

# JUVENILE JUSTICE SYSTEM IN INDIA

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## ABSTRACT

*The juvenile justice system in India, is one of the most important areas of law making, for it impacts the very backbone, and the future of the nation, the children. The juvenile system in India started its journey from the British Raj, however, it reached a consolidated stage by the Juvenile Justice Act of 1986, which was repealed in by the 2000 Act which subsequently came to be replaced by the Juvenile Justice (Care and Protection) Act 2015. This study aims to give an insight into the development of the juvenile justice system in India with emphasis on the Act of 2015. Further, to give a better understanding of the scenario, a clear analysis has been made between the Juvenile Justice (Care and Protection) Act 2015 and the Juvenile Justice (Care and Protection) Amendment Act 2021. The article also gives instances of prominent cases of the juvenile justice system which gave rise to the law as we know it. This research is a holistic study on the juvenile justice system of India and its present stage.*

**Keyword:** Juvenile, Children in conflict with law, Child in need of care and protection

## 1. INTRODUCTION

*“The children of today will make the India of tomorrow.”*

*- Pandit Jawaharlal Nehru*

India, the world's largest democracy and the second most populated country in the world, is a melting pot of cultures. With more than twenty states, one hundred and fifty languages, and a kaleidoscope of cultures. In light of such diversity and the increasing, India has set up a robust legal system to combat the obstacles which come its way. Through various laws and regulations, catering to every aspect of society, the country has been able to establish a state of law and order. One such aspect of the law is the juvenile justice system.

The juvenile justice system in India can be traced back to 1850, with the Apprentice Act, which was the first known legislation dealing with children in conflict with law. Following this, came several other acts like the Reformatory Schools Act 1897 to deal with youth offenders, the Bengal and Bombay Children Act of 1922 and 1924. Post-independence discussions were undertaken with regards to a Children's Bill, which was eventually abandoned. In 1959, that the General Assembly of the United Nations passed a resolution called the Declaration of the Rights of the Child, to which India was made a party. Immediately after this, the Indian Parliament passed the Children Act of 1960, for the welfare of women and children. However, despite these legislations, the question of juvenile justice, the children in conflict with law, juvenile delinquents was still

undecided. In 1992, India ratified the UN Convention on the Right of the Child, which led to a need of a domestic law conforming to the international standards that India had agreed to. In an aim to address this issue, the Indian lawmakers introduced what we now know as the Juvenile Justice (Care and Protection) Act 2000, which repealed the Juvenile Justice Act of 1986. The Act of 2000 was further replaced by the Juvenile Justice (Care and Protection) Act 2015 and further amendments were made in the form of the Juvenile Justice (Care and Protection) Amendment Act 2021, which came into force from September 1st 2022.

The Juvenile Justice Act of 2000, under Section 2(k) defined a child as someone, “person who has not completed eighteenth year of age.” And, a “juvenile in conflict with law”, as, “a juvenile who is alleged to have committed an offence” under Section 2(l). This Act further spoke of the setting up of the Juvenile Justice Board along with demarcating the juveniles into two broad categories. Firstly, a juvenile in conflict with law and secondly child in need of care and protection. Despite best efforts, this act had been said to be rigid and not conforming to the rising needs of the society, which is why there was emergence for a new and developed act which not only looked into the welfare of the juveniles involved, but also ensured justice for those who had been wronged.

In 2012, India saw a case like never before. On 16th December 2012, a young doctor was brutally gang-raped in a bus in the national capital and thrown on the road to die along with her friend, who too was mercilessly beaten.

On 29th December 2012, that young woman succumbed to her injuries in a hospital in Singapore. This is the case of Jyoti Singh Pandey or commonly known as the Nirbhaya Case. Among the convicts, was one juvenile by the name of Mohammed Afroz or Raju, who at the time of the crime was 17 years and 6 months old. If reports are to be believed, he was the most brutal among all the accused named in the crime. However, despite this, the Juvenile Justice Board, declared him to be a minor and sentenced him to a reform home, from where he was released in 2015 amidst much protest. It is in this scenario that, there arose a need for a stricter yet considerate reform to deal with cases of such nature. In light of this, the Juvenile Justice (Care and Protection) Act 2015 came into being.

