



HISTORICAL BACKGROUND OF THE JUVENILE JUSTICE SYSTEM IN INDIA

1. Shailender Tyagi

2. O.P. Rai

E-mail: aaryvrat2013@gmail.com

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Abstract: *The modern societies typically disconnect juvenile justice process from criminal justice administration; this was not the custom for much of human history. For millennia the juvenile justice was merely subsumed under the broader concept of criminal justice, and harsh punishment were imposed on juveniles to protect the prevailing social order. No distinction was made between delinquency and criminality, so that juvenile offenders were deemed to be nothing more than young criminals and were treated accordingly. Most societies simply treated juvenile offenders in the same manner as deviant adults. Even in societies that took into account the special status of young people, identical punishments were meted out to juveniles and adults alike.*

It was only after centuries of human civilization that what we now term juvenile justice began to develop outside the adult criminal justice system, thus the concept of promoting distinct form of justice for children is relatively new development in the history of civilization and the administration of justice.

Key words- juveniles, protect, prevailing, distinction, delinquency.

The progressive era waned during the 1920s and ended by the time of the great depression. Nevertheless, Progressive theories about juvenile treatment and the institutionalization of juvenile courts had received national acceptance on the eve of the great depression. By 1925, 46 states had established juvenile court systems. The decade of the 1960s was a period of great social and cultural transition in the United States.

Historical Development of Juvenile Justice System in India- The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and development in the field of prison reforms and juvenile justice. The changes introduced in India to deal with delinquent juveniles, however, were not limited only to those practiced in England. The juvenile court under the Madras Children Act 1920 was not different from that under the English Children Act 1908. But subsequent children Act dispensed with the presence of lawyers on the lines of the *parens patriae* model of the American Juvenile courts. The juvenile

1. Research Scholar 2. Associate Professor Faculty of Law, Agra College, Agra India.

Corresponding Author

welfare boards, adopted by the Scandinavian countries, became an integral part of the legislation dealing with neglected children since 1960.

CONCEPTUAL DEVELOPMENT- The juvenile justice system in the juridical sense in various countries in the west has developed through a similar course. First, there was a recognition that children were not as mature as adults to understand the nature and consequence of their acts and could not be held responsible for their criminal act. Before the twentieth century, little distinction was made between adult and juvenile offenders.

Then the accounts of the appealing prison conditions in prisons and segregation in prisons. By the 1850s institutions concentrated more on custody and lesson reform. The prison reformers did not want children to be processed as adults and sent to penitentiaries but neither did they want the children released. The recognition of the harmful effect of keeping adult and juvenile offenders together resulted in separate juvenile jails and reformatories. The principle of segregation further led to separate hearings on charges in the criminal procedure, and the creation of juvenile courts. For example, the Juvenile Offenders Act 1847 in England allowed larcenies and thefts committed by persons under fourteen years to be heard by magistrate in petty sessions. The Summary Jurisdiction Act 1879 provided summary trial of children under sixteen for nearly all indictable offences. The search for means for prevention of crime and delinquency finally moved towards utilization and organization of community resources.

Various factors have led to this composite result; for example, the traditional age differentiation with regard to "criminal responsibility" the increased use of special institutional treatment for juvenility", the increased use of special institutional treatment for juvenile offenders, the early child saving and foster care movement, the rise of social



justice and the impact of probation, the reaction against the too-harsh and rigid criminal procedure, the intensive search for new measures likely to stop the alarming increase in juvenile delinquency and crime, and the increased recognition of public responsibility in the field of juvenile justice.

An 1836 report of the inspectors of prisons reiterated that absolute impunity would have been far less mischievous than the confinement of adults and children together, "the boy is thrown among veterans in guilt and his vicious propensities cherished and inflamed. He enters the prison a child in years, and not infrequently also in crime, but he leaves it with knowledge in the way of wickedness".

The two primary assumptions underlying the children act 1908 of England were (i) juveniles were less responsible for their actions than adults, and (ii) juveniles treated with adult offenders were likely to be contaminated in some way, so the two groups should be treated separately.

PERIODICAL DEVELOPMENT OF THE JJS IN INDIA-

The history of the JJS in India has been divided here into five periods by reference to legislative or other landmark developments, namely,

- (a) prior to 1773;
- (b) 1773-1850
- (c) 1850-1918;
- (d) 1919-50; and
- (e) post 1950.

The year 1773 marked a historical break in the Indian legal system as the Regulating Act of 1773 granted to the East India Company the powers of making laws and enforcing them on a very restricted scale; it was the Charter Act of 1833 which converted the commercial East India Company into a governing body. The period between 1773 and 1850 saw numerous committees examining condition of jails in India and setting the stage for special focus on children in jails. The first legislation providing for keeping children out of jails was enacted in 1850. The report of the All-Indian Jails Committee 1919-20 led to the beginning of complete segregation of children from the criminal justice administration. Let us now examine in more detail the development in each of these periods.

