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Juvenile Justice System in India: Legal Safeguards and Institutional Mechanisms

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Juvenile Justice System in India: Legal Safeguards and Institutional Mechanisms

ABSTRACT

India is one of the most populated nations in the world and nearly 31% of total population of India are youth. The youth sometime involved themselves in antisocial activities or some crime, may be for different reasons and stuck themselves in legal jeopardy. The "juvenile justice system" in India represents a distinct legal framework grounded in the principles of reformatory justice, child protection, and rehabilitation for "Juvenile delinquent". This article is framed to examine the legal safeguards and institutional mechanisms established under the Juvenile Justice (Care and Protection of Children) Act, 2015, which governs "children in conflict with law" and those in need of care and security. It critically analyses the statutory provisions that ensure basic safety measure such as the presumption of not guilty, the right of legal aid, protection of privacy, and the primacy of the best interests of the child. The study further explores the role and functioning of key institutions, including "Juvenile Justice Boards", "Child Welfare Committees", in implementing these safeguards. It further evaluates the impact of constitutional mandates and international obligations, particularly under the UN Convention on the child's rights, in shaping India's juvenile justice regime. Judicial pronouncements have played a substantial role in reinforcing child rights and ensuring procedural fairness, which is also examined in this analysis. Despite extensive legal drafting, challenges are there in implementation, such as "infrastructural deficiencies", lack of "trained personnel", and societal stigma affecting rehabilitation. The article concludes by emphasizing the need for a more integrated and child-centric approach, strengthening institutional capacities, and ensuring effective enforcement of legal safeguards to achieve the objectives of juvenile justice in India.

KEYWORDS

Juvenile Justice, Child Rights, Legal Safeguards, Rehabilitation, Institutional Framework

1. INTRODUCTION

The future of a nation relies on young generation. In context of India, nearly 31% of its population is in between 10-18 years of age¹. This fact

¹ <https://india.unfpa.org/en/topics/youth-and-adolescents>

presents dual prospective that, on one hand, there is a strong possibility of having a great potential to bring change into the society and on the other hand it is too difficult to render them into a law-abiding citizen. So, there is high probability that some of them might be involved in some criminal activity. Reasons may be many, like- family background, social structures, community he or she belongs, economic condition, education etc and they are known as delinquent child.

The law dealing with crimes, in India, is “Bharatiya Nyaya Sanhita, 2023” which states the definitions, elements of a crime and provision of punishment and the “Bharatiya Nyaya Suraksha Sanhita” which deals with the procedure of arrest, investigation, trial of offence and prosecuting criminals, the convicted person send into a jail. Whereas, in reference to delinquent children, they keep in a rehabilitation centre with the objective to restrict them to become a hardcore criminal and to render them a good and law-abiding citizens.

A country's future as well as social stability are at risk due to juvenile delinquency. A well-organized juvenile justice system backed by strong legislation is necessary to address this problem and guarantee the protection, restoration, and reintegration for young offenders. The fundamental tenet of the Indian juvenile adjudication system is that children should not be treated similarly as adult offenders because of their age, mental status, and emotional immaturity.

Given the shorter history of juvenile justice, if such issues arose, the court either chose to overturn the severe penalties meted out to the kids or declined to enforce the law against them because of the lack of punishments designed especially for juvenile offenders. For decades, justice of juvenile delinquent was included in the larger idea of criminal justice system only, and juveniles were punished severely in regard to uphold the dominant order of the society. Juvenile delinquents punished like young offenders as there was little differentiation regarding misbehaviour and offending act. In most of the societies, juvenile offenders received the same treatment as adult offenders.²

India is one of the Signatory countries of International Covenant and treaty, dealing for the protection of Children rights and providing security and justice like UDHR,1948, UN Declaration on the Rights of the Child, 1959, International Covenant on Civil and Political Rights 1966. But much prior to that the founder of Indian Constitution realized the importance and security of the children and a result, Article 15 clause (3) of Indian Constitution contains the provision to make laws for the

² Shweta Mittal, Geeta University, “Juvenile justice in India: challenges, reforms, and the way ahead”, Indian Journal of Integrated Research in Law, Volume V Issue III | ISSN: 2583-0538.

advancement of women and children. The Constitution imposed a duty on the state to protect the children from the exploitation, ensure rights and justice. Article 24 of the constitution protects children from the forced labour and from employment, hazardous in nature.³

The Juvenile Justice Act, 2000 (henceforth referred to as the J.J. Act of 2000) is the source of many of the provisions in the J.J. Act of 2015. The J.J. Act of 2000's legislative history intended to protect children's rights and promote their wellbeing while resolving delinquent circumstances in order to reintegrate them into society. The J.J. Act of 2000 replaced the important developments of the preceding decade. From the perspective of international law, juvenile justice is a system that prioritizes protection of human dignity, rehabilitation, and reintegration over only punishing young offenders⁴.

