

Evolution of The Juvenile Justice System

^{1*}Saheli Chakraborty

JUVENILE JUSTICE SYSTEM: A CONCEPTUAL DEVELOPMENT—

The noted Nobel Laureate Gabriel Mistral expressing his concern for child-care, long ago observed: *“We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait, the child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer ‘tomorrow’. His name is ‘Today.’* In a civilized society, Children are a “supremely important national asset”² and the future well being of the nation depends on how its children grow and develop.

The problem of juvenile delinquency is essentially not of a recent origin, and it has further increased, because children get easily attracted to temptations of life and leap into criminality. In order to curb such a situation, a Justice system had to be formulated. The early penology did not recognize any discrimination between adult and juvenile offenders, so far as the punishment was concerned.³ The Juvenile Justice System in India originated during the British Rule and was a direct consequence⁴ of development in the field of prison reforms and juvenile justice, that took place in the west. The history of Juvenile Justice System in India can be divided into five periods with reference to legislative or other landmark developments, as—(i) prior to 1773; (ii) 1773-1850; (iii) 1850-1918; (iv) 1919-1950; (v) post 1950.

(i) Prior to 1773, both the Hindu and Muslim laws had provisions for the maintenance of children. The primary responsibility to bring up children was that of parents and family.⁵⁶

(ii) But, the period between 1773 and 1850 saw the colonial exploitation which had eased out the indigenous rural economy, forcing people to slums in suburbs. It also increased destitution and delinquency among their children. Concerns for the welfare of such children were raised. Krishna Chandra Ghoshal and Jai Narain Ghoshal in 1787 pleaded to Lord Cornwallis, the then Governor-general in India, for establishing a ‘home’ for destitute children in the vicinity of Calcutta. The first ‘ragged school’ for orphans was established in 1843 through the efforts of an Englishman, Dr. Buist.

(iii) The Apprentices Act 1850 was enacted, during period of 1850- 1918 which enabled the underprivileged children to learn trades, crafts etc, to gain a livelihood. The Female Infanticide Act, 1870 and the Vaccination Act, 1880 sought to secure life and health of infants; further, the Guardianship and Wards Act, 1890 made provisions for continued care and protection of children. Existence of child labor was recognized by the Factories Act, 1881. The IPC, 1860 declared children below the age of 7 years as *doli incapax*, while the presumption of necessary *mens rea* can be questioned in the 7-12 age group.

(iv) One of the most significant developments in the history of juvenile justice system in India proved to be the Report of Indian Jail committee, 1919-1920. It undertook the exercise of overhauling the entire prison system, by visiting numerous jails and reformatory schools in the country and abroad. The Report suggested that children with defective intellect should after examination of their physical and mental condition, be sent to

institutions specially provided for them. For young offenders above the age of 15 years, it recommended Borstal schools. The Committee emphasized on the need of establishment of children's courts with proceedings 'as informal and elastic as possible'. The Children Acts of British India followed the same pattern—delinquent and neglected juveniles were to be dealt by the juvenile court, kept in remand homes and certified schools, or released on probation, with a possibility of imprisonment when the nature of offence was serious and the character of the offender justify that. However, one of the major problems was that the age below which a person was considered as a child differed in at least six states. West Bengal and Gujarat had prescribed 18 years for both boys and girls. In Maharashtra, Punjab and Uttar Pradesh it was 16 years for both. Tamil Nadu described persons below 14 years as children and those above 14 but below 18 as young persons. This difference is age led to differential treatment being meted out to children of the same age group residing in different states. Recognizing this anomaly, the Hon'ble Supreme Court in the case of *Sheela Barse v. Union of India*⁷, observed: "*We would suggest that instead of each State having its own Children's Act in other States it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country.*"

- (v) Developments in juvenile justice system post 1950 can be best described in terms of—A. five year plans; and B. legal provisions.

FIVE YEAR PLANS⁸:

Provisions for children were included in the First Five Year plan (1951-1956). The provisions were implemented by the Ganga Sharan Sinha

Committee in 1968, that established a non-recurring cost of Rs. 160 crores, and recurring cost of Rs. 4866 crores for programmes recommended by it for the care of children alone.

The Seventh Five Year Plan allocated Rs. 799 crores only for central and centrally sponsored schemes like Integrated Child Development Services (ICDS), services for children in need of care and protection, prevention and control of juvenile maladjustment, day-care centers, training of ICDS and non-ICDS functionaries etc.⁹

The Eighth plan recognized 'girl child' as an important target group, demanding attention of the government for her development. In pursuance of the National Policy on Education 1986, and the Program of Action 1992, various steps were taken during this period to universalize elementary education and expand early child care programmes.

The Ninth Plan took cognizance of the increasing problem of social maladjustment such as juvenile delinquency, abuse, crime, exploitation etc. It promised a suitable development of appropriate services under the juvenile justice system.