(a) 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. Charity for the care of poor and destitute has been a noble cause under both Hindu and Muslim laws and has been a noble cause under both Hindu and Muslim laws and indirectly provided for the care of children in case of failure of the family to do so. Muslim law makes it compulsory for a person who finds an abandoned child to take its charge, if he has reason to believe that it may

otherwise perish.

It is generally maintained that neither Hindu nor Muslim laws had any reference to juvenile delinquents. However, a cursory study of the Manusmriti and Hedaya show differential punishment to children for certain offences. For example, under the Hindu law, a child throwing filth on a public road was not liable for punishment, but only to admonition and made to clean it, while an adult in similar circumstances was to pay a fine and made to clean the filth. A young boy having sex with a consenting adult woman under the Muslim law was not punishable. These provisions show the adoption of the principle of lesser culpability of children for their criminal activities.

(b) Period between 1773 and 1850-

The period between 1773 and 1850 began with the emergence of East India Company as a governing body forms a trading company and ended with the introduction of the first legislations relating to children. This period also saw the conversion of prisons from place for transporting convicts to places for keeping convicts, following the suggestions emanating from the state and internal arrangements of the Bengal jail. The report of the committee appointed by Lord William Bentinck, pursuant to T.B. Macaulay on the subject of jail discipline, was submitted in 1839. It fearlessly exposed the evils of the jail management existing then.

Concern for the welfare of children took many shapes. Krishna Chandra Ghoshal and Jai Narayan Ghoshal in 1787 pleaded with 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 and vagrant children in India was establishment of the ragged school, Bombay now known as the David Sassoon Industrial School. The object of the school was:

- (i) the reformation of juvenile offenders arrested by the police, and
- (ii) the encouragement of apprenticeship amongst the working classes. All these



developments together prepared the ground for the introduction of the Apprentices Act 1850.

(c) Period between 1850 and 1919- Many legislations were enacted in this period covering a wide range of matters concerning children, the female infanticide Act 1870, and the Vaccination act 1880, factories Act 1881. Prison reports in the meanwhile continued to point towards the need for change in policy and administration.

The Reformatory School Act enacted in 1876 and later modified in 1897, was the next landmark legislation in the treatment of juvenile delinquents. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years but they would not be kept in the reformatory schools after they had attained the age of eighteen years.

The report of the Indian Jails Committee 1889, reiterated the need for segregation and classification of offenders according to their age and duration of sentence, while emphasizing that younger juveniles should never be punished with curtailment of diet, it recommended daily emphasized that habitual juvenile offenders should not be sent to reformatories as they take with them to the schools the worst traditions and practices of the convict prisons.

(d) Period between 1919 and 1950- In our society Delinquent behavior is sanctioned less heavily than criminality because the law considers Juveniles as being less responsible for their behavior than adult. One of the most significant developments in the history of the juvenile justice system in India is the report of Indian jail Committee 1919-20. It undertook the most comprehensive exercise for the overhauling of the entire prison system after visiting numerous jails and reformatory schools in the country and abroad, preparation for a Children Act were underway in Madras since 1917 and it passed the legislation in June 1920, and the recommendations of this committee provided the impulse for the enactment of similar legislation by other states too.

The committee drew attention to the desirability of making provision for children who had not committed crime yet, but were living in criminal or vicious surroundings or without proper guardians or homes, when they are sent to Jails they get contaminated by the hardened criminals and become criminal. Special enactment for children in immoral surroundings, and especially female children likely to be brought up to habits of prostitution was also needed.

Madras (now Tamil Nadu) had already passed the first Children Act on 20 June 1920. Its provisions relating to age limit of childhood, prohibition against imprisonment of child offenders, remand homes, certified schools, and non-criminal children

inbadsurrounding were recommended for adoption by other states.

Children Acts in Bengal and Bombay were enacted in quick succession in 1922 and 1924 respectively. Pursuant to the recommendations of the Indian Jail Committee, 1919-20, the Madras Children Act 1920 was adopted in the Andhra area.

The spirit of reforms sweeping the world did not leave the French colonies unaffected. Pondicherry promulgated a decree in 1928 instituting special jurisdiction and the probation system for the European infants and those assimilated in the French colonies (other than Anilles and la Reamion) in the protectorates, and mandated territories under the ministry of colonies.

More states followed suit in the years to follow: namely, the Delhi Children Act 1941, the Mysore Children Act 1943, the Travancore Children Act 1945, the Cochin Children Act 1946 and the East Punjab Children Act 1949.

(e) Post -1950 Period- Various official and non-official developments have contributed to the development of juvenile justice since 1950. With the establishment of the planning commission in 1951, the Five year plans were started and provisions for children were made under these plans though implementation to services under juvenile justice has not been a specific head of expenditure in the Five year plans. Implementation of state as well as central Acts relating to neglected and delinquent children has remained with the states.