The juvenile justice system has been through several amendments over the years in an attempt to meet the current needs of the society. The most latest being the amendment of 2021. These amendments along which the current status of the juvenile justice system will be discussed in detailed, further in the article.

## 2. ANALYSIS

In the discussion of the juvenile justice system, it is essential that we know from the very beginning as to why we need a juvenile justice system in the first place. Juvenile delinquency is a term used to denote a youth who has committed a criminal act or offence. It is a person who is not of the age of majority and cannot be considered as an adult. Sociologists view the concept of juvenile delinquency in a broader perspective, covering violations from legal and social norms to minor offences to lastly serious criminal offences committed by the juveniles. Some of the major causes of juvenile delinquency are the economic decline, especially in the poorer districts of large cities. Many children encounter violence around them from a very young age and along with often being targets of such violence. Socio-economic instability is homes often lead to children being sent to work at a very young age increasing the likelihood of getting involved in criminal activity. Broken homes, lack of educational opportunities, poverty all are major contributing factors of the rise in juvenile delinquency especially in the Indian scenario. Further, in recent times, juvenile delinquency is not restricted to only people to the lower strata of society. With the impact of social media on children across all groups, children have a higher tendency to get influenced and commit crimes. Aggression, violence, abusing and various other behaviour patterns seen and perceived through the social media are contributing factors of juvenile delinquency.

In recent years several crimes have come into light which were committed by juveniles. One of the most prominent of such crimes was the 2012, Delhi Gang-rape case. In 2015, two juveniles were arrested for the raping a two-and-half year old girl from West Delhi. 2018 saw another heinous crime, the Kathua rape case in Jammu & Kashmir where an eight year old girl was gang-raped and murdered by several people including a juvenile. These cases are just the tip of the iceberg with many going unreported. The Juvenile Justice system in India, has a twofold perspective, firstly, a rehabilitative function for the juveniles who have been committed under the juvenile justice laws and to do justice to the victims. This has been carried out by the Juvenile Justice (Care and Protection) Act and its subsequent amendment which are being discussed below.

### **Juvenile Justice (Care and Protection) Act 2015.**

The Juvenile Justice Act of 2015, replaced the Act of 2000 and brought in the much appreciated provision of treating juveniles in conflict with law in the age group of 16-18 involved in heinous crimes to be treated as an adult. This change was in the aftermath of the Nirbhaya was wherein the juvenile was treated as minor by the Juvenile Justice Board, in spite of being only six months shy of the age of majority. Furthermore, through this Act the Central Adoption Resource Authority was given the statutory status.

Under this Act the definition of a “child in need of care and protection”, has been expanded and given an all-encompassing outlook. It now includes children found in contravention of labour laws, who is at imminent risk of marriage before attaining the risk of marriage and whose family and parents may be responsible for the solemnization of such marriage. In the event of a child in conflict with law is apprehended by the police, such child will be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall ensure that the child is produced before the Board within a period of twenty-four hours. Further, the Act under Section 15, a child above the age of sixteen who has committed a heinous crime, will be assessed by the Board regarding his mental and physical capacity, giving way to the fact that he can be tried as an adult if the situation permits.

The Juvenile Justice Board continues to be the authority for adjudicating matters related to children in conflict with law, comprising of one judicial magistrate and two social workers. However, now it is not a pre-requisite that,

the magistrate must have special knowledge of child psychology and child welfare.

Another unique feature of the Act of 2015 is the emphasis put on the process and procedure involved in adoption of children in need of care and protection. Section 2 (2), defines adoption as , “means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.” Vide this act orphaned and abandoned children are also eligible for adoption. The definition was adoption was expanded and given a wider ambit. The Central Adoption Resource Authority formed under Section 68 is the foremost authority when it comes to adoption in India.

The Act of 2015, aimed to make comprehensive provisions for children alleged and found to be in conflict with law by taking into consideration the various international conventions, for example 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 the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993) among others. Further, it also took a view of rehabilitating, adoption, re-integration and restoration of the children in need of care and protection. The Juvenile Justice (Care and Protection) Act 2015, was a step towards evolving the scenario in relation to the children in conflict with law along with that the children in need of care and protection. The lacunae which existed in this act was sought to be removed by the most recent amendment of 2021, which came into force in 2022.

