



## JUVENILE JUSTICE

By *Chandana Pradeep and Kavya Arora*  
From *UPES, School of Law Dehradun*

### INTRODUCTION

India is home to the largest child population within the world. The Constitution of India ensures basic Rights to any or all children within the nation and empowers the State to create special provisions for children. The Directive Principles of State Policy expressly guide the State to protect children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.<sup>1</sup>

Juvenile may be outlined as a child who has not accomplished an exact age at which he, like an adult person beneath the law of the land, may be command to blame for his criminal acts. The juvenile is a child who is purported to have committed /violated some law that declares the act or omission on a part of the kid as an offence.

Juvenile offenders have identical set of constitutional guarantees as an adult, such as a fair trial. However fairly often, adult wrongdoers are able to secure bail quicker than a juvenile offender, simply because the juvenile isn't fined, it will in no means deduct his/her constitutional guarantees of liberty. The sole distinction is that, in contrast to adult offenders, the state should defend, and ultimately assimilate, juvenile offenders. However, protection cannot become custody. Also, the statute stresses on

privacy as a right for the juvenile wrongdoer. The statute focuses on necessary infrastructure with a major involvement of informal systems, specifically the family, voluntary organizations, and also the community, to produce a system become independent from the criminal justice system.

In modern scientific thought pervaded with predominant cultural positions, childhood and adolescence are perceived as being indisputably completely different from adulthood, notably in terms of their biological, psychological, and social aspects. From the first of human civilization, dynamic social circumstances have continuously had a major impact on the method of a child's psychological development, that mostly depend on specific social settings and also the underlying cultural angle to kids and youth.

Understanding this state of the Juvenile Justice System in India needs recourse to the history. The JJS in India originated throughout British rule. Before British regime in India, juveniles were treated by the family and society generally. The institutional treatment of juvenile wasn't visibly witnessed. Therefore, JJS and punitive live was the direct consequence of western philosophy and development of jail modifications.

The culture of crimes by Juvenile wrongdoer is as recent because the society as a result of doli incapex and adventurous perspective, the youth typically come in conflict with law and indulged in crimes. Gone are those stormy days when the issues of Juvenile weren't thought of as a separate

<sup>1</sup> The National Policy for Children, 2013



system. It can be witnessed from the past that; the children were thrown into prison without trial. They were locked in the jail along with hardened criminals. In the nineteenth century penologists prescribed equal punishment for both adult and juveniles. History reveals that, juveniles were hanged, transported and imprisoned like adult criminals. The records reveal that, in 1833, death sentence was passed on nine years of child for stealing goods worth two pence. Hanging, whipping and torture of the pillory were common practices for petty offences. The punishments were commonly made before public as a method of deterrence.

Gradually the problem of youth offender was given separate treatment. Some leading penologists have suggested for correctional measure in place of penal measures. India got independence in 1947. It became the party to UDHR 1948. Being a party to the UNO, India has adopted measures as per the international standard. The constitution makers of India provided a separate treatment for children and women. In this article an attempt is made to analyse the special treatment adopted by India for juveniles in the light of its constitutional philosophy and the international conventions.

Considering the magnitude of the problem and the issues involved, analysis indicates that the number of factors for neglect and delinquency are mostly common and interrelated, based on socio-economic and psychological reasons. The neglect of children by their parents, family, society and the nation create detrimental effect on their

physical, mental growth and overall development. Needless to say, that most of the factors causing delinquency are in plenty in the Indian context and any attempt to prevent and control them can be fruitful for society.

**MEANING AND CONCEPT**

The Juvenile Justice system (JJS) relies on principles of promoting, protecting and safeguarding the rights of children. It was enacted by the Indian Parliament in 1986. In the year 2000, the Act was comprehensively revised based on the United Nations Convention on the Rights of the Child (CRC), which India had ratified in 1992. The Act is based on the provisions of Indian Constitution and the four broad rights defined by the UN CRC:

- Right to Survival
- Right to Protection
- Right to Development
- Right to Participation

Juvenile Justice System is a system coming within the area of criminal law administration of justice. This is a system adopted for the young person not old enough to be held responsible for criminal acts. It is adopted as correctional measures for juvenile delinquency. The term 'Delinquency' connotes 'failure to observe norms of society or omission of duty, involving with crime or doing any wrong. The term 'Justice' means 'concern for justice, fairness, equitableness' or a concern for peace and genuine respect for people. It is a principle of moral rightness in the





pursuits of fair treatment against unfair behavior. The term 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society.

