

# EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA

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## ABSTRACT

*The present-day Juvenile justice system in India has not been a continuous process resulting from an uninterrupted concern for children. The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and development in the field of prison reforms and juvenile justice. The changes introduce in India to deal with delinquent juveniles, however, were not limited only to those practiced in England. We will here examine in more detail the development of JJS in modern Indian history from 16<sup>th</sup> century up to contemporary period.*

**Keywords-** Evolution, Juvenile, Justice, India

## INTRODUCTION

In this twenty first century, we find that the young generation is highly deviated from leading a moral life. Rather the increasing rate of youth indulgences in immoral activities is a greater concern for the society. And with this increase in the number of young offenders, there is also a need for a system for administration of Juvenile Justice. The history of Juvenile Justice is shorter one and whenever such questions came before the court, they either opted to nullify the harsh punishments for the children or refused to enforce the law against children due to the lack of penalties provided specifically for young offenders. For millennia the juvenile justice was merely subsumed under the broader concept of criminal justice, and harsh punishment were imposed on juveniles to protect the prevailing social order. No distinction was made between delinquency and criminality, so that juvenile offender was deemed to be nothing more than young criminals and was treated accordingly. Most societies simply treated juvenile offenders in the same manner as deviant adults. Even in societies that took into account the special status of young people, identical punishment was meted out to juveniles and adults alike.

It was only after centuries of human civilization that what we now term juvenile justice began to develop outside the adult criminal justice system, thus the concept of promoting distinct form of justice for children is relatively new development in the history of civilization and the administration of justice. Approximately 4000 years ago sometime around 1750 B.C.E., King Hammurabi of Babylon in Sumeria presided over the first State known to be governed by a written legal code. The code of Hammurabi supplemented tribal custom and uniformly applied laws governing everyday social interaction. Thus, law that we would now term juvenile justice

provision was enacted entirely for the preservation of Babylonian patriarchy.<sup>i</sup>

In ancient Rome, a doctrine known as patria potestas established the role of children within the societies and the family unit. Under patria potestas the father had absolute control over his children father had the power of life and death over his children. There was no intervention by the state in matters of paternal discipline of children. Children were no rights other than the good will of father. As time progressed, and the empire gradually developed a sophisticated legal system, harshness of patria potestas was softened. The crusade against harshness towards young offenders began in 1772 when certain special concessions granted to juvenile delinquent in civil matters<sup>ii</sup>. Progress towards separation of juvenile court and criminal court proceedings began in the final decades of the nineteenth century. In 1874, Massachusetts passed legislation requiring separate court hearings for juveniles, known as children's tribunals. In 1877, New York passed similar legislation, and mandated the separation of adult and juvenile offenders. The beginning of the juvenile justice system is attributed to the establishment of the juvenile court in Cook County, Illinois, in 1899.<sup>iii</sup> The bill, officially entitled the act to regulate the treatment and control of Dependent, Neglected and Delinquent children, was the first comprehensive and modern juvenile justice statute.

## DEVELOPMENT OF JUVENILE JUSTICE SYSTEM IN INDIA

The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and development in the field of prison reforms and juvenile justice. The changes introduce in India to deal with delinquent juveniles, however, were not limited only to those practiced in England. The juvenile court under the Madras Children Act 1920 was not different from that under the English Children Act 1908. But subsequent children act dispensed with the presence of lawyers on the lines of the parens patriae model of the American Juvenile courts. The juvenile welfare boards, adopted by the Scandinavian countries, became an integral part of the legislation dealing with dealing and neglected children since 1960.

The juvenile justice system in the juridical sense, in various countries in the west has developed through a similar course. First, there was a recognition that children were not as mature as adults to understand the nature and consequence of their acts and could not be held responsible for their criminal act. Before the twentieth century, little distinction was made between adult and juvenile offenders.<sup>iv</sup>

The history of the JJS in India has been divided here into five periods by reference to legislative or other landmark developments, namely, (a) prior to 1773; (b) 1773-1850 (c) 1850-1918; (d) 1919-50; and (e) post 1950. The year 1773 marked a historical break in the Indian legal system as the Regulating Act of 1773 granted to the East India Company the powers of making laws and enforcing them on a very restricted scale, it was the Charter Act of 1833 which converted the commercial East India Company into a gravening body. The period between 1773 and 1850 saw numerous committees examining condition of jails in India and setting the stage for special focus on children in jails. The first legislation providing for keeping children out of jails was

enacted in 1850. The reporter of the All-Indian Jails Committee 1919-20 led to the beginning of complete segregation of children from the criminal justice administration. Let us now examine in more detail the development in each of these periods.

