

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- V

JUNE 2020

DISCLAIMER

NO PART OF THIS PUBLICATION MAY BE REPRODUCED OR COPIED IN ANY FORM BY ANY MEANS WITHOUT PRIOR WRITTEN PERMISSION OF EDITOR-IN-CHIEF OF LEXFORTI LEGAL JOURNAL. THE EDITORIAL TEAM OF LEXFORTI LEGAL JOURNAL HOLDS THE COPYRIGHT TO ALL ARTICLES CONTRIBUTED TO THIS PUBLICATION. THE VIEWS EXPRESSED IN THIS PUBLICATION ARE PURELY PERSONAL OPINIONS OF THE AUTHORS AND DO NOT REFLECT THE VIEWS OF THE EDITORIAL TEAM OF LEXFORTI. THOUGH ALL EFFORTS ARE MADE TO ENSURE THE ACCURACY AND CORRECTNESS OF THE INFORMATION PUBLISHED, LEXFORTI SHALL NOT BE RESPONSIBLE FOR ANY ERRORS CAUSED DUE TO OVERSIGHT OTHERWISE.

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE
OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS
INTERNATIONAL UNIVERSITY) - MARKETING
MANAGEMENT

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION
BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL
AND ADMINISTRATIVE LAW)., NET (TWICE) AND
SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

ABOUT US

LEXFORTI IS A FREE OPEN ACCESS PEER-REVIEWED JOURNAL, WHICH GIVES INSIGHT UPON BROAD AND DYNAMIC LEGAL ISSUES. THE VERY OBJECTIVE OF THE LEXFORTI IS TO PROVIDE OPEN AND FREE ACCESS TO KNOWLEDGE TO EVERYONE. LEXFORTI IS HIGHLY COMMITTED TO HELPING LAW STUDENTS TO GET THEIR RESEARCH ARTICLES PUBLISHED AND AN AVENUE TO THE ASPIRING STUDENTS, TEACHERS AND SCHOLARS TO MAKE A CONTRIBUTION IN THE LEGAL SPHERE. LEXFORTI REVOLVES AROUND THE FIRMAMENT OF LEGAL ISSUES; CONSISTING OF CORPORATE LAW, FAMILY LAW, CONTRACT LAW, TAXATION, ALTERNATIVE DISPUTE RESOLUTION, IP LAWS, CRIMINAL LAWS AND VARIOUS OTHER CIVIL ISSUES.

HISTORY OF JUVENILE LEGISLATION

Purvika Jain

HISTORY OF JUVENILE LEGISLATION

India has a long history of providing separate treatment for Juvenile offenders. Differential treatment for Children can be traced as far back as the Code of Hammurabi¹ in 1790 BC, the responsibility for their supervision and maintenance being vested on the family. The Code of Hammurabi⁸ is a well-preserved Babylonian law code of ancient Mesopotamia dating back to about 1754 BC. It is one of the oldest deciphered writings of significant length in the world. The sixth Babylonian king, Hammurabi enacted the code, and partial copies exist on a human-sized stone tablet and various clay Tablets.

The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" (lex talions) as graded depending on social status, of slave versus free man². Nearly one-half of the Code deals with matters of contract, establishing, for example, the wages to be paid to an ox driver or a surgeon. Other provisions set the terms of a transaction, establishing the liability of a builder for a house that collapses, for example, or property that is damaged while left in the care of another. A third of the code addresses issues concerning household and family relationships such as inheritance, divorce, paternity and sexual behavior. Only one provision appears to impose obligations on an official; this provision establishes that a judge who reaches an incorrect decision is to be fined and removed from the bench permanently. A handful of provisions address issues related to military service.

During the colonial regime, in 1843, the first center for those Children called " Ragged School " was established by Lord Cornwallis. The period between 1850 and 1919 was marked by social and industrial upheavals.

The Apprentices Act, 1850, chronologically the first law which required that Children between the ages of 10-18 convicted in Courts, to be provided vocational training as part of their rehabilitation process. The Indian Penal Code (1960) exempts Children under the age of seven years from criminal responsibility. It also exempts Children between the ages of seven to twelve years, because they have not attained sufficient maturity of understanding to consequences of their act.