International legal standards, such as Articles 37 and 40 of the CRC, require states to adopt policies that prioritize the child's best interests, promote avoiding formal legal proceedings and limit the use of detention to exceptional circumstances⁵.

1.1 Concept of Juvenile Justice

The word 'Juvenile' originated from a Latin term 'Juvenis' means 'Young'. The term "juvenile" is frequently used interchangeably with "delinquency," which refers to a minor who is perceived by the laws as a violent young person.

The idea of juvenile justice is very broad, as it applied the reformatory approach in dealing with the juvenile delinquent and also considers the circumstance in which a crime was committed by the juvenile. Thus, Juvenile justice is a phenomenon that addresses issues with young people's reformation, socialization, and rehabilitation. Dealing with "juveniles in confrontation with the law" and "children in need of care and protection" is referred to as juvenile justice. The juveniles are victims of their living circumstances in which they live. Instead of being penalized, young people who have broken the law should receive treatment, rehabilitation, and discipline.⁶ The ideology behind this principle is that the law maker have had the notion that being at the tender age, the young have no sufficient maturity to understand the pros

³ Simi John, "Juvenile Justice in India: Legal Safeguards and Implementation Issues" available at: <https://doi.org/10.5281/zenodo.17811599>

⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) GA Res 40/33 (29 November 1985).

⁵ Convention on Right of Child (n 1) arts 37-40

⁶ Alice Jacob and Kusum Kumar, "Child Welfare", published in SN. Jain (Ed), "Child and the Law" (1979) p. 41

and cons of their act.

Juvenile justice, as used in criminology, refers to providing justice to children who are delinquent or close to delinquent in a number of formal procedural areas, including arrest, apprehension, adjudication, sentence, custodial care, incarceration, and aftercare. In broader prospective the concept of juvenile justice also linked to the framing of law, sentencing policy, standard of care and protection, establishment of institution, trained the personals etc.⁷

Definition and Meaning

1.1. Juvenile

In layman language, a Juvenile is a person who not attained the age of eighteen years. Actually, term 'Juvenile' refers to the 'adolescent', who is neither in the stage of childhood nor in the stage of adulthood. The meaning of 'Juvenile' is a person who is physiologically immature and under develops. According to Sec.2(35) of The Juvenile Justice (Care and Protection of Children) ACT, 2015: "juvenile" means a child below the age of eighteen.

The Juvenile Justice Act 1986 defined 'juvenile' means in the case of boy who had not completed the sixteen years of age and in the case of girl she had not completed the eighteen years of age.⁸ But this Act has been repealed and new definition given in Juvenile Justice (Care and Protection of Children) Act, 2000 which state that 'Juvenile' is a boy or a girl who has not completed the eighteen years of age.⁹ The Juvenile Justice Act, 2000 does not differentiate between boy and girl on the basis of age and it requires same age for both.

1.2.Delinquency

Delinquency means an antisocial behaviour or beyond the pale act committed by children. The term 'delinquency' is now considered as a stigma for the society and connotes a negative impression about the individual child. Sir C. Burt defines delinquency as: "A child is to be regarded as technically a delinquent when his social tendencies appear so grave that he becomes or ought to become the subject of official action".¹⁰ Sheldon and E Gluck define

⁷ K. Rosenhein Margard, "Organisation and Process of Juvenile Justice", in Janford Kadish (ed) Encyclopedia of Criminal Justice, Vol. 3 (The Free Press, New York, 1983) at 969.

⁸ Section 2(h) of JJ Act, 1986.

⁹ Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁰ Sir Cyril Burt, the Young Delinquent (4th Edn 1996) p.15.

delinquency as repeated acts of a kind which when committed by persons beyond the statutory juvenile court age of sixteen, are punishable as crimes except for a few instances of persistent stubbornness, truancy, running away, associating with immoral persons, and the like. Children who once or twice during the period of growing up if involved in any kind of anti social activities like theft or any of such kind than easily they get attract into stealing, sneak something into a theatre, play hooky, and the like and soon outgrow such peccadilloes are true delinquents even though they have violated the law.¹¹

1.3. *Delinquent Juvenile*

Adult criminals are not the same as "delinquent youngsters." They are conscious of the nature of their crimes, its consequences and the difference between right and wrong, whereas "juveniles in conflict with law" lack the maturity to comprehend what is right and wrong as well as the consequences of their conduct. The juvenile court system usually refers to young people who committed crimes as delinquent juveniles. According to Edward Eldeforiso, "A delinquent juvenile is defined as any law violator under the statutory age as described by the state in which he resides, whether or not he comes to the attention of the court".¹² Gibbons and Krohn defines: "Juvenile delinquents are youths who commit an act prohibited by statutes, which includes a range of infractions".¹³ Robinson views 'delinquency as a precursor to adult crime, describing it as a signpost of danger'.