The Eighth plan recognized the Girl child' as an important target group, demanding attention of the Government for her development and to fight against the prevailing gender discrimination. In pursuance of the National Policy on Education 1986 and the Programme of Action 1992, various steps were taken during the Eighth plan to universalize elementary education and expand early child care education.

The Ninth Plan takes cognizance of the increasing problems ASVP PIF-8.500 /ASVS Reg. No. AZM 561/2013-14



of social maladjustments such as juvenile delinquency, abuse, crime, and exploitation. It promises a definite thrust to develop appropriate/suitable services under juvenile justice. Further the existing state and central level monitoring systems will be activated to ensure effective implementation of the JJ Act of 1986.

The draft of Tenth Five Year Plan by the ministry of social justice and empowerment points out that the mandate of the ministry is to reach out to every child in need of care and protection and to ensure that his/her basic rights are fulfilled.

In addition to fundamental right which children enjoy alone with adults, the constitution guarantees to children below 14 years of age that they shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Article 39 (f) provides that the state is also to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.

The need for a uniform Children Act continued to be emphasized at official and non-official forum, but the Central government showed its inability to enact one on the ground that the subject matter of Children Act fell in the state list of the Seventh Schedule of the Constitution. The judiciary too emphasized the need for a children act in every state.

With the adoption by the UN General Assembly of the Beijing Rules in 1985, recommendation for a uniform law in the 69th Report of the Committee on subordinate Legislation tabled in Parliament on 12 May 1986 and the Supreme Court's suggestion in 1986 for initiation of parliament legislation on the subject, the stage was set for bringing about uniformity in the law relating to juvenile justice all over the country.

Parliament enacted the Juvenile Justice Act, 1986 and brought it into force on 2 October 1987 in all the areas to which it was extended.

JJA provided for prohibition of confinement of children in police lock or jail and provisions for separate institutions for the processing, treatment and rehabilitation of the neglected and delinquent children was made.

The Juvenile Justice (Care and Protection of Children) Bill 2000 was introduced in the Lok Sabha and Rajya Sabha without any mention of the Children's Code Bill 2000, though Maneka Gandhi did mention the name of Justice Krishna Iyer among the wide range of people consulted before finalization of the proposed Bill. The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for

the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. This law, brought in compliance of the 1989 UN Convention on the Rights of the Child (UNCRC), repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified the UNCRC in 1992. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted to consolidate and amend the law relating to juveniles in conflict with the law and those in need of care and protection. The JJ (C&P) Act 2000 recognizes the family of the child as a unit to deal with while dealing with children.

After the 2012 Delhi gang rape, it was found that one of the accused was a few months away from being 18. So, he was tried in a juvenile court. On 31 July 2013, Subramanian Swami, a BJP politician filed a Public Interest Litigation in the Supreme Court of India seeking that the boy be tried as an adult in a court. The Court asked the juvenile court to delay its verdict.

After that Supreme Court allowed the juvenile court to give its verdict, the boy was sentenced to 3 years in a reform home on 31 August 2013. The victim's mother criticised the verdict and said that by not punishing the juvenile the court was encouraging other teenagers to commit similar crimes.

In July 2014, Minister of Women and Child Development, Maneka Gandhi said that they were preparing a new law which will allow 16-year-olds to be tried as adult. She said that 50% of juvenile crimes were committed by teens who know that they will get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults, will scare them. The bill was introduced in the Parliament by Maneka Gandhi on 12 August 2014. On 22 April 2015, the Cabinet cleared the final version after some changes.

The Juvenile Justice (Care and Protection of Children) Act, 2015 allows a Juvenile Justice Board, which would include psychologists and sociologists, to decide



whether a juvenile criminal in the age group of 16-18 should be tried as an adult or not. It 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. It also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined.

It introduces foster care in India. Families will sign up for foster care and abandoned, orphaned children, or those in conflict with the law will be sent to them. Such families will be monitored and shall receive financial aid from the state. Parents giving up their child for adoption will get 3 months to reconsider, compared to the earlier provision of 1 month.

One of the most criticized steps in the new JJ Act 2015 is introduction of "Judicial Waiver System" which allows treatment of juveniles, in certain conditions, in the adult criminal justice system and to punish them as adults.

The establishment of juvenile court and juvenile welfare boards, celebrated as the beginning of the JJS, was the culmination of a process that began with the *parens patriae* and *mens rea* principles and progressed through separate institutional facilities. At first, the entire safeguards available to adults were considered unnecessary in the case of children because the child was not to be punished but 'treated' and 'rehabilitated'.

The present-day Juvenile Justice System in India has not been a continuous process resulting from and 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 demand of the children in the country.

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