

Legislation and juvenile justice system in India- An Analysis

Dr. Prativa Panda

Reader University Law College, Utkal University, BBSR-4

Abstract

The history of juvenile justice in India can be traced back to the early 18th century, where references to children and the laws and rules governing them can be found in the texts of the ancient Hindu scripts. The country was faced by a rapid social change, industrialization and increasing populations. These changes brought about a new class of delinquent, neglected, and dependent children needing formal intervention. Thus the need for new legislations dealing with children was felt. This paper has made an attempt to analyze the legislation on juvenile from 18th century to 21st century till passing of JJ (care and protection of children) Bill 2015 which is as a means to address the rise in juvenile crimes.

Keywords: Constitution, Juvenile justice and CrPC

Introduction

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace” Kofi Annan.

The Evolution of the Juvenile Law in India (1773- 2000) ^[1]

The history of juvenile justice in India can be traced back to the early 18th century, where references to children and the laws and rules governing them can be found in the texts of the ancient Hindu scripts. The most important laws passed between 1850 and 1919 were

I The Apprentices Act, 1850 ^[2] was passed as the first juvenile legislation in India to deal with the children.

1. 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.
2. Children who were found to have committed petty offences used to be dealt with under this Act.

II. The Indian Penal Code, 1860

1. It exempts child from all criminal liability who is under seven years of age (Section 82).
2. It also exempts child above seven years of age and under twelve years, from all criminal liability, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion (Section 83).
3. In the year 1959, the Indian Penal Code, 1860 was amended with a view to provide protection to child from possible abuse of kidnapping or maiming a minor for purpose of begging (Section 363-A).

1919–1950

From 1919 and 1950 two major changes occurred in India's juvenile justice policy as the country slowly moved towards independence. First, an internal move to establish a special

children's act came from the Indian Jail Committee (1919–1920).

III. Constitutional Protection for Children:

The Constitution of India guarantees all children certain rights, which have been specially included for them.

1. Article 14 provides that the State shall “not deny to any person equality before the law or the equal protection of the laws within the territory of India” “Nothing in this article shall prevent the State for making any special provision for women and children.”
2. Article 15 (3) mentions that, “Nothing in this article shall prevent the State from making any special provision for women and children”
3. Article 19(1) (a) provides that all citizens shall have the right (a) to freedom of speech and expression;
4. Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law;
5. Amendment 86 of the Constitution recognizes the Right to education. Article 21A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
6. Article 24 prohibits employment of children below the age of fourteen years in factories, mines or any other hazardous occupation.
7. Article 39(e) and (f) provides that the State shall, in particular, direct its policy towards securing to “ensure that the health and strength of workers, men and women and the tender age of children are not abused” and that “the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity” and that the childhood and youth are protected against exploitation and against moral and material abandonment
8. Article 45 envisages that the State shall Endeavour to provide early childhood care and education for all children until they complete the age of six years.

9. Article 46 recognizes the right of weaker sections of the people to be protected from social injustice and all forms of exploitation.
10. Article 47 provides that State shall raise the level of nutrition and standard of living of its people and the improvement of public health.

IV. The Probation of Offenders Act in 1958:

1. It restricts courts in awarding imprisonment to offenders under twenty one years of age and to direct removal of all disqualifications attaching to conviction.
2. Section 361 of the Code of Criminal Procedure, 1973 requires that in any case where the court could have dealt with the accused person under the provisions of the Probation of Offenders Act or under section 360 of the CrPC and yet the court decides not to do so, it shall record in its judgment, special reasons for not having done so.

The Central Children Act, 1960

The basic principles to deal with the destitute and delinquent children were followed in the Juvenile Justice Act, 1986.

International Conventions and Declarations

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of the Rights of the Child on 20th November 1959.

It endorsed that everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The General Assembly of the United Nations adopted the CEDAW on 18 December 1979 and it came into force on 3 September 1981.

It states that States parties shall take all appropriate measures to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.

United Nations Standard Minimum Rules, 1985 (popularly known as Beijing Rules) [3].