Misconduct or inappropriate behaviour of juvenile is caused by a complex interaction of personality, cultural, and economic variables. Numerous factors, including personal risk, family risk, psychological health risk, have an impact on adolescent misconduct. Individual risk factors affect the juvenile's general physical, mental, and emotional well-being. Family risk factors include the juvenile's parents and other family members who are in charge of raising him or her. When parents are not there, family members who may or may not be emotionally attached to the child or give enough care may take on the role of parent.¹⁴

¹¹ Sheldon and Eleanor Glueck: Unraveling Juvenile Delinquency (1940 Edn).

¹² Edward Elde Fonso: Law Enforcement and Youth Offender, 2nd Ed.1972, p. 8.

¹³ <https://www.shortcutstv.com/wp-content/uploads/2020/02/sociology-of-deviant-behavior.pdf>.

¹⁴ JUVENILE JUSTICE IN INDIA, Author: Aastha Goyal, Prashasti Tiwari, Student at NMIMS, Hyderabad, ISSN(O): 2582-306X VOLUME 3, ISSUE 3.

1.4. Child in Conflict with Law

"Child in conflict with law" refers to a minor who has not attained the age of eighteen on the day crime was committed.¹⁵ Therefore, it is evident from this definition that a child under the age of eighteen will be regarded as a minor. The Indian Constitution's "Fundamental Rights" chapter contains unique protections for children in respect of overall development.

2. ORIGIN OF JUVENILE JUSTICE IN INDIA

The notion of Juvenile Justice is not a new concept. In Hindu mythology, the concept of Juvenile justice is pre-existed. Ancient Indian civilization was governed by religious and moral precepts found in texts such as the Manusmriti, Yajnavalkya Smriti, and Narada Smriti. These writings included clauses that distinguished between adults and juveniles in terms of accountability and punishment, even though the term "juvenile justice" was not used explicitly. The idea that a kid lacked the mental ability (*mens rea*) to commit a crime was a fundamental part of ancient Indian law. Children were therefore frequently spared severe penalties. For example, the Manusmriti proposed that extremely young children should not be punished for crimes since they are unable to comprehend the repercussions of their behavior. Rather, parents or guardians were frequently blamed for their actions.¹⁶

Over the time, "India's juvenile justice system" has seen considerable changes. During the British era, rules were developed to treat juvenile delinquent differently from grown-up offenders. Among the initial moves in this direction were significant statutes like the Reformatory Schools Act of 1897 and the Apprentices Act of 1850. Later legislation created child-specific tribunals and protections.

After independence, India desired a more structured juvenile justice system. In 1960 and 1986, laws were passed with the goal of assisting juvenile offenders and creating special facilities for them. Further reforms resulted from India's 1992 decision to abide by an international convention, including a 2000 law that placed a strong emphasis on treating children well. However, a new rule that permits some juveniles to be tried as adults for extremely serious crimes was passed in year 2015 as a result of a serious crime committed in 2012. The system is still being upgraded. This article will examine the evolution of these laws, the discussions around them, and the challenges of both safeguarding

¹⁵ S. 2(13), The Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁶ Manusmriti, Chapter VIII (various verses relating to punishment and responsibility of minors).

children and acting morally when they commit crimes.¹⁷

With a view to have better understanding, the development of Juvenile Justice may be divided into two parts: (1) Pre- Independence Developments; and (2) Post- Independence Developments.

2.1. Pre-Independence Development

In ancient time, care and protection of children were not the sole responsibility of parents and family. Rather society was also concerned for their well being. As it has been believed that, a kid has no maturity to evaluate the pros and cons of his conduct; therefore he was free from any type of criminal liability. The society had the moral responsibility to take care of children, if the parent failed to take care or they were orphaned.¹⁸ The 'Manu smriti' and 'Shariya' text mentioned the different type of punishment for the children compare to adult at commission of crime.

The East India company which initially, as a trading entity, with the period of time, started to rule over India and to execute and implement the British rules and regulations. These laws brought drastically change in the society. Significant improvements in the administration of justice took place throughout the East India Company's transition from a trade organization to a governing body, including early attention to children's difficulties. During this time, the first law pertaining to minors were introduced and prison systems started to change from being only detention facilities to being facilities for the transportation of offenders.

The 1839 report on jail discipline, which was chaired by Thomas Babington Macaulay and appointed by Lord William Bentinck, was a significant advancement. The report demonstrated the need for reform by highlighting grave shortcomings and abuses in prison administration. Children's destitution and delinquency intensified as a result of the effects of British colonial policy, which also increased poverty, urban slums, and social dislocation. Child care issues started to surface in India as a result of Western reform initiatives.

Social reformers like Krishna Chandra and Jai Narain Ghoshal

¹⁷ 'Historical and legal evolution of juvenile justice in India', Vinit Raj, International Journal of Research Publication and Reviews, Vol (6), Issue (4), April (2025), Page – 10693-10698.

