



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## JUVENILE JUSTICE SYSTEM: AN OVERVIEW

~*Samiya Choudhary*

### INTRODUCTION

The term juvenile here means a child of a particular age who is alleged to have committed some offense. There are different categories into which the children, as per their age group, are divided for the purpose of alleging them for the offense. The age group below 7 years is considered to be dolly incapax, i.e., not eligible to have committed any crime. This means that a child below the age of 7 years has absolute immunity from guilt or conviction regarding the allegation of committing an offense. They are considered to have low intellectual understanding and no intentions on their part regarding the commission of the crime. The criminal justice system in India is different for adults and for children or minors. The minors can't be tried in the ordinary courts, and they are tried by a special board made in this regard, i.e., the Juvenile Justice Board, and the law that regulates them is the Juvenile Justice Act. However, in the minor category as well, there are a few exceptions where the minor can also be considered an adult for the commission of a crime. So therefore, to know about the Juvenile Justice system in India, it is important to focus on its historical aspect, its characteristics, and its practical applicability in India.

### HISTORICAL CONTEXT OF THE JUVENILE JUSTICE SYSTEM

There was no such law or any regulation as such with regard to juvenile delinquency; however, with time, and with increased instances for the requirement of dealing with juvenile delinquency, the government undertook to do an act for this, i.e., the Juvenile Justice Act which got amended from time to time. The already existing criminal law, i.e., IPC, was dealing with this. Section 82<sup>1</sup>

---

<sup>1</sup> IPC 1860, Section-82, Acts of Parliament, 1860(INDIA).

of IPC grants blanket immunity to a baby under seven years of age, imbibing the precept of *doli incapax*. Thereafter, initiatives were taken to get a specific enactment for dealing with and managing the instances of Juvenile Delinquency.<sup>2</sup> The law dealing with Juvenile offenders was the need of the hour post-independence. In furtherance of this requirement, the Children's Act 1960 was passed, which prevented children from being imprisoned and provided for the welfare, education, and guidance of those who needed help. After this Act, the Juvenile Justice Act 1986 was enacted for the whole of India. This was the result of international rules and conventions, etc. After this came another enactment, i.e., the Juvenile Justice Act 2000, which was also the result of United Nations conventions, which primarily dealt with the aspect of rehabilitation of juveniles, moreover, this act has led to the creation of a particular board to deal with and manage the affairs relating to juvenile delinquency. i.e., the Juvenile Justice Board<sup>3</sup>. From the very beginning, in the sphere of juvenile justice, the approach was rehabilitation. However, there has been a transformative change from this approach to the retributive approach. This was the result of the incident called the Nirbhaya case, which was a rape case against two girls where one of the accused was a minor and was the most aggressive and active in the commission of the crime against the two victims. Post this incident, the court has observed a change in the approach towards the juveniles and has tried to categorize them, i.e., from the age group between 16-18 years who can be treated as adults. In the Current time, we have the Juvenile Justice Act, 2015, which deals with juvenile crimes.<sup>4</sup>

## JUVENILE JUSTICE SYSTEM

The dynamics of Juvenile offenders are completely different from those of other offenders<sup>5</sup>. It is an area of law that seeks to help these agitated children follow the path with proper care and protection.<sup>6</sup> The children are the future of the country and are the ones who will have to bear the responsibilities of this nation on their shoulders. Thus, the development of the nation is in their

---

<sup>2</sup> Aseem Prasenjit, Poonam Devi, 'Historical Development of the Juvenile Justice System in India', ILCRT, <IJCRT2307683.pdf>, accessed on 25 May, 2024.

<sup>3</sup> Writing Law, 'History and Development of Juvenile Justice System in India', <History and Development of Juvenile Justice System in India (writinglaw.com)>, accessed on 25 May, 2024.

<sup>4</sup> Teena Thomas, 'The juvenile Justice System in India: A Brief Overview', <22.5.2020\_The-Juvenile-Justice-System-in-India\_A-Brief-Overview.pdf (sprf.in)>, accessed on 25 May, 2024.

<sup>5</sup> Vaibav, Shruti Katiyar, 'Juvenile Justice System in India and Contemporary Challenges', IJL Volume 4, Issue 3 (2018), <4-3-44-410.pdf (lawjournals.org)>, accessed on 25 May, 2024.

<sup>6</sup> Supra note 3.

hands, and it becomes immensely important to provide them care, treatment, training, and protection even when they get themselves involved in any such activities that might be unlawful. The main aim of dealing with them differently from the ordinary procedure of law is to make reforms in them and treat them with kindness so that they may be reformed and rehabilitated and would have a positive mindset towards the absorption of them back into their lives and into society. The Juvenile Justice Act of 2015 is in existence and in execution in today's times, and it has certain characteristics and features that make it different from the other previous acts on the same subject matter. As and society don't stand still, and changes and amendments are bound to come. It is a dynamic concept, and thus, with the changing society and with advancement and development of the society, people also change; their mindset or attitudes, perceptions, etc., change with time. Crime, being a part of every society, is no exception, meaning that new kinds of crime evolve, and it extends to children as well. New evolving crimes, particularly committed by children, have to be dealt with with great effort, with the act of 2015 being a comprehensive act dealing with this subject matter. It primarily aims for the reformation and rehabilitation of children. Though the age from 16 to 18 years has been categorized as adults in cases of heinous crimes, however, the main aim of the act is based on the well-settled principle that the offenders should be treated with kindness and patience as this behavior will ultimately affect them positively and will have the effect of changing their mindset towards the positive aspects of life and the realization that these things are wrong not only against an individual but against society as a whole and thus, are something very wrong that hurts others. This would help them to come to normal life and rehabilitate again in society from their abnormal behavior. On the other hand, if the criminals are treated as criminals and kept with criminals because of the company and influence, there are higher chances of the child becoming more criminal rather than reforming. There will be no realization on his part, and thus, it will badly affect him and society.

