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## **“EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA”**

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As we came to know about the meaning of the term Juveniles; Juvenile Delinquency; Children in Need of Care and Protection and much more related terms. Now let us see how the Juvenile System developed in India and what all factors helped the formulation of the law in our country. The historical significance and the vast cultural diversity brought us to the conclusion of developing a better law from time to time implementing what the society needs. National as well as International Laws developed on this matter or matters concerning the same helped the policy makers to make better law related to Juvenile Delinquency.

### **THE DEVELOPMENT OF JUVENILE JUSTICE SYSTEM IN INDIA**

#### **PERIOD PRIOR TO 1773**

Maintenance of children has been embedded in all the personal laws including Hindu and Muslim laws. The bringing up of the children was the prime responsibility of parents and family. Amongst the Hindu and Muslim laws charity has been a noble cause and concern for the care of needy and the poor children in case of family failure. Considering the fact that the Muslim law makes it compulsory for a person to take charge of an abandoned child, who is at the resort of getting perished. None of the laws had a clear reference to juvenile delinquents as such.

Though, studying closely of the Hedaya and the Manusmriti provides for different set of punishment to children for certain offences.

#### **PERIOD FROM 1773-1840**

The period between 1773 and 1840 began with the emergence of the East India Company as a governing body from a trading company and ended with the introduction of the first legislations relating to children.

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## **PERIOD FROM 1843-1950**

The first ragged school for orphans and vagrant children in India was established in 1843 through the exertions of an Englishman, Dr. Buist, who was instrumental in the establishment of the ragged school at that time Bombay was known to be as the David Sassoon Industrial School. The objects of the school were

- (i) The reformation of juvenile offenders arrested by the police, and
- (ii) The encouragement of apprenticeship amongst the working classed.

All these developments together prepared the ground for the introduction of the Apprentices Much legislation was enacted in this period covering a wide range of matters concerning children.

## **PERIOD FROM 1950-1986**

The independence of India in 1947 saw the partition of the country, coupled with a huge amount of migration and many riots, leaving many children homeless and without family care. Parliament discussed in great depth the Children Bill 1953, which was to apply to Part C states, but it was shelved in 1954 with the reorganization of states.<sup>1</sup>

- The Parliament of India passed its **first central Children Act in 1960**, but it was applicable to union territories only. It was presented as a model act, and it indeed was followed by all other states that enacted Children Acts after 1960. The Children Act of 1960 introduced four unique features for the first time.

1. It introduced a sex-based definition of “child,” making the act applicable to girls below the age of 18 and boys below the age of 16.
2. It provided for the constitution of two separate competent authorities, namely, children’s courts to deal with delinquent children and the **Child Welfare Board** for neglected children.
3. It prohibited the imposition of the death penalty or sending children to imprisonment or keeping them in a police station or jail under any circumstances, including for failure to pay a fine or failure to find sureties and even while proceedings were pending.



4. Three categories of institutions were established under this act for providing residential care to children, namely, Observation Home for keeping all children falling under the purview of the act while their proceedings were pending before the competent authority; Children Home for keeping children found to be neglected; and Special Home for children found to have committed an offense.

Subsequent legislation on the subject has retained the prohibition of imposition of any punishment for children for any offense while introducing some changes in the other features and retaining the two adjudicatory bodies and three kinds of residential institutions.

- In 1983, **Sheela Barse** a journalist, filed a petition of habeas corpus in the public interest in the Supreme Court of India for release of 1,400 children who as per official records of the government, were in prisons.

She claimed that these children were illegally confined as the Children Acts of various states prohibited keeping children in prisons. The Union of India, all the states and union territories were made party to this petition. Legal aid committees and district judges were given the responsibility of filing reports on the state of affairs in each district.

The Supreme Court noted that the differences in the Children Acts of various states especially the differential in the cut-off age defining child was resulting in differential treatment for children in different states. The Supreme Court suggested to the Union of India that it should pass a uniform legislation for children across the territory of India to remove such inequality.<sup>2</sup>

## **PERIOD POST 1986**

This period denoted the principal uniform enactment gone by Parliament to be specific the **Juvenile Justice Act of 1986**. It connected to the entire of India aside from the province of Jammu and Kashmir. It held the **essential highlights of the Children Act of 1960** including the sex-based meaning of "youngster" just as the total denial of keeping child in detainment facilities, correctional facilities, or police headquarters under any conditions.