¹⁸ Kumari Ved, The Juvenile Justice System in India- From Welfare to rights, 2004, p- 57.

https://www.academia.edu/86002029/The_Juvenile_Justice_System_in_India_From_Welfare_to_Rights

petitioned Lord Cornwallis in 1787 to construct an orphanage for impoverished children in the vicinity of Calcutta. This represents one of colonial India's first coordinated initiatives for child welfare. The earliest child welfare law in India was the Apprentices Act, 1850. It was passed in order to give children – especially orphans and those receiving public charity – the opportunity to acquire skills, crafts, and careers so they might earn a living when they grew up. The Act was largely concerned with vocational training and rehabilitation rather than juvenile misbehaviour. It permitted guardians or parents to bind youngsters between the ages of 10 to 15 as apprentices until they were 21 years.¹⁹ This Act offered a community option to incarcerating delinquent children for small offenses and brought up the idea of neglected children for the first time for legislative purposes.

The Government of Bengal officially acknowledged the idea of rehabilitating young offenders in the late 1800s. When adolescents were imprisoned with adult offenders in 1874, Sir Richard Temple, the governor of Bengal at that time, noted that this resulted in moral degradation and the continuation of criminal tendencies. He supported their segregation and rehabilitation via industrial training and reformatory facilities. As a result, the Reformatory Schools Act of 1897 was passed, stating that juvenile criminals under the age of 15 should typically be placed in reformatory schools for corrective training rather than being imprisoned.²⁰

An important turning point in the development of India's "Juvenile Justice System" is the Indian Jail Committee Report (1919–1920). After visiting several jails and reformatory facilities around the nation, the Committee conducted a thorough analysis of prison administration. It noted that while material conditions like labor, food and health had significantly improved since 1889, inmates' moral, intellectual, and reformatory characteristics had received less attention. The Committee stressed that preventing people – especially children – from being imprisoned wherever feasible should be the main goal of the legal system. In this regard, it encouraged reformatory actions, such as the adoption of laws pertaining to child welfare, like the 1920 Madras Children Act.

2.2. *Post- Independence Developments*

1950, 26th January is a historical day in India as Constitution was enforced. The constitution provides rights to the Citizen and

¹⁹ Apprentices Act 1850, in *The Juvenile Justice System in India*, by Ved Kumari, 2004, p. 60.

²⁰ Section 8, 10 Reformatory Schools Act 1876, Report of the Indian Jail Committee 1884, April 1889, p. 71.

protection from the arbitrary action of the state. It also imposed moral obligation, on the state, to draft and enforced the welfare policy for the citizen of India. The women and children as consider as weak; therefore Article 15(3) of the constitution empower the state to make special law for the protection, security and justice of these people. After the independence, government took initiatives to stop the crime, discrimination, violation of right, against the children which were taking place in society.

A major development in India's statutory framework for the maintenance, safety and rehabilitation of children was the Children Act, 1960, which was passed under the Second Five-Year Plan. The Act required that Central government and State Governments to adopt programs and initiatives for impoverished and delinquent children, including measures for education, training, and rehabilitation, especially for children with impairments.²¹

It created two institutional mechanisms: Child Welfare Boards to handle situations involving neglected children and Juvenile Courts to decide instances involving delinquent youngsters. The Act ensured a specialized and reformatory approach to child welfare and justice by requiring neglected children to be presented before Child Welfare Boards and delinquent children to be produced before Juvenile Courts. The tremendous job of this Act was to putting restriction on imprisonment of a child accused of commission of any offence.²²

Adoption of 'National Policy for Children' in year 1974, recognized children as the most precious resource of the country and stressed that national development planning must prioritize their welfare. It emphasized the State's responsibility to guarantee the provision of sufficient services meant to support children's holistic physical, mental and social development.²³

In the year 1986, Central Government passed 'The Juvenile Justice Act, with an intent to lay down a uniformity in 'Juvenile Justice' legal framework and to eradicate the discrepancy, which exist in the law made by the state for the Justice of juvenile. The Act with an objective to specify 'definition' 'mechanism' 'establishment of board' 'competent authority' etc, for the overall improvisation in Child care and protection from injustice. To bring into force the United Nations

²¹ The Children Act, 1960.

²² Ibid.

²³ Sayanti Ganguli, A Short History of Juvenile Legislations in India: A Sociolegal Perspective, Journal of Research in Humanities and Social Science Volume 11 ~ Issue 4 (2023) pp: 100-102 ISSN(Online):2321-9467.

Minimum Standards for Administration of Juvenile Justice and Convention on the Rights of the Child²⁴ government brought a new law “Juvenile Justice (Care and Protection of Children) Act, 2000” in the place of “Juvenile Justice Act 1986”.²⁵

The Act with the objective to modify and unify the laws pertaining to children’s protection with care and adolescents who are in legal trouble. By attending to their changing requirements and taking a child-friendly environment in case adjudication and disposition, it makes sure that they obtain the suitable care, protection, and treatment. Through suitable institutional processes, the Act also seeks to make sure the best interests of children and ultimate rehabilitation.

