

# ‘Evolution Of Juvenile Laws In India’

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**Abstract:**— The paper aims to throw light on the advent and evolution of juvenile laws and its present scenario. Juveniles are considered to be the dominant part of the society and thus they need care and protection. Society and law goes hand in hand. The paper attempts to analyze timeline that lead to the formulation of juvenile laws. To cater the juvenile, constitutional philosophy and international parameters, the rational evolution is attempted. The paper highlights prime cases which brought a huge change in the laws of the juvenile. The series of events which led to the codification of juvenile laws has also been elaborated further. It enumerates the present scenario and the changes which led to the final enactment.

**Key words**— Juvenile, evolution, codification, enactment

## EVOLUTION OF JUVENILE LAWS

The evolution of juvenile laws can be traced back around 4000 years ago, around 1750 B.C.E. The king Hammurabi of Babylon was the first state to be known to be governed by a written legal code. The code of Hammurabi is a well preserved Babylonian code of ancient Mesopotamia dating back to around 1754 B.C. it is one of the old deciphered writings of significant length in the world. The sixth Babylon king, Hammurabi enacted the code, and the partial copies still exists on a human sized stone tablet and various clay tablets. It consist of 282 laws, it propounded the theory of lex talionis or the law of retaliation implicating quite literally ‘an eye to an eye’ ‘a tooth for a tooth, and ‘a limb for a limb’. The code of Hammurabi also incorporated complex provisions of marriage, family of solidarity and family treatment. The provisions were enacted entirely for the preservation of Babylonian patriarchy. For example the code stated-“if a son strike his father, one shall cut of his hands”. The children and teenagers could be treated as a little more than a property. Less significance were given to juveniles as they were treated as an asset.

Internationally, in 1704 Pope Clement XI first introduced the idea of the, instruction of profligate youth in institutional treatment. The Elizabeth Fry established a separate institution for Juvenile Offenders. Subsequently, in Britain, Reformatory Schools Act was passes in 1876 and Industrial Schools Act was brought in a Statue books. The first juvenile Court was established in 1899 in Chicago under the Juvenile Offenders Act and the first Juvenile court was opened in Cook Country in the United States of Illinois. The theory of Juvenile court was to rehabilitate Juvenile offenders and not to punish them. The doctrine of ‘Parens Patriae’ meaning parent of the country, became the

guiding light to allow the state to serve as the guardian of Juveniles with physical, legal or mental disabilities.

## CODIFICATION OF LAWS

During the advent of East India Company which started as a trading company in 1608 many changes took place including in the change of government when the company failed to establish its own institutions and then, the Britain government took over. This was the period when reforms momentum was gaining a pace which also affected India. Colonial exploitation ruined the agriculture economy, the increased destitution and delinquency among children and may more things turned upside down. Welfare mechanism for the children took different forms. Krishna Chandra Goshal and Jai Naryan Ghoshal approached to Lord the then Governor General for establishing the home for destitute juveniles in major trading city of Calcutta. Lord Cornwallis, in 1843 established its first centre for those children called ‘Ragged School’ now it’s known as ‘David Sasson school. The first law (the Apprentices Act 1850) which required the children between 10-18 years to be convicted in the courts, to be provided with vocational training as part of their rehabilitation process. The object of law was to channelize the energy of the children and deviate them from criminal influence. During the British rule, the Whipping Act of 1864 was passed to punish the juvenile through whipping and setting him free that he should not repeat the same Act, it was to deter the child against committing crime.

The next landmark was The Reformatory School Act 3, 1876 and 1897. Under this Act, the court could detain delinquents in a reformatory school for a period of 2-7 years, but the court could not keep them if they

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turned 18 years of age. The Act of Criminal Procedure 1898 provided special treatment to juvenile offenders. It prescribed for separate trial for the person below the age of 15 years and required that they should be confined in reformatories rather than on adult prison.

The provinces of Madras, Bengal and Bombay passed their own children Act in 1920, 1922 and 1924 respectively. The Bombay Children Act became the first children Act to become functional. To implement the provisions of the Bombay children Act, and Children's aid's society a voluntary state agency was formed in 1924. These laws contained special provisions relating to the treatment of juveniles. Each state enacted its own children Act, Madras children's Act was the first delinquency law in India. The Vagrancy Act 1943 pertains to the street or vagabond children which provided care and training to children below fourteen years living on begging or lacked proper guardianship. By the year of 1960, many states enacted its own laws and rules pertaining to the juveniles, it was then in the case of Sheela Barse<sup>1</sup> which acknowledged the need to bring a uniform law and recommended the parliament to enact a new legislation pertaining to this matter. The union government enacted the children Act 1960, which was administered by the Union government and was applicable to union territories. It was intended to serve as a model for the state legislations which did a ground work for the National law passed as a Juvenile Justice Act 1986, which then acted as a uniform law throughout the country.

