

# Juvenile Justice in India: Approsso to the Act & It's Juridical Approach

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**Abstract-The Juvenile Justice System in India is designed to provide care, protection, and rehabilitation to children in conflict with the law. The system is guided by the Juvenile Justice (Care and Protection of Children) Act, 2015, which aims to create a child-friendly justice system that is in line with the principles of the United Nations Convention on the Rights of the Child.**

Despite the existence of this legal framework, the efficacy of the juvenile justice system in India has been the subject of much debate. One of the main criticisms of the system is that it is often ineffective in rehabilitating juvenile offenders and preventing them from reoffending. There have also been concerns raised about the lack of resources and infrastructure available to the juvenile justice system. This has led to overcrowding in juvenile homes and inadequate facilities for rehabilitation. Furthermore, there have been instances where juveniles have been subject to abuse and mistreatment within the juvenile justice system. This raises questions about the ability of the system to protect the rights of children in conflict with the law.

Despite these challenges, there have also been positive developments in the juvenile justice system in India. For example, the system has started to focus more on restorative justice and diversion programs, which aim to address the root causes of juvenile delinquency and provide support to young people to help them avoid criminal behavior. This paper is about judicial approach seeks towards juvenile justice.

**Keywords: Juvenile, juvenile justice act, legal, Child.**

## INTRODUCTION

The juvenile justice system refers to the legal framework and set of institutions responsible for handling cases involving minors who have committed offenses or engaged in delinquent behavior. It operates parallel to the criminal justice system but focuses on the unique needs and circumstances of young individuals who have not yet reached the age of majority.

The former Juvenile justice act from 2000 was superseded in India by the Juvenile justice (care and

protection of children) act from 2015. The Act establishes a framework for the protection, treatment, and rehabilitation of children who are in need of care and protection as well as those who are in conflict with the law. The idea of reform and rehabilitation rather than punishment serves as the foundation for India's juvenile justice system. The system's goals include helping children who need it, protecting them, and rehabilitating those who have broken the law. The system aims to ensure that the child's best interests are always protected and that their rights are preserved. The Act calls for the creation of Child Welfare Committees (CWC) and Juvenile Justice Boards (JJB) at the district and sub-district levels, respectively, to handle cases involving children who have broken the law and those who require care and protection. The JJB is in charge of determining the child's age and whether or not they have committed an offense, while the CWC is in charge of providing care and protection for children who need it. The Act also outlines a variety of strategies for the rehabilitation and reintegration of children who have run afoul of se law, including counselling, instruction, job training, and community service. The goal is to prevent ulematization and provide the child a chance to become a valuable member of society once again. the overall goal of India's juvenile justice system is to protect children who need care and protection and those who are in contravention of the law while also ensuring that their rights and best interests are protected.

## HISTORY OF JUVENILE JUSTICE SYSTEM IN INDIA

In recent times, there has been a global movement advocating for special treatment of juvenile offenders, including in developed countries like the U.K. and U.S.A. This movement originated around the 18th

century. Before this movement, juvenile offenders were treated the same as adult criminals.

During British rule, there was no separate system for juvenile offenders. Juveniles were often treated the same as adult offenders and subjected to similar punishments. The British government's approach was primarily punitive, with a focus on retribution rather than rehabilitation. After gaining independence in 1947, India began to consider reforming its juvenile justice system. The Juvenile Justice Act of 1986 was a significant milestone. It marked the beginning of a separate legal framework for dealing with juvenile offenders. This act established juvenile courts and probation officers to work with young offenders. It also introduced the concept of the "Borstal school" for the rehabilitation of juvenile offenders. Soon after that The Juvenile Justice (Care and Protection of Children) Act, 2000 was introduced This act replaced the 1986 law and marked a more child-centric approach. It recognized juveniles as children in conflict with the law rather than as criminals. The Act established Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) to deal with juvenile offenders and children in need of care and protection, respectively. It introduced a range of diversionary measures and emphasized rehabilitation and reintegration into society. In 2006, the Act underwent significant amendments to address various concerns and improve its effectiveness. One of the key changes was the reduction of the age of juveniles from 18 to 16 in cases where a heinous crime was committed. This amendment became known as the "Juvenile Justice (Care and Protection of Children) Act, 2006". Then in 2015, The Juvenile Justice (Care and Protection of Children) Act, 2015 act was passed This Act was a response to the public outcry following the Nirbhaya gang rape case in Delhi in 2012, where one of the accused was a juvenile.