In order to outlaw the employment of minors in factories and other dangerous jobs, the “Child Labour (Prohibition and Regulation) Act, 1986” was passed. According to the Act, a person under the age of 14 years is considered as a kid, and their engagement in such job is completely restricted. Additionally, it mandates that businesses offer suitable care and educational facilities where teenagers are allowed to work, and it regulates the working circumstances for young worker.

“The Juvenile Justice (Care and Protection of Children) Act, 2015” is the principal legislation governing ‘children in conflict with law’ and those in need of “care and protection” in India. It adopts a ‘child-friendly’ perspectives in adjudication and rehabilitation, ensuring the best interests of the child. In the leading case *Dr. Subramanian Swamy v. Raju*²⁶ the Juvenile Justice Act's definition is straightforward and explicit, and it is evident from the legislative intent that all individuals under the age of eighteen are placed in a single class or group in order to establish a distinct system of investigation, trial, and punishment for offenses they commit. As a signatory to the international conventions accords, India has contributed to the advancement and implementation of global perspectives. When the general characteristics of the class are recognizable and discernible and the classification is logically related to the thing being targeted, the Constitution does not prohibit such classification.

The Act establishes “Child Welfare Committees” for children in need of care and protection and Juvenile Justice Boards for youngsters in legal trouble. One important aspect of the Act is that, following a preliminary evaluation by the Board, children between the ages of 16

²⁴ Beijing Rules 1986.

²⁵ Aseem Prasenjit and Poonam Devi, Historical Development of the Juvenile Justice System in India, 2023 IJCRT | Volume 11, Issue 7 July 2023 | ISSN: 2320-2882.

²⁶ (2014) 8 SCC 390.

and 18 who are accused of serious crimes may be tried as an adult. Additionally, it increases protections for child safety, social reintegration, and rehabilitation while streamlining adoption procedures.

3. CONSTITUTIONAL FRAMEWORK

A number of provisions regarding children's upliftment, survival, and protection can be found in the Indian Constitution; these are specially incorporated in Parts III Fundamental Rights and IV, which deal with Directive Principles of State Policy. Children are given special protection under the Indian Constitution, and Article 15(3) states that the State may make any additional provisions for woman and children. Everyone has the right to life, according to Article 21 of the Constitution, and the state cannot take someone's life without following the due process of law. *Vikram Deo Singh Tomar vs. State of Bihar*²⁷ state that India, as a welfare state, ruled by the constitution should prioritized the well-being of weaker section, especially children.

Article 21-A, which was added to the Constitution by the 86th Amendment in 2002, states that each and every child have the fundamental right to "free and compulsory education"²⁸ up to the age of fourteen. *Mohini Jain v. State of Karnataka*²⁹ For the first time Court acknowledged that every individual have right to free education without any discriminatory and financial constraints. The ruling reaffirmed the need for education to be remained free from commercial exploitation. In another leading case *Avinash Mehrotra vs. Union of India and others*³⁰, the Supreme Court of India mandated that schools adhere to specific fire safety measures and interpreted the right to education include the right to a safe atmosphere in schools. In India many harmful practice were run by the society and bondage labour and slavery is one of them. The Constitution makers know about the dangers of exploitation of children thus they inserted special provisions to save the children from exploitation. Article 23 of the Constitution provides that any kinds of human trafficking, beggar and other similar forms of forced labour are prohibited and the practice of these evil habits shall be punishable in accordance with law. In the leading case "*People Union for Civil Liberty vs. Union of India*"³¹the apex court interpreting the scope of Article 23, state that this Article protect individual not only from the exploitation of state but also save from the exploitation by the private citizen. In *Bachpan*

²⁷ AIR 1988 SC 1782.

²⁸ Article 21 A of Indian Constitution.

²⁹ (1992) 3 SCC 666.

³⁰ Writ petition (Civil) No. 483 of 2004, (2009) 6 SSC 398.

³¹ AIR 1982 SC 1473.

*Bachao Andolan v. Union of India*³² the Central and State Governments were given detailed instructions by the Court, which included bolstering investigative procedures, keeping accurate records of missing children, and guaranteeing agency coordination. It highlighted the State's obligation to safeguard children and guaranteed their well, safety, and dignity.

The ruling greatly improved India's administrative and legal structure for dealing with the problem of missing and trafficked children. Constitution contains the provision of prohibition on employment of children in a factory which may dangerous to the life and limb of the children.³³

Article 39(e) of the Constitution contain provision that the State must focus its policies on caring the healthiness and strength of employees, both men and women, and to make sure that young of tender age are not to be abused. Additionally, citizens should not be compelled by economic necessity to pursue careers that are inappropriate for their age or strength.