For the treatment of Juvenile delinquents, the next landmark legislation was the Reformatory School Act, 3 1876 and 1897. Under the Act, the court could detain delinquents in a reformatory

¹ Review: The Code of Hammurabi, J. Dyneley Prince, The American Journal of Theology Vol. 8, No. 3 (Jul., 1904), pp. 601–609 Published by: The University of Chicago Press Stable URL: <http://www.jstor.org/sTable/3153895> (visited on 14.4.19)

² Gabriele Bartz, Eberhard König, (Arts and Architecture), Könemann, Köln, (2005), ISBN0 3-8331-1943-8. The laws were based with scaled punishments, adjusting "an eye for an eye" depending on social status.

school for a period of two to seven years but after they had attained the age of eighteen years, the court would not keep them in such institutions.

The Act of Criminal Procedure, 1898 provided special treatment for Juvenile offenders. The Code provided probation for good conduct to offenders“ up to the age of twenty-one.

From the early 20th century, the different Indian states had enacted their own Children Acts. The Madras Children Act 1920 was the first Children act to be enacted, closely followed by Bengal and Bombay in 1922 and 1924 respectively. Though the Bombay Act was enacted 4 years after the Madras Act, it was the first to be functional. In February 1924, a voluntary state-aided agency, viz., the Children’s Act Society, was formed to implement the provisions of the Bombay Children Act within the municipal corporation limits of Bombay. CAS established institutions for the care and protection of children, and even today manages these institutions.

The State’s Children Acts brought within its ambit two categories of children, viz., (i) youthful offenders, and (ii) destitute and neglected children. The Juvenile courts handled both these categories of Children. Throughout the world, during this period, Children were dealt with under the “welfarism” mode. The welfare model emphasized the rehabilitation needs of the offender. When Children were tried legally in both the above categories' priority was given to the well-being of them and adjudication of guilt was not stressed.³

POST-INDEPENDENCE ERA

In 1960, the Government of India enacted the Children’s Act, which is also applicable to the Union Territories. The act was conceived as a model piece of legislation. The above act was to “provide for the care, protection, maintenance, welfare, training, education and, rehabilitation of neglected or delinquent Children and for the trial of delinquent Children in the Union Territories.” Under this Act, a Child was a boy below 16 years of age and a girl below 18 years of age. The Child Welfare Board handled neglected Children, and the Children’s court delinquent Children (Section 2(e) of the Children Act, 1960 quoted by Adenwalla, 2006). The Children Act, 1960, was a precursor to the Juvenile Justice Act, 1986. The Juvenile Justice Bill, in conformity with Beijing Rules, was first introduced in the Lok Sabha on 22nd August 1986, and the Central Children Act was replaced by this Juvenile Justice Act 1974. The Law came into force in all the union territories

³ Denwalla Maharukh, *Child Protection and Juvenile Justice System for Juvenile in Conflict with law*. (2006) (Childline India Foundation, Mumbai, NHRC).

but the States having no Juvenile law were free to adopt it in 1974. India declared its National Policy for Children which include training and rehabilitation of delinquent, destitute, neglected and exploited Children.

The Juvenile Justice Act, 1986 : Prior to the enactment of the Juvenile Justice Act, 1986, the state governments had enacted their own legislations for Children. But the provisions contained in each state's Children Act were different from each other. For example, the definition of the term "Child" differed from state to state. On May 12, 1986, the 69th Report of the Committee on Subordinate Legislation was tabled on in the Parliament which recommended a uniform law. At this juncture it would be relevant to state about one Ms. Sheela Barse, a freelance journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee. She persistently followed the issue of illegal detention of Children in jails. She filed a public interest litigation for the release of Children kept in jails and for information on the conditions of the Children in detention.⁴

In *Sheela Barse Vs. Secretary Children Aid Society*⁵ decided by the Apex Court on 20/12/1986 by their Lordships Hon'ble Justice P.N Bhagawathi the then Chief Justice of India and Hon'ble Justice R.S.Pathak. This act provided for prohibition of confinement of Juveniles in Police lock-up or jail and separate institutions for the neglected or delinquent Children with regard to the processing, treatment, and rehabilitation. The act also has provided for a wide range of disposition alternatives. The Hon'ble Supreme Court in Sheela Barse's case⁶ observed that instead of each state having its own Children's Act different in procedure and content from the Children's Act in other states, it would be desirable if the Central Government initiates parliamentary legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to Children in the entire territory of the country. The Children's Act which may be enacted by the Parliament should contain not only provisions for investigation and trial of offences against Children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic, and psychological rehabilitation of the Children who are either accused of offences or are abandoned, destitute, or lost.

