

PROGRESSIVE JUVENILE JUSTICE SYSTEM: A COMPARATIVE
SOCIO-LEGAL ANALYSIS

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Children are the greatest gift of humanity. They are nation's asset and the best human resource. They are the future stakeholders and hence, need proper upbringing. Being physiologically and intellectually immature, they are wide open to acts of brutality and cruelty. For a very long period, child remained to be a neglected piece of the commodity. It is the responsibility of the State to administer well-being of the child and adjudication of his guilt. It must endeavour to convert children into positive personalities. In a country like India, where child labour is still so prevalent children need additional care, protection, and meaningful life. The NCRB reports state that the crime rate of juveniles is increasing and the nature of crime committed by a child is also witnessing a change.¹ Various crimes of heinous and serious nature are committed which portray a lack of literacy, poor family relationships, moral and mental weaknesses, etc. Once the child is taken in custody by the Juvenile Justice Board (JJB) or Court, he is weaned away from his social context and he tends to become a 'fish out of water'. This chapter aims to create an understanding of the juvenile justice system in India, its critical analysis, and sociolegal reasons of juvenile delinquency in different countries with special attention to India and Mauritius. This will provide each country with new information, fresh theoretical perspectives, and ideas for understanding and

addressing the problem of juvenile delinquency. The reader will get information about historical evolution of juvenile's justice system in India and judicial efforts for child welfare through a series of landmark judgments. It is believed that other countries may be inspired to think differently by the success or failure of one nation.

INTRODUCTION

"Our nation's children are our greatest asset and our most precious treasure."

- By Christopher Dodd²

The first Indian Prime Minister, Pandit Jawaharlal Nehru believed that "children were like the buds in a garden. They should be nurtured cautiously and lovingly, as they were the future of the nation and the citizens of tomorrow. He felt that children are the real strength of a country and the very foundation of society."³ Children are the greatest gift of humanity. They are the nation's principal asset and the best human resource. Children, being the future stakeholders must have an opportunity to access, learn, unlearn, relearn, and grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the life skills and activations needed by society. India has the highest number of children in the world. The total population of India as recorded by 2011 Census is 1.2 billion and 40% of it is children. With the increasing pace of development, a lot of changes are observed in the behaviour of children. Research shows that delinquent behaviour among children is increasing. Though primarily, it is the duty of the State to look after the welfare and well-being of children it now requires partnering with different NGOs and social organisations having similar objectives. These institutions work as a strong support

system. Lack of proper care, poverty, broken homes, family tensions, migration from rural to urban, the influence of media, residing in conflict-affecting countries etc. are some of the social, economic, psychological and legal factors that result in 'child delinquency'.⁴

'Child delinquency' is an increasing big problem worldwide that needs to be dealt with collectively.⁵ Constitutional provisions clearly mention that State shall endeavour to provide for equal opportunities for the development of all children during their growth period, for reducing inequality and ensuring social justice, which in turn would serve as an effective tool to curb child delinquency. Children are expected to be obedient, respectful and of good virtues and quality. Due to various socio-economic, physical and psychological reasons children do not follow settled social and legal command. In recent years, it has become very clear that juvenile delinquency is the most important aspect of the subject matter of criminology. These years have also seen a desire for an impartial assessment of the issue and the creation of new techniques. Juvenile delinquent behaviour has taken on serious forms, which is a sign of an unhealthy society. The instability and devastation caused by deviant behaviour, a global phenomenon, are taking on frightening proportions in social organisations and are serving as a wake-up call for individuals who are either already under its influence or are at risk of being affected.

According to NCRB Reports, there has been an increase in crimes committed by juveniles, especially by those in the age group of 16-18 years. The rate of crime by juveniles as on 2020 is 6.7%.⁶ Therefore, the legislature needs to constantly revamp and reform the definition of juvenile and various provisions of the Juvenile Justice

System. Children must be at the centre of all child planning, research, and welfare initiatives.

JUVENILE JUSTICE SYSTEM (JJS): HISTORICAL GENESIS IN INDIA

Understanding the present state of the Juvenile Justice System (JJS) in India requires recourse to history. The JJS in India originated during British rule. Before the British regime in India, Juveniles were treated by the family and society in general.

Gone are those wild days when the problems of juvenile were not considered as a separate system. It can be witnessed from the past that the children were thrown into prison without trial. They were locked in the jail along with hardened criminals. In the nineteenth century, penologists prescribed equal punishment for both adults and Juveniles. History reveals that juveniles were hanged, transported and imprisoned like adult criminals.

Gradually, the problem of youth offenders was given separate treatment. The Constitution of India demanded separate treatment for children and women.