'Juvenile Justice System' means a process to deal with the problem concerned with children and society. The main purpose of JJS is to insulate children by resorting to appropriate treatment and create an environment to develop a positive human personality. JJS is socio-legal measure to create an atmosphere for the treatment of delinquent juveniles. Almost all countries of the civilized world have adopted Juvenile Justice Law to treat the young offender in the most equitable manner, so that they can lead a peaceful moral and democratic life.

Juvenile Justice is administered through a Juvenile court, a court which is child friendly in nature. The main goal of this System is to adopt rehabilitative measure rather than punitive measures. If a child commits or any wrong young person turns delinquent, the Juvenile court takes measures for foster care and soft treatment through special institutions. So that Juvenile offender can find a path to lead a decent life. The main aim of this system is to change the overall mind-set and personality of the child and to give him an impression about the wrongs that are being committed by him rather than just punishing him and not making him realize the depth or the consequences of his act.

Within the post-independence period; the government of India was taken over of the problems among others, of juvenile justice significantly within the centrally administered union territories. This is often

what led to the children Act.1960. The law was in full force altogether the UTs, but the states, not having juvenile legislation, were free to adopt it. As would be expected, at this stage, juvenile justice within the country was uneven and had varied standards, norms and practices. These issues were sought-after to be removed through the Juvenile Justice Act 1986. The law was operative throughout the country.

The Second United Nations Congress on prevention of Crime and Treatment of Offenders in 1960 expressed that delinquency ought to be understood because the commission of an act, that when committed by an adult higher than a prescribed age would represent an offence in law. The Sixth united nations Congress on the prevention of Crime and Treatment of Offenders held in Venezuela in 1980 discussed further and thoroughly the matter of juvenile delinquency. They decided that there ought to be the standard Minimum Rules for the Administration of Juvenile Justice. Each child has its human rights and that they shouldn't be denied thereto by anybody. Hence, the same that there ought to be laws to guard the proper of the kids.

Consequent thereto, it absolutely was accepted that special attention ought to be the first step to be initiated to stop delinquency among children and conjointly to homeless and street children within the urban setting. The necessity for giving special attention to youth criminality was conjointly given due importance and emphasis.

### **Development of JJS**

The Juvenile Justice System developed throughout the world with a conception that,



children are not mature like adult. They failed to understand the nature and consequence of their acts. This idea is based on the legal 'principle of doli incapax' i.e. child do not have capacity to form criminal intention. Therefore, a child cannot be made liable for acts which are illegal. An adult is commonly understood to mean a person who has reached maturity of mind. In the psychological perception, a person is mature 'who possesses certain skills that are the product of both cognitive development and the nature of the person's interactions with his or her environment.'<sup>2</sup>

The Juvenile Justice Act of 2000 is replaced by the JJ Act of 2015, with a view to update JJS in accordance with the International conventions and present social development. The new Act under lying following basic principles: -

1. Presumption of innocence.
2. Principles of dignity and worth.
3. Principles of participation with due regard to maturity.
4. Principles of best interest of the child.
5. Principles of family responsibility to take care.
6. Principles of ensuring safety without my abuse of the child.
7. Positive measures for wellbeing and development of child.
8. Principles of non-accusatory or non-stigmatizing semantics.
9. Principles of non-waiver of rights.
10. Principles of equality and non-discrimination.
11. Principles of right to privacy and confidentiality

<sup>2</sup>Kohlberg, L – Child psychology and child Education: A cognitive development view, 1987, New York, Longman

12. Principles of institutionalization should be last resort.

13. Principles of Repatriation and restoration.

14. Principles of fresh start-erasing of past records.

15. Principles of diversion (without resorting to judicial proceedings)

16. Principles of natural justice.

The introduction of The New Juvenile Justice (care and Protection of children), 2015, has introduced a number of the exceptional changes within the existing Juvenile Law.<sup>3</sup> One in every of such major changes is, juvenile archaic cluster of sixteen to eighteen are to be tried like Association in Nursing adult. Also, the one who have learned the age of twenty one whereas in sentence are send to the jail for remainder of the time span.<sup>4</sup>

This paper has highlighted on varied polemical problems regard to new Juvenile Justice Act with special reference to the views of various activists.

#### **Judicial Efforts**

From time to time many trends have been made over the juvenile justice system in India as by different judgment by various courts and legislations and some out of that are as follows:

The Supreme Court of India in Laxmikant Pandey v. State<sup>5</sup> the Hon'ble Court of India

<sup>3</sup> Mahrukh A (2006) Child and Protection and Juvenile Justice System: for Juvenile in conflict with Law. Children India Foundation.

<sup>4</sup> Government of India (2000) The Juvenile Justice (care and Protection of children) Act. Publication division, New Delhi.