Moreover, it is not enough merely to have a legislation on the subject, but it is equally, if not more, important to ensure that such a legislation is implemented in all earnestness and mere lip sympathy is not paid to a such legislation and justification for non-implementation is not pleaded on ground

⁴See *Sheela Barse v Secretary, Children's Legal Aid Society and others (children in jails)* 1986 (2) SCALE 1 [1], as documented in 'Children' in chapter three. After the order reported AIR 1988 SC 2211 / (1988) 4 s e e 226, the cause title changed to Supreme Court Legal Aid Committee.

⁵*Sheela Barse v Secretary, Children's Legal Aid Society and others (children's home)* (1987) 3 SCC 50 / AIR 1987 SC 756

⁶*Sheela Barse v. Union of India*, 1986 3 SCC (Cri) 352.

of lack of finances on the part of the state. The greatest recompense which the state can get for expenditure on Children is the building up of powerful human resources ready to take- its place in the forward march of the nation. The Juvenile Justice Act (JJA) came into effect in 1986, when the Parliament decided to replace the Children Acts in different states and union territories with a single uniform piece of legislation. This act was to provide the care, protection, treatment, development, and rehabilitation of neglected or delinquent Juveniles and for the adjudication of certain matters relating to and disposition of delinquent Juveniles.

In the United Kingdom the common law right of *Parens Patriae* provided the Chancery Courts (a division of the High Court of Justice) to exercise authority over Children in the absence of responsible parental control.⁷ In India, only in 1897 the Reformatory Schools Act gave the statutory recognition of jurisdiction of courts in cases of Juveniles. The courts were conferred with the power of sending a convicted youth to reformatory schools, instead of imprisoning him or her. But such power of the court in its basic features is meant to be in the nature of basic equitable jurisdiction exercisable by the Chancery Court over the Juvenile in criminal matters. But after the Madras Children Act came into force in 1920, the above provisions were affected because the Madras Children Act divested the criminal courts to assume jurisdiction over the Children under the Reformatory Schools Act, 1897.⁸

As a result of such a move, an amendment in the Code of Criminal Procedure in 1923 was made to insert Section 29 B. This section emphasized the need for a judicial procedure with respect to the adjudication in criminal proceedings of Child offenders. Section 29B of the code of the criminal procedure, 1868 provided that “any offence” other than one punishable with death or imprisonment for life committed by a person under the age of 15 years may be tried by a District Magistrate or a Chief Presidency Magistrate or by any Magistrate specially empowered by the state government to exercise the powers conferred by Section 8 sub-section (1) of the Reformatory Schools Act, 1897.

However, the Code of Criminal Procedure, 1973, streamlined the subject of adjudication of status. Section 27 of the new Cr.P.C provides that “any offence not punishable with death or imprisonment for life” committed by a person under the age of 16 years may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other for the time being in force providing for the treatment, training, and rehabilitation of

⁷Who Gets the Child? Custody, Guardianship, and the Rise of a Judicial Patriarchy in Nineteenth-Century America, *Michael Grossberg, Feminist Studies Vol. 9, No. 2 (Summer, 1983), pp. 235-260 (26 pages)*

⁸ Supra note 10

youthful offenders (Code of Criminal Procedure, 1973).The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992.⁹

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

It is a comprehensive legislation dealing not only with juveniles in conflict with law, i.e., juveniles who are alleged to have committed an offence, but also provides for care, protection, treatment and rehabilitation of both 'juveniles in conflict with law' and 'children in need of care and protection'. The definition of 'juvenile' or 'child' under this Act is much wider than what is provided under ss 82 and 83 of the Code. Section 2(k) of the Act defines 'juvenile' or 'child' as 'a person who has not completed eighteenth year of age'. Though the Act does not provide for absolute immunity from criminal liability for offences committed by juveniles as in ss 82 and 83, the provisions are almost akin to it. The Act provides that no child, who has committed an offence, be sentenced to death or imprisonment for life or committed to prison in default of payment of fine or in default of furnishing security. It also, inter alia, stipulates that the child who has committed an offence should be sent home after advice or admonition; released on probation of good conduct and placed under the care of parents or guardian; or sent, for a period not exceeding three years, to a Special Home. The Act further removes all disqualifications attached to conviction of a juvenile in conflict with law. Thus, though absolute immunity from criminal liability is not provided to juveniles under this Act, upon a reading of all the sections, it would appear that something akin to immunity is provided to delinquent juveniles under this Act.