18th century: In India, the first piece of legislation pertaining to juvenile justice was found in 1850 under the Apprentice Act. It was made clear that as part of the rehabilitation process, children between the ages of 10 and 18 must get vocational training.

IPC, 1860 declared children below the age of 7 years as 'Doli incapax' i.e. "unable to do harm." It is a philosophy concerned with protecting minors from criminal accountability. It is considered in law that a kid under the age of seven (in India) is

incapable of understanding the implications of his acts and hence is immune from criminal prosecution. For the age group of 7 to 12 years, IPC accorded only partial exemption from criminal liability provided their *mens rea* is not proved.⁷

Thereafter, the Reformatory Schools Act, 1897 talked upon reformation and rehabilitation as a humane approach towards juvenile offenders.

19th century: Even the Indian Constitution promulgated in 1950 has a vision for child protection. It can be inferred by going through its various articles. It guarantees children in the age group of 6 to 14 right to free and compulsory elementary education, right to be protected from any hazardous employment till the age of 14 years, right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength, right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment and right to early childhood care and education to all children until they complete the age of six years.⁸

The Children Act in 1960 defined 'juvenile offender' as a child (boy below 16 years and girl below 18 years), who has committed a crime for which he or she is legally responsible. An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories.

With the implementation of *Juvenile Justice Act, 1986* the Children's Act got repealed. The JJA, 1986 defines a 'juvenile or child' to be a person who in case of a

boy has not completed age of 16 years and in case of a girl 18 years of age. This was the primary legal framework on uniform law relating to juveniles in India. Prior to this Act, each State enacted a separate juvenile law leading to complexities and differential dealing of the delinquent children. This Act was made applicable to whole of India excluding Jammu and Kashmir.

This Act was further repealed by enactment of **Juvenile Justice (Care and Protection of Children) Act, 2000**. Section 2 (k) of the Act defines “juvenile” or “Child” as a person who has not completed eighteenth year of age. India complied with its international commitments by repealing the 1986 Act and enacting the Juvenile Justice (Care and Protection of Children) Act, 2000. This Act was further amended in 2006 and 2015.

Now, age of juvenile in conflict with law for male and female has been fixed at 18 years. A juvenile in conflict with law under the *JJ (C & P) Act, 2000* is a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence.

Under **Juvenile Justice (Care and Protection) Act 2015**, a juvenile is defined w/s 2 (35), as a child below the age of eighteen years.

An amendment to India’s Juvenile Justice Act was made after a huge outrage by common people, when one of the accused in the Nirbhaya case, was punished for only three years, being a minor. Now in India, anyone above the age of 16, can be treated as an adult if he or she has commissioned a heinous crime. However, there is a condition imposed on Juvenile Justice Board (JJB) to do a preliminary assessment

of mental status to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. However, there is a strong public outrage for harsher punishment for youths who commit adult crime i.e. serious crimes like murder, rape, robbery, dacoit etc. Such youths should be punished like adults.

WHAT IS JUVENILE DELINQUENCY?

‘Juvenile’ refers to any young individual who still exhibits the traits and nature of a child, according to its etymology. Delinquency is defined as failing to uphold social norms, shirking your responsibility, committing a crime, or engaging in any other wrongdoing. Justice can refer to a concern for peace and sincere regard for others as well as for justice, fairness, and equity. It is a morally correct notion that seeks to balance unfair behaviour and treatment. The administration of justice for criminal cases includes a system known as juvenile justice. This system was put in place for children who are too young to be held accountable for crimes. The commission of an act against society by young people is known as juvenile delinquency.

JUVENILE JUSTICE ACT 2015: SALIENT FEATURES

In order to understand the features of current Juvenile Justice Act, we need to go through its history.

1. Juvenile Justice Act of 1986
2. The Juvenile Justice (Care and Protection of Children) Act, 2000

The main legislative framework for juvenile justice in India is the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act establishes a framework for the protection, care, and rehabilitation of children under the jurisdiction of the juvenile justice system and calls for a unique approach to the prevention and treatment of juvenile delinquency. The former Juvenile Justice Act of 1986 was repealed by the Act of 2000, which was made in accordance with the 1989 UN Convention on the Rights of the Child (UNCRC), which India signed and ratified the UNCRC in 1992. Additional amendments to this law were made in 2006 and 2010.

3. Juvenile Justice (Care and Protection of Children) Act, 2015

This Act allows children aged 16 to 18 years and in conflict with the law to be tried as adults, in case of heinous offences.

4. Juvenile Justice Act, 2021

The **primary goals** of the juvenile justice system, in addition to maintaining public safety, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community.

