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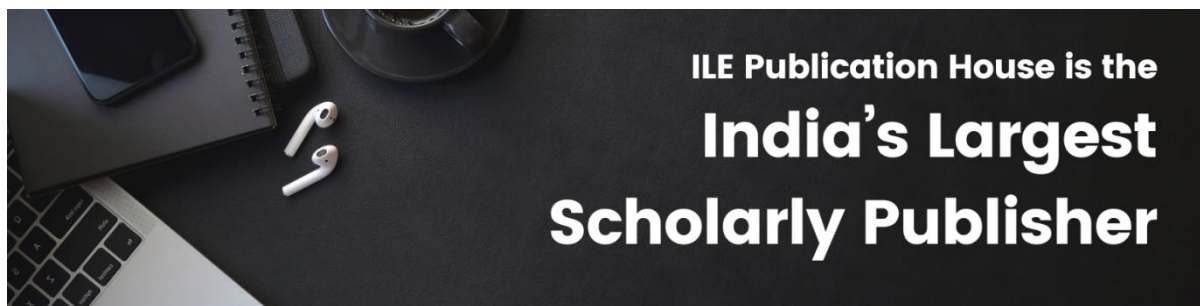
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LEGISLATIVE PROSPECTIVE IN THE CONTEXT OF JUVENILE JUSTICE SYSTEM

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Abstract

The juvenile justice system is a critical component of legal frameworks worldwide, aiming to rehabilitate rather than merely punish young offenders. Legislative perspectives on juvenile justice continue to evolve, balancing the need for child protection with public safety concerns. In many jurisdictions, laws have been reformed to emphasize rehabilitation, diversion programs, and restorative justice while ensuring due process rights for juveniles. The United Nations Convention on the Rights of the Child (UNCRC) serves as a global benchmark, influencing national policies to adopt child-friendly justice systems. However, challenges persist, including inconsistencies in age thresholds for criminal responsibility, judicial discretion in trying juveniles as adults, and the effectiveness of rehabilitation programs. Recent legislative efforts focus on strengthening alternative sentencing, expanding access to education and mental health support, and ensuring that detention remains a last resort. A forward-looking legislative approach must integrate international best practices, evidence-based policymaking, and a commitment to balancing accountability with reintegration to create a more just and effective juvenile justice system.

1. Concept of Juvenile Delinquency

The term 'juvenile delinquency' has been differently interpreted but, generally speaking, it refers to a large variety of behavior of children and adolescents which the society does not approve and for which some kind of admonishment, punishment or preventive and corrective measures are justified in public interest.

Use of the word juvenile should be clearly understood to refer to a legal classification that is established within the parameters of culture and social custom. The word 'juvenile' has been derived from Latin term 'Juveniles' meaning thereby young. The term delinquency has also been derived from the terms *do* (away from) and *liquor* (to leave). The Latin imitative 'delinquents' translated as to emidines original, sense. It was apparently used time to refer to the failure of and individual to perform a task or

duty. Cohen observed that the only possible definition of delinquency is one that relates to the behavior in question to some set rules and observes that all children without exception must in the course of development have recourse to violent conduct. Most children adopt themselves with varying degrees of difficulty to the rules observed by their elders. The child grows up with distorted notion of what is right and wrong. Use of the word juvenile should be clearly understood to refer to a legal classification that is established within the parameters of culture and social custom¹. The word 'juvenile' has been derived from Latin term 'Javeniles' meaning thereby young. The term delinquency has also been derived from the terms *do* (away from) and *liquor* (to leave). The Latin imitative 'delinquents' translated as to emidines original, earliest sense. It was apparently used time to refer to the failure of



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The term 'delinquent' describes a person guilty of an offence against the customs. The concept of delinquency has been viewed differently by various authors. According to Tappan, there are two kinds of delinquency: (a) the adjudicated delinquents, who have been processed through the courts and (b) 'in official delinquents' who are handled officially by the police, court and other agencies. Delinquency and crime are inter related to each other and could not be comprehended without understanding of other³.

Ruth Cavan describes the delinquency as "A delinquent child is one who, by habitually refusing to obey the reasonable and lawful authority, is deemed to be habitually uncontrolled, habitually disobedient or habitually is a truant from home or school, or who habitually so deports himself as to injure or endanger the moral, health or welfare of himself or others³⁵¹.

The second United Nations congress on the prevention of crime and the treatment of offenders, held in London in 1960, considered the scope of the problem of juvenile delinquency. Without attempting to formulate a standard definition of what should be considered to be juvenile delinquency in each country, the congress recommended:

- (a) That the meaning of the term juvenile delinquency, should be restricted as far as possible to violation of criminal law, and

- (b) That even for protection, specific offences which would penal is small irregularities or maladjusted behavior of minivets but for which adults would not be prosecuted should not be created.

