



Juvenile Justice System in India: A critical Analysis

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Abstract: *The world's citizens have welcomed the juvenile justice system as the most vibrant and illuminating framework for the holistic development of children. The main focus should be on reforming the corrupt and caring for the defenceless children. A child should be restored to the family and given the best chance of rehabilitation, if possible. The paper evaluated India's juvenile justice system in light of international standards and protected reasoning. By way of distinction, John Locke maintains that the human identity starts out as a "white paper, devoid of any characters and without any thought." According to this perspective, each "material of reason and learning" actually begins at the beginning. Locke undoubtedly targeted Descartes and the Cartesians in particular when he forbade the teaching of intrinsic considerations. It also suggests abandoning the Platonic notion that knowledge is a memory of Forms that are undeniably known. A few modern experts on mental evolution found Locke's enormous impelling or Plato's or Descartes' forceful occupants to be utterly agreeable. Youth is a fundamentally developing state, according to what we have named the "Aristotelian start." According to this viewpoint, it is not necessary for a child's evaluation to be exceptional in it but rather beneficial for assisting the child in developing into a respectable adult. A possible antidote to this craving is some childish workmanship. The paper tries to discuss about the provisions of Juvenile Justice Act, 2015 and the Lacunae appearing in the above mentioned act.*

Keywords: *Children's Rights, Juvenile Justice System, Constitutional Law.*

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1. Introduction

The Nehru quote is spot on: "Children are recognised across the world as the highest assets of the state and must be nurtured and protected."

In order to achieve its goal of creating a wholesome and healthy society, India's Constitution has given children numerous rights, including protection against various forms of exploitation and abuse as well as rights to education, religious freedom, and cultural and intellectual growth. Due to factors like poverty, broken families, improper upbringing, and lack of parental supervision, India has a large population of street children. If these children are prosecuted and punished like adults at such a young age, there is a risk that they will become hard core criminals, so they need to receive special protection and care as they are the future of the nation. If they are punished like other criminals they will most probably become one of them.

Juvenile offenders have been much more prevalent over the past few years. Additionally, there has been a significant rise in the number of crimes committed by minors under the age of 16. The National Crime Records Bureau reports that in 2011, juveniles were the victims of 23, 25,575 IPC offences. In 2015, it increased gradually to 29, 49,400 [1]. The child's rearing environment, the economy, lack of education, and parental care and control may all be contributing factors to the rising crime rate. These are just a few of the

fundamental causes behind the rise in youth criminality. The most depressing aspect of it is that kids these days, especially those between the ages of 5 and 7, are exploited as tools for crime since their minds are still very immature and naive, making them easy to control.

2. Concept of Child

A person who has not reached the age of eighteen and is not mature enough to discern what is right and wrong is generally referred to as a "child." In the modern era, the penal laws of the majority of nations have embraced the concept of "doli incapax," which refers to someone who is regarded incapable of developing the intent to conduct a crime or tort, particularly due to age. The penal code also specifies that only children between the ages of seven and twelve can be found guilty, provided that the act they committed was heinous or serious and that they had the knowledge and acquired the necessary knowledge to comprehend the circumstances surrounding the act and its repercussions.

The Indian Penal Code (IPC) 1860 finds that no youthful underneath the age of seven may be considered criminally in charge of advancement (Sec 82 IPC). By uprightness of mental impediment or frailty to fathom the after effects of one's exercises the criminal obligation age is raised to twelve years (Sec 83 IPC). A young woman must be no under sixteen years remembering the deciding objective to give sexual consent, unless she is hitched, in which case the

reinforced age is no less than fifteen. Regarding security against finding, getting, and related offenses the given age is sixteen for energetic associates and eighteen for young women [2].

According to the Juvenile Justice (Care and Protection) Act of 2015's section 2(12), a "child" is defined as a person who is under the age of 18 years old. The Juvenile Justice (Care and Protection) Act of 2015 distinguishes between "kid in dispute with the law" and "child in need of care and protection."

The Child Labor (Prohibition and Regulation) Act, 1986 defines a child as a man who has not completed fourteen years of age. The Factories Act, 1948 and Plantation Labor Act 1951 states that a child is one that has not completed fifteen years of age and a juvenile is one who has completed fifteen years of age yet has not completed eighteen years of age. According to the Factories Act, young people are allowed to work in handling plants the length of they are regarded therapeutically fit yet may not for more than four and half hours a day [3].

