

ROLE OF POCSO ACT IN CASE OF JUVENILE JUSTICE AND CHILD SEXUAL ABUSES: A CRITICAL ANALYSIS

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Abstract

The juvenile justice system is the most vibrant and modern framework adopted by the world that addresses all aspects of children's development. The primary focus is to consider the vulnerable children. As much as possible, the child is rehabilitated and brought back into the family. The scope of this project will evaluate The juvenile justice system in India has evolved over time, incorporating protected reasoning and aligning with international parameters. There have been landmark cases that prompted the need for a distinct Juvenile Justice Act. Juvenile justice was started because people didn't think that problems like juvenile delinquency or kids in abnormal situations could be solved with the usual criminal law. It's used to mean both social and legal justice. India is trying to give social and legal justice to neglected and delinquent kids by using courts, codes, etc. The Constitution of India shines a spotlight on the welfare and rights of our children, recognizing their unique status through several articles. Articles 15(3), 24, 39(e), 39(f), and 45 are like guardians, ensuring that the well-being of children remains a core value in our nation. In this article with this commitment, the Indian National Policy of 1975 proudly declared children as our most precious national resource. It's a testament to our collective belief that investing in the well-being, education, and protection of our youth is vital for the nation's future.

Keywords: Juvenile Justice, Constitution, Children rights, Juvenile court, Scandinavian countries, Sexual abuses.

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1. INTRODUCTION

Children are a vital segment of India's diverse population, and they rightfully command both social and legal attention when it comes to their growth and well-being. While our Constitution has made commendable efforts to ensure their safety and development, there remains a poignant truth: a substantial number of Indian children still endure a childhood marked by a lack of proper care and support.

With a deep concern for providing children in India with a good and secure childhood, our nation introduced the concept of "juvenile justice" through legislation. This approach is rooted in the belief that every young life deserves a chance at proper treatment, care, and development, especially when they find themselves in challenging situations as delinquent or neglected youth.

The concept of juvenile justice originates from the belief that the problems of juvenile delinquency and abnormal situations of young people cannot be corrected within the framework of traditional criminal law. The Juvenile Justice Act was created to serve and meet the needs of these offenders.¹

The Juvenile justice Act is one of the many initiatives taken to fulfill the vision of the Constitution of India as it recognizes the special status of children under Article 15 (3), Articles 24, 39(e), 39(f) and 45.

Juvenile justice can mean a lot of things, like juvenile court, rehabilitating young people, etc. But if you look at it from a bigger picture, juvenile justice is all about making sure all the kids in need are taken care of and protected. It's used to describe social and legal justice for neglected and delinquent kids, like code, court, etc. These kids are usually forced into this lifestyle because they've committed a crime or because something happened to them that caused them to turn to crime.²

2. HISTORICAL DEVELOPMENT³

The development of juvenile justice, from a legal perspective, has followed similar paths in both the Western and Eastern worlds. For instance, the Juvenile Court of Madras operating under the Children Act of 1920 bore similarities to the English Children Act of 1908. However, as time passed, subsequent Children's Acts eased the requirement for lawyers to be present in these

¹ The Juvenile Justice (Care and Protection) Act, 2015.

² Kumari, Ved, *The Juvenile Justice (Care and Protection of Children) Act 2015*, Universal Law Publishers, 3rd Edn, Delhi, 2015.

³ Universal Law Publishing Co. Pvt. Ltd. 10th Edn., 2008.

courts. Influences from the Nordic countries also played a significant role in shaping juvenile justice. The adoption of Juvenile Welfare Boards, which have been in operation since the 1960s, became a crucial part of legislation governing delinquent and neglected children. Initially, the belief prevailed that children were not yet emotionally mature enough to fully comprehend the nature and consequences of their actions, thus making them less accountable for their crimes.

In tracing the development of the juvenile justice system in India, we can break it down into five distinct periods to gain a better understanding. Let's start with the period "Prior to 1773."

Before the year 1773, India had rich traditions and cultural practices that governed the care and protection of children. Both the Hindu and Muslim communities had their own sets of laws and customs aimed at safeguarding the well-being of young ones. These age-old traditions reflect the deep-rooted concern for children's welfare in our society, emphasizing the timeless importance of nurturing and guiding our youth.

The main job of raising kids was for the parents and the whole family. In Muslim law, if you find an abandoned child, you have to take care of them if you think they might die. It's said that neither law had anything to do with juvenile delinquents. The period from 1773 to 1850 started with the East India Company and ended with the first laws about kids. It was also the time when prisons changed from being used for transporting prisoners to being used for keeping prisoners.