The need was also felt in USA for narrowing the extent of juvenile delinquency and Standard Juvenile Court Act avoided most of the items of delinquency cited in the list of Rubin. The standard Act included in its provisions what correspond to the usual delinquency definition; only two items in addition to violation of law or ordinance. These items are a child "who deserts his home or who is habitually disobedient or is beyond the control of his parents or other custodian; and who, being required by law to attend school, willfully violates rules thereof or absent himself there from.

Walker has stated that delinquency refers to acts that violated at state law or municipal ordinance by youth of juvenile court age or to conduct so seriously anti-social as to interfere with the rights of others or to menace to the welfare of the delinquent himself or for the community. Criminality can lead to arrest conviction, or incarceration for adults, while delinquency is related to juveniles committing unlawful acts³⁵².

There are two reasons for concentrating on delinquency. As long ago as 1895 the Gladstone committee in the U.K recognized that the juvenile delinquent of today is the hardened and persistent adult criminal of tomorrow. By this hypothesis, if juvenile delinquency could be understood and possibly prevented a large amount of adult criminality could be preempted and prevented. The second reason for the preoccupation with juvenile is simply its scale. The fastest raising criminal statistics since the second world have been for this group which now accounts for over one third of all officially recorded crimes. The exact type of menacing behavior have changed over the

³⁵¹ R. S. Cavan, *Delinquency and Crime Cross-Cultural Perspective*, (J. B. Lippincott Co. Philadelphia, 1968)

³⁵² Prof. Umesh Kumar, *Applied Criminology*, (Anmol Publications Pvt. Ltd. New Delhi, p.154)



time, but in Britain have been personified by such groups as Teddy Boys in the 1950s, muggers and football hooligans in the 1970s and 1980s and carjacking drug taking and selling in the 1990s. It was largely youths who were involved in riots of the early 1980s³⁵³. In England the Children's Department of a local authority, a police constable and officer of the National Society for the Prevention of Cruelty towards Children must bring child before a juvenile court if they have reasonable grounds for believing him to be in need of care, protection or control on any of the following grounds.

That the juvenile is not receiving such care, protection and guidance, as a good parent may be reasonably expected to give and In addition good parent may be reasonably expected to give, and addition.

- (i) That he is falling into bad association or is being exposed to moral danger. Or injury or lives in the same household as a perpetrator of an offence of that kind against a juvenile and
- (ii) That he is beyond his parents' control.

2. The Concept of Juvenile Delinquency in India

In India, the definition of Juvenile delinquency presents no such problems as are faced in the 'USA' and some other countries. The concept is confined to the violation of ordinary penal law of the country so far as the jurisdiction of the juveniles who are in conflict with law and children who are in need of care and protection is called Juvenile Justice (Care and Protection of Children) Act, 2000. This law has replaced the earlier law governing juveniles and which was known as Juvenile Justice Act, 1986 which was in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as Beijing Rules, 1985).

However, the Juvenile Justice (Care and Protection of Children) Act, 2000, which replaces the Juvenile Justice Act, 1986 is primarily designed to give effect to the provisions of the UN Convention on the Right of the child, 1989 (ratified by India December, 1992). The Convention laid stress on social re-integration of child victims, to the extent possible, without resorting to judicial proceeding.

"Juvenile" or "Child" means a person who has not completed eighteen years of age³⁵⁴. The Act prescribes a uniform age for both boys and girls. Under the Juvenile Justice Act, 1986, which was repealed by the Act of 2000, "juvenile" meant a boy who had not attained sixteen years of age or a girl who has not completed eighteen years age. The question then is the date that is to be reckoned for determining the age of the juvenile. Whether it is the date of commission of the offence, or the date of arrest or trial. Earlier, the Supreme Court has taken a liberal stand, holding the age on the day of commission of the offence as the relevant age,

But some High Court had taken a view that age at the date of first trial was material for determining the age. This view was supported by Supreme Court in case of *Arnit Das v. State of Bihar*³⁵⁵ where the Supreme Court laid down that the crucial date for determining the age of juvenile is the date when he is brought before the competent authority and not date of commission of offence. It is almost a settled law that where an accused appears to be minor, it is the duty of Magistrate to enquire into his age for possible eligibility under the Juvenile Justice System.

But in *Pratap Singh vs. State of Jharkhand*³⁵⁶, a three-Judge Bench of the Supreme Court, while considering the question regarding the date on which age to be determined As regards the general applicability of the Act, held that we are clearly of the view that the relevant date for the applicability of the Act is the date on which the

³⁵³ Katherine S. Williams, *Textbook on Criminology*, (sixth ed. Oxford University Press, p.361.)