The state's policy must prioritize protecting children from exploitation and material and moral abandonment, as well as giving them the opportunity and means to develop in environments of freedom, dignity and in a healthy manner.³⁴

4. INTERNATIONAL PERSPECTIVE ON JUVENILE JUSTICE

The aim of international "Juvenile Justice" instruments is to implement the most effective strategies for safeguarding and advancing adolescents' rights. The creation of international instruments pertaining to the development, care, and protection of children have taken place since the turn of the 20th century. "The League of Nation" issued in the year 1924, Declaration on the Child rights. It was primarily focused on meeting the financial, social, and psychological needs of children as well as their welfare. December 10, 1948 the General Assembly in Resolution 217A (III), announced "Universal Declaration of Human Rights". This UDHR, which consists of 30 articles, is a "common standard" of achievement for all people and by all nations. As such, individuals and societal organs must work to promote respect for these rights and freedoms through educating, by teaching, as well as through progressive national and international measures to ensure their universal and effective recognition and observance. Article 25(2) of this declaration ask the signatory country to promote care and protection of motherhood and childhood,

³² (2011) 5 SCC 1.

³³ Article 24 of the Indian Constitution.

³⁴ Article 39(f) of the Indian Constitution.

made special laws also.³⁵

A significant step taken by world, in the realm of protection of child rights, is the 1959 Declaration of Child rights. It is concerned to the care, safety, and development of rights of children and welfare. The “Geneva Declaration” had been superseded in the 1959 by Declaration of the “Rights of the Child”. These aforementioned declarations do not contain any juvenile justice requirements. The significance of separating young defendants from adult defendants is first addressed in 1966 International Covenant on Civil and Political Rights. Children's economic, social, and cultural rights are acknowledged in the 1966 by “International Covenant on Economic, Social, and Cultural Rights”.³⁶

Juvenile justice administration is governed by the Beijing Rules which were established in year 1985. It set the standard parameters and right of the young offender. The Beijing Rules, which call for the creation of minimum standard rules for the juvenile justice administration, and provide a comprehensive standard for the administration of juvenile justice. These regulations uphold the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economy, Social, and Cultural Rights, and other international human rights accords that are relevant to youth rights.

The followings standard rules are:

- Rule 1.1 and 1.2: talk to promote well-being of juvenile as well as their family.
- Rule 17.1: state about proportionality in reference to punishment by considering circumstances both offender and the offence.
- Rule 13.3: Containing “Last Resort Method” means to keep the juvenile in detention in extreme situation only and for possibly for the shorter period of time.
- Rule 7- 10: it speak about basic rights of the offender like - legal counselling, notifying parents immediately, medical.
- Rule 4: it put stress on signatory countries to specify the age of criminal responsibility that considers emotional, mental maturity.
- Rule 17.2 & 17.3: Putting ban on Corporal and Capital Punishment.

³⁵ Mr. Aseem Prasenjit, Dr. Ashutesh Anand, An Overview of International Perspective of Juvenile Delinquency Laws, © 2023 IJCRT | Volume 11, Issue 9 September 2023 | ISSN: 2320-2882.

³⁶ Article - 10 of International Covenant on Economic, Social, and Cultural Rights, 1966.

- Rule 26.3: That the Juvenile shall not be kept with adult prisoners.

Thus, in order to secure the rights of juvenile offenders during his/her arrest, trial, prosecution, and institutional and non-institutional treatment, the Beijing Rules take into account a number of protective principles.

The Riyadh Guidelines¹⁹⁹⁰, UN Guidelines for Juvenile Delinquency Prevention, were acknowledged and its fundamental principles state that the large number of young people who may or may not be in legal trouble but are neglected, abused, abandoned, exposed to drug abuse, in marginal circumstances, and at social risk should not be socialized or controlled. It also acknowledges the necessity of developing national, regional, and global approaches and strategies for the prevention of juvenile delinquency and affirms that every child has fundamental human rights, such as access to free education. The guidelines place a strong emphasis on preventative intervention and early protection, with particular attention paid to circumstances involving "social risk."

The Riyadh Guidelines recognizes the measures necessary to prevent children from committing crimes. The guidelines offer a lot of intricate ideas about how to deter crime and keep kids from committing crimes. The guidelines see the kid as a fully-fledged member of society and emphasize their involvement in the preventative process. They adopt a proactive approach to preventing juvenile delinquency and their social reintegration. This demonstrates how society's views on the community's involvement in preventing juvenile delinquency and the role of children as right bearers are evolving.

In 1985, the United Nations adopted the Juvenile Justice Standard Minimum Rules. Because a UN convention was held in Beijing in 1985, this treaty is known as the Beijing Rules. Juvenile justice was framed in the report. This document has served as a reference but is not legally binding since its establishment. Four years after the Beijing Rules, the UN created the CRC. Unlike the Beijing Rules, this may be enforced by signatories. It is "in poor taste" for nations to violate treaty laws, rules, and procedures. CRC is one of the well-known treaties.