Under the power given in Article 253 of the Constitution<sup>2</sup>, the parliament enacted a uniform juvenile justice in India to conform the United Nations standard Minimum Rules for the Administration of Juvenile Justice ( Beijing Rules 1985 ) to abide the International Obligation which India agreed by ratifying in 1985. For the first time the law mandated care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for adjudication and disposition of juvenile delinquency matters throughout country.<sup>3</sup> The Act formulated separate procedures for delinquents and neglected juveniles. It established separate juvenile courts and welfare boards.<sup>4</sup>

The Act aims to achieve its objectives as it lays down a uniform framework for juvenile justice in country, provides for a specialised approach towards the prevention and treatment of juvenile delinquency, laid down the norms and standard for the administration of juvenile justice.

As India in 1992, ratified the United Nation Convention on the Rights of the Child (UNCRC), it repealed the earlier Juvenile Justice Act of 1986 and enacted The Juvenile Justice (Care and Protection of Children) Act, 2000. It was passed in December 2000 and came in force on April 1, 2001 was amended in 2006 aiming to protect, care, rehabilitate and educate the juvenile and to provide them with vocational training opportunities. As the preamble clearly states that the 'object of the law relating to juveniles in conflict with law is providing 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 and for their ultimate rehabilitation through institutions establishes under this law'.

It also recognized and emphasized on the involvement of voluntary organizations and admonished their participation in the process of juvenile justice through running the observation homes, special homes, compiling social investigation reports. According to the Beijing Rules on Administration of Justice, there is no such provision of death sentence in law for juveniles; they cannot be sent to prison if unable to pay fine. It establishes separate homes for different age groups.

After the catastrophic and heinous incidence of Delhi Gang Rape December 16, 2012 where a juvenile raped and tortured the victim to that level that she died, this was worst incidence ever recorded in the history. People were agitated. Thus issue raised a debate on the point of law where, different writ petitions were filed by the advocates in the Supreme Court on reduction of age of juvenile. With the increase in juvenile offenders day by day this question became as the central point of discussion.

Later a committee headed by Justice Verma was established for amending the laws in criminal law to protect the rights of women but the committee refused to reduce the age of juvenile and argued that the time is not ripe for reduction and one case cannot be the motivation for changing the law. Eminent jurist 'Subramanian Swami' later filed a petition on reducing the age of criminality which was again quashed by the Apex court.

Then came the juvenile justice Act (Care and Protection of Children) Act 2014 which replaces the juvenile justice Act, 2000. The bill permits the Juveniles between the ages of 16-18 years to be tried

#### **CONTEMPORANEOUS SCENARIO AND CHANGES**

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as adults for heinous offences. It addresses children in conflict with law and children in need of care and protection. Also, any 16-18 year old, who commits a serious offence, may be tried as adult only if he is apprehended after the age of 21 years. It also facilitated that each district shall contain Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC). It will be the duty of Juvenile Justice Board to conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The Child Welfare Committees will determine institutional care for children in need of care and protection. Eligibility of adoptive parents and the procedure for adoption have been included in the Bill. Also, penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed. The provisions of trying a juvenile committing a serious or heinous offence as an adult based on date of apprehension could violate the Article 14 (right to equality) and Article 21 (requiring that laws and procedures are fair and reasonable). The provision also counters the spirit of Article 20(1) by according a higher penalty for the same offence, if the person is apprehended after 21 years of age. The UN Convention on the Rights of the Child requires all signatory countries to treat every child under the age of 18 years as equal. The provision of trying a juvenile as an adult contravenes the Convention. The Standing Committee examining the Bill observed that the Bill was based on misleading data regarding juvenile crimes and violated certain provisions of the Constitution.

The Act of Juvenile Justice (Care and Protection of Children) Act, 2015 was the biggest legal reform by the Indian judiciary, where the age of the juvenile was been reduced from 18 years to 16 years.

### **EPILOGUE**

The International Convention on the Rights of child of 1989 proposes various rights of child as it possess an inherent right to life, right to preservation of his or her identity, right to express his/her own views freely, right to access information and many more right enriched under this convention. By agreeing to the Convention, countries undertake to rights to be respected in it. Even our constitution grants specific rights to the children as enriched under Article 14, 15 and 21. Various International Conventions and even the Constitution of India embody special rights pertaining to the juveniles. Recent changes in the laws related to juveniles have widened the scope of betterment of the juveniles. Juvenile laws have been diversified in every sector. The child labour Act, the factories Act, and many more. With the change in time and society, it demands change in law.