³⁵⁴ Section 2(k) of Juvenile Justice (care and Protection of Children) Act, 2000

³⁵⁵ (2000) 5 SCC 488

³⁵⁶ AIR 2000 SC 2731



offence takes place. Children Act was enacted to protect

young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing men's rea as in the case of an adult. This being the intention of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial." After this decision a number of amendments introduced in Juvenile Justice (Care and Protection of Children) Act 2000 by the amendment of August 22- 2006 (act 33 of 2006). The effect of the amendment in the act were considered by Supreme Court in *Hari Ram vs. state of Rajasthan & Another*³⁵⁷, where in the court held that Pratap Singh case is no longer relevant since it was decided before the 2006 amendment. The Court further noted that conjoint reading of section 2(K), 2(I), 7-A, 20, and 49 though read with Rules

12 and 98 of JJ Act, makes it clear that all person who were below the age of

18 years on the date of commission of the offence even prior to 1 April, 2001, would be treated as juveniles even though the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the act and were undergoing sentence upon being convicted.

Age Probes Can Be Treated as Proof In a direction that will benefit thousands of children

incarcerated in jails, the Delhi high court has linked birth registration system with the juvenile justice administration to ensure that they get permanent birth certificates. The order, once implemented, can ensure that age inquiries conducted by juvenile justice boards and child welfare committees are treated as a birth record. Once such a record is available it will be difficult for police to put children in jails meant for adults even as repeat juvenile offenders won't be able to take advantage of the loophole in the JJ Act that prescribes a fresh age inquiry every time an accused claims to be a minor. A division bench of Chief Justice G. Rohini and Justice Rajiv Sahai recently held that age inquiry under Section 49 of the JJ Act can be treated as a magisterial inquiry required under Section 13 of Birth and Death Registration Act for the delayed registration of children without any certificate. HC came out with the order after taking into account submissions of Bharti Ali of HAQ: Centre for Child Rights and other stakeholders. Ali highlighted that a link between the JJ system and birth registration system can ensure that every child has a birth certificate. Later, the National Commission for Protection of Child Rights (NCPCR) held consultations and filed its report backing the proposal. The commission stressed the need to put in place proper infrastructure and tweaking of rules so that a database is maintained for age inquiries. The Delhi Legal Services Authority too said that once the police have access to age declarations in their data base they can verify if an arrested person is an adult or a juvenile, removing the current large-scale reliance on bone ossification medical tests which in any case has inbuilt ambiguity of two years. HC disposed of the matter it took up Suo moto in 2011 when it realized that thousands of children had been put in jails meant for adults. It converted a letter by advocate Anant Asthana into a PIL. In his letter Asthana cited information received under RTI showing that in central jail No.7, 114 persons were shifted out to observation homes between October, 2010 to August, 2011 after they were found to be juveniles. Asthana

³⁵⁷ (2009) 13 SCC 211



and the HAQ foundation alleged that police have failed to find out if the accused is a juvenile or adult at the time of arrest. In many cases, despite the family of the accused producing the birth certificate to show the young age of the arrested person, police ignored the evidence and acted only after age inquiry was conducted and it was ultimately found that the accused person is a Juvenile³⁵⁸. The Juvenile Justice (Care and Protection of Children) Act 2000 caters to the justice needs of two types of children, namely, 'Juvenile in conflict with law' and 'Children in need of care and protection'. The first group is of those who are in conflict with the law and have committed any offence. Juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth years of age as on the date of commission of such offence³⁵⁹. They are to be dealt with as provided under Chapter II of the Act. But under this Act a new provision has been included, which deals with those children who need care and protection. Section 2 (d) of the Act defines a child in need of care and protection as under:

- (i) Who is found without any home, or settled place or abode and without any ostensible means of subsistence,
 - a. Who resides with a person (whether a guardian of the child or not) and such person-Has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out or,
 - b. Has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by the person.

- (ii) Who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iii) Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (iv) Who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run-away child and whose parents cannot be found after reasonable inquiry,
- (v) Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.
- (vi) Who is being or likely to be abused for unconscionable gains,
- (vii) Who is victim of any armed conflict, civil commotion or natural calamity;

The Indian position is obviously in consonance with the principle *nullum crimen sine leg*, and recommendation of the UNO body on social defense.

a. Meaning of juvenile Delinquency

Juvenile Delinquency is legal term of behavior of children and adolescents that in adult would be judge criminal under law. In the United States, definitions and age limits of juvenile vary. The maximum age being set at 14 years in some and as high as 21 years in others. The 16 to 20 years age group, considered adult in many places, has one of the highest incidences of serious crime. A high proportion of adult criminal have a background of early delinquency. Theft is the most common offence by children; more serious property crimes and rapes are most frequently committed in later youth.