The Convention on the Rights of Children was ratified by the Government of India on December 11, 1992. A necessity arose for the Government of India to re-enact the existing law relating to Juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations-Rules of the Protection of Juveniles Deprived of Their Liberty

⁹ Mousumi Dey, *International Journal of Interdisciplinary and multi disciplinary studies*, IJIMS(2014) Vol I, No6, 64-70, available at <http://www.ijims.com>(visited on 14.4.19).

of 1990, and all other relevant International instruments¹⁰. The above objective was taken note of the Parliament as such the Indian Parliament enacted the present Act on Juvenile Justice called as Juvenile Justice (Care and Protection of Children) Act, 2000, on December 30, 2000, The said act consolidated and amended the law relating to Juveniles in conflict with law and Children in need of care and protection. This act was aimed at providing for proper care, protection, and treatment by catering to their development needs and by adopting a Child-friendly approach in the adjudication and disposition of matters in the best interest of Children and for their ultimate rehabilitation.

The Juvenile Justice (Care and Protection of Children) Act, 2000, was brought into force on April 1, 2001¹¹. However, certain provisions of this act were challenged before the High Court of Delhi through an public interest litigation. The High Court of Delhi also observed that some provisions of the above Act needed reconsideration. In the light of the observations made by the High Court of Delhi, it was proposed to carry out amendments in some sections of this act. Accordingly, an amendment Bill was introduced in the Lok Sabha in July 2003. Thereafter, the Lok Sabha referred the amendment Bill to the Parliamentary Standing Committee on Labour and Welfare for examination and report submission. But, the Lok Sabha was dissolved before the Standing Committee submitted its report and as a result the amendment Bill lapsed. Before re-introducing a fresh amendment Bill, the Government of India considered it necessary to revisit the amendment proposals again along with other suggestions received by the Standing Committee from various experts. The suggestions and views of all those concerned were obtained on the proposed amendments and based upon such suggestions and views it was proposed to make amendments in the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, in addition to those contained in the earlier Bill. The amendment Act enacted by the Parliament in the 57th Year of the Republic of India (Act 33 of 2006) was notified on August 22, 2006.¹²

¹⁰Child Protection and Juvenile Justice System for juvenile in conflict with law, *Ms Maharukh Adenwalla*, CHILDLINE India Foundation, 2006

¹¹ D.Seshaclam, *Juvenile Justice (Care and Protection of Children) Act 2000*, Deccan Publications 2013.

¹² The Fundamentals' of the Fundamental Right to Education in India, *Dr Niranjana Radhyaa and Aruna Kashyap*,

SALIENT FEATURES OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000 AND AMENDMENTS IN 2006

- The Juvenile Justice (Care and Protection of Children) Act 2000 The Title of the Act stresses on the need for care and protection to both categories of Children.
- Uniform age for both boys and girls – any Child who has not completed the age of 18 fall within the jurisdiction of the Act to comply with the CRC definition of the Child.
- Separation of Child in need of care and protection and Child in conflict with law.
- Constitution of Child Welfare Committees to deal with Children in need of care and protection and Juvenile Justice Boards to handle Children in conflict with law.
- The category of Children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, Child who is found vulnerable and likely to be inducted into drugabuse.
- More legal protection assured for the Child in conflict with law – detention to be resorted to as the last option, disqualification of past records and privacy maintained.
- The innovation the law makes with respect to Children in need of care and protection is the conceptualization of restoration of the Child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents. (Sec39).
- The law outlines four options of restoration for Children in Children's homes and special homes which include adoption, foster care, sponsorship and after care.
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. The JJ Act 2000 was subsequently amended and referred as Principal Act.

The Amendment Act brought about 26 amendments which are in force.

- This Act forms the legal System and framework for the care, protection, treatment and rehabilitation of Children of both categories
- The competent authority to deal with Children in need of care and protection is the Child Welfare Committee which constitutes a Chairperson and four other members, one of whom at least should be a woman.
- Juvenile Justice Board (JJB) is the competent authority to deal with Children in conflict with law which consists of three members. The Chairperson of the Board should be a First Class Judicial Magistrate and two honorary social workers out of whom at least one should be a woman.

The Act provides for the establishment of various kinds of Institutions such as Children's Home for the reception of Child in need of care and protection.– Special Homes for the reception of Child in conflict with law– Observation Homes which are meant for the temporary reception of Children during the pendency of any inquiry.– After-care Organizations which are meant for the purpose of taking care of Children after they have been discharged from Children's Home or Special Homes