**Before 1773:** Both the Hindu and Muslim laws had provisions for the maintenance of children. The primary responsibility to bring up children was that of parents and family. Charity for the care of poor and destitute has been a noble cause under both Hindu and Muslim laws and has been a noble cause under both Hindu and Muslim laws and indirectly provided for the care of children in case of failure of the family to do so. Muslim law makes it compulsory for a person who finds an abandoned child to take its charge, if he has reason to believe that it may otherwise perish. It is generally maintained that neither Hindu nor Muslim laws had any reference to juvenile delinquents<sup>v</sup>. However, a cursory study of the Manusmriti and Hedaya show differential punishment to children for certain offences. For example, under the Hindu law, a child throwing filth on a public road was not liable for punishment. But only to admonition and made to clean it, while an adult in similar circumstances was to pay a fine and made to clean the filth. A young boy having sex with a consenting adult woman under the Muslim law was not punishable. Under the Hindu law, the king in inflicting punishment was to ascertain the motive, the time and place of offence, consider the ability of the criminal to suffer and the nature of crime, and cause the punishment to fall on those who deserve it<sup>vi</sup>; all these provisions clearly show that children were recognized as separate entities from adults, needing special care from others for their survival, and not fully responsible for their acts.

**Between 1773 and 1850:** The period between 1773 and 1850 began with the emergence of East India Company as a governing body forms a trading company and ended with the introduction of the first legislations relating to children. This period also saw the conversion of prisons from places for transporting convicts to places for keeping convicts, following the suggestions emanating from the state and internal arrangements of the Bengal jail. The report of the committee appointed by Lord William Bentinck, pursuant to T.B. Macaulay on the subject of jail discipline, was submitted in 1839. It fearlessly exposed the evils of the jail management existing then.

**1850-1919:** Social and industrial upheavals were spread during the period between the years of 1850 and 1919. In 1850 an Apprentices Act was introduced which was the first law which provisioned that convicted children between the ages of 10-18 would be provided vocational training. The concept of neglected children for the first time get recognition for legislative purposes and it provided an alternative to imprisonment of delinquent children. Further Indian Penal Code 1860 (IPC) saw the children as *doli incapax* who were age of below 7 years. Prison reports of above-mentioned period continuously raised concerns towards the need for change in policy and administration of juvenile imprisonment. Taking cognizance of high rate of recommitment and the remarkable increase in juvenile offenders (as Poona reported an increase of 65 times in 1861 from one in 1860), the government had to inquire along with making separate provision for juveniles.

The Reformatory School Act enacted in 1876 and later modified in 1897, was the next landmark legislation in the treatment of juvenile delinquents. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years, but they would not be kept in the reformatory schools after they had attained the age of eighteen years. There was also a provision to license out boys over fourteen years of age if suitable employment could be found. In Bombay Presidency, the Act was applicable to boys under sixteen years of age, while elsewhere it applied to boys under fifteen years of age. A year later, the Code of Criminal Procedure 1898 authorized magistrates to send juvenile offender to reformatories instead of prisons in the specified circumstances along with provisions relating to grant of probation and trial of children by the juvenile court<sup>viii</sup>.

One of the most significant developments in the history of the juvenile justice system in India is the report of Indian jail Committee 1919-20. It undertook the most comprehensive exercise for the overhauling of the entire prison system after visiting numerous jails and reformatory schools in the country and abroad, preparation for a Children Act were underway in Madras since 1917 and it passed the legislation in June 1920, and the recommendations of this committee provided the impulse for the enactment of similar legislation by other states too. More states followed suit in the years to follow namely, the Delhi Children Act 1941 the Mysore Children Act 1943, the Travancore Children Act 1945, the Cochin Children Act 1946 and the East Punjab Children Act 1949.<sup>ix</sup>

**Post 1950:** The Children Act 1960, for the first time in India, Prohibited imprisonment of children under any circumstance. It provided care and protection of children who found themselves to be in conflict with law.<sup>x</sup> It also introduced a sex discriminatory definition of child. It provided for separate adjudicatory bodies – a children court and a child welfare board to deal with delinquent and neglect children respectively. These adjudicatory bodies were to be manned by persons who had special knowledge of child psychology and welfare. This act introduced the system of three tier intuitions' namely, an observation home for receiving children during the pendency of their proceedings, a children's home for housing neglected children, ad a school for delinquent children.