5. INSTITUTIONAL MECHANISMS

The Government has duty to take care of children in holistic way. To fulfil this objectives state frame policy and regulation time to time. In year 2015, The Juvenile Justice (Protection and care of Children) Act was enacted. It designed with a view to provide child- friendly mechanism, welfare-oriented approach, Protection from abuse, establishment of Institution and other authority to make coordination and supervision, regarding follow - up and execution of policy, given under this Act.

5.1. *Juvenile Justice board*

The “Juvenile Justice Board” is the body who dealt with the Juvenile Delinquents. Actually, in the year 1960 ‘The Children Act’ make the provision of ‘Juvenile Court’ to handle the case of both young offender and neglected children. To ensure the justice, in year 1986, JJ Act make the provision for the constitution of two institution, one would be ‘Juvenile – Welfare Board’ to dealt with neglected Juvenile specifically, whereas, the ‘juvenile Court’ to dealt with delinquent juvenile. According to the “Juvenile Justice Act of 1986”, the Juvenile Courts are composed of a bench of one or more magistrates, one of whom is designated as a Principal Magistrate.³⁷ The child alleged to have conflict with law, committed any crime shall be inquired, within four months from the commencement date³⁸, and adjudicate by the ‘Juvenile Justice Board’ as provided under the Juvenile Justice (Care and Protection of Children) Act, 2000. The matter shall be heard by the principal magistrate, who have special knowledge in child psychology and well trained in child -welfare. The principal magistrate shall be assisted by two social worker who well-versed in child education, health, welfare with the experience not less than seven years.³⁹ The Board will convene at a facility that meets all the standards for an Observation Home or a suitable institution that operates in accordance with the Act. The Juvenile Justice Board will not operate in a manner akin to that of a traditional court. The atmosphere of the place must be kid-friendly rather than courtroom-like. The Juvenile Justice Board cannot be situated on an elevated platform and must have a uniform seating configuration. There won't be a witness box.

No matter what other laws are now in effect, the Juvenile Justice Board has the sole authority to handle juveniles who are in legal trouble.⁴⁰ In order to ensure that the minimum standards of justice and treatment are upheld in the spirit of the Act, the Board will oversee institutions for juveniles in conflict with the law, deal with non-compliance on the part of concerned government employees or employees of voluntary organizations, and instruct the District Authority and Police to provide the necessary infrastructure or facilities. In regards to children in need of care and protection, the Board also keeps in touch with the Child Welfare Committee. The District and State Child Protection Units receive weekly information from the Juvenile Justice Board regarding minors in legal trouble who

³⁷ Section 5(2) of Juvenile Justice Act, 1986.

³⁸ Section 14 of Juvenile Justice (Care and Protection of children), Act 2000.

³⁹ Section 4 of Juvenile Justice (Care and Protection of children), Act 2000.

⁴⁰ Section 6 of Juvenile Justice (Care and Protection of children), Act 2000.

appear before him. Permission to enter an institution's premises may be granted by the State Government and the Chief Judicial Magistrate or Chief Metropolitan Magistrate.

The Board will conduct the age determination inquiry by obtaining documentary proof of matriculation or similar certificates, a birth certificate issued by a competent authority, or a date of birth certificate from the school. The medical board's opinion will be used to ascertain age in the absence of the aforementioned papers. Through the State Legal Aid Services Authority, accredited voluntary legal services organizations, or university legal services clinics, the Board will guarantee free legal services to all minors.

5.2. *Child Welfare Committee*

The Juvenile Justice Board and the Child Welfare Committee are not the same. According to the Juvenile Justice Act, 2000, the Child Welfare Committee has the competence to handle cases involving "children in need of care and protection." The Child Welfare Committee decides cases involving children who require care and protection but have not broken any laws. At the district level, the CWCs serve as the responsible authority to make final decisions about children in need of care and protection.

The Child Welfare Committee will consist of four members, a chairperson, and at least one female member. A Selection Committee established by the State Government will recommend the appointment of the Committee's chairperson and members. All Committee members must get training and orientation in child psychology, child welfare and rights, and national and international standards for juvenile justice from the State Government.⁴¹ The major function of the committee are:

- To take the custody and cognizance of children brought before committee.
- Primarily to conduct inquiry when the issue related to child care and protection, with an instruction to the Probationary officer, non-governmental organisation to submit report after inquiry.
- To ensure rehabilitation, shelter and to issue instruction, if required, to the parents or fit person or fit institution in this regard.
- To ensure the admission of children in Child care home by instructing the officer and to maintain the case summary, case dealt with committee.

⁴¹ Section 29 of Juvenile Justice (Care and Protection of Children) Act, 2000.

- To provide child friendly environment and adoption.
- To keep visiting and supervising such institution.