During the 1850s-1919, a lot of laws were passed to deal with all kinds of things related to kids. Some of the laws that were passed during this time are the Female Infanticide Law, 1870, and the Vaccination Law, 1880, which were really helpful for kids. Between 1919 and 1950, there were a lot of changes in the juvenile justice system. One of the biggest changes was the Indian Jail Committee's report from that year. They said that if it was possible, the courts should make it clear to all authorities that it was their job to keep people out of jail.

After 1950, five-year plans were established for general development. When the five-year plans were launched, they were intended for the benefit of children, although the implementation of juvenile justice was not a separate item in the five-year plans. During this period, the "Girl" was recognized as an important target that required attention and systems such as integrated child development services for children in need of care and protection.⁴

⁴ Maha Rukh, Aden Walla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with law*, Sage Publications, Delhi, 5th Edn., 2006.

3. LEGISLATIVE PROCESS⁵

The Indian Parliament has deliberated on numerous Bills pertaining to the welfare of children in need of care and protection. These Bills have been introduced by both government ministers and private members. To advance the juvenile justice system in India, Parliament has had discussions on seven significant Bills, including the Children Bill 1953, the Women and Children Institutions Licensing Bill 1953, the Children Bill 1959, and The Children (Amendment) Act, 1977, among others. These legislative efforts highlight the ongoing commitment of India's Parliament to address issues related to child welfare and protection.

During these debates, there were varying opinions on the issue of delinquency among children. One debater expressed the view that these children had a corrupt and morbid tendency, setting them apart from ordinary children.

One of the significant challenges highlighted during the discussions was the lack of sufficient funds for implementing the proposed provisions. Various institutions and adjudicatory bodies pointed out that the extensive scope of these Bills, both in terms of subject matter and territorial coverage, incurred high costs. This was compounded by the fact that the Central Government did not directly provide funds for these initiatives. Critics also raised concerns about the Bills delegating the implementation of crucial matters to junior officers who may not fully grasp the specialized approach required by the legislation. These debates underscore the complex nature of addressing delinquency in children and the need for adequate resources and expertise to effectively implement the proposed measures.

Adoption was warmly embraced as a crucial avenue for offering children the nurturing care of a loving family. There was a strong emphasis on the need for meticulous scrutiny when selecting adoptive families, with particular attention paid to this process when it came to girl children. The inclusion of adoption provisions within the Juvenile Justice Act was viewed as a means of rehabilitating children in need. Interestingly, when these provisions were introduced, they didn't receive any discussion in the Lok Sabha, despite the minister introducing the Bill mentioning them and their features. This highlights both the importance of adoption as a child welfare measure and the intricacies involved in legislative deliberations.

4. FUNCTION OF THE JJ BOARD⁶

⁵ 84th Law Commission Report (1980) and its 172nd Report (2000).

1. According to Section 4 of the Act, a special training program must be established and board officials, including the chief justice, must be trained in child psychology and child welfare.
2. The atmosphere of the Lautakunta research site must be child-friendly. The use of a black jacket, the use of high platforms or explosions etc. should be avoided. Young people standing in front of the board should be stopped. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should also be provided to the government for smooth performance of its duties.
3. It's crucial to maintain files and case records with the utmost care and precision.
4. Children should be provided with Video links homes so that the board can control and monitor so that any activities against the interest of the child can be monitored.
5. In each Board, having at least one of the two social workers with a minimum qualification of a law degree is essential.
6. The board should have access to a comprehensive list of resources, including psychological experts, counselors, clinical psychiatrists, non-governmental organizations, trusted legal colleagues, and relevant institutions. This ensures that they can tap into a wide range of expertise and support for the benefit of children in their care. It's like having a toolbox filled with professionals and organizations dedicated to child protection. Furthermore, the officials working in juvenile courts and boards must possess qualities of sensitivity towards the developmental needs of young individuals. They should be adaptable, willing to embrace new insights from social science research, and open to exploring innovative interventions that hold promise in rehabilitating young offenders. It's about fostering an environment that prioritizes the well-being and growth of these youth.
7. To provide the best possible care to juveniles and support their parents, it's essential to address their psychological well-being. That's why it's recommended to have a psychologist and a social worker with a good understanding of the relevant laws on the Juvenile Justice Board. This combination ensures that not only are the emotional needs of the youth and their families met, but also that these actions are in accordance with the legal framework, creating a more holistic and effective support system. It's like having a

⁶ Sethi, T.D, *The Juvenile Court: Its Genesis, Philosophy and Characteristics*, Deep & Deep Publishers, New Delhi, 4th Edn., (1982).

dedicated team to nurture both hearts and minds.

