



Juvenile Justice in India: Historical Context

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Abstract: *The present paper is based on the historical context of juvenile justice in India. This has been a part of the ongoing Ph.D. research where the authors have tried to delve deeper into the aspects of the emergence of juvenile justice acts, keeping in mind their vulnerability. The findings suggest that India is committed to doing away with the vulnerability of the juveniles, but much more has to be done for their successful rehabilitation.*

Keywords: *Juvenile Justice Act, Justice Krishna Commission, Juvenile children*

Introduction:

No exploration, to my understanding, will be justified unless we do not try to understand the contexts that make a particular event possible. In the case of exploring aspects of justice relating to juveniles, the researcher believed it to be imperative to explore the historicity under which juvenile justice in India emerged. It was also understood to be essential since it directly relates to the area of my research. The juvenile justice system in India is not a new area; rather, it has crossed a long distance and owes a long history. India is basically a traditional country if we try to look at it through the lens of socio-cultural perspectives. Even after attaining its modern outlook, a larger section of society desires to rear their young children with traditional values, customs, traditions, and so on. If we try to peep through the traditional facts of cultural values, customs, and traditions, then we find that the system of extended family has great importance. In the process of growing up, a child in the traditional family system is often surrounded with due care from their first family, extended family, community, as well as religious and social institutions existing in their vicinity. No doubt, such cohesion has become much more diluted with the passage of time, especially in urban areas as compared to rural areas.

Modernization and globalization have also contributed to loosening such traditional bonds in society. Thus, modernization and globalization have contributed a lot to the rapid increase in the number of children in distress and in need of care. This is because, with modernization and globalization, a platform for job opportunities has emerged. As a result, many male members of the family have left their hometown in search of such opportunities, leaving their female and children behind. Thus, the care and protection of children in the absence of a male member in the family has also been diluted with modernization and globalization. This is more visible in the lower and middle classes as compared to the higher classes of society, where the problems are different. However, the fact is that every child in every family is not so privileged to enjoy living a happy and healthy life. Thus, with modernization and globalization, cases of juveniles have also emerged rapidly. Thus, it



became a sound background where the need for regulating the issues related to juveniles and their rehabilitation was felt. This saw the emergence of the Juvenile Justice Act in India.

Juvenile Justice Act in India: Evolution in its historicity

Delving deeper into the historicity of juvenile justice in India prior to year 1773, we do not find mention of any written documents of rules and regulations relating to children. However, Manusmriti, where we find mention of the ancient laws written in ancient scripts. These laws mention crimes committed by the children. Littering on public space was treated as offence under the laws of the time and therefore, it had provisions of punishment. The punishment was not severe, rather, it was light such as cleaning the litter made by the child. However, in case of adult for the same crime, some monetary fine was prescribed. During medieval period, the criminal activities of children were considered under the respective laws of the rulers. Thus, the history of juvenile justice in India, in actuality, is traced back to 18th century.

As a result of expansionist and mercantile policy of the British government, India saw rampant colonial exploitation and industrialization. This led a large scale migration of people from rural areas to semi urban and urban slums. Furthermore, The British rule in India was very much disliked and resisted. As a result, this period was also a period of several revolutions including Bengal. Such resistance of British rule which included both-adult and children, also brought a rapid social change in the entire geographical areas. As a result, the number of destitute and street children also increased in the mentioned semi urban and urban slums. This is one of the reasons where we see that Lord Cornwallis (1786-1793), the then Governor General established the centre for destitute children in Calcutta for the first time which was one of his several reforms. These centers, as popularly known to be ragged schools, had a provision of providing free education to street children. Almost the independence, in 1950, Apprentice Act was passed for destitute and street children for 10-18 years. Passing of the Apprentice Act involved them in economic activities also.

Reformatory School Act was enacted after the Apprentice Act. As the name suggests this act was enacted with the view of treating and reforming the young offenders. This act provisioned for boys less than fifteen years of age to be kept in reformatory school till he attains the age of 18 years. Prior to enacting of this law and reformatory school, the juveniles were kept with the adults in the same jails. The jail committee of 1919-20, already had recommended to establish separate institution and special court for the juvenile children. However, the recommendation did not lead to enact any legislation by the British government. But, some other states such Madras enacted separate laws to deal with juvenile children during pre-independence period for the first time. This was called Children's Act.

Post-independence period development:

With the enactment of constitution of India in the post-independence period, rights to children were guaranteed through several articles. These rights were provisioned under article 15(3), article 23, article 39 (e) & (f) and article 45. In 1960, Central Children Act was passed in India. No doubt, the act provisioned for careful treatment of the juveniles as well as the protection of children. However, this act since its being a central act, was not applicable and cover the whole of India, rather, it was applicable to those states that were under central government. This was also because, the issues of children were kept on the concurrent list of the constitution, therefore, under concurrent list there was a provision that the state could separately enact their laws on the issue. As a result, many states enacted their own legislation related to children but several others did not legislate at all. However, by the end of 1986, almost all the states came up with their own legislation relating to children.

