



# THE PATH OF JUVENILE JUSTICE SYSTEM DEVELOPMENT IN INDIA: A HYPERCRITICAL STUDY OF THE LEGISLATIONS

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**Abstract:** Juvenile Justice is a component of criminal law that reduces criminal liability based on the assumption that a juvenile lacks the capacity to act maliciously. The conception of juvenile justice arose from the notion that the challenges of juvenile delinquency and kids in unusual settings could not be resolved through standard criminal justice methods. India's juvenile justice system is at a critical crossroads in its history. With all of these big adjustments, there is growing worry that the system has gone from its objective of rehabilitation and reformation. This essay examines the issues that the Juvenile Justice System is facing, which are eroding its legitimacy, and proposes plausible alternatives. The author contends that, while India's current juvenile justice system can be traced back to colonial rule with many improvisations, it lacks vitality and does not address the reality of exacerbated criminal tendencies among the young. The author makes a few recommendations that will help bring about change and fulfil the expanding needs of today's world. The rate of crime in our society is soaring at a breakneck pace. While the necessary law is in place, it is at the implementation phase that the majority of things fail. There is a loud voice within society advocating for strict rules, and the time has come to address them in order to ensure greater justice and a more effective juvenile justice system.

**Keywords:** Juvenile Justice System, Criminal law, Crime, Reformation, Rehabilitation, Reforms

## 1. Introduction

In the last few decades, there has been an incredible rise in the number of crimes committed by youngsters under the age of 16. The child's rearing environment, economic situations, lack of education, and parental care are all cited as explanations for the development of such behaviour in children. Even more astounding is the fact that children are being used as tools in the commission of a crime, and this age range includes mainly youngsters aged 6-12 years, since the minds of innocent children may be controlled more easily at this age.

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The protection of juveniles and an apt treatment for betterment always was the main motive beyond the drafting of the legislations for the Juveniles in India. Though it always carried a greater weightage in the minds of the Constitution framers, clear demarcations of juvenile offenders and general offenders did not find a place in the comprehensive Articles. Juvenile Justice was first recognized under the colonial rule which was adopted in the British era and was then later converted to various modern-day legislations.<sup>4</sup>

In India, the need for Juvenile Justice System is felt far more in Delhi as compared to other major cities. In Delhi, there has been a constant increase in this type of crime, with the National Crime Records Bureau recording 1,981 crimes in 2015 and 2,368 cases in 2016. According to the data, juveniles were responsible for 46 killings in 2017, the largest number of homicides across all metropolises, as well as the highest number of robberies and fraud across all metropolises.

Delhi Police has implemented programmes such as Yuva, enrolling juvenile delinquents and vulnerable minors in vocational programmes to prepare them for full time work. The state government has plans to divert young people away from crime as well. However, according to reports, these strategies have not been successful. It is possible that the failure of the Delhi government's and Delhi Police's welfare scheme for children of a vulnerable age is a result of the city's ranking first in the number of crimes committed by juveniles in 2017. With 2,677 reported cases, Delhi accounted for 35% of all such crimes in metropolitan areas in the United States.

## 1.1 Historical Evolution of Juvenile Justice

In India, someone under the age of 18 who has committed a crime is considered a juvenile. There is a distinction to be made between minors and juveniles. A minor is someone who has not reached the age of full legal responsibility, while a juvenile is someone who has committed an offence or who requires care and protection.<sup>1</sup> The Juvenile Justice Acts of 2000<sup>18</sup> and 2015<sup>19</sup> have been both made as a result of the Convention and is a major trial to follow the convention. However, this trial is not a result of a day. It is a result of a long-drawn process which can be understood in two major phases.

### 1.1.1 Pre-Independence

Differentiated treatment of children dates all the way back to the Code of Hammurabi in 1790 BC, when the family was entrusted with the obligation of their monitoring and upkeep. Lord Cornwallis founded the first centre for these children, nicknamed "Ragged School," during the colonial administration in 1843. After 1850, the Apprentices Act was created, which was the first law to demand occupational training for youths between the ages of 10 and 18 who were convicted in court. Another key piece of legislation was the 1876 and 1897 Reformatory School Act. The Act permitted the court to imprison delinquents in reformatory schools for a period of two to seven years, but not after they reached the age of eighteen. Additionally, the Criminal Procedure Act of 1898 provided for specific handling of minor criminals. Probation was available to criminals up to the age of twenty-one for good behaviour. The Indian Jail Committee then drafted the Indian Children Act (1919-1920). Individual provincial governments gained the authority to adopt separate juvenile legislation in their own territories under this Act. In 1920, 1922, and 1924, the provinces of Madras,

Bengal, and Bombay each approved their own Children Acts. These statutes included provisions for the establishment of a dedicated juvenile justice system.