- There are several changes or features of the Juvenile Justice Act of 2015. It defines juveniles as children below the age of eighteen years.<sup>7</sup> In this Act, the age group of the juveniles is 18 years, i.e., the children below the age group of 18 years will be treated as juveniles and will be tried separately from the ordinary courts. However, an incident

---

<sup>7</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 35, Acts of Parliament, 2015 (India).

famously called as Nirbhaya case pertains to the gang rape of two girls on a bus where one of the accused was a minor, I,e below 18 years, was involved in the gang rape committed against two girls. The main aspect in this was that the minor, amongst all other accused, was the most aggressive one, which made the Indian judiciary ponder over the issue relating to the juveniles committing heinous crimes. So, post-Nirbhaya incident, the age group in the act of 2015 was amended where it continued with the age cap of a juvenile at 18 years but introduced the category of 16-18 years who could be convicted as adults in cases of heinous crimes, i.e., the offenses punishable with 7 years punishment or more under section 2(33).<sup>8</sup> The provisions pertaining to the establishment of committees and boards were included in the previous acts. However, this act of 2015 provides for 3 members on the Board (Metropolitan or Judicial Magistrate and 2 social workers).<sup>9</sup> It also establishes welfare committees for children.<sup>10</sup> And also child court in every district.

- There are provisions for adoption where sections 67-68 provide for the establishment of a state adoption resource agency and central adoption resource agency, which will monitor, regulate, make rules, etc., in regard to the adoption of children. <sup>11</sup> It lays down the criteria for the parents' adoption. This will provide and help in easy and speedier adoption of children.<sup>12</sup>
- The Preamble of the act aimed at catering to their basic needs through proper care, protection, development, treatment, social re-integration, and child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation.

---

<sup>8</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 2(33), Acts of Parliament, 2015 (India).

<sup>9</sup>THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 4., Acts of Parliament, 2015 (India).

<sup>10</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 27., Acts of Parliament, 2015 (India).

<sup>11</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 67-68., Acts of Parliament, 2015 (India).

<sup>12</sup> Smriti Agarwal, Nishant Kumar, Juvenile Justice(Care and Protection of Children) Act, 2015: A Review, March (2016), < (PDF) Juvenile Justice (Care and Protection of Children) Act 2015: A Review (researchgate.net)>, accessed on 29May, 2024.

- It provides for two categories of a child, i.e., the child in conflict with the law and, secondly, the children in need of care and protection. Section 13<sup>13</sup> defines the child in conflict with the law, i.e., “child in conflict with law” means a child who is alleged or found to have committed an offense and who has not completed eighteen years of age on the date of commission of such offense;

While in Section 2(14)<sup>14</sup> defines the other category, i.e., child in need of care and protection” means a child— (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of labor laws for the time being in force or is found begging or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused, or neglected the child or has violated any other law for the time being in force meant for the protection of a child; or

(b) has threatened to kill, injure, exploit, or abuse the child, and there is a reasonable likelihood of the threat being carried out or

(c) has killed, abused, neglected, or exploited some other child or children, and there is a reasonable likelihood of the child in question being killed, abused, exploited, or neglected by that person or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of them, or whose parents have abandoned or surrendered him, or

(vii) who is missing or runaway child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

---

<sup>13</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 2(13), Acts of Parliament, 2015 (India).

<sup>14</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, Section 2(14), Acts of Parliament, 2015 (India).

(viii) who has been or is being or is likely to be abused, tortured, or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is a victim of or affected by any armed conflict, civil unrest or natural calamity;

or (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian, and any other persons are likely to be responsible for solemnization of such marriage;

- The offenses are also categorized into 3 types. These are the heinous offenses, petty offenses, and serious offenses in the context of the offense committed by the juveniles.
- It provides for the procedure as well as how the board and the committee constituted under the act have to work and proceed once the incident has come forward. As the Juvenile Justice Board is provided under the act, though it was constituted in the previous acts as well. They are required to conduct a preliminary inquiry of a crime committed by the child within a specified time period and decide whether he should be sent to a rehabilitation center or be sent to children's court.<sup>15</sup>
- The Procedure regarding the child in conflict with the law is provided under section 11<sup>16</sup>, 12<sup>17</sup>, 13<sup>18</sup> etc., which comprehensively deals with how the authorities concerned have to proceed with the case where the child is in conflict with the law and also the information given to the parents.
- <sup>19</sup>General Principles of Care and Protection of Children- Chapter II of the Juvenile Justice (Care and Protection of Children) Act, 2015 outlines the general principles to be followed in the administration of the Act. These principles are fundamental to ensuring the care and protection of children in India, both those in conflict with the law and those in need of care and protection. Here is a simplified summary of these principles:

---

<sup>15</sup> Biswaranjan Panda, 'Critical Analysis on Juvenile Justice (Care and Protection of Children) Act, 2015, 8May 2018, < Critical analysis on Juvenile Justice (Care and Protection of Children) Act, 2015 (lawyersclubindia.com)>, accessed on 29 May, 2024.

