

## **“Emergence of Juvenile Justice Act in India”**

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In the past few years, there has been drastic increase in the crimes by children who are below the age of 16 years. And the reasons for the development of such behavior among the children are the upbringing surrounding of the adolescence, economic conditions, lack of education and parental care. Most adolescent involve in illegal activity is an increment of the kind of risk taking i.e. part of the directed change procession of identity formation, and most adolescents mature out of these tendencies. An even more astonishing part of this aspect is that the adolescents are being used as tools for the criminal activities, and this age group includes especially children aged between 6-12 years, as at this point of time, the minds of innocent children can be manipulated in a very easy way.

In accordance with the law – Child who has not attained the age of 18 years and is also not capable of understanding what is wrong and right or arriving at a fair conclusion. In the modern law, most of the country who deals with juvenile acts have adopted the principle of “Doli Incapax” which by the definition means that the person who is not capable of understanding the commission of a crime

### **Juvenile System in India**

Juvenile Justice Act came into effect in 1986 in India. Following this, the United Nations adopted the convention which dealt with the children’s right, in 1992 when India ratified the UNCRC. The main motive of the convention was to uphold the right of the child to reintegrate with the society without any judicial proceedings initiated against them and in order to attain this the government felt, there was a need to rewrite the existing law. And then the old law was replaced in 2000 by the new law – Juvenile Justice (Care and Protection of Children) Act. And there existed wide differences between the old and the new law. And the changes were made in order to secure the interest of the Juveniles. One of the important changes to be taken into consideration was regarding the role of NGOs.

Section 45 of Juvenile justice Act – The state government is empowered to make rules in order to ensure effective connection between various governmental, non-governmental, corporate and other communities for the sake of rehabilitation and social integration of the child.

Role of NGOs and Social Workers, they are required to carry forward is offer care and compassion to a child, moreover also ensured that his rights are acknowledged and protected.

The Juvenile Justice Board which is headed by Metropolitan Magistrate or Judicial Magistrate of the first class has an additional requirement to appoint two social workers on board and these social workers should be present in the selection committee and further, state government appoint them.

Juvenile Justice under Constitution of India

The Constitution of India is the Superior land law and the constitution lays down the rights and duties of its citizens which are to be followed. The working of government machinery is also provided by the constitution. And in addition to all this, **Part IV of the Indian Constitution** provides for Directive Principles of State Policy (DPSP) and this is provided mainly to ensure the smooth functioning of the society. And regarding the rights and welfare of the children following has been provided by the constitution as under:

- **Article 21A: Right to education.**-The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine<sup>1</sup>.
- **Article 24:** Right to be protected from any hazardous employment under the age of 14 years.
- **Article 39:** Right to be protected against exploitation and against moral and material abandonment<sup>2</sup>.
- **Article 47:** Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

The lawmakers while drafting the Juvenile Act of 2015 have hence taken into consideration all the provisions which have been laid down by the constitution for the welfare and protection of the rights of children. And for the above reason chapter IV of the Juvenile Justice Act lays down numerous provisions which have focused their attention on the betterment and welfare of children and also the reformation and rehabilitation of juveniles in every possible circumstance.

Types of offences committed by children in conflict with law have been defined under the JJ Act, 2015 as follows:

**Petty offences:** Petty offences include the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.

**Serious Offences:** Serious offences include the offences for which the punishment under the Indian Penal Code or any other law for the time being in force is imprisonment between three to seven years.

**Heinous Offences:** Heinous offences committed by children in conflict with law include the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for 7 years or more.<sup>3</sup>

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<sup>1</sup> Inserted by Constitution (Eighty Sixth Amendment) Act, 2002.S.2 (w.e.f. 1-4-2010)

<sup>2</sup> Subs. By Constitution (Fourty-second Amendment) Act, 1976, sec 7, for clause (f) (w.e.f. 3-1-1997)

<sup>3</sup> <https://vikaspedia.in/social-welfare/women-and-child-development/child-development-1/children-in-conflict-with-law>

Indian Penal Code and Criminal Procedure Code:

The Indian Penal Code came into being on 1st May 1861 and it was considered to be the first establishment of codified law in colonial India, and the IPC dealt with both adult and juvenile offences.

**Section 82 of IPC** states that – “Nothing is an offence which is done by a child under seven years of age”.

**Section 83 of IPC** enshrines – “Nothing is an offence which is done by a child who is above 7 years of age and under 12 who has not attained the sufficient maturity of understanding in order to judge the nature and consequence of his act on that particular occasion”.

Further, there are **Section 315 and 316 under IPC** which discuss the offence of foeticide and infanticide. If a person does an act which amounts to culpable homicide which results in the quick death of an unborn child then the person will be charged with the act of Culpable Homicide.