### **1.1.2 Post-Independence**

Following India's independence, the Constitution included provisions for the protection and development of children under the fundamental rights and directive principles of state policy. The Indian government enacted the Children Act 1960. This act made it illegal to imprison children in any scenario and provided for their care, welfare, education, maintenance, protection, and rehabilitation. This act applies solely to Union Territories. This Act established three tire-related institutions. A residence for observation during court procedures, a children's home for neglected children, and a special school for delinquent youngsters. The Juvenile Justice Act of 1986 was enacted to ensure consistency with the Children Act and to establish a norm for juvenile protection consistent with the 1959 United Nations declaration of the child. Following these declarations, the Indian government finally decided to enact the Juvenile Justice Act 2000.<sup>2</sup>

## **1.2 Juvenile Justice System**

Juvenile justice is a legal system that is designed to safeguard and promote the human rights of all children and adolescents. It is a branch of law that deals with minors / under-aged individuals who have been charged with crimes or who have been neglected or abandoned by their parents / guardians. It is more focused with rehabilitation than with adult criminal justice. International standards highlight the significance of both prevention and rehabilitation in the context of minors accused of crimes, referred to as juveniles in confrontation with the law. International standards affirm 'the right of any child who is claimed to have committed, is charged with, or is recognised as having committed a criminal offence to be treated in a way consistent with the promotion of the child's sense of dignity and worth'. In India, juvenile justice policy is largely guided by the constitutional mandate contained in Article 15,<sup>17</sup> which guarantees special attention to children through the enactment of required and unique laws and policies to protect their rights. Additionally, the policy is based on fundamental safeguards such as the right to equality, the right to life and personal liberty, and the right against exploitation (enshrined in Articles 14, 15, 16, 21, 23 and 24). The Indian Constitution places a premium on the state's obligation to protect children from exploitation and to promote their wellbeing. International Standards and case law also have an impact on the policy.<sup>2</sup>

## **2. Indian Legislations with special reference to Juvenile Justice Act 2000**

Juveniles have recently been proven to be involved in the most terrible crimes, such as murder and gang rape. Not all criminals come out of the woodwork at a young age. Although the causes of criminal behaviour in children are complicated, delinquency can be predicted quite early in some children's lives. Antisocial behaviour in the form of adolescent delinquency, on the other hand, is linked to adult criminality. Early problem conduct, on the other hand, should not be overlooked for two reasons: it predicts later, more significant difficulties, and if addressed, even modest interventions may be beneficial in reducing future delinquency. Children are seen as God's gifts, and it is our responsibility as parents, guardians, and society to ensure that children are given the opportunity to grow up in a healthy socio-cultural environment in order

to become responsible citizens. It is the responsibility of the state to ensure that all children have equal opportunity for development throughout their lives. Responsible individuals with the ability to express and resolve problems while working together for civic betterment are critical to our world's future. As a result, children are expected to be obedient, courteous, and of high quality.<sup>10</sup> However, for a variety of reasons, a small minority of children do not adhere to established social and legal guidelines. Juvenile delinquency, often known as juvenile crime, is a term used to describe how frequently such children engage in criminal behaviour.

## 2.1 Juvenile Justice Act 2000

On December 30, 2000, the President of India signed the Juvenile Justice Act 2000.<sup>18</sup> The Act mandates the care, protection, treatment, development, and restoration of neglected and delinquent children, as well as the necessary machinery and infrastructure. The Juvenile Justice Act of 1986 has been repealed.

The Act renamed delinquent and neglected children as "children in conflict with the law" and "children in need of care and protection." This Act establishes the Juvenile Justice Board to provide juvenile justice.