The Tenth plan's (2002-2007) approach had shifted to a right-based one, insuring the survival, development and protection of children. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was amended in 2003 to address the problems of female foeticide and infanticide. Many other goals were set out such as reduction in Infant Mortality Rate to 45 per 1000 live births by 2007, reduction of Maternal Mortality Rate etc. Major accomplishments were the constitutional amendment making Right to education a fundamental right, the amendment of the Juvenile Justice Act and the adoption of the Goa Children's Act, 2003.¹⁰

The eleventh Five Year plan (2007-2012) clearly stated "Development of the child is at

the center of the Eleventh Plan". According to MWCD working group, the plan outlined its work according to the National Plan of Action for Children (NPAC) 2005. There were four key areas of the plan—ICDS, early childhood education, girl child and child protection.¹¹

LEGAL PROVISIONS:

The Constitution has secured special status for children in the Indian polity since its adoption in 1950. The Children Act, 1960, for the first time in India, prohibited imprisonment of children under any circumstances. It also introduced a sex-discriminatory definition of child. It provided separate adjudicatory bodies—a children court and a child welfare board, to deal with delinquent and neglected children respectively. The Children Act, 1960 turned out to be a revolutionary enactment in the lights of Juvenile Justice System, whose reflection can be seen in the modern day Juvenile Justice System.

The Parliament enacted the Juvenile Justice Act, 1986 in response to long standing demand for rationalizing the system dealing with socially-deviant children, in keeping with the spirit of social justice and humanitarian law. The 1986 Act was passed following the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the UN. The Act provided for care, protection, treatment, development and rehabilitation of neglected juveniles.

The Juvenile Justice (Care and Protection of Children) Act, 2000 repealed the Juvenile Justice Act, 1986. It has been enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care & protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children.

The Act of 2000 was further repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, w.e.f. 16th January 2016. The bill will allow the Juvenile Justice Board—which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 years, should be tried as an adult or not. The bill introduced concepts from The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in the previous Act. The bill also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined.

The Juvenile Justice (Care and Protection of Children) Act, 2015 outlines two target groups—(i) juvenile in conflict with law and (ii) children in need of care and protection.¹² It strengthens the protective approach provided by the juvenile justice system towards children in conflict with law as well as children in need of care and protection. Offences have been categorized as petty, serious, or heinous offences. The Act puts a complete embargo on capital punishment or life imprisonment without the possibility of release for the child offenders who come to be treated as adults by the juvenile justice administration. The decision whether the child is to be released or sent to jail after attaining the age of 21 years will be taken by the Children's Court.

CONCLUSION:

It appears that juvenile justice system in India has not been a continuous process resulting from an uninterrupted concern for children. The timing and content of various developments relating to the juvenile justice system have close relationship with the reforms taking place elsewhere in the world rather than with the demands of children in the country.¹³ Further, the juvenile justice legislations in India are passed by the legislators merely to please their conscience and to show the international bodies that they too were in the forefront of child protection.¹⁴ Since the age for

mental maturity cannot be determined accurately, the question is whether the juvenile should be penalized or whether he should be rehabilitated remains. The answer to the question lies in where the crime has been committed, the perceived maturity of the juvenile in that community, and the public opinion.

(Endnotes)

- 1 * 4th year BA. LLB (University of Calcutta)
- 2 *Laxmi Kant Pandey v. Union of India*, AIR1984 SC 469.
- 3 Sen P.K.: *Penology Old & New*, p. 149.
- 4
- 5 N. Chandrasekhara Aiyer, *Mayne's Treatise on Hindu Law and Usage*, 11th ed., 1953; *The Hedaya, or Guide: A Commentary on Mussulman law*, 2nd Ed., 1870.
- 6 The principle of *Dharma* under the Hindu Law made it incumbent on the king to provide to each one in the society an opportunity to realize his ultimate goal of human existence. R. Lingat, *The Classical Law of India*, 1973.
- 7 *Sheela Barse v. Union of India*, 1986 SCALE (2)230.
- 8 Five year Plan documents, Planning Commission, Government of India: available at: <http://planningcommission.nic.in/plans/planrel/index.php?state=planbody.htm> (last visited: 20th august 2017, 09:20 p.m.)
- 9 The Seventh Five Year Plan 1985-1990.
- 10 Dr. Savita Bhakrhy, 2006: *Children in India and their Rights*, National Human Rights Commission, Rajika Press Services, Pvt. Ltd. New Delhi.
- 11 MWCD, A Report: *Working group on development of children for the Eleventh Five Year plan*. Available at: <http://childlineindia.org.in/CP-CR-Downloads/XIth%20five%20year%20plan%20and%20children.pdf> (last visited: 22th august 2017, 08:17 p.m.)
- 12 At the time of research, the Juvenile Justice (Care and protection of Children) Act 2015 was in effect. Hence, the research paper is strictly based on the 2015 Act.
- 13 Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, p.89 (Oxford University Press, New Delhi, 2nd edn., 2010).
- 14 K.F. Rustamji, 'Note on Legal Measure Relating to Social Defence (Child)—Supportive Measures Needed for Their Effective Enforcement', a paper presented at the Workshop on National Children's Act, sponsored by SOS Children's Villages, Multiple Action Research Group, Joint Women's Programme, Community Aid and Sponsorship Programme, and the Indian Social Institute, held at the Indian Social Institute, New Delhi, 10 August 1986.