Going through this legislation, one can find that there are inconsistencies not in relation to the procedures towards dealing with juvenile children and sentencing them but also with the court



proceedings as well as the institutional practices. Such inconsistency led the Indian government to formulate a uniform central legislation. This was the Juvenile Justice Act- 1986 applicable to all states in India. On the pursuance of Beijing Principles- 1985, this act deals with the juvenile delinquents, their care, protection and development. However, this act also does not define the children uniformly and differentiate on the basis of age. The age of for boys is kept as sixteen years whereas the same for girls is eighteen years. It further divides the children on two categories i.e. delinquent juveniles and neglected juveniles. However, in spite of the division of children upon two categories, they are put in the same observation till their enquiry finishes. This act led to the enactment of Juvenile Courts for the juvenile delinquents and Juvenile welfare boards for the neglected juveniles. Thus, juvenile home was provisioned for the neglected juveniles whereas special home was provisioned for the delinquent juveniles. However, it is the state that decides in terms of implementation of the resolution pertaining to the juvenile welfare boards and juvenile courts. However, the juvenile justice failed to provide due care, protection and treatment to both the above mentioned categories of children.

United Nation intervention and development:

United Nation Guidelines upon the Prevention of Juvenile Delinquency, (1990) popularly known as the Riyadh Guidelines as well as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) was another development in the field of juvenile children. Both these legislative developments provided the platform to revisit the existing laws and amend it in its entirety of recommendations. Further, the United Nation Convention on Rights of Child in 1992 that made it mandatory for the respective governments of the signatory country, to enact law relating to children in tuned with United Nation Child Rights Convention (UNCRC).

UN Convention on the Rights of the Child and development:

The UN General Assembly in 1989 adopted the UN Convention on the Rights of the Child (UNCRC). This came into force from 2 September 1990. It sets out the rights of the child keeping in mind their holistic development and in terms of leading a life free from starvation, neglect and abuse. This provided an opportunity to visualize the individual identity of children free being considered as the property of their parents. These rights were divided as:

1. The right to life
2. The right to protection
3. The right to development
4. The right to participation

These rights mandated the duty to protect the rights of the child upon the State, the family and all other entity related with life of children. It provided several rights and responsibilities to the family such as proscribing the separation of child from their parents, except in specific case that becomes detrimental to their development. Thus, article-9 states:

“Child should not be separated from the parents against their will until the concerned authority determines that separation is beneficial for the child’s development.”

Further, Article 14 states:

“Appreciate the rights and duties of the parents, legal guardian, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”

Thus, the convention guarantees freedom of children without any coercive interference and hindrance to their privacy and individuality. In this regard, article 16 states:

“No child can be subjected to arbitrary or unlawful interference along with his/her privacy, family, home or correspondence”.

Article 18, 20 and 27 were specifically enacted considering the role of state towards children and



their rights. Article 18 states:

“Parents and legal guardians have the accountability for upbringing and development of the child and the State has to render appropriate assistance to them in performance of their child-rearing responsibilities.”

Similarly, Article 20 states:

“a child who is deprived of his/her family environment shall be entitled to special protection and help furnished via the state.”

And article 27 speaks:

“State Parties respect the right of every child to a standard of living sufficient for the child's physical, mental, spiritual, moral and social development.”

Justice Krishna Commission and development in India:

Subsequent to these developments, the Indian government under the chairmanship of Justice Krishna enacted a committee in order to prepare children codes. This culminated in the preparation of Children's Code Bill 2000 which was presented in the parliament on 14th November, 2000. Finally this code led to the enactment of Juvenile Justice (Care and Protection of Children) Act, 2000 in India. The vision of the act states:

“amend and consolidate the law in the case of juvenile in conflict with law and children in need of care and protection, by providing for the proper care, protection, .treatment catering to their .development needs by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for his/her ideal rehabilitation by means of various institutions established under this enactment.”

This legislation brought uniformity in the age of juvenile boys and girls and considered the child as those who has not attained the age of 18 years and divided the children into two categories:

1. Children in need of care and protection and
2. Juvenile in conflict with law

This legislation also widely discusses that child welfare committee will deal with the matters of children in need of care and protection and the Juvenile Justice Board will deal with the matters of juvenile delinquents. The acts further provided child friendly procedures as well as legal protection for juvenile in conflict with the law of the land. Apart from these, the Children in need of care and protection (CNCP) were expanded to also include victims of natural calamity, armed conflict and children who become the victim of drug abuse and so on.

Conclusion:

The development of India's juvenile justice system has progressed from no rights to partial rights to the recognition of individuality and direction to parents, the state, and all entities involved in the affairs of children. However, having rights does not guarantee that they are implemented and that individual dignity is maintained. If the Juvenile Justice Act is followed exactly, it is possible to gain a better understanding of the children. For this, the implementation needs to travel a long way. There is a need to regulate the institutional care homes dealing with juveniles. Poor institutional care has to be involved whole-heartedly for the cognitive, affective, and psychomotor development of the children for their overall development.



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