³⁵⁸ *Ibid*

³⁵⁹ Section 2(l) of Juvenile Justice (Care and Protection of Children) Act, 2000



b. Delinquency in Girls

"Boys will be Boys," was the old way of referring to youthfully breaking of rules. Now days this propensity has an official name; it is Called juvenile delinquency¹³. Almost all youths commit acts of which they could be arrested and taken to court. But it is a much smaller group that ends up being officially define as delinquent. Official delinquents are predominantly male. In 1965 boys under 18 years were arrested five times as often as girls were referred to juvenile courts.¹⁴ the second UN Congress on Prevention of crime had without attempting to formulate a standard definition indicated that the meaning of the term juvenile delinquency should be restricted as far as possible to violation of Criminal Law and that even for protection specific offences which would penalize small irregularities or maladjusted behavior of the minors, but for which adult will not be prosecuted should not be created³⁶⁰. The offences committed comprise, for the most part such breaches of law as would be punishable in an adult by penal servitude or imprisonment – stealing, burglary, damage, common assault and soliciting; in this list also be added certain other misdeeds which none but a child can commit, as truancy and beyond parental control. And one or two which while offending against no explicit enactment, may become a ground of official intervention.

There is, however, no sharp line cleavage by which the delinquent may be marked off from the non – delinquent. Between them no deep gulf exists to separate the sinner from saint, the white Sheep from the black. It is all the problem of degree. It is the sand with the moral fault of the children the run in and uninterrupted series for the most heart – less and persistent crime that could possibly be picture up to the more occasional naughtiness. The line of demarcation is thus an arbitrary line, and delinquency is, at a bottom a social rather than a psychological and legal problem.

Sexuality Theme was reiterated by a group of British Researchers like John Cohee, Valerie Cowie and Eliot Slater. Who argued that dysfunctional families are the source of female Delinquency. There is universal agreement among Criminologist that the girl and women fall foul of the law much less frequently, than men and boys and that when they do so, by and large the delinquencies' do not take on the aggressive and socially destructive qualities of much of the criminal behavior of the males, and can in fact be regarded in a less serious light.

He further says that the sex difference must lies close to the etiological factors that go to the causation of delinquency and an effort must be made to understand it³⁶¹. The evidence of those who have made comparative studies runs consistently in one direction (By Fernald Bingham, Healey and Bronner, Sheldon and Selena or Glueck, Bagot, Otterstrom, Atcheson and Williams, Wattenberg and Saunders, Monahan, Morris, Scholfield, Walker). Comparing delinquent girls poor homes, with more mental abnormality in the family, with poorer moral standards, worse discipline, more often a broken home, more frequent change of home meter conflict at home and more distributed more marked in girls than in boys, the girls have worse school record, and more often have developed a hostile reaction towards schooling they show a larger degree of rejection of family influence, their working careers are worse.

Delinquent girls more often than boys have other forms of impaired physical health; they are noticed to be oversized, lumpish uncouth and graceless with a raised incidence of minor physical defects. Yet with all this greater amount of abnormality, the peak age of delinquency comes about one year later in adolescent girls than in boys and the ultimate outlook for social adjustment is better for girls than boys.

³⁶⁰ "Seminar on Juvenile Delinquency, Role of Police", *C.B.I. Report* (1965) p.13

³⁶¹ John Cowie, Valerie Cowie and Eliot Slater, *Delinquency in Girls*, (Humanities Press, 1968, p.168)



c. Nature and Extent of Juvenile Delinquency in India

To point out the juvenile delinquency is on the increase is not correct statement keeping in view the recent statistics available to us. But it may be interesting and useful to find out the rate at which it is manifested in a higher degree than in others. It will be also interesting to note the pattern of juvenile delinquency items of differentials based on age, sex and religion. Crimes committed by the juvenile may range from petty offences to heinous offences. It has been found the offences committed by juveniles to the total IPC crimes report in the country has shown a declining trend since 1989. From 1.2% during 1989, the share of juvenile crimes has steadily gone down. Though it showed some marginal increase between 1995-1996, but again went down to 0.5% during 1997-99. Under the IPC a total of 16509 IPC cases were registered against juvenile during the years 2001 showing an increase of 78.1% against such cases in 2000. Similarly a total of 8332 cases of juveniles were reported under SLL during 2001 as against 5141 cases in 2000. 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.

3. 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 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.

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 a 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.

4. 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: –

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.