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Role of Juvenile Justice System in India

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Introduction

A Latin maxim that aptly describes India's juvenile justice system is "Nil Novi Spectrum," which means that nothing on earth is brand-new. Since the beginning of time, there has been a prevalent assumption that juveniles should be treated leniently because, according to one school of thinking, young people tend to respond to substantial and sustained dissatisfaction with aggressive approaches.

It has also been noted that the number of crimes committed by children between the ages of 15 and 16 has dramatically increased over the past several years. Early life experiences, dominant masculinity, upbringing, economic chaos, lack of education, etc., are the general propensity or psychology behind the commission of the crime or the causes of crime. The exploitation of children between the ages of 6 and 10 as tools for committing illegal or illicit acts in modern society is a source of shame. Kids can be seduced cheaply because their thoughts have an innocent and naive quality that makes them easy to manipulate.

The Children Act of 1960, which predated the Juvenile Justice Acts of 2015, 2000, and 1986, was intended to put into practise the international responses to the juvenile justice issue by establishing a uniform policy that safeguarded a juvenile's interests and rights and took into account the care, treatment, rehabilitation, and overall development of a child. The Indian government is obligated to propose new, progressive, and stronger legislation for the nation's juvenile system in light of recent events in the worldwide community and the advent of juveniles' involvement in crime.

The Indian government is obligated to propose new, progressive, and stronger legislation for the nation's juvenile system in light of recent events in the worldwide community and the advent of juveniles' involvement in crime. As a result, the Parliament passed the Juvenile Justice Act in 1986, the Juvenile Justice Act in 2000, and the Juvenile Justice Act in 2015.

The number of crimes committed by minors under the age of 16 has increased over the past few decades. The child's rearing environment, the economy, illiteracy, and parental care may all be contributing factors to the rising crime rate. These are some of the fundamental explanations. The most upsetting aspect of all is that kids these days, especially those between

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the ages of 5 and 7, are used as tools for crime because their minds are still so innocent and susceptible to manipulation.

On December 16, 2012, the terrifying "Nirbhaya Delhi Gang Rape Case"² horrified the entire country and sparked a number of discussions among the legal community and leftists. The involvement of the accused, who was only six months away from being 18 years old, was the primary motivating factor and topic of discussion. The Indian Parliament created a new law called as "Juvenile Justice (Care and Protection), 2015" as a result of the accused's involvement in the horrible crime of rape, which compelled the country's legislation to change.

The Act's introduction has replaced the previous juvenile rules and brought about some remarkably significant modifications. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

According to the Juvenile Justice Act of 2015 and other statutes, a child and a juvenile are defined as:

According to sub-section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a "child" means a person who has not completed eighteen years of age. The Act classifies the term "child" into two categories: –

- child in conflict with law³, and
- child in need of care and protection⁴.

Children Act, 1960: Section 2(e) of the Act states "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.⁵

United Nations Convention: The UN Convention on the Rights of Child, 1989 defines that "child" means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier.

Aftermath of Nirbhaya Case:-

Today (After Nirbhaya case) many people are aware that a separate Justice System exists for Juveniles.² Many people are not yet aware how JJS works. After the incidence of Nirbhaya people turned sentimental and expressed their hostile attitude towards the decision of the court. They demanded a death sentence for the child involved in the Nirbhaya case. There was roaring in parliament and the new law (Juvenile Justice Care and protection of children 2015) came into existence in India. It is a comprehensive provision for children alleged and found to be in

² (2017) 6 Supreme Court Cases 1: (2017) 2 Supreme Court Cases (Cri) 673: 2017 SCC Online SC 533.

³ Section 13 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

⁴ Section 14 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵ Bare Act, The Children Act, 1960, Universal Publication, 12th Edition.

conflict with the law. It also deals with children in need of care and protection. This law is enacted taking into consideration of conventions of Rights of the child and other related international instruments. The government of India acceded the convention of Rights of the Child (CRC) on 11 Dec.1992. The constitution of India empowers and cast duty on the state to ensure that their minimum requirement are met and their basic human rights are fully protected.⁴The state intended to upkeep the principle adopted in the constitution.⁵ According to the international treaties and constitutional parameters, it is responsibility of the state to treat the children with all softness and for the best interest of the child. However, there is a strong public demand for harsher punishment for youths who commit adult crime i.e. serious crimes like murder, rape, robbery, dacoit etc. Such youths should be punished like adults. Of course, there is inflammatory rhetoric about youth crimes and there is increased public cynicism about the present JJS. Since the adoption our constitution a lot of efforts were made to understand the philosophy of the JJS and accordingly various laws were enacted. But all the efforts are half-hearted and need serious consideration. The stakeholders of Juvenile Justice Administration must take note of the serious conditions that prevail in our JJS. Intellectuals criticise about the poorly conceived policies and squandering of huge precious resources.⁶

The main criticism is the poorly treatment

process and poor infrastructure. It need viable response from all quarters.

History of Juvenile Justice System in India

In the modern era, a movement for the special treatment of juvenile offenders has begun in many developed nations, including the U.K. and the U.S.A. Beginning in the 18th century, this movement. Before this, juvenile offenders received the same treatment as adult offenders. And on November 20, 1989, the General Assembly of the United Nations adopted the Convention on the Rights of the Child for the same reason. The goal of this convention is to safeguard the interests of young offenders. According to the Convention, juveniles cannot be the subject of legal proceedings or court trials in order to protect their ability to reintegrate into society. The Juvenile Justice Act of 1986 is repealed and replaced by new legislation as a result of the Convention. Thus, Indian Legislation came up with a new act which was called as “The Juvenile Justice (Care and Protection of Children) Act, 2000.

The Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the U.N. countries in November 1985, were intended to be put into practise by the Juvenile Justice, 1986,

which replaced the earlier Children Act, 1960.⁶ The aforementioned Act, which applied to all of India except for the State of Jammu and Kashmir, included 63 Sections and 7 Chapters. The Act's main goal was to provide neglected young offenders with care, protection, therapy, development, and rehabilitation. The Act's primary goals were:

1. The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile
2. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Juvenile Justice Act, 2000

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011 .The amendment was made to address the gap and loopholes in the implementation.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “Delhi Gang Rape Case” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by The Juvenile Justice(Care and Protection) Act, 2015.

Present Juvenile Justice System in India

In an effort to address the issue of juvenile delinquency, India, like other nations, has made legal provisions that specifically and especially deal with the rights and protection of juvenile offenders. The three main presumptions upon which the Indian juvenile justice system is built are as follows:-

- young offenders should not be tried in courts, rather they should be corrected in all the best possible ways
- they should not be punished by the courts, but they should get a chance to reform
- trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

⁶Prof. N.V. Paranjape , Criminology , Penology with Victimology, page no 673 ,Central Law Publications, 17th edition,2017.

Juvenile Justice Act, 2015

The Juvenile Justice act of 2000 was superseded with the Juvenile Justice act of 2015 because a more powerful and efficient justice system that prioritised both deterrence and reformative measures was required. There were arguments made in the Parliament that the juveniles should be given more room for transformation, reformation, or improvement and that is only possible when there is a special justice system. The approach to juveniles should be different from that of adults. Therefore, the Juvenile Justice (care and Protection of Children) Act, 2015, which was the new act, centred on an approach to adjudication and resolution of cases that was friendly to juveniles.

Claim of Juvenility

The "claim of juvenility" is the first and most contentious issue among the legal community and socialists. The Juvenile Justice Board will rule on the claim of juvenility. The claim of juvenility must be decided by the Board prior to the court proceedings, although it may be brought up in court at any time, even after the Board has resolved the matter. In order to decide the claim of juvenility, the Board had to take into account Rule 12 of the Juvenile Justice Rules, 2007.

In case of *Kulai Ibrahim v. State of Coimbatore*⁷ it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015.

Again in the case of *Satbir Singh & others v. State of Haryana*,⁸ Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of *Krishna Bhagwan v. State of Bihar* the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for the considering the age of juvenile should be on which the offence has been committed.

But later in case of *Arnit Das v. State of Bihar*⁹, the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.

⁷ AIR 2014 SC 2726.

⁸ AIR 2005 SC 3549.

⁹ AIR 2000 SC 748.

Juvenile Justice Board

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.

The Board shall consists of Principal Magistrate and two social workers, among whom one should be a women.[22]The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.

Special Procedure of Juvenile Justice Board: The Act has provided the procedure against the juvenile offender. Following are the main special procedure –

1. The proceedings cannot be initiated on a complaint registered by the police or citizen
2. The hearing must be informal and should be strictly confidential.
3. The offenders should be kept under Observation Home after detention.
4. The trial of juvenile in conflict with law shall be conducted by lady Magistrate.
5. A child in conflict with law may be produced before an individual member of the Board , when Board is not sitting.

Causes of Juvenile delinquency

Studies and research have revealed a variety of factors that contribute to adolescent delinquency in India. Every person has a different behavioural style, and children are no exception. Early childhood is when behavioural patterns emerge, and this is also the time when it is most challenging to recognise any particular type of behaviour. But as soon as a child grows up and enters the real world, their behaviour patterns shift occasionally, and a variety of situations or circumstances may give rise to their engaging in delinquent behaviour. Here are a few of the factors that contribute to juvenile delinquency:

- Adolescence Instability

One of the key determinants of an adolescent's behaviour pattern is their biological, psychological, and sociological makeup. Teenagers start to become more self-conscious about things like their enjoyment, diet, play, and clothes at this age. At this age, adolescents desire independence and freedom, but occasionally, their parents, instructors, and elders give them opportunities that encourage the development of antisocial conduct in them. Biological changes, psychological causes, and anti-social behaviour are some of the factors that contribute to adolescent delinquency.

- Disintegration of Family System

Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.

- Economic condition and poverty

As a result of poverty and poor economic conditions, parents and guardians often fail to meet their children's needs, and at the same time, kids often expect their parents to fulfil their wants by any means necessary. Once their wants are satisfied, however, kids often turn to stealing from homes or other parents after their needs have been met. And as a result, stealing becomes a habit, which leads to widespread theft.

- Migration

Boys who are abandoned and destitute who move to slum regions come into touch with anti-social elements of society who engage in illicit activities including prostitution, drug trafficking, and other contraband. The juveniles are very drawn to these activities, and they might participate in them.

- Sex indulgence

The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. In this age they may become more vagrants or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc.¹⁰

- Modern life style

It is quite challenging for children and teenagers to adapt to the new lifestyles due to the society's and modern living's quick change. They struggle with cross-cultural issues and struggle to distinguish between good and wrong.

Juvenile Justice and Constitution of India

The Constitution of India is consider as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided Directive Principles of State Policies (DPSP) which

¹⁰ Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.

acts as general guidelines in framing government policies. Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

1. Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A)
2. Right to be protected from any hazardous employment under the age of fourteen age. (Article 24)
3. Right to be protected from being abused in any form by an adult. (Article 39(e)).
4. Right to be protected from human trafficking and forced bonded labour system. (Article 39)
5. Right to be provided with good nutrition and proper standard of living. (Article