Before the authorization of the Juvenile Justice Act 1986 questions were raised about the ward of the youngsters' court to manage genuine offenses in perspective on section 27 of the Code of Criminal Procedure of 1974, which allowed exchange of children underneath the

age of 16 who carried out offenses not culpable with death or life detainment to child's court. The Supreme Court had illuminated and decided that children courts were equipped to attempt all offenses incorporating genuine offenses culpable with death or life detainment.

After the order of the Juvenile Justice Act 1986, its pertinence to juvenile who submitted offenses under the unique laws was tested by and large and was chosen distinctively by various courts. The extraordinary laws contained an abrogating impact proviso expressing that the arrangements of that demonstration would supersede some other opposite law in power. Certain cases decided by the judiciary also provide a brief understanding about Juvenile Justice, such as-

- In, the Gauhati High Court, in *Jagdish Bhuyan v. State* held that the arrangements of the Juvenile Justice Act of 1986 were not appropriate to a juvenile who submitted an offense under the Terrorist and Disruptive Activities Act (TADA) in perspective on its superseding impact condition.
- Further in *Antaryami Patra v. Territory Of Orissa* the High Court of Orissa held that the arrangement of required safeguard contained in the Juvenile Justice Act of 1986, established after the death of the Narcotics and Psychotropic Substances Act of 1986, was abrogated because of the consideration of the non obstante provision in the Narcotic Drug and Psychotropic Substances Act in 1989.
- Moreover in, The Kerala High Court in *re Sessions Judge\_Kalpetta*, nonetheless, connected the Juvenile Justice Act to a youngster who carried out an offense under the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act of 1989, which contained a comparative non obstante proviso, with the thinking that a superseding impact statement comes into activity just if two enactments are managing a similar topic. The court opined that the previous enactment managed wrongdoers, while the last managed offenses, and henceforth, there was no event for struggle in the arrangements of the two demonstrations. The Supreme Court held that the Juvenile Justice Act connected to a youngster who submitted an offense under the NDPS Act and TADA.<sup>3</sup>

Be that as it may, these cases helped in combining the comprehensiveness of adolescent equity, with the point of not barring child from the domain of the demonstration.

### **RATIFICATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC) IN 1992**

Remarking in 2000 the UN board of trustees under the CRC watched "Of specific worry to the Committee is the low period of criminal obligation under the Penal Code which is set at seven years; and the likelihood of attempting young men somewhere in the range of 16 and 18 years as grown-ups."

Soon from that point, the Indian Parliament sanctioned the Juvenile Justice (Care and Protection of Children) Act of 2000 "remembering the models recommended in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other significant global instruments." The period of criminal obligation keeps on being seven years right up 'til today.<sup>4</sup>

### **THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT ACT, 2006 AND 2011**

The Amendment Act was directed by the States for better usage and organization of the arrangements of the Act in its actual soul and substance.

These principles called the Juvenile Justice (Care and Protection of Children) Rules, 2007 has come into power on the date of its distribution in the Official Gazette and these Rules will be adjusted to until the concerned State Government defines Rules explicit for the State with impact to usage of the J.J. Act.

The Act in Section 68 recommends different territories wherein the Rules can be connected to for better execution of the Act explicitly with the executives of the homes norms to be clung to jobs and obligations of the Juvenile Justice functionaries, systems and working of the able specialists, recovery instrument and task of Juvenile Justice Fund.

Further, the occurrence of "*Delhi Gang Rape Case of 2011*" has constrained the legislators to concoct the law. The real downside of the Act was that it contains not well

prepared legitimate arrangements and failing adolescent framework was additionally the significant reason in avoiding the adolescent wrongdoings in India. The demonstration was supplanted soon by The Juvenile Justice (Care and Protection) Act, 2015.

### **THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015.**

The means to unite the laws identifying with juvenile affirmed and observed to be in strife with law and children needing care and security by providing food and considering their essential needs through legitimate consideration and assurance, improvement, treatment, social- reconciliation, by receiving a child neighborly methodology in the settling and transfer of issues to the greatest advantage of children. The demonstration additionally centers on recovery of adolescent guilty parties through different youngster care houses and establishments. The most significant subjects of the Act are Claim of Juvenility.