This Act prescribes enhanced punishment for cruelty to children from six months to three years. The selling or buying of children was made a punishable offence with imprisonment of five years.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was passed that widened the ambit of 'serious offences' that a juvenile can be charged with. It makes offences with punishments ranging from 3 to 7 years as cognisable from non-cognisable — meaning a juvenile accused of such offences can be arrested without a warrant.

INTERNATIONAL PERSPECTIVE

India is a party and signatory to UN Declaration on Rights of Child, 1959 which is the first major international agreement on the basic principles of children's rights. The Preamble to the Declaration of the Rights of the Child highlights children's need for special care and protection, "including appropriate legal protection, before as well as after birth."⁹ The Declaration of the Rights of the Child lays down ten principles:

1. The right to equality, without distinction on account of race, religion or national origin.
2. The right to special protection for the child's physical, mental and social development.
3. The right to a name and a nationality.
4. The right to adequate nutrition, housing and medical services.
5. The right to special education and treatment when a child is physically or mentally handicapped.
6. The right to understanding and love by parents and society.
7. The right to recreational activities and free education.
8. The right to be among the first to receive relief in all circumstances.
9. The right to protection against all forms of neglect, cruelty and exploitation.
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.

THE ROLE OF JUDICIARY: A RIGOROUS OR A REFORMATIVE APPROACH

1. Nirbhaya case (2012): Delhi Gang Rape Case

An amendment to the India's Juvenile Justice Act was made after a huge outrage by common people, when one of the accused in the Nirbhaya case, was punished for only three years, being a minor. However, now in India, anyone above the age of 16, can be treated as an adult if he or she has commissioned a heinous crime.¹⁰

2. Sheela Barse Case

A petition was filed by a social worker seeking release of children below 16 years who were detained in jails. Court also stated that petitioner shall have a right to information and visit the jails to meet delinquent children. She should share the information with Court before publishing it. Sheela Barse worked a lot for child rights and announced the need of uniform juvenile law in 1980's. This case opened up the eyes of public and new juvenile laws were enacted.¹¹

CHILD RIGHT AS SOCIAL COMMITMENT

If we study about child rights around the world, we will indeed find that child rights are a matter of great concern. Every child that is born, regardless of age, race, gender, wealth or place of birth, deserves not only to survive but to thrive.

If we consider the global situation, the rights of crores of children are denied, so if we want to raise our voice for their exploitation or their basic rights, then it's not only the burden on Legislative, executive or judiciary to protect the rights of child

but it is the moral responsibility of society to take some active steps to protect the rights of child.

Therefore, when we talk about child protection as a social commitment, we as a conscious citizen should do some things for Protecting children from violence, abuse, neglect and exploitation is everybody's responsibility like Families, communities, governments and non-governmental organisations (NGOs) together play a vital role in realising children's rights for protection. The range of programmes and policies needed to shield children from the immediate and lifelong consequences of poverty with proven impacts addressing malnutrition, a lack of clean water and poor-quality education.

What can the society do to protect the children of the world? When such question arises, it is realized that the society should take initiative for the rights of the children and donate to the child protection fund and some such schemes should be implemented at the social level so that it should benefit the children. Awareness should be spread in the society about the rights of children.

Every child deserves a childhood, surrounded by protective families and communities, and the opportunity to thrive. So, the society should form community partnership to prevent abuse of children from forced labour and conflict in the society. Society must work to equip and mobilize faith leaders and communities to challenge harmful norms and injustices against children. Every child of the country should be helped to create a brighter future

It is the responsibility of every person to participation sponsorship and relief programme. Through such programme we should teach the children about their rights. We must teach children about their rights, equip them with the skills to speak up for themselves, and educate their communities about what is and is not acceptable behaviour towards children. We must all come together to push for policy changes at the local, national and global levels that protect children's basic rights.

Various activist from Princess Diana's charitable work on behalf of children to the efforts of activists like Grace Abbott and the youngest Nobel laureate Ms. Malala Yousafzai striving for social justice to children. These famous activists have put commendable efforts in helping improve the lives of the Children as a social responsibility. Community involvement plays the vital role to protect children right.

Every citizen must be held accountable for ensuring child rights for every child in the country. And hopefully, some world organizations and movements' United Nations International Children Emergency Fund, UNICEF works to ensure these rights are discharged to all underprivileged children, girl child, street children, children enslaved in labour, physically and mentally challenged children, children used for commercial sex, and children in juvenile institutions. Aside from the institutions that provides for this right, the citizens also have a role to play in this regard by ensuring they do not abdicate their own part of responsible parenthood and the governments of states should also maintain the status quo. Violating a child's right is tantamount to violating the right of the entire world.