A decision of the Gujarat High Court<sup>xi</sup> striking down a provision prohibiting a lawyer in juvenile court proceedings, as well as other difficulties experienced over the year in the functioning of the CA60 led to the Children (amendment) Act 1978. It permitted lawyers in a children court made provisions for inter transfer of cases between the board and the children court and for wider community involvement through measures like a panel of social workers to assist the children court fit person fit intuitions, and place of safety. The judiciary, too, time and again emphasized the need for a children act in every state.<sup>xii</sup>

With the adoption by the UN General Assembly of the Beijing Rules in 1985, recommendation for a uniform law in the 69<sup>th</sup> Report of the Committee on subordinate Legislation tabled in Parliament on 12 May 1986 and the Supreme Court's suggestion in 1986 for initiation of parliament legislation on the subject, the stage was set for bringing about uniformity in the law

relating to juvenile justice all over the country. The single person crusade of Sheela Barse for the rights of the child on this point must not go unmentioned. She persistently followed the question of illegal detention of children in jails and a uniform code for children through her journalistic writings, meetings with a series of personnel in different ministries and the prime Minister, discussions in seminars and workshops.

Parliament enacted the Juvenile Justice Act, 1986 and brought it into force on 2 October 1987 in all the areas to which it was extended. Though the JJA extended to the whole of India except the state of Jammu and Kashmir, it virtually brought about a uniform system of juvenile justice in the whole country. In addition, the JJA provided for prohibition of confinement of children in police lock or jail separate institutions for the processing, treatment and rehabilitation of the neglected and delinquent children, a wide age of disposition alternatives to family community-based placement and a vigorous involvement of voluntary agencies at various stages of the juvenile justice process.

Juvenile Justice Act, 1986, envisages the establishment of Juvenile justice Board, Juvenile courts, Observation homes, juvenile home special home and after care homes<sup>xiii</sup> Dr Hira Singh voiced the general concern that there was a wide gap between the cherished principles and the actual practices under the JJA. Most of the states have not set up the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and after care homes. For want of adequate measure for non – instructional care such as non-institutional probation, foster care, sponsorship etc.institutionalization continued to be used, with all its ill effects despite mandatory requirements, the minimum standard for institutional care in terms of accommodation maintenance education vocational training or rehabilitation were not spelt out in most of the states there was no definite policy towards the manpower development of juvenile justice. The gap between rhetoric and reality further widened with the ratification of the Convention on the Rights of the Child.

In year 2000, the juvenile justice (care and Protection of Children) Bill 2000 was introduced in the Lok Sabha and Rajya Sabha. The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. This law, brought in compliance of the 1989 UN Convention on the Rights of the Child (UNCRC), repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified the UNCRC in 1992. The Juvenile justice (care and Protection of Children)Act, 2000 has been enacted to consolidate and amend the law relating to juveniles in conflict with law and those in need of care and protection<sup>xiv</sup> The JJ (C&P) Act 2000 recognizes the family of the child as a unit to deal with while dealing with children. It introduces a wider range of community placement option in terms of adoption, foster homes, shelter homes, and sponsorship while imposing fine on the parents and providing counseling to the family of a child in conflict with law. The good intention in bringing forth the new legislation has been marred by loose and inconsistent drafting.

After the 2012 Delhi gang rape Government felt the need of bringing new juvenile Law and a bill was introduced in the Parliament by Maneka Gandhi on 12 August 2014.<sup>xv</sup> On 22 April 2015, the Cabinet cleared the final version after some changes. The Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed by Lok Sabha on 7<sup>th</sup> May 2015. It was Passed in Rajya-Sabha on Tuesday 22 December 2015 . It got the assent of President on 31 December 2015 and was enforced on 15 January 2016. Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from 15 January 2016, and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. The main feature of this act is treating juvenile between 16-18 age group<sup>1</sup> as adult in heinous offences.

## CONCLUSION

The present-day Juvenile justice system in India has not been a continuous process resulting from an uninterrupted concern for children. The timing and content of various developments relating to juvenile justice system have close relationship with the reforms taking place elsewhere in the world. Rather than with the demand of children in the country. After the year 1986, the central government undertook an active role to evolve a national policy for the welfare of delinquent, destitute and handicapped children. In present juvenile justice system, more emphasis is given on care and rehabilitation of the children who are in conflict with the law. In juvenile justice act 2015 provision has been made to deal with the heinous offences committed by the juveniles.

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