There are various Sections in IPC which discuss the matter of Kidnapping and Abduction. **Section 361** states that if a male minor who hasn't yet attained the age of 16 and a female minor who hasn't attained the age of 18 if removed from their lawful guardians without their consent then the act is termed as the offence of kidnap.

**Section 27 of the Criminal Procedure Code** deals with the clause of – Jurisdiction just in case of Juveniles which states that the offences not punishable with death or imprisonment for life, which is committed by an individual below the age of 16 years, may be tried by a court which is specially empowered under the children act to decide on such matters. Or it can be dealt with by the other laws for present operative which is providing for treatment, training and rehabilitation of young offenders.

**Section 437 of the Criminal Procedure Code** lays down that a child in conflict with law can apply for an Anticipatory Bail. Justice Narayana Pisharadi of Kerala High Court held that the child within the conflict of law has all the rights to use for anticipatory bail and there is no bar on any provisions of Juvenile Justice Act. The anticipatory Bail of a child in conflict with law is maintainable within the High Court or the Court of Sessions.

This aspect of Juvenile Justice laws draws the attention of critics because in most of the countries of the world the concept of juvenile justice is considered to be that of Criminal Justice, but at the same time the ministry or the department which is responsible for making laws and implementing them is the one from the Department of Social Justice. Further, the results arising out of it because of this mismatch are the following

- There arises a tension between the Protective and Rehabilitative approach of Juvenile Justice and the traditional approach of dealing with the crime.
- There will be ample scope for discrimination among the juveniles which will be based on the nature of the offence at every stage.
- There even arises a confusion in the law and its administration.

### **Changes brought in JJ Act within the wake of recent developments**

The United Nations Convention on Child Rights defines a ‘child’ as any human being under the age of 18 years and thereby forbids any capital punishment inflicted on them. Article 37 (a) obliges all the member countries to prohibit as well as eliminate corporal punishment, including any other form of punishment that is cruel and degrading in nature on children below 18 years.

The increased public pressure post the horrific Delhi Gang rape case (Nirbhaya case), led to the amendment to the Juvenile Justice (Care and protection of Children) Act, 2000 Act. The amended act (Juvenile Justice (Care and Protection of Children) Act, 2015) proposes the trial of juveniles in the age group of 16 to 18 years, who are involved in horrifying crimes and offences. Recently the “Bois locker room case”

### **Indian Juvenile Act – Violation of the UN Convention on Child Rights**

India ratified the convention in the year 1992, and after introducing these new amendments to the Justice Juvenile Act, 2015, it is contravening the said part of UN Convention by not treating all the children equally as mandated, under the age of 18. Thus the amended act stands in complete violation to the UN Convention on Child Rights.

### **The amended Juvenile Justice Act, 2015 on Child rights and its implication**

- Adolescents who are in the age of 14 to 17 are still not mature enough to be considered as adults. But, the introduction of the new Juvenile Justice Act is reducing the age of juvenile by treating their act of engaging in high risk crimes under Indian Penal Code.
- The enactments have been construed on growing misconceptions, un-consolidated statistics and public pressure. There is a misconception that a large proportion of juvenile population is accused of committing rapes.
- Psychologists and Neuro-scientists inform that this phase of age undergoes numerous changes in body and mind which includes physiological, hormonal, emotional as well as structural changes. Amendments will misdirect the thought process of children in the age of 16-18 and close the doors of their better reformation.
- The proposed enactment is going to affect India’s international reputation and its committed vision to contribute in making the world a safe place.

The need is to create a reformative environment for adolescent but the Act has been criticized and opposed by several women right groups, NGOs working on child rights, Pro-child Network etc. on the ground that it is disadvantageous to the rights of Indian children especially children from poor societies or illiterate families.

**Comparison of penalties in Juvenile Justice Act 2015 to Juvenile Justice Act 2000:**

First, for giving a child alcohol or any intoxicating liquor or narcotic drug, the punishment up to seven years and penalty up to one lakh rupees.

Second, for buying or selling of a child have a prescribed punishment of five years of punishment and a fine up to one lakh rupees.

Third, for employing a child for begging in streets or train would amount to imprisonment up to five years and fine up to one lakh rupees.

Fourth, for subjecting a child to cruelty would lead to the punishment up to three years of imprisonment and a fine of amount one lakh.

**“Bois Locker Room is tip of the iceberg”**

“The Locker Room case is just tip of the iceberg. There are thousands of chat rooms openly discussing sex in India. But the saddest part is no one will ever get down to the bottom of such scandals. Big schools cannot afford to get tainted. Schools are big business,” says **Pavan Duggal**, an expert in cybercrime.