5. THE FOLLOWING ARE THE PROVISIONS OF THE ACT WHICH NECESSITATE A REVISION⁷

- i. The High Court can play a pivotal role by taking the initiative to create and establish more dedicated Juvenile Courts.
- ii. The Juvenile Justice Board (JJB) should be there for young individuals and their cases every working day. This consistency ensures that the needs of juveniles are addressed promptly and efficiently.
- iii. The Act should be updated to empower the Juvenile Justice Board (JJB) to directly listen to the concerns of children regarding offenses against them, without the need to involve the police. This change would provide a safe space for children to express their grievances without fear.
- iv. The Juvenile Act 2000 does not differentiate between men and women. Such a plan of the JJ Law in any case ignores the way in which exceptionally helpless female youth are likely to be more quietly and cheaply used, abused and even hostile. Such female youth need unusual assurance even in an observatory or welfare center, regardless of how intentional social associations may approach the shelter. For such young women, there will be a welfare component built into the law itself.
- v. It must be provided that in any case 25 percent of the number of fines collected by the criminal court in each place is intended for the payment of youth state aid and recovery aid when JJB is transferred from a particular place/area of use. through this help to meet the daily healing needs of the youth or young people in question.
- vi. Section 16(1) of the Act should undergo a change, replacing the term “life imprisonment” with “any imprisonment.” This adjustment aligns with the legislative intent expressed in section 16(2) of the Act.

6. THE TREATMENT OF A JUVENILE CAN PROVIDE A RANGE OF BENEFITS⁸

- i. Juveniles should be brought before the Juvenile Justice Board within 24 hours. This swift action is essential to ensure their rights are protected and to provide them with timely support and guidance.
- ii. The age of the adolescent should be determined based on the date of the offense’s

⁷ The Juvenile Justice (Amendment) Act, 2006

⁸ Mousumi Dey, “International Journal of Interdisciplinary and multi-disciplinary studies” IJIMS (2014) Vol I, No.,64-70.

- commission. There's no need for an exhaustive scientific examination to establish this. It's about keeping things simple and fair for everyone involved.
- iii. The Juvenile Justice Board should make it a top priority to ensure that the protection rights of the adolescents are never compromised. This means that every aspect of Section 21 of the JJ Act should be observed meticulously, not just in the letter of the law but also in its spirit.
 - iv. The adolescent is subject to the same constitutional protections as other adult guilty parties. The notification of the adolescent in accordance with Section 313 of the Criminal Procedural Court should be documented, and if proof is required, then that should also be admissible.
 - v. If an adolescent is brought before a judge who isn't allowed to use the powers of the board according to the JJ Act, the officer should record the assessment in a way that respects the teen and send it to the Board right away. The Board will handle the inquiry as if the teen was brought before them in the first place.
 - vi. Judges in Adolescent Courts should undergo training to be able to recognize and understand the educational, social, and treatment needs of children in crisis. This training is vital to ensure that the legal proceedings take into account the unique circumstances and challenges these young individuals face.
 - vii. Without a proper framework or proper implementation, this part will remain fragmented. This part should also be managed by fully involved government or non-governmental bodies.
 - viii. In India, there are lots of reasons why a lot of kids don't have birth certificates, so it's important to make sure they're old enough to get the help they need. That's why using the enrollment of birth and death of the kids is so important.

7. CONCLUSION

Juvenile justice is a system that plays a crucial role in nurturing the holistic development and safeguarding of young children. It's a beneficial concept that deserves to be promoted and expanded further for the well-being and growth of our youth. It's about creating a supportive and caring environment that ensures young minds are given the best chance to thrive and contribute positively to society. Young children do not possess the capacity to distinguish between right and wrong, thus they cannot be held accountable. However, in my view, there should be laws in place that prevent the minors from taking advantage of the situation they are in. After all, the law must be applicable to everyone. In conclusion, the POCSO Act plays a

crucial role within the realm of juvenile justice and child protection by providing a specialized legal framework for addressing child sexual abuse. While it has made significant strides in ensuring the rights and well-being of child victims, challenges remain in terms of implementation, awareness, and creating a supportive environment. Continued efforts, collaboration among stakeholders, and a commitment to child safety are necessary to address these challenges and uphold the Act's intended impact.