<sup>5</sup>Laxmikant Pandey v. State, A.I.R. 1990 S.C. 292.



observed that every juvenile has a right to proper care and assistance and affection and of morality and proper security and this is only claimable only when the juveniles will be brought up in proper family and good environment.

In *Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board*<sup>6</sup>. Some incidence becomes mileage stone that shook the psyche of the society or nation. One of such is the case of the Delhi gang rape as where the 5, 6 persons rape a girl though brutally and killing her by putting rod in private part and the justice system is as such the juvenile involve in it is to be released after small imprisonment. In the particular case *Dr. Subramaniam Swami* a senior lawyer of Supreme Court moved to the Supreme Court of India requesting the court for an order restraining the release the set juvenile from special home. The Supreme Court of India maintain that they are unable for the same as due to the law made for it not tend to do son and affirm him to move to parliament and make proper law for it. Here, it would not be out of context to mention that set juvenile was kept in a special home along with an accused Delhi Blast Case. Thus, one can easily imagine the influence of the blast case accused on the sad juvenile and vice versa. It has further been observed that juvenile released from observation home and special home were found to commit a more heinous crime. Thus, a question naturally arises whether this reformatory home is capable serving the objectives for which these homes were established. Section 16 of the JJ Act lays down requirements for orders that may be

passed regarding a juvenile, wherein the maximum penalty a juvenile has to pay is to remain in the observation home for three years or till he attains the age of twenty-one. *Arnit Das v. State of Bihar*<sup>7</sup> has been a highly controversial case and has been criticized to the core but the court seems have to have taken a contrary view from the earlier case because it is known to have taken same set of persons which evolve juvenile justice action till they turn 50 years of age. The problem with this decision was that it set the same yardstick for everyone – whether a serial criminal or a petty offender so, an amendment in the existing act is definitely necessary in order to thwart any attack on the nation.

Apart from terrorists taking advantage of the omission in the system, serious crimes like rapes and murders also go unpunished with the offender wearing the garb of juvenility. The legislators of the country have their task cut up as they need to work out a middle path that takes the country's and society interest into account but does not go to extremes like in the case of *Arnit Das*.

A 3 judge Bench call of Supreme Court just in case of *Umesh Chandra vs. State of Rajasthan*<sup>8</sup>, said that: - "As regards the final relevancy of the Act, we tend to are clearly of the read that the relevant date for the relevancy of the Act is that the date on that the offence takes place. Juveniles Act was enacted to shield young kids from the implications of their criminal acts on the footing that their mind at that age couldn't be aforementioned to be mature for imputing

<sup>6</sup>*Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board*, A.I.R. 1992 S.C. 118.

<sup>7</sup>*Arnit Das v. State of Bihar*, A.I.R. 1989 S.C. 1329.

<sup>8</sup>*Umesh Chandra v. State of Rajasthan*, A.I.R. 1982 S.C. 1057



men's space as within the case of associate adult. This being the intendment of the Act, a transparent finding has got to be recorded that the relevant date for relevancy of the Act is that the date on that the offence takes place...We are clearly of the read that the relevant date for relevancy of the Act up to now as age of the defendant, United Nations agency claims to be a toddler, worries, is that the date of the prevalence and not the date of the trial."

In case of Pratap Singh Vs. State of Jharkhand<sup>9</sup> and it absolutely was control that: - "The reckoning date for the determination of the age of the juvenile is that the date of the offence and not the date once he's made before the authority or within the court".

In Sheela Barse v. Secretary, children Aid Society,<sup>10</sup> The Supreme Court commented upon setting up dedicated juvenile courts and special juvenile court officials and the proper provision of care and protection of children in observation Homes.

In Vishal Jeet v Union of India,<sup>11</sup> The Supreme Court issued appropriate directions on a PIL to the state Governments and all Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of the young fallen victims.

### Conclusion

In India, social legislations are always proved abortive due to improper infrastructure and coordination.<sup>12</sup> Different homes prescribed, does not have an environment of home. These clogs of JJS need to be resorted to. Juvenile Justice System is based on the principle of social welfare and rights of the child.<sup>13</sup> The prime focus of the JJS is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order.

Children are the future resources of the country. They must be transformed from negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carry the dreams, we need to make the dream reality.

\*\*\*\*\*

<sup>9</sup>Pratap Singh v. State of Jharkhand, A.I.R 2005 S.C. 128.

<sup>10</sup>Sheela Barse v. Secretary, children Aid Society, A.I.R. 1987 S.C. 656.

<sup>11</sup>Vishal Jeet v Union of India, A.I.R. 1990 S.C. 1412.

<sup>12</sup>The objective and reasons of JJ Act 2015.

<sup>13</sup>Constitution of India – 1950 (preamble, fundamental right and DPSP of part VI).