The Act also establishes a Child Welfare Committee to deal with child-related issues. This Act addresses children's basic needs and protects their human rights. Infants in need of immediate assistance may be placed in observing homes or shelters for the duration of the investigation. The Act prohibits the imposition of death, life imprisonment, and prison without fine or security. Important aspects of the Act include removing disqualification and publishing the juvenile's name, address, etc. in any newspaper or magazine. Section 23 of the Act punishes a person in actual charge or control of a juvenile for cruelty to a youngster. Section 26 punishes obtaining a juvenile or minor for dangerous job, keeping him in bondage, and withholding or misusing his profits. These are all cognizable offences.

## 2.2 Juvenile Justice and the Indian Constitution

Constitution is the supreme legislation of the land, outlining the citizens' rights and responsibilities. The Constitution also contains provisions governing the operation of the government apparatus. Additionally, Part IV of the Indian Constitution contains Directive Principles of State Policy DPSP, which are intended to ensure the society's smooth functioning. And the constitution has the following provisions about the rights and welfare of children:

- Article 21A - All children aged 6 to 14 years have the right to a free and obligatory education.
- Article 24 of the Indian Constitution guarantees that children under the age of 14 years be protected from dangerous employment.
- Article 47 of the Indian Constitution guarantees the right to a decent standard of living and adequate nutrition.
- Article 39 of the Indian Constitution guarantees the right to be free from human trafficking and forced labour.

Thus, when lawmakers drafted the Juvenile Act of 2015, they took into account all of the articles of the constitution pertaining to the welfare and protection of children's rights. And for the same reason, Chapter IV of the Juvenile Justice Act contains various laws aimed at improving and protecting children's welfare, as well as reforming and rehabilitating juveniles in all possible circumstances.<sup>11</sup>

### 2.3 Juvenile Justice with regard to Indian Penal Code and Criminal Procedure Code

The Indian Penal Code was enacted on 1st May 1861 and was widely regarded as the first codification of law in colonial India. The IPC covered both adult and juvenile offences. According to Section 82 of the IPC, "nothing committed by a kid under the age of seven constitutes an offence."<sup>20</sup> And section 83 of the IPC states – 'Nothing committed by a kid over the age of seven but under the age of twelve constitutes an offence if the child lacks the necessary maturity of understanding to judge the nature and effect of this act on that specific occasion'.

Additionally, Sections 315 and 316 of the IPC discuss the offences of foeticide and infanticide. If a person commits an act that constitutes culpable murder and resulting in the untimely death of an unborn child, the offender will face charges of Culpable Homicide.

Numerous provisions of the IPC deal with kidnapping and abduction. Section 361 provides that if a male minor under the age of 16 or a female minor under the age of 18 is taken from their rightful guardians without their agreement, the crime is referred to as abduction.

Section 27 of the Criminal Procedure Code<sup>21</sup> deals with the clause of – Jurisdiction in Particular instance of Juveniles; it states that – Any offence not punishable by death or life imprisonment committed by a person under the age of 16 years may be tried by a court specifically empowered by the children act to decide on such matters. Alternatively, it can be addressed by any other law now in place that provides for the treatment, training, and rehabilitation of juvenile offenders.

Section 437 of the Criminal Procedure Code provides that a kid who is in violation of the law may seek Anticipatory Bail. Justice Narayana Pisharadi of the Kerala High Court held that a kid involved in a conflict of laws has full rights to seek for anticipatory bail and that no section of the Juvenile Justice Act precludes this. A youngster who is in violation of the law may seek anticipatory bail in the High Court or the Court of Sessions.

### 3. Adoption of the Juvenile Justice Act 2015

The Juvenile Justice Act of 2015 repealed the Juvenile Justice Act of 2000, recognising the need for a better comprehensive and efficient juvenile justice system that emphasised both deterrence and reformative techniques. The approach to juveniles should be distinct from that to adults; there were arguments made in Parliament those juveniles should be allowed more room for transformation, reform, or progress, which can only be accomplished through the establishment of a separate legal system. Thus, the new laws, the Juvenile Justice (Care and Protection of Children) Act, 2015, placed a premium on a juvenile-friendly adjudication and resolution of cases.<sup>6,7</sup>

### 3.1 Key points of the Act

The Juvenile (Care and Protection) Act 2015 defines a kid as a person under the age of eighteen. The Act divides “child” into two categories:

- “Child in legal trouble”
- "Kid in need of care"

Children under the age of 18 who have committed a crime are classified as “children in dispute with the law”.<sup>5</sup> A child in need of safety and treatment is specified in Section 14 of the Act. After the amendment, a person aged 16-18 can be tried as adults depending on the characteristics of the offence. This amendment establishes a distinction between a kid and a juvenile, declaring that anyone accused of a crime and aged 16-18 is a juvenile, and so can be prosecuted as an adult in court. If the heinous criminal element is missing, the case goes to the juvenile justice board.