It raised the age of juveniles from 16 to 18 in conflict with the law, aligning it with the United Nations Convention on the Rights of the Child. The 2015 Act focused on the rehabilitation and social reintegration of juvenile offenders and recognized the importance of child rights and welfare.

The current Juvenile Justice (Care and Protection of Children) Act, 2015 emphasizes the principle of the child's best interests. It aims to ensure juvenile offenders care, protection, and rehabilitation. It includes provisions for social reintegration, foster

care, adoption, and establishing child welfare committees and young justice boards at the district and state levels.

#### JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice Act of 2015 replaced the Juvenile Justice Act of 2000 in order to establish a more robust and effective justice system that incorporates both deterrent and reformatory approaches. The new act recognizes that the approach towards juveniles should be different from that of adults. It emphasizes the need to provide juveniles with space for transformation, reformation, and improvement, which requires a specialized justice system. The key provisions of the Act are as follows:

1. **Definition of Juvenile:** The Act defines a juvenile as a child who has not completed 18 years of age.
2. **Juvenile Justice Board:** The Act provides for the establishment of Juvenile Justice Boards (JJBs) in every district to deal with cases of children in conflict with the law. The JJB is responsible for determining whether the child has committed an offense and for deciding on appropriate measures for their rehabilitation and reintegration.
3. **Child Welfare Committee:** The Act also provides for the establishment of Child Welfare Committees (CWCs) in every district to deal with cases of children in need of care and protection. The CWC is responsible for providing care and protection to children who are in need of it, such as abandoned or orphaned children.
4. **Rehabilitation and Reintegration:** The Act lays down various measures for the rehabilitation and reintegration of children in conflict with the law, such as counseling, education, vocational training, and community service. The aim is to ensure that the child is not stigmatized and has the opportunity to reintegrate into society as a responsible citizen.
5. **Non-institutional care:** The Act encourages the use of non institutional care options for children in need of care and protection, such as foster care, sponsorship, and adoption.
6. **Confidentiality:** The Act ensures that the identity of the child in conflict with the law and the child in need of care and protection is kept confidential to protect their privacy.

7. Special provisions for heinous offenses: The Act provides for a separate procedure for dealing with cases of heinous offenses committed by children aged between 16-18 years.

Overall, the Juvenile Justice (Care and Protection of Children) Act, 2015 is a progressive law that aims to provide a protective and rehabilitative environment for children in need of care and protection and those in conflict with the law, while also ensuring that their rights and best interests are protected.

#### JURIDICAL APPROACH TOWARDS JUVENILE JUSTICE SYSTEM IN INDIA

Almost all the countries have developed juvenile justice system to deal with their young offenders. In India scene for the children has changed a lot and their problems and related issues have been given attention and are being discussed at various forums. The question of providing proper protection and care to the children of such a big number is a big challenge. A good number of our children on account of socio-economic reasons have adding themselves in the list of delinquent child.

There is a need to give specific importance to children in society. Importance of a child is well recognized since ages. Nowadays children are under tremendous social pressure due to new changing social perceptions. A report of UNICEF in 2005 on the state of world's children under the title "Child under Threat", speaking regarding India, mentioned that millions of Indian Children are equally deprived their right of survival, health, nutrition, education and safe drinking water. This is what is happening to the most of the young children who if properly taken care of would shine the future of country. The cache statement "Children are supremely important national asset" as discussed in *Laxmikant Pandey v. Union of India*<sup>1</sup>. And the greatest gift of humanity also discussed in case *Bandhua Mukti Morcha v. Union of India*<sup>2</sup> in the present scenario and on ground level realities appear hollow. The children in India require double sided protection. The action is required on two fronts. Firstly, by preventing and arresting the increase in

number of the juvenile delinquents and secondly by giving the delinquent child or a juvenile in conflict with law proper opportunity to reform himself and join the mainstream of the society. Juvenile delinquency is difficult to be defined as to its behavioral connotation's.

The Indian Judiciary plays a vital role having passed a lot of significant judgments favouring child rights.

