



## History of Legislation on Children in Conflict with Law

Ms. Lekshmy K.V.<sup>1\*</sup>

### Abstract

*Nations introduced separate legislation for juvenile offenders and children requiring care and protection. With the enactment of the Juvenile Justice Act (JJA) 1986, though there continued to be a single law, two distinct types of machinery were set up to deal with "neglected juveniles" and "delinquent juveniles". Both these categories of children were kept in the Observation Home while their inquiries were pending before their respective competent authorities. Juvenile Justice Act (JJA) 2000 for the first time provided for "juveniles in conflict with law" and "children in need of care and protection" to be kept separately pending their inquiries. In the 2015 legislation also this approach continued. This segregation aims to reduce the corruption of the innocent child from the influence of the "criminal juvenile".*

**Keywords:** Children, juvenile in conflict with law, juvenile justice, legislation, welfarism.

**Author for Correspondence\* email id.** [klakshmiramesh@gmail.com](mailto:klakshmiramesh@gmail.com)

### Introduction

Many Indian states passed their own versions of the "Children Acts" starting in the early 20th century. In 1920, the Madras Children Act became the first of its kind, and it was quickly followed by similar laws in Bengal (1922) and Bombay (1924). The Bombay Children Act came into effect as the first Children Act, although being passed four years after the Madras Children Act. Within the boundaries of the Bombay Municipal Corporation, the provisions of the Bombay Children Act were implemented in February 1924 through the establishment of a voluntary State-aided organisation known as the Children's Help Association. In order to provide for and safeguard children, the Children's Aid Society (CAS) founded and continues to oversee a number of residential facilities.

Both juvenile criminals and homeless and abandoned children were within the purview of the State's Children Acts. The Juvenile Courts were designated to hear cases involving both of these types of minors. Children were treated differently at this time period all throughout the world "method of "welfarism." With the welfare of the kid as the primary concern, Probation Officers were heavily involved, and legal counsel was seldom sought for either group of youngsters.

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<sup>1</sup>Assistant Professor, G J Advani Law College, Mumbai, Maharashtra, India.

In 1960, the Indian government enacted the Children's Act in an effort to "provide for the trial of juvenile offenders and the care, protection, maintenance, welfare, training, education, and rehabilitation of children who have been neglected or who have committed crimes in the Union Territories. A minor is defined as a boy under the age of 16 and a female under the age of 18 for purposes of this Act."<sup>2</sup>

Both abused and neglected children were referred to the Child Welfare Board, while juvenile offenders were sent to the Children's Court. The Juvenile Justice Act of 1986 (JJA) grew out of this law. Not only had each state government passed their own laws for kids, but the specifics of those laws differed from state to state. What constituted a "child" was defined differently from State to State. In 1986, this led to the Supreme Court taking action.<sup>3</sup>

*"Instead of having a Children's Act that varies in method and content from state to state, we think it would be best if the Central Government introduced legislation in Parliament to standardise all of the country's child protection laws. The Children's Act that may be enacted by Parliament should include mandatory provisions for ensuring the social, economic, and psychological rehabilitation of children who are either accused of offences or are abandoned, destitute, or lost, as well as provisions for the investigation and trial of offences against children under the age of 16 years. Further, it is not sufficient merely to have legislation on the subject; it is equally, if not more, important to ensure that such legislation is implemented in all seriousness, without merely tip sympathy being paid to such legislation and without the State's lack of finances being pleaded as justification for non-implementation. The best return on investment for government spending on kids is a strong workforce that is able to contribute to the nation's progress."*

When the General Assembly passed the United Nations Basic Minimum Guidelines for the Administration of Juvenile Justice on November 29, 1985, it was the first time the term "welfare" was used in international law, and the term "justice" had been used in international law. The Juvenile Justice Act (JJA) of 1986 mirrored this shift in nomenclature in domestic law. The period of "welfarism" has brought about the era of "justice" with the implementation of the "Beijing Rules Paradigm": *"Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society."*

We were to split our attention between the child's best interests and the pursuit of justice. Justice for the youngster and for others who have suffered as a result of his actions. The increasing scepticism of the public towards "welfarism" in the minds of voters, public officials, and civil libertarians. The former argued that children beyond a certain age should be held accountable for

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<sup>2</sup>Section 2 (e) of the Children Act 1960.

<sup>3</sup>Sheela Barse v. Union of India (1986) 3SCC 362

their deeds, reasoning that if they are capable of acting as adults are, then they should be treated as such. As the former feel that "welfarism" leads to unfair and unequal treatment of similarly situated juveniles, the latter argue that juveniles should be afforded the same constitutional and procedural safeguards allowed to adults, given that they, like adults, are denied their freedom.

Several countries have passed laws specifically addressing the needs of juvenile offenders and youngsters in need of protection. As a result of the Juvenile Justice Act (JJA) of 1986, there is now a separate system in place to handle "neglected juveniles" and "delinquent juveniles," despite there still being just one statute. Both groups of children were housed at the Observation House while their cases were investigated by the appropriate authorities. For the first time, the Juvenile Justice Act of 2000 (JJA) mandated the separation of "juveniles in conflict with law" from "children in need of care and protection" while their cases were investigated.