For the courts to comprehend the need for this change, victims must be recognised for the brutalities they have endured. The case of *Mukesh and Anr vs. State of NCT of Delhi & Ors*, often known as the Nirbhaya rape case, cleared the path for this amendment. In this case, it was argued that the accused's age should not obscure the character of his brutality towards the victim. He was found guilty of torturing the victim with an iron rod, spewing abuse and causing internal ruptures. Due to the laws' ignorance towards such horrible crimes committed by so-called “children”, Advocate Shweta Kapoor filed a PIL in the Delhi High Court, asking revisions to the Juvenile Justice (Care and Protection) Act, 2000. “Minds of kids over 16 who commit significant crimes are well formed and do not require society's care and protection. Rather, society requires care and protection,” claimed the PIL.<sup>9</sup>

The PIL contended that if a 16-year-old is convicted of a crime, they should be kept in juvenile justice institutions, but once they turn 18, they should be handled like regular criminals. It was emphasised that a blanket minimum age allows young individuals who are perfectly capable of distinguishing between good and wrong to get away with major crimes.

Another point worth discussing is the phrase ‘heinous. A person aged 16-18 must be convicted of a terrible crime to be tried as an adult. Section 2(33) of the 2015 Act defines ‘heinous crimes’ as “crimes for which the minimum sentence under the IPC or any other law in force is seven years or more imprisonment.” In some situations, permitting a 16-18-year-old to be tried as an adult is a victory for the Indian judicial system, but the definition of atrocious seems wrong. The definition is based solely on the length of punishment, not the sort of offence or characteristics committed.

The rising rates of youth crime in India are a serious worry that must be addressed.<sup>10</sup> Although the government has enacted different laws and regulations to reduce juvenile crime, the current laws on juveniles do not have a practical impact on juveniles, and hence the results are ineffective and the legislative objective is not being fulfilled.

#### 4. Critical Analysis of the present system

All crimes committed by children under the age of 16 are dealt with exclusively by the Juvenile Justice Board. And all petty or serious acts committed by minors between the ages of 16 and 18 that are classified as such under the Juvenile Justice Act 2015. In situations involving 16–18-year-old minors suspected of committing an offence, the Board is obligated to perform a preliminary evaluation with the assistance of professional experts in order to analyse the child's mental state and assess the circumstances surrounding the offence. Following the evaluation, the JJB may decide to treat the kid "as a child," or transfer the child to a children's court formed under the Protection of Children's Rights Act 2005, a special court formed under the Protection of Children Against Sexual Offences Act 2012, or a session court.

When such a child is received, the children's court must make a new determination as to whether the child must be treated as an adult or as a child in the children's court. If it is decided to treat the child as a child, a court order must be issued in that regard. If the child is to be tried as an adult, the children's court should make appropriate orders based on the child's requirements.<sup>8</sup> The issue with this statute is that it makes no indication of whether the youngster must serve any time in prison as a result of the offence. If the child turns of 21 before the time of confinement expires, the children's court can determine whether the child has changed and is ready to be freed. If the child is deemed to be reformed, he or she must be released under the supervision of a monitoring authority for the remainder of the stay. If they do not reform, they will be sent to jail for the remainder of the original sentence.

The inherent flaw of treating some children differently leads to calls for lowering the age at which a juvenile can be tried as an adult and expanding the list of offences for which they should be tried, thereby increasing the number of children who are excluded from the Juvenile Justice Act's protective umbrella.

The Act with all its shortfalls is considered as a greater legislation till date in favour of the juveniles.<sup>13, 14</sup> The courts have complemented the provisions of the Act and the functioning of the provisions is hence, subject to other parameters like the role of police, justice system machinery and effectiveness of lower tribunals and courts.