In general, a child who is accused of committing or proven to have committed a crime and who was under the age of 18 on the date the crime was committed is referred to as a "kid in confrontation with the law." The "child in need of care and protection" category, which is broken into 12 groups, is the second category of children.

The Motor Transport Workers Act 1961, and The Beedi and Cigar Workers (Conditions of Employment) Act 1966, both portray a child as a

man who has not completed fifteenth years and fourteenth years of age respectively [4]. The Merchant Shipping Act, 1958 and Apprentices Act, 1961 don't describe a youth, yet in acquirements of the acting state that a child underneath fourteen is not permitted to work in occupations of the appear [5]. The Mines Act, 1952 is the significant trade-related act that depicts an adult as a man who has completed eighteen years of age (thusly a child is a man who has not completed eighteen years of age) [6].

UNCRC: According to the 1989 UN Convention on the Rights of the Child, a "child" is any human being who has not reached the age of eighteen, unless the child's legal majority is reached earlier.

3. Historical background of Juvenile Justice System in India

There is currently a global trend to treat young criminals differently, including in many affluent nations like the United Kingdom and the United States. The 18th century saw the start of this movement. Before this, juvenile offenders received the same treatment as other criminal offenders. On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child. The goal of this treaty is to safeguard the interests of young offenders. According to the Convention, juveniles cannot be the subject of legal proceedings or court trials in order to protect their ability to reintegrate into society. The Juvenile Justice Act of 1986 may

be repealed and replaced by a new law under the terms of this convention. As per The Juvenile Justice Act, 1986, the age for a female to be treated as juvenile was 18 years and that of a male was 16 years. Also, apart from the need for a uniform Act regarding children, the Juvenile Justice Act, 1986 was a result of Sheela Barse v. Union of India, 1986 (2) Scale 1 [7].

Since, there were few grey areas where this new Act was silent and not expressive in dealing with certain issues most importantly determining the age of a juvenile offender, the landmark judgment of the Hon'ble Supreme Court of India by a Constitutional Bench in the case titled as Partap Singh v. State of Jharkhand, 2005(3) SCC 551. was pronounced addressing this issue in detail and held that "reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court". Thus, in light of the above decision by the Hon'ble Apex Court, the law pertaining this issue was amended [8].

The Juvenile Justice (Care and Protection of Children) Act, 2000, is a new piece of legislation on this subject that was developed by the Indian Legislature.

The Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the U.N. countries in November 1985, were intended to be put into practise by the Juvenile Justice, 1986, which replaced the earlier Children Act, 1960. The aforementioned Act, which applied to all of India except for the State of Jammu and

Kashmir, included 63 Sections and 7 Chapters. The Act's main goal was to provide neglected young offenders with care, protection, therapy, development, and rehabilitation.

The main objectives of the Act were:

1. The Act basically laid down uniform framework for the juvenile justice in the country in such a way that it protects the rights and interests of juvenile.
2. It talks about the machinery and infra – structure for the care, protection, treatment, development and rehabilitation of the juvenile offenders.
3. It sets out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

At present, the Juvenile Justice (care and protection of children) Act, 2015 is in force for dealing with the matters related to the child in conflict with law and child in need of care and protection.

4. Debate on Juvenile Justice Act-2015

The horrific and brutal episode of the Delhi gang rape in December 2012 sparked a number of discussions on the sufficiency or deterrent power of the juvenile justice act of 2000. The involvement of the juvenile offender, who was just six months away from becoming an adult, was consequently the main problem among these. Due to the fact that this was governed by the Juvenile Justice (care and protection) Act of 2000,

the criminal received just a three-year prison sentence from the court. Many rallies were organised in response to this Apex Court ruling, calling for changes to the current Juvenile Justice Law 145 [9].

Several notable changes to the current juvenile law have been made since The New Juvenile Justice (care and Protection of Children) was enacted in 2015. One of these significant changes is that adolescents between the ages of sixteen and eighteen will now be treated as adults. Additionally, those who have reached the age of 21 while serving a sentence are sent to jail for the duration of the term. However, the Juvenile Justice Board makes these decisions [10].

5. Lacunae in the JJA, 2015

Clause 7 of the JJ Bill, 2014, as it was presented to the Lok Sabha, was clearly unconstitutional because it said that those who were arrested after becoming 18 for an offence they committed before turning 18 would be tried as adults. Article 20 of the Constitution, which states in the clearest possible words that no one may "be subjected to a penalty greater than that which may have been inflicted under the legislation in existence at the time of the conduct of the offence," was directly at odds with this provision. Thankfully, the government removed this clause before the Lok Sabha approved it. However, it still has clauses that are in contravention to the right of equality guaranteed by the Constitution.