This method was also preserved in the laws passed in 2015. The hope is that by separating the "criminal juvenile" from the "innocent youngster," we can prevent the former from being "corrupted by the latter". The formerly defenceless misguided child is now seen as a dangerous schemer who must be shielded from adults and younger children alike. This shift in perspective has come about because of the increased visibility of juvenile criminality, which typically takes place in urban areas where young people try to make a living without the assistance of their families or the rest of society. The media has also contributed significantly to the stereotype of juvenile offenders as violent criminals who are able to get away with their crimes because of their young age.

India's juvenile laws have sought a "welfarism" and "justice" by conceiving of a "welfare court" that affords a kid constitutional and procedural protections throughout the investigation phase, and then determines the child's mode of treatment with his best interests and full rehabilitation in mind. It is hoped that the fact that a person under the age of 18 who has committed an offence also deserves protection will always be recognised in our legislation. Both "juveniles in conflict with law" and "children in need of care and protection" remain governed under the Juvenile Justice Act (JJA) 2000.

Thankfully, our Juvenile Justice Boards have maintained a socio-legal approach, giving the social side of juvenile delinquency the prominence, it deserves, rather than being changed into inferior criminal courts for young offenders. While the United Nations Convention on the Rights of the Child does provide certain protections for children, it also mandates "The child's best interests must always come first"<sup>4</sup> in all actions concerning children. The Juvenile Justice Act (JJA) of 2000 requires that the principle of best interest be applied, interpreted, and implemented as a main factor in juvenile justice system administration, and this is reflected in the Model Rules.

## Juvenile

Everyone under the age of eighteen is considered a "juvenile" or "child." According to subsection 2(k) of the Juvenile Justice Act (JJA) of 2000, any male or female under the age of 18 is considered a juvenile. Under the Juvenile Justice Act (JJA) of 1986, a juvenile is a male under the age of 16 or a female under the age of 18. Professionals in the field of children advocated for an increase in the minimum age for juvenile offenders for boys so that it would be consistent with the age for juvenile female offenders.

Because the Government of India joined the Convention on the Rights of the Child (CRC) on December 11, 1992, the Juvenile Justice Act (JJA) of 2000 raised the minimum age for a male juvenile to 18. This discrepancy is cited as justification for abolishing the Juvenile Justice Act (JJA) of 1986 in the Statement of Objectives and Reasons of the Juvenile Justice (Care and Protection of Children) Bill, 2000.

Some other suggestions have been offered in a similar vein: (iii) bringing the juvenile legislation into compliance with the United Nations Convention on the Rights of the Child; (iv) prescribing an identical age of eighteen for both boys and girls.

For the purposes of the present Convention, a child means any human being under the age of 18 years, unless, under the legislation applicable to the child, the majority is acquired earlier.

Juvenile law presently protects all children under the age of 18, including both boys and girls. Whatever the case may be for raising the minimum age of a male juvenile, the change is necessary and appreciated.

Others have contended, namely the Superintendents and employees of Observation Homes and Special Homes, that the present infrastructure is insufficient to cope with the increased number of juveniles in conflict with the law owing to the increase in the age of boy juveniles under the 2000 Act. Several government officials have publicly called for the boy juvenile's age to be lowered to 16. This is an absurd and defeatist request that will never be granted.

It is crucial to understand that reducing the age to 16 years is not an option. Furthermore, statistics belie this contention. Statistics indicate an initial growth in the juvenile crime rate<sup>4</sup> in 2001<sup>5</sup>, but the same soon thereafter stabilized. The following figures have been reproduced from Crime in India published annually by the National Crime Records Bureau, Ministry of Home Affairs, Government of India:

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<sup>4</sup> Crime rate is defined as the "Incident of crime" per 1,00,000 population. Juvenile crime rate is the number of juvenile crimes per 1,00,000 population.

<sup>5</sup> JJA 2000 came into force on 1-4-2001.

**Table 1. Data regarding crimes committed by juveniles in India**

<b>Year</b>	<b>Juvenile crime rate</b>	<b>Offences committed by juveniles to the total crime reported</b>
1999	0.9	0.5
2000	0.9	0.5
2001	1.6	0.9
2002	1.8	1.0
2003	1.7	1.0
2004	1.8	1.0
2005	1.7	1.0

*Source: National Crime Records Bureau, Ministry of Home Affairs, Government of India.*

Juvenile crime rates rose in 2001, when the minimum age for the prosecution was raised to 18, and stayed high for the next few years, as seen in the table above. The percentage of juvenile offences relative to all IPC offences has reduced somewhat from 1.2% in 1989 to 1.0% in 2005, according to statistics released by the National Crime Bureau Records. Arrests of minors have also decreased.

From 2003 to 2004, there was a 9.0% drop in the total number of 16-18-year-olds that were arrested. The number of juvenile arrests dropped by 7.1% from 2003 to 2004 on a countrywide scale.

