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JUVENILE JUSTICE SYSTEM: AN INDIAN PERSPECTIVE- Kaavya¹ & Dr. Smita Tyagi²**I. INTRODUCTION**

After independence a number of Bill has been introduced in Parliament relating to children in need of care and protection, these bills were discussed by Parliament and some of them were passed .first statute relating juvenile Justice after independence was children Act 1960.Then Juvenile Justice Act 1986 was passed which contains elaborate provision regarding juvenile Justice. In year 2000 Juvenile Justice (care and protection of children) Act 2000 was passed, which was a comprehensive legislation on Juvenile Justice. Latest statute is Juvenile Justice (care and protection of children) Act 2015. Besides these Act Indian Constitution also contains some provision relating Juvenile justice. Criminal Procedure code and Indian Penal Code also contains provision relating to juvenile Justice, All these Statutes have been discussed in this chapter.

II. INDIAN CONSTITUTION

In Indian Constitution part three of Fundamental Right and part four of Directive Principles of State Policy respectively contain some special provisions with respect to protection of children.

Article 14 of the constitution provides that The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 provides that The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them . No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State

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funds or dedicated to the use of the general public . Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

Article 21A relates to Right of education. This article provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine .

Article 24 protects the Children against exploitation. According to this article, No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39 provides that The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood; and that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; it also provides that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Constitution makes it very clear that there is equal pay for equal work for both men and women. State must ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. State is also directed that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

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Article 45 was substituted by the Eighty six amendments Act 2002, to ensure the primary education of Children. It provides, that The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 51-A (k) In this Article Fundamental duty of the Parents towards their children ensured. According to this provision who are parents as guardian for provisions the opportunity of education to their children as the case be shall be guardian of the children of 6 years to 14 years of age.

INDIAN PENAL CODE, 1860

Indian Penal Code also provides safeguard to children and exempt children of tender age from criminal liability on the concept of Mens Rea and it totally exempt children under seven years age from criminal liability Section 82 provides that nothing is an offence which is done by a child under seven years of age.

Section 83 gives restricted immunity to children above seven years age and under twelve years age according to section nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

III. CRIMINAL PROCEDURE CODE, 1973

The Criminal Procedure Code provides special procedure regarding trial of juvenile. Section 27 authorizes only chief judicial magistrates to hold trial of juvenile offender. According to section 27 Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by the court of a Chief- Judicial Magistrate, or by any court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

Section 360 provides for release of juvenile on probation and prescribes procedure in this respect According to section 360 of Criminal Procedure Code, 1973, When any person not under twenty-one years of age is convicted of an offence punishable fine, or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not Punishable with death or

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imprisonment for life, and no previous conviction is proved against the offender, if it, appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing, him at once to any Punishment, direct that he be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

Provided that where first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking, bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceeding are submitted to the Magistrate of the 1st class as provided in sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and if thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its power of revision. When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on

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appeal when there is a right of appeal to such court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law.

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the court by which the offender was convicted. The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

The court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts or in which the offender is likely to live during the period named for the observance of the conditions. If the court, which convicted the offender, or a court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

An offender, when apprehended on any such warrant, shall be brought forthwith before the court issuing the warrant, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such court may after hearing the case, pass sentence. It is further provided that this section shall not affect the provisions of the Probation of offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

IV. JUVENILE JUSTICE ACT, 1986

The Juvenile Justice Act, 1986 which replace the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rule for the Administration of Juvenile Justice adopted by the UN countries in November, 1985. The Act consisted of 63 sections spread spared over seven chapters. The act which extended to whole of India except in Jammu & Kashmir provided for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles and for the adjudication of certain matters relating to, and disposition of delinquent juvenile and for the adjudication of certain matters relating to, and disposition of delinquent juveniles.

The main objectives of the act were as follows:-

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It laid down a uniform frame work of juvenile in the country so as to ensure that no child in any circumstance is lodged in jail or police lock-up.

1. It spelled out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of juvenile justice system.
2. It set out the norms and standards for the administration of justice in terms of investigation and prosecution, adjudication and disposition, care and protection, etc.
3. It south to develop appropriate linkage and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected and socially maladjusted children.

CONCLUSION

Children are all around us. They represent about a quarter of the world's population. They are not equipped to defend themselves, they must depend on what is given them. They are victims of circumstances. They bring us joy, they bring us tears, they are our reason to hope. They are your children, they are my children, they are the children of the world.

Eddie Adams

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment .

The profile of children in India reveals that a majority of them are living in conditions of want, deprived of basic survival, subsistence, and developmental opportunities. High rates of child mortality, school dropouts, child labour, handicapped children, and the problem of juvenile Childcare and protection had been accepted as the responsibilities of the modern welfare state but become obligations of the state with the shift from welfare to rights for fulfilling the needs of children following the UN Convention on the Rights of the Child. Through social welfare programmes and the Juvenile Justice System, states

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have undertaken the responsibility of ensuring developmental opportunities to children living in conditions of want and showing Signs of social maladjustment.

Juvenile delinquency has become a global phenomenon these days, despite intensive rehabilitative measures and special procedure for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency The industrial development and economic growth in India has resulted into urbanization which in turn has given rise to new problems such as housing, slum dwelling, overcrowding, lack of cost of living in urban areas make it necessary even for women to take up outdoor jobs for supporting their family financially. With the result their children are left neglected at home without any parental control. Moreover, temptation for modern luxuries of life lures young people of resort to wrongful means to satisfy their wants. All these factors cumulatively lead an enormous increase in juvenile delinquency in urban area.

REFERENCES

Adenwalla, Maharukh: Child protection and juvenile justice system for juvenile in conflict with law. Childline India Foundation, Mumbai, 2006

Attar, A D: *Juvenile delinquency: A comparative study*. Popular Prakashan, Bombay, 1964.

Baig, Tara Ali: *Our Children*, Publication Division, Ministry of Information and Broadcasting, Govt. of India, New Delhi, 1979.

Brandt, David: *Delinquency, development, and social policy*. Yale University Press, London, 2006

Burt, Cyril: *The Young Delinquent*, University of London Press, London, 1945

Caldwell, Robert G.: *Criminology*, Ronald Press Company, 1956,

Cavan, R.S.: *Delinquency and Crime Cross-Cultural Perspective*, J. B. Lippincott Co. Philadelphia, 1968

Chatterjee, Gautam: *Child criminals and the Raj: Reformation in British jails*. Akshaya Pub. New Delhi, 1995

Chaudhary, R. N.: *Law Relating to Juvenile Justice in India*, Fourth Edition, Orient Publishing Company, New Delhi, 2015

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