<sup>16</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, section 11, acts of Parliament, 2015 (India).

<sup>17</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, section 12, acts of Parliament, 2015 (India).

<sup>18</sup> The Juvenile Justice (Care and protection of children) act, 2015, section 13, acts of parliament, 2015 (india).

<sup>19</sup>Harshvardhan Prakash Deshmukh, 'The Juvenile Justice(Care and Protection of Children Act, 2015 Overview', < The Juvenile Justice (Care And Protection Of Children) Act, 2015 Overview (legalserviceindia.com)>, accessed on 29May, 2024.

1. **Presumption of Innocence:** Children under the age of eighteen shall be presumed innocent of any wrongdoing.
2. **Dignity and Worth:** All individuals, including children, must be treated with equal dignity and rights.
3. **Participation:** Every child has the right to be heard and participate in decisions affecting their interests, considering their age and maturity.
4. **Best Interest:** Decisions regarding children must prioritize their best interests and support their full potential.
5. **Family Responsibility:** The primary responsibility for caring for and protecting the child lies with their biological family or adoptive/foster parents.
6. **Safety:** Measures must be taken to ensure a child's safety and protect them from harm or abuse while in the care and protection system.
7. **Positive Measures:** All resources, including family and community support, should be utilized to promote a child's well-being and reduce vulnerabilities.
8. **Non-Stigmatizing Semantics:** Avoid using adversarial or accusatory language when dealing with a child.
9. **Non-Waiver of Rights:** No one can waive a child's rights, and the non-exercise of a fundamental right does not amount to a waiver.
10. **Equality and Non-Discrimination:** Children cannot be discriminated against based on factors such as sex, caste, ethnicity, disability, etc., and they should have equal access and treatment.
11. **Right to Privacy and Confidentiality:** Every child has the right to privacy and confidentiality throughout legal processes.
12. **Institutionalization as a Last Resort:** Placing a child in institutional care should be the last resort after a reasonable inquiry.
13. **Repatriation and Restoration:** Children in the juvenile justice system have the right to be reunited with their family and restored to their previous socio-economic and cultural status unless it's not in their best interest.
14. **Fresh Start:** Past records of children in the juvenile justice system should generally be erased, except in special circumstances.

15. Diversion: Measures to deal with children in conflict with the law without resorting to judicial proceedings should be promoted unless it's in the best interest of the child or society.
16. Natural Justice: Basic procedural fairness standards, including the right to a fair hearing, impartiality, and the right to review, must be upheld by all individuals or bodies acting in a judicial capacity under this Act.

## **COMPARATIVE ANALYSES**

Different countries have different laws, and the laws dealing with juveniles are particularly different based on the needs and situations existing in different societies. For instance, in France, The criminal minor is categorized into 3, i.e., the infant who doesn't have his own perception of his own acts can't be convicted, the minor between the age group 7-8 years and 13 years with no criminal punishment but educative measures can be taken or pronounced against them. The category of minors between the age group of 13 and 18 years commits an offense, and punishment can be educational and criminal in special cases. In the country, Canada, the law that governs juveniles is the Youth Criminal Justice Act. This is the criminal as well as correctional law and applies to those who are between 12 and 18 years of age. While the ones who are between the age group of 14 and 17 may be tried and sentenced as adults but under certain conditions. Therefore, different laws operate and apply differently in every country based on the circumstances and several factors existing in that country.<sup>20</sup>

## **CONCLUSION**

Thus, the Juvenile Justice (Care and Protection Act), 2015, is a great step for the government to deal with the criminal realm within children. It has been comprehensively dealing with all the aspects of the crime and the proceedings step by step that needs to be followed by the authorities made under the act and heard by the competent court, which is not the ordinary courts, however special courts known as children courts are made for serving the purpose, aims and objectives of the act. The act contains a total of 112 Sections and 10 Chapters. The principles of rehabilitation

---

<sup>20</sup> Rohit Pradhan, 'Critical Analyses: Juvenile Justice (Care and Protection of Children) Act 2015, 13 September(2020), < Critical Analysis: Juvenile Justice (Care and Protection of Children) Act 2015 (lexforti.com)>, accessed on 29 May, 2024.

and reformation are the ones that keep the spirit of the act intact and cause it to be used successfully. The said act is done with the needs and demands of the changing society in view. Hence, we have recognized the importance of protecting the children who commit crimes for whatever reason and have recognized the need for a specific law dealing with this for their reformation and transformation.