Although it does not define a child but Article 15 (3) of the Indian Constitution provides special legislation for children. It provides that special provisions can be made for the benefit of women and children. Children under the age of 14 should not be employed in factories, mines, or other hazardous jobs, as stated in Article 24. They should not be employed in any kind of hazardous works. According to Article 21 Children between the ages of 6 and 14 are the only ones who can secure the fundamental right to an obligatory and free elementary education. Articles 39(e) and (f), which strive to ensure that young children are not abused and are given the chance and resources to develop in a healthy way, in conditions of freedom, and with dignity, do not mention any particular age range. Children under the age of six must receive early childhood care, according to Article 45. India committed to conforming the definition of a child for all purposes to the CRC's requirements when it signed the convention in December 1992. Children are defined as all the natural persons under the age of 18 years in Article 1 of the CRC, unless majority is reached earlier in that nation.

The JJA, 2000 was put into effect expressly to meet this commitment of India by raising the age of juvenility for boys from 16 to 18 years old as girls were already covered by the previous law, the JJA, 1986, until the age of 18 [11]. There is no denying that, despite the CRC duty, India retained the right to choose any age as the cutoff for identifying a child, and if it had felt the need, it

could have done so by selecting 16 or lower. The JJA of 2015, however, decided to go with the cutoff age of 18 years for the definition of children while still allowing for the selective transfer of children who are older than 16 but younger than 18 and who are accused of committing heinous crimes to the adult criminal court to be tried as adults. This provision is in direct contravention of the general comment 10 of the UN CRC Committee which specifically prohibits children below the age of 18 years to be tried as adults and exhorts the countries that have been doing so to abolish such provisions.

India is possibly the first nation to decide to include an exception 15 years after it complied with article 1 of the CRC even though it did not originally include one. There is no denying that India, as a state party to the CRC, is not bound by the general comments, but there is also no denying that India is bound by its own Constitution.

All people, including children, are guaranteed "equality before the law or the equal protection of the laws within the territory of India" according to Article 14 of the Constitution [12]. It is commonly known that this clause forbade class legislation but allowed allow for fair classification using the nexus test. Any classification is appropriate if the standard for classification has some connection to the Act's goal. The criterion for treating children differently depending on their age and the type of offence must be proven to have a direct

connection to the JJA, 2015's goals in order to pass this test.

It was contended before the Supreme Court in *Subramanian Swami v. Union of India* [13] that regardless of their mental state or the type of crime they committed, clubbing all minors until the age of 18 was an over classification and was not permitted by the Constitution. Reiterating the well-established principle that [14]: Classification or categorization need not be the result of mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences among the members included within a particular class, the Supreme Court rejected the argument of reading down the provision of the JJA, 2000.

Article 14 will not prohibit such a course of action as long as the categorization's broad characteristics are recognizable and discernible and the categorization is rationally related with the object objectives. The state has accepted that typical characteristics of children up to that age are distinguishable and identifiable by defining "child" as a person under the age of 18, and the goal of this classification is to provide for their care and protection, among other things, as previously said. Therefore, any further subcategorization must logically relate to the same things. Because the subject of this sub-classification has no connection whatsoever to the goals of the JJA, 2015, the provisions relating to the transfer of 16-18 year old children accused of committing a heinous crime to an adult court fail

the test of reasonable classification inherent in article 14 of the Constitution. In the future, we will see the arbitrary decisions that will lead to genuine cases of child transfer because there is no scientific method for judging whether the crime was committed with a childish or adult mind. It is further submitted that after defining children as those who have not completed the age of 18 years, exclusion of 16-18 years old to be tried as adults is also against article 15(3) which permits special legislations only 'for' children and not 'against' them.

6. Conclusion

For more than a century, states have strongly believed that by developing a mechanism to address crimes committed by young children who are growing up and becoming adults, the juvenile justice system may be used to protect the public.

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- [5] The Merchant Shipping Act 1958 and Apprentices Act 1961.
- [6] The Mines Act, 1952.
- [7] Sheela Barse V, Union of India, 1986 (2) Scale 1.

States are aware that adolescent offenders are often less responsible and more changeable than adult offenders. In response to the differences, states have created juvenile justice systems and other youth-based service delivery systems that are accessible to adults. It has been noted that the delinquency rates in the economies of transitioning countries have drastically grown. Most young adults and children who find themselves in legal difficulty have committed crimes.



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