This contradicts the claim that the number of young people engaging in criminal behaviour is on the rise.

Even under the Juvenile Justice Act (JJA) of 1986, when the age of a boy juvenile was 16, the infrastructure was inadequate and needed updating. The current infrastructure must be upgraded and streamlined by the respective state governments. In order to ensure that vacancies in institutions are filled, the strength of the institutional staff and POs are increased, appropriate posts are created, educational and vocational training is provided, and the spirit of juvenile legislation is adhered to, it is not a difficult or impossible task; all that is required is some application of mind and the political will to set an improved system in place. The backlog of cases can be reduced by granting bail and expanding the sittings of or forming more Juvenile Justice Boards (JJBs). In 2006, Section 14(2) was added to the Juvenile Justice Act (JJA) 2000 in recognition of the importance of expeditious disposal of juvenile cases: "*The Chief Judicial*

*Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards."*

### **Who is a Juvenile in Conflict with Law?**

Section 2(1) of the Juvenile Justice Act (JJA) 2000 has defined "juvenile in conflict with law" as a juvenile who is alleged to have committed an offence and has not completed the eighteenth year of age as of the date of commission of such an offence.<sup>6</sup>

It was predicted that as the average age of boy juveniles rose, there would be a corresponding increase in the frequency of juveniles committing crimes of a more severe character, such as murder and rape. Statistics also lays to rest this hypothesis. According to NCRB Statistics, homicide accounted for 2.7% of all IPC offences in 1999, 2.6% in 2000, and 1.8% in 2001. In 2002, homicide accounted for 2.2% of all IPC offences and rape for 2.1%.<sup>7</sup>, it was this definition that in Arnit Das's case was found to be ambiguous.

By redefining the phrase "juvenile in confrontation with the law" refers to a minor who is suspected of breaking the law. This revision made it clear that Juvenility should be determined as of the period at which the presumed criminal act had a place. An offence is only presumed to have occurred as of the date of the incident. The legislature responded to the Pratap Singh case by clarifying the concept of "juvenile in conflict with the law" in 2006 means a person who has not reached the age of eighteen as of the date of commission of the alleged offence. If the crime was done over a long period of time (a "continuous offence"), the juvenile offender's age is assessed as of the date the offence began; even if the FIR is filed after the juvenile offender has turned 18, he will be subject to juvenile law.

### **Retrospective Legislation**

Also, it was not clear whether or not a person who committed a crime on or before 1 April 2001 (before the 2000 Act went into effect) and who was over the age of 16 but under the age of 18 at the time of the crime would be subject to the provisions of the 2000 Act. In the case of Pratap Singh, the Supreme Court examined this question and decided that the 2000 Act would only apply if the individual was under the age of eighteen on the first day of April 2001, the date on which the 2000 Act became effective. According to this line of thinking, a person who was under 18 on the day of the offence but over 18 as of April 1, 2001 would not be entitled to the protection afforded to a juvenile. This argument for limited retroactivity contradicts the purpose of the Act, which is to shield minors from the consequences of their own reckless behaviour. The rewrite from 2006 also clears up this misunderstanding.

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<sup>6</sup>K. Kusum, 'Juvenile Delinquency- A Socio-legal Study'(1979) Published by KLM Book House, New Delhi

<sup>7</sup>Section 2(e) of JJA 1986.

To be clear, "in all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with the law, in any Court, the determination of juvenility of such juvenile shall be in terms of clause (1) of Section 20, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes." So, regardless of when the offence was committed, the 2000 Act applies to all individuals who were under the age of 18 at the time of the offence.

In that it applies to events that occurred before it went into effect, the Juvenile Justice Act of 2000 (JJA) is considered retroactive legislation. In spite of the fact that the provision of the 2000 Act raising the age of juvenility went into effect on April 1, 2001, it will also apply to offences committed prior to that date. Laws that apply to actions and events that occurred before they were passed are called "retrospective." Relating to or changing the legal impact of a prior transaction from what it would have had under the law at the time it was made.

### **Conclusion**

A defendant who wishes to claim juvenile status after a case has already been resolved may do so under new Section 7-A, which requires the court to inquire into the defendant's age on the date of the offence and, if the defendant was under the age of 18 at the time of the offence, to transfer the case to the Juvenile Justice Board (JJB) for appropriate orders. Since Section 64 of the Juvenile Justice Act (JJA) of 2000 expands the Act's scope to include those persons who were below 18 years of age on the date of the offence and who were serving a sentence of imprisonment at the commencement of the Act, it is imperative that State Governments swiftly establish a mechanism to identify persons who were below 18 years of age on the date of offence but have been convicted as adults and are serving their respective sentences in different jails. That they do not suffer irreparable harm, that they are not punished for acts committed at an age when legislation intends for them to be treated differently from an adult, and that they are able to take advantage of Section 64, which provides for their treatment in accordance with juvenile legislation, all depend on their prompt identification. Such people may have been given the death penalty by a court of law and are currently waiting to be put to death.

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