- In the case of *Sheela Barse vs. Union of India*<sup>3</sup>, The Supreme Court had directed the state government to establish the required observation homes to accommodate the accused children. Hereafter only the pending investigations in their name will be tried. In *Sheela Barse vs. Secretary, children aided societies*, The Supreme Court directed to form juvenile and special juvenile courts and to take proper care of the children in conflict with the law and provide them the required protection.
- In the case of *Vishal Jeet vs. Union of India*<sup>4</sup>, the Supreme Court has issued proper directions on a PIL to the state government and all the Union Territories to eradicate the evil of child prostitution and to evolve programmes for taking care, protect, treat, develop, and rehab the young victims.
- In the case of *M.C. Mehta vs. State of Tamil Nadu*<sup>5</sup>, 13 Supreme Court pronounced upon the constitutional perspective to abolish child labour, and issue proper framework with respect to mandatory education, health, nutrition, etc, of the child laborers.
- In the case of *Sakshi vs. Union of India*<sup>6</sup>, 14 Supreme Court gave directions to the government/law commission for conducting a study and submit a report on the means to curb child abuse.
- In the case of *Umesh Chandra v. State of Rajasthan*<sup>7</sup>, Supreme Court Case states the enactment of JJ Act aims at protecting the children in conflict with law, from the criminal implications when their maturity is different from mens rea of adults. The date of offense is considered as the date of prevalence, and not the

<sup>1</sup> 1984(2) SC 244.249

<sup>2</sup> (1997) 10 SC 551-553

<sup>3</sup> 1986 SCALE (2)230

<sup>4</sup> 1990 AIR 1412.1990 SCR (2) 861

<sup>5</sup> AIR 1997 SC 701

<sup>6</sup> AIR 2004 SC 3566

<sup>7</sup> 1982 AIR 1057

date of trial of the case, which is in line with the UN agency's claim.

- In the case of *Salil Bali v. Union of India*<sup>8</sup>: The Supreme Court of India considered the issue of the constitutionality of the Juvenile Justice (Care and Protection of Children) Act, 2000, particularly with regard to the setting up of Juvenile Justice Boards and the provisions for the detention and punishment of juvenile offenders. The Court held that the Act was constitutional and that the establishment of Juvenile Justice Boards was necessary to ensure that the rights of children in conflict with the law were protected. The Court also emphasized that the primary focus of the Act was on the rehabilitation and reintegration of juvenile offenders into society, rather than punishment. The Court further held that the detention of juvenile offenders should be a measure of last resort and that they should be provided with adequate facilities and services to ensure their care, protection, and education. The Court also recognized the importance of keeping juvenile offenders separate from adult offenders to prevent them from being exposed to further harm. Overall, the Supreme Court of India in *Salil Bali v. Union of India* upheld the constitutional validity of the Juvenile Justice (Care and Protection of Children) Act, 2000, and emphasized the importance of protecting the rights of children in conflict with the law and providing them with the necessary care, protection, and rehabilitation.
- In the case of *Jarnail Singh v. State of Haryana*<sup>9</sup>: In this case, the Court held that the provisions of the Juvenile Justice Act of 2015, including those relating to the age determination of juvenile offenders, must be applied retrospectively. The Court held that juvenile offenders who had been sentenced under the old law should be given the opportunity for rehabilitation and reintegration. These cases have helped to shape the legal framework and the approach towards dealing with children in conflict with the law in India, emphasizing the need for rehabilitation and reintegration measures rather than punishment,

and the importance of protecting the rights and best interests of the child.

## CONCLUSION

The Juvenile Justice System in India is a crucial mechanism aimed at protecting the rights of children who come into conflict with the law. The system was introduced with the objective of promoting rehabilitation, reintegration, and restoration of children in conflict with the law, rather than punishment.

The Juvenile Justice Act, 2015 is a significant legislation that provides for the protection, care, and rehabilitation of children in conflict with the law. The Act also outlines the procedures and mechanisms for dealing with such children and aims to provide a child-friendly justice system. However, there are still challenges in implementing the Act effectively. The age determination process is not always accurate, and there is a need for more comprehensive rehabilitation and reintegration programs for children. The lack of infrastructure and resources in juvenile homes is another challenge.

Despite these challenges, there have been some positive developments in the juvenile justice system in India. The focus on rehabilitation and reintegration is slowly gaining momentum, and there is a growing awareness of the rights of children in conflict with the law. The government and civil society organizations are also working towards improving the infrastructure and resources in juvenile homes.

In conclusion, while there is still work to be done, the Juvenile Justice System in India is an essential step towards promoting the rights of children and ensuring that they receive the care and support they need to lead productive lives.

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<sup>8</sup> (2013) 6 SCC 770

<sup>9</sup> (2021) 4 SCC 369

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