Children) Act, 1986, 2000 and 2015 in conformity with the international standards and rules providing for upliftment of the children in need of

care and protection and for the better treatment and early disposition of juveniles in conflict with the law. The role of the Supreme Court of India and various High Courts has been very appreciable in interpreting the provisions of the new enactment in such a way that advances the cause of the juvenile justice. The judicial trends set by the Supreme and High Courts are guiding factors for the lower judiciary. The beneficial provisions have been applied and benefit has been given to a number of juveniles whose cases had even attained finality and they were undergoing sentences. It has also been the efforts of the courts at the time of final disposition of the case that an opportunity for reforming himself is provided to the juvenile in conflict with the law by way of proper training and providing necessary care and protection for absorbing the juvenile in the mainstream of life. The Supreme Court of India in *Gaurav Jain v. Union of India*, 33 while dealing with writ petition under Article 32 of the Constitution pertaining to the plight of the prostitutes or fallen women and their progeny, spoke about the Preamble of the Constitution and stated that it is an integral part of the Constitution of India and that the children have the right to equality of opportunity, dignity, and care, protection and rehabilitation by the society with both hands open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of his or her. In *Laxmikant Pandey v. State*, 34 the Apex Court of India observed that every child has a right to love and affection and of moral and material security and this is possible if the child is brought up in a family and an inter-country adoption should be permitted after exhausting of adoption within the country. In *Subramanian Swamy v. Raja Thr. Member, Juvenile Justice Board*, 35 some incidence becomes milestone that shook the psyche of the society or nation. One of such incidence Delhi Gang Rape Case which held in December 2012 in running bus where, 6 persons, one of the homes was a few months of short of 18 years, gang rape a college student of the age 23 years. Accordingly, the accused juvenile was tried in JJB was sent to a special home for a term of three years. The Irony of the law is that even after committing the heinous crime of rape and murder, including insertion of an iron rod into the private part of the victim, the juvenile was set free to roam freely in the society. In the particular case Dr. Subramaniam Swami, a Rajya Sabha Member, ExLaw Minister and a senior lawyer of Supreme Court moved to the Supreme Court of India requesting the court for an order prohibiting the release opportunity, dignity, and care, protection and rehabilitation by the society with both hands open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of his or her. In *Laxmikant Pandey v. State*, 34 the Apex Court of India observed that every child has a right to love and affection and of moral and material security and this is possible if the child is brought up in a family and an inter-country adoption should be permitted after exhausting of adoption within the country. In *Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board*, 35 some incidence becomes milestone that shook the psyche of the society or nation. One of such incidence Delhi Gang Rape Case which held in December 2012 in running bus where, 6 persons, one of the homes was a few months of short of 18 years, gang rape a college student of the age 23 years. Accordingly, the accused juvenile was tried in

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#### **Objectives of the study**

1. To find out the socio-economic and demographic factors that lead to juvenile offences.
2. To examine the perspective of the significant adults about the juveniles and their rehabilitation.
3. To examine the rehabilitative measures undertaken for the juveniles within the juvenile justice system and the Juvenile Justice Board.
4. To study the life situation of the juvenile after rehabilitation and social reintegration.
5. To suggest a framework for rehabilitation of juveniles in conflict with law.

#### **Research methodology**

Whereas the current study work of all the existing literature available in shape of reports, judgements, books, etc has been consulted. An effort has been made to analyse the subject matter undertaken for study. The more stress has been given on the issues and on the judgements/case laws that has been decided by High Courts of different states and Supreme Court of India. In brief, Doctrinal approach has been adopted.

So here all aspect of the Juvenile Justice in India as well as International and Legislative Judicial Approach has been analysed to the possible extent.

#### **Conclusion**

The story of the Juvenile Justice Act is one of broken promises and dashed hopes. Passing of the proposed bills without the necessary resources is merely eyewash as implementation is the crux of the matter. The general quality of juvenile justice remains coarse and arbitrary with little regard for fairness and justness to the juvenile concerned. Though the concept of juvenile justice comprises two important ideas, viz., fairness or justness to children and alternative standards of administering justice, there is preoccupation with the second idea due to the utilitarian grounds of serving the public. As of September 2007, the

Government of India is drafting two bills that will hopefully offer solutions to the present problems. The Ministry of Women and Child Development is creating Model Rules as an addendum to the Juvenile Justice Act, with the intention that all states will adopt and comply with them. These rules will hopefully take care of all the inadequacies of the Act, and will provide for set guidelines regarding the implementation of the Act. The Ministry is also overhauling the Department of Women and Child's organizational structure and policy, creating an Integrated Child Protection Scheme ("ICPS"). The Rules advocate for a stronger relationship between NGOs and government agencies, an acknowledgement of the positive impact NGOs can have within the Observation Homes and throughout the system. The Integrated Child Protection Scheme will hopefully address implementation concerns, through an entirely new bureaucratic structure and increased expenditures for child protection. Three different justifications have been advanced for a separate juvenile system

1. compared to adults, children are more treatable;
2. compared to adults, children are less culpable; and
3. Compared to adults, children are less deterrable.

All these criteria need to be utilized to ensure that the objective of the separate juvenile justice system is fulfilled. It has been discovered that deterrence-based interventions do not have the requisite effects on children and it is therefore better to go in for reformative justice. In order to have effective functioning of the juvenile justice system, there must be close coordination between police, magistracy and social services. The involvement of NGO's in the juvenile justice system is a boon as they seem to be more aware of ground realities and problems facing the children. Mental health and juvenile justice systems must work together to address the psychological components of rehabilitating delinquent youth. Therapeutic jurisprudence, which lies in the use of community based programs for the mentally ill juvenile offenders, needs to be applied in the juvenile justice system. Fairness and justness to children does not only demand that their liability ought to be diminished, but also ordains that they must be subject to protective and restorative measures as are most conducive to their reintegration into the society. It needs to be ensured that the child does not end up getting the worst of both the worlds; he gets neither the protections accorded to adults nor the solicitous care nor regenerative treatment postulated for children.

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