Before deciding on a case, the Committee will evaluate the kid's age, developmental stage, physical and mental health, the child's opinion, and the suggestion of the child welfare officer or caseworker. In the last a case's disposition order must be signed by the Chairperson and at least two other Committee members.⁴²

6. CRITICAL EVALUATION OF THE JUVENILE JUSTICE SYSTEM

Care and protection of the children right is the primary object of the juvenile justice system. The goal of this Act is to prevent imprisonment of the delinquent children, assessment of impact on children and society of punishment and it should be taken as last resort. It is true that laws occasionally need to be modified to reflect societal demands. This need was felt by the legislature after the brutal rape case took place in Delhi, famously known as "Nirbhaya Kand". This rape case raised demand, by the people, to change the age of Juvenile, as one of the accused was minor and escaped from the punishment, while rest of the accused was awarded capital punishment. Because he was a minor, he was completely immune from the death sentence and protected by the J.J.A. 2000. The juvenile was well aware of what he was doing, and it appears that he was mature enough to understand the repercussions of his actions. It was completely impractical to sentence him for just three years under these conditions.⁴³

In order to lower the age of criminal liability for young offenders, Menaka Gandhi the then Minister of Women and Child Development introduced the Juvenile Justice Bill 2015. The age of criminal accountability was reduced from 18 to 16 years old by this measure, which is now an Act, in extreme circumstances. It was clear that the public's mounting opposition to the release of the young person found guilty of the gang rape and murder of 23-year-old Nirbhaya in the capital on December 16, 2012, was the reason behind the Bill's hurried passage.⁴⁴ Children's rights should always be upheld while their best interests are safeguarded. The fundamental aims and objectives of the juvenile justice system should not be overlooked when implementing modifications. Since there was a chance that a youngster under the age of sixteen could

⁴² Section 30 and Rule 26.

⁴³ Mr. Atul S. Jaybhaye, CRITICAL ANALYSIS OF JUVENILE JUSTICE SYSTEM IN INDIA, Bharati Law Review, Oct. – Dec., 2017, p. 103.

⁴⁴ <https://economictimes.indiatimes.com/news/politics-and-nation/juvenile-justice-bill-introduced-in-lok-sabha-by-maneka-gandhi/articleshow/40121395.cms?from=mdr>.

conduct a horrible act again, there was absolutely no need to lower the juvenile age from eighteen to sixteen.

The error that the reformation and retributive nature can be applied to a minor simultaneously should have been disregarded since it highlights the fact that a kid's life will be ruined if they are purposefully determined to become adults, which would be against the act's preamble. Furthermore, according to Rule 2 of The United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (The Beijing Rules), a "juvenile" is defined as a child or young person who, under the applicable legal system, may be punished for an offense differently than an adult.

7. CONCLUSION

In India, the Juvenile Justice (Care and Protection of Children) Act, 2000 is a social, adaptable, and reformatory piece of legislation. Instead of punishing "juveniles in conflict with law" and "children in need of care and protection," the JJ(C&P) Act, 2015 offers care, protection, development, welfare, control, treatment, and rehabilitation. The Act establishes a Child Welfare Committee for children in need of care and protection as well as two distinct bodies for the adjudication and resolution of juvenile cases. The Juvenile Justice Board handles cases involving "juveniles in dispute with the law." The Board consists of a magistrate and two social workers, at least one of whom must be a woman. The Board is a bench with powers granted to first-class magistrates by the Bharatiya Nyaya Suraksha Samhita. The Act gives the State Government the authority to set up enough Observation Homes, Special Homes, Children's Homes, and Shelter Homes in every area.

Juveniles who have completed a specific amount of care and training in an institution are the target audience for the aftercare programs. The Commission on the Protection of Child Rights was established in 2007 in accordance with the 2005 National Commission for Protection of Child Rights Act. The Commission's mandate is to make sure that all laws, policies, programs, and administrative procedures align with the Constitution's protection of children's rights.

The critical research reveals that although India's juvenile justice system has solid legal underpinnings, implementation issues restrict its efficacy. To fully accomplish its reformatory and protective objectives, the system requires improved infrastructure, skilled staff, and a more uniform approach among states. One of the primary points of contention in its future development is how to strike a balance between accountability and rehabilitation. The juvenile justice system in India is intended to deal with juvenile delinquency, emphasizing reform and rehabilitation above punishment.

Juveniles' mental and emotional health may suffer as a result of lengthy stays in observation homes caused by the system's problems with court procedure delays. Additionally, disparities in infrastructure and law enforcement between various regions – particularly rural ones – lead to unequal access to justice and rehabilitation services. After rehabilitation, social integration is still very difficult, and many young people experience stigma and insufficient support, which raises recidivism rates. Additionally, the system frequently fails to provide vulnerable children with the care and protection they require, especially those from low-income families. In conclusion, even though India's juvenile justice system has a solid legal foundation, its efficacy is limited by uneven application, a lack of funding, and difficulties striking a balance between rehabilitation and culpability for significant crimes.