The absolute first and most disputable inquiry among the lawful crew and communists is the "case of immaturity". The case of Juvenility is to be chosen by Juvenile Justice Board. The Board needs to choose the case of adolescence under the steady gaze of the court procedures yet the case of immaturity can be raised under the watchful eye of the court at any phase of procedures and even after the transfer of the issue by the Board .The Board needed to consider Rule 12 of the Juvenile Justice Rules, 2007 so as to decide the case of adolescence.<sup>6</sup>

In instance of *Kulai Ibrahim v. State of Coiminator* it was seen by the Court that blamed has appropriate to bring up the issue of immaturity anytime of time amid preliminary or even after the transfer of the case under the Section 9 of Juvenile Justice Act , 2015.

Further on account of *Deoki Nandan Dayma v. Province of Uttar Prades* the court held that passage in the register of school referencing the date of birth of understudy is acceptable proof in deciding the period of adolescent or to demonstrate that whether the charged is adolescent or child.

### **PRINCIPLE OF FAMILY RESPONSIBILITY**

The importance of the family will be increasingly obvious on the off chance that we consider offspring of broken homes or penniless.

A family is where the general public begins its advancement and advancement. The organization of family performs assortment of capacities as officially depicted. These capacities are vital to the prosperity of the person just as the general public.

The offspring of broken home are mentally precarious and sincerely unreliable. They for the most part develop upon to end up lopsided identities which are loners in the general public. They are maladjusted and may even turned out to be unsocial components of society. In spite of the fact that it might be contended that since numerous elements of family like instruction, wellbeing, entertainment and so on are being taken up by other social establishments, the significance of family is diminishing, yet it isn't valid. Since a family holds its significance as a constituent element and building square all things considered and networks and will keep on doing as such in future moreover. Along these lines the Principle of Family Responsibility assumes an essential job in the organization of Juvenile Justice as a casual consideration.<sup>7</sup>

The biological parents ought to be given the principal need just when they are not accessible, at that point the duties shifts upon the other two choices. Continuously the essential duty lies upon family ideally with organic guardians. It is just the standard, yet there is a special case to this. This Principle likewise perceives the special case as in except if the best enthusiasm of the child manages something else, the obligation will be just on the family.

In *Bhola Bhagat v. State of Biha* additionally the issue was the age of the denounced, where it was held that in the event that the court engages any uncertainty about the rightness of the request it must make due enquiry by offering chance to the gatherings to set up their cases and record a positive finding with respect to age of the blamed.

The Supreme Court has made it unmistakable in another case<sup>68</sup> that on the off chance that it is demonstrated that on the date of event, the appellants had not finished 16 years old, they could be treated as juveniles. Be that as it may, in *State of Haryana v. Balwant Sing*, the Supreme Court had cautioned the pointless legal energy to bring the delinquents under the juvenile equity framework. It was held: "When it isn't the situation of the respondent that he was a child both under the steady gaze of the committal court just as under the watchful eye of the preliminary court, it is extremely amazing that the High Court, in view of on the

passage owned in section 313 expression referencing the age of the respondent as 17 has inferred that the respondent was a 'child' on the date of event."

In *Santenn Mitra v. State of West Bengal*, likewise the Supreme Court expanded its most great frame of mind towards the appealing party who raised the request that he was a child on the date of the commission of the offense. Making juvenile equity framework free from procedural conventions does not imply that the essential standards of decency can be undermined under the pre-content of non-recognition of details or customs. The U.S choices in such manner likewise merit notice.<sup>8</sup>

### **JUVENILE JUSTICE ACT**

Indeed, even at the Ministerial dimension, the condition of usage of juvenile equity was not discovered attractive. It is expressed that these strategies and enactments for youngsters have all in all experienced feeble usage, attributable to sparse thoughtfulness regarding issues of child security, bringing about rare assets, insignificant framework, and lacking administrations to address insurance issues. In spite of the fact that the Juvenile Justice Act see the misconduct or the issue of youngsters misuse in all encompassing terms, due to absence of usage the target of the Act isn't accomplished.

The Nirbhaya episode at Delhi and the judgment of the Madras High Court provided lacuna in the Act and the lacuna in the execution. An occurrence of assault and subsequent passing following 13 days of a female physiotherapy understudy, which activated most grounded challenge from all segments of the general public, built up a discussion in the whole nation with regards to the age up to which an juvenile ought to get assurance under Juvenile Justice (Care and Protection) Act. In the assault, the most forceful conduct was from the juvenile, by name, Pawan (nonexistent). That made the blood of all people to bubble. The 33 page charge-sheet did not contain the name of the juvenile normally. The probability of the juvenile being condemned uniquely to the most extreme time of three years by the Juvenile Justice Board, this made alert from all segments of the general public. Consequently, there was a well known interest to lessen the period of insurance from 18 to 16.





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