#### 5. Conclusion and Suggestions

As a result of the preceding discussion, we may conclude that treasured ideas alone will not benefit society. The value of practical practice must be emphasised. A fundamental flaw in this Act is the lack of cooperation and oversight among the various authorities. Many people involved in the administration of this Act, including police officers, lawyers, and judicial officers, are unfamiliar with the concept and ideology of the juvenile justice system. To achieve the desired consequences, the law must be implemented effectively. The society must be urged to provide sufficient space and opportunities for children's development and reform. The judiciary has played an admirable role in ensuring that the juvenile justice system is properly implemented by interpreting the provisions of numerous statutes to provide optimal advantage and relief to juveniles. Juvenile crime trends can be reversed with serious implementation of excellent legislation.<sup>15</sup>

Few Suggestions includes:

- The Juvenile Justice Act should be enforced vigorously. Acting without the assistance of willing arms is inefficient and dangerous. As a result, the government should make certain that the law is properly enforced by the authorities.
- For all crimes in India, there should not be a uniform juvenile age. The system can be constructed to categorise and split the Juvenile Justice system into various age groups in the same way that it is done in the United States, the United Kingdom, and France.
- Cases involving minors should not be transferred to adult courts. To strengthen their efficacy in giving safe shelter to abandoned and neglected children, every Juvenile Justice Board must interact with local child welfare services.
- Representatives of the Juvenile Justice Board must work with local child welfare organisations to increase their ability to provide safe havens for vulnerable children and young people.
- It is necessary to study the viability of constructing a non-judicial juvenile justice system.
- Justice for adolescents who have breached the law would be achieved by ensuring and increasing the quality of juvenile correctional services.
- The juvenile age should not be lowered since it will have far-reaching consequences for India's criminal justice system that will be detrimental to the growth of justice and equity.

The deterrence part of juvenile criminal law must take a back seat to the reforming aspect. Despite its faults, the 2015 Act straddles the line between the punitive and protective, ensuring that the juvenile is effectively rehabilitated while simultaneously being discouraged from violating the law. The need of the hour is strengthening the other aspects for a better law and legislations for the juveniles in the country.

### References

1. SK Bhattacharya, *Juvenile Justice: An Indian Scenario* (Regency Publications New Delhi 2000).
2. Vedkumari, *The Juvenile Justice System in India* (2nd edn, Oxford University Press 2010).
3. Franklin E Zimring, Langer Maximo and David S Tanenhaus, *Juvenile Justice in Global Perspective* (NYU Press 2017).
4. Susan Guarino Ghezzi, *Balancing Juvenile Justice* 116 (Routledge 2005).
5. C Roberson, *Juvenile Justice: Theory and Practice* (CRC press 2016).
6. PM Bakshi, *The Constitution of India* 35 (13th edn, Universal Law Publication 2015).
7. Suhail Sharma, *Juvenile Justice System, Reforms and Policing System in India: Origin, Dialectics, Comparisons, and Way Forward* (Cambridge University Press 2022).
8. Venudhar Routiya, *A critical study of children under Juvenile Justice system in India*, 11(04) IOSR Journal of Electronics and Communication Engineering (2016).
9. DP Farrington, *Childhood Risk Factors and Risk Focussed Prevention*, 4 The Oxford Handbook Criminology 602-640 (2007).
10. Dr Bikram Kumar Das, *Juvenile Justice System in India*, 5(5) Indian Journal of Research 1 (2016).
11. Dr Ratnaprava Barik and Dr Jayanta Kumar Dash, *Juvenile Justice in India: A Historical Outline*, 10(9) International Journal of Current Research 73445-73449 (2018).
12. M Ramachandran and M Kannappan, *A Study on Juvenile Justice System in India before and after Nirbhaya Case*, 119(17) International Journal of Pure and Applied Mathematics 1265-1275 (2018).



13. Sesha Kethineni, *The Juvenile Justice System in India: From Welfare to Rights*, 1(2) Asian Journal of criminology 209-11 (2007).
14. Mr Atul S Jaybhaye, *Critical Analysis of Juvenile Justice System in India*, Bharti Law Review (2017).
15. Gautam, Madhavi, *Indian Juvenile Justice System: Child Conflict with the Law*, International Journal of Law Management and Humanities (2020).
16. Pupul Dutta Prasad, *Reimagining Counselling in the Juvenile Justice System*, 55(9) Economic and Political Weekly (2020).
17. The Constitution of India
18. The Juvenile Justice (Care and Protection Of Children) Act, 2000
19. The Juvenile Justice (Care and Protection of Children) Act, 2015
20. Indian Penal Code, 1860
21. The Code of Criminal Procedure, 1973