1. The Beijing Rules encourage:
 - a) The use of diversion from formal hearings to appropriate community programmes;
 - b) Proceedings before any authority to be conducted in the best interest of the juvenile;
 - c) Careful consideration before depriving a juvenile of liberty;
 - d) Specialized training for all personnel dealing with juvenile cases;
 - e) The consideration of release both on apprehension and at the earliest possible occasion thereafter.

The UN Convention on the Rights of the Child, 1989 includes three 'p':

- **Provision:** the right to be provided with the certain things and services e.g. nationality, a name, health, care, education;
- **Protection:** from torture, exploitation, arbitrary detention;

- **Participation:** in decisions affecting their lives and society as a whole.

The United Nations Guidelines for the Prevention of the Juvenile Delinquency, 1990 (known as the Riyadh Guidelines) [4]

1. These deal with almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration.
2. These guidelines describe social and economic strategies to prevent children from entering into conflict with law.
3. The guidelines stress the importance of improving the overall situation of children in crime prevention.

Juvenile Justice Act, 1986

1. Keeping in view the United Nations Standard Minimum Rules for the administration of juvenile justice (Beijing Rules, 1985), the Government of India enacted the Juvenile Justice Act in 1986 for the whole country to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles and to ensure that no child under any circumstances is lodged in jail or police lock-up [5].

Juvenile Justice (Care and Protection of Children) Act, 2000 [6]

The JJ Act 2000 is intended to protect the best interests of juvenile. One of the objectives of the JJ Act 2000 is to introduce the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules (Beijing Rules, 1985) for the administration of juvenile justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990.

Important Sections of the JJ Act, 2000

Section 10: Apprehension of juvenile in conflict with law may be sent to an observation home.

Section 12: Bail of juvenile

Section 49: Presumption and determination of age.

Juvenile Justice (Care and Protection of children) Amendment Act 2006 [7]

The legal foundation of the Child Protection mandate in India is

The Juvenile Justice Act which first came into force in 1986 - Was renamed and rewritten in 2000 to be called the Juvenile Justice (*Care and Protection of children*) Act is the premier law related to all individuals "children/juveniles" below 18 years of age, in India.

The Juvenile Justice (Care and Protection of Children) Act, 2000, (JJ Act, 2000) was amended in 2006 to ensure better care and protection for children. The Juvenile Justice (Care and Protection of Children) Rules, 2007, (JJ Rules, 2007) were also made by the Government for effective implementation and administration of the Act.

The JJ (Amendment) Act, 2006, states that JJBs and Child Welfare Committees (CWCs) are to be set up by State Governments for all the Districts within a year of this Act coming into force. The amendment prohibits placement of a juvenile in conflict with law in police custody/lock-up and has to be produced before a JJB within 24 hours.

The Juvenile Justice Act and the modal rules lays specific duties for the police especially SJPU's vis a vis children such as to upgrade the police treatment of all juveniles^[8].

The Act also protects the privacy of the child/juvenile in conflict with law by prohibiting the publication of names, etc. in any print or visual media. It also provides for speedy disposal of cases through regular review of pending cases every six month by the CJM/ CMM.

The Act states that all institutions, whether run by State Governments or by voluntary organizations for children in need of care and protection, are to be registered within six months of the Act being passed. The Act has made the adoption process simpler and allows for adoption of children from juvenile homes.

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

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs

through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

Juvenile Justice (Care and Protection of Children) Act, 2015 is a legislation of the Parliament of India. It aims to replace existing the Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, *so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.*^[9] It was passed on 7 May 2015 by the Lok Sabha and on 22 December 2015 by the Rajya Sabha after the Nirbhaya case accused juvenile was released.^[10]

Distinction between JJAct2000 and JJ (Care and Protection of Children) Act 2015:

JJAct2000	JJ (Care and Protection of Children)Act 2015:
1. Juvenile Justice Act, 2000 is facing issues with respect to implementation and procedural delays.	The new bill is aimed to remove all such discrepancies by acting as a deterrent for the juvenile offenders
2. The Juvenile Justice Act of 2000 prescribes the maximum punishment of three years detention in a juvenile home irrespective of the nature of the offence	The new bill seeks to segregate the adolescents in the 16 to 18 age group by categorizing them into petty, serious and heinous offences by treating the juveniles accused of heinous offences as adults. For the first time, petty, serious and heinous offences based on provisions of IPC have been clearly defined in the said bill which provides that (i) a heinous offence is one for which the minimum punishment is seven years of Imprisonment under any existing law. (ii) Imprisonment between three to seven years falls under the category of serious offence and, (iii) any offence for which maximum punishment is three years is a petty offence.
3. Act adheres to the UN Convention as well as Constitution,	2015 Bill fails to comply with the necessary requirements of Arts.14and 21 of Constitution and UN guidelines.