POSITION IN MAURITIUS TO PROTECT RIGHT OF CHILDREN

Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Mauritius ratified the Convention on the Rights of the Child (CRC) on 26 July 1990. On 14 and 15 January 2015, the Committee on the Rights of the Child (the Committee) examined the third to fifth periodic report of Mauritius

In efforts to introduce new legislation, the Committee on the Rights of the Child also finalized and adopted "The Children's Bill" which brought all legislation about children's rights under the same text and allowed for better implementation. This has a more modern and comprehensive legislative framework when compared with the Child Protection Act already in place. It also helps give better effect to the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child

In Mauritius, according to Juvenile Offender Act, no magistrate shall inflict on any young person imprisonment with or without hard labour for more than one year or any fine exceeding 1000 rupees. The juvenile offenders should be separated from the adults therefore they should be sent in reformatory schools and not in jail.

Despite the fact that Mauritius is an economically developed country, poverty persists. Combined with poverty, children markedly suffer from discrimination,

living in the streets, lack of schooling, and sexual exploitation. Although the government has provided considerable support for children's rights in recent years, some human rights violations are still too frequent.

Currently in Mauritius, many problems concerning children's rights persist ranging from discrimination against children with disabilities to the sexual exploitation of children. There are gaps and insufficiencies in policy frameworks, implementation of programs, and mindset that must be improved to correctly address the needs of the children in Mauritius and provide them an opportunity to benefit from all of their rights.

CONCLUSION

India and Mauritius have a reformatory approach towards juvenile delinquency. US is the only country to treat juveniles in a harsh way. According to the international treaties and constitutional parameters, it is the responsibility of the state to reform the children with all softness and for the best interest of the child. The Supreme Court expressed concern over "rising rate of juvenile delinquency" and wondered if the lenient approach of law was emboldening children to indulge in heinous crimes.¹²

The rate of crime committed by juveniles in between the age group of 15 to 18 is high in both countries, which requires an urgent attention and amendment in laws dealing with them.

We should focus on effective educational programs to children aged 0-8 years because the research suggests that the most effective interventions can nip in the bud in the early years.

India is constantly monitoring the change in crime rate by juveniles, assessing the reasons for juvenile delinquency and restructuring its juvenile justice system. Therefore, the law on Juveniles is evolving and progressing each day with each case. Legal amendments must occur at a rate that is commensurate with the young offender's crime commission.

The present school of thought believes that the reformation goal is ideal. The question is whether the juvenile justice system (JJS) has sub served its objective?¹³

¹ National Crime Records Bureau, Incidence And Rate Of Juvenile Delinquency Under IPC (1996-2006), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010.1_2006.pdf (Last visited Nov 20, 2022).

² American lobbyist, lawyer, and Democratic Party politician

³ Times of India, <https://timesofindia.indiatimes.com/education/news/childrens-day-2021-top-quotes-by-pandit-jawaharlal-nehru-and-others/articleshow/87680184.cms> (Last visited Nov. 29, 2022).

⁴ Dr. Bharat R. Patel, JUVENILE DELINQUENCY (CAUSES AND CONTROL), (ed. 2015).

⁵ Academia, Juvenile Justice Act: A Socio Legal Study Introduction, https://www.academia.edu/24487101/Juvenile_Justice_Act_A_Socio_legal_Study_INTRODUCTION (Last visited on Nov. 22, 2022).

⁶ National Crime Records Bureau, Crimes Committed by Juveniles (2018-2020), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/TABLE%205A.1.pdf.

⁷ Juvenile Justice Law Reform on Fixing Age for Criminality: Post Nirbhaya Initiative 2016 1 MLJ (CRL) 1

⁸ INDIA CONST. art. 21, 24, 39, 45.

⁹ Children's Rights Portal, <https://www.humanium.org/en/declaration-rights-child-2/> (last visited on Nov. 23, 2022).

¹⁰ Mukesh & Anr vs State For Nct Of Delhi & Ors, (2017) 6 SCC 1.

¹¹ Sheela Barse vs Union Of India & Ors, (AIR 1983 SC 378).

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¹² Bhadra Sinha, Is Reformatory Slant Of Law Emboldening Juveniles To Indulge In Heinous Crimes – SC Asks, THE PRINT (Nov. 17, 2022, 09:16 AM) <https://theprint.in/judiciary/is-reformatory-slant-of-law-emboldening-juveniles-to-indulge-in-heinous-crimes-sc-asks/1220694/>.

¹³ Dhananjay Mahapatra, *Supreme Court: 'Juvenile' accused in Kathua case an adult*, THE TIMES INDIA, (Nov. 17, 2022, 08:49 AM), <https://timesofindia.indiatimes.com/india/supreme-court-juvenile-accused-in-kathua-case-an-adult/articleshow/95566551.cms>.

An Edited Book on
Rights of Child vis-à-vis Law, Policy & Access to Justice