#### **The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.**

The Amendment Act of 2021 brought in several amendments to the Juvenile Justice (Care and Protection) Act of 2015. Some amendments catered to deletion of provisions, like omitting Section 2(4) of the Act of 2015, the omission of the words, “the person in-charge of which is willing,” in Section 2(46), the substitution of the words “Children’s Home” for the words “child care institution” in Section 2(17) and the words, “words “submitted by Child Welfare Officer” to be omitted from Section 37(1) are some examples of the amendments made.

The most significant amendment carried out this Act of 2021, is the expansion of the provision that in cases of

heinous crimes, juveniles within the age group of sixteen to eighteen can be tried as adults. This change was made to Section 18 of the Act of 2015, wherein “or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under section 15, disposed of the matter,” was inserted. Another interesting amendment made in 2021 was the substitution of Section 86 of the 2015 Act, which dealt with, the classification of offences and the designated court. The substituted provision states that, “86. (1) Where an offence under this Act is punishable with imprisonment for a term of more than seven years, then, such offence shall be cognizable and non-bailable. (2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable. (3) Where an offence, under this Act is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable and bailable. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or the Commission for Protection of Child Rights Act, 2005 or the Protection of Children from Sexual Offences Act, 2012, offences under this Act shall be triable by the Children’s Court”.

The Amendment of 2021, took a more pragmatic approach to dealing with the 2015 Act and made changes, which though may seem stringent, will be instrumental in proper governing and implementation of the laws in the juvenile justice system. Both the Act of 2015 and the Amendment Act of 2021, are progressive steps towards making the situation of the juveniles in conflict with law, suitable and rehabilitative enabling them to lead proper and righteous lives after their time in the juvenile homes. Although, improvements will be warranted with changing times, the current law aims to provide justice as well as reformation all together.

#### **7. CONCLUSION**

Children are the backbone of the society, and it is imperative that their welfare is taken to be of paramount importance. The courts in various cases have upheld such position in relation to matters of custody and adoption. The Supreme Court has time and again emphasized the fact that the “welfare of the child is of paramount importance”, and is the sole yardstick when deciding for such matters. In the same way, the juvenile justice system in India aims to uphold the welfare of the children in conflict with law along with doing justice to those who have been wronged. The Indian Constitution in Part III and

Part IV, provides for the welfare and protection of children and women ensuring the best interest of the child. In addition to this and the international conventions of child welfare, the juvenile justice system was consolidated to be an integral part of the judicial system in India.

In recent years there have been many instances wherein there arose a confusion about whether a minor was to be treated as an adult for serious and heinous offences. As discussed earlier, the most prominent of such cases was the Delhi Gang-rape case. Another, such case was the Ryan International school murder case of Gurugram in 2017, wherein a seven year old boy was murdered by a senior student of the same school. The question in this was whether the sixteen year old accused was to be tried as an adult. After several deliberations, the decision was taken by the Juvenile Justice Board that the accused was to be tried as an adult.

Reformation and rehabilitation of juveniles was the primary motivation behind the setting up of the juvenile justice system. The claim of juvenility can be raised at any stage of the trial, however the burden of proof falls on the person claiming such protection. This is yet another way of ensuring that the juvenile is treated in a more considerate manner, for being tried as an adult and subsequently being sent to an adult prison will have long lasting and dangerous impacts on the minds of such individuals. Many a times, the maxim of “Doli-incapax”, is used a defence while contending juvenility. This Latin term means, “Incapable of doing harm”. It is of contended that the child in conflict with law was incapable of doing such an act or incapable of having any mens rea. This is similar to Section 82 of the Indian Penal Code which states that, “Nothing is an offence which is done by a child under seven years of age.” These issues along with issues relating of adoption and other procedures are what gives the juvenile justice system in India a holistic outlook. It caters, to almost all sectors of society in which juveniles, or children in need of care and protection are present and need assistance. With developments and the progress taking place each day, it can be hoped that the laws if implemented properly will lead to a system of law and order.

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