Juvenile Justice Act and Criminal Procedure Code 1973

The provision of the juvenile justice Act, not only override the provision of the Code of Criminal Procedure, 1973 (2 of 1974) but also any other law for the time being in force^[11].

There cannot be any dispute that the age is to be determined according to different pieces of evidence and appreciation of this fact depends upon the facts and circumstances of the each case. It was the duty of the Court to form a tentative opinion whether the accused was juvenile or not and refer the matter to juvenile Court^[12].

Section 27 of the CrPC states that any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of 16 years, may be tried by the Court of a Chief Judicial magistrate, That Court is not to hold a trial of the case, but only inquire into the offence as provided by the 1986 Act^[13].

Juvenile Justice Act and NDPS Act, 1985

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is the anti-drug law of India. Section 18 of the Juvenile Justice Act, 1986 made a general provision with regard to the right of a juvenile delinquent to be released on bail irrespective of the offence committed by him but the NDPS Act, 1985 is a special provision and that special statute a further special provision has been made with regard to the pre-condition to be satisfied for an accused being released on bail. Section 37 of the NDPS Act would override section 18 of the juvenile Justice Act, and therefore, even in the case of a

delinquent juvenile involved in commission of an offence under NDPS Act, no bail can be granted until and unless the provision of section 37, NDPS Act are complied with.^[14] A juvenile has to be dealt with under the Juvenile Justice act because this Act has an overriding effect over all the law existing at the time of enforcement of the Act which is later than the NDPS Act.^[15]

Conclusion

The New bill aims to strike out a balance between children alleged and found to be in conflict with law and children in need of care and protection by taking into account their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach. Thus, it is positive step for preventing the children from committing crime.

Reference

1. Constitution of India, Paras Diwan, edn, 2014, 36.
2. Drug addict juvenile and the Law, P. Panda, The Law Publication, 2016 edition.
3. <http://www.lawyersclubindia.com/article/ juvenile justice in India - on a path to redemption.181.asp>
4. PDF file734,Bureau of Police Research & Development, page27
5. Res GA. 40/33, Annex, UN.GAOR, 40th sess, Supp.No.53, U.N.Doc. A/40/53Annex, 1985.

6. United Nations Guidelines for the Prevention of Juvenile Delinquency.G.A.Res.45/112,Annex.UN GAOR, 45th Sess., Supp.No.49-A, UN. Doc. A/45/49/Annex, 1990.
7. Krishan Bhagawan V. State of Bihar, 1990(1) crimes423 (Pat)
8. www.JJ Act Pdf
9. Ministry of Women and Child Development, government of India, Building a protective environment for Children, 2006, 23.
10. Section63
11. Rajya Sabha. Passes Juvenile Justice Bill; Jyoti's parents welcome development. The Indian Express. 22 December 2015. Retrieved 22 December 2015.
12. http://timesofindia.indiatimes.com/india/Rajya-Sabha-passes-Juvenile-Justice-Bill-Nirbhayas-mothersatisfied/articleshow/50285328.cms?utm_source=facebook.com&utm_medium=referral&utm_campaign=2015 in law
13. Nanhu V. State of UP,1990All.LJ496
14. Daljit Singh V. State of Punjab,1992Cr.LJ1051 at 1054
15. Ganguly'sCommentary on the Juvenile justice(care and protection Act)2000, Dwidevi law Agency,2010p42-43
16. Antaryami Patra V. State of Orissa, 1989(1) Cri.LC195 (Ori).
17. Matadin V. State of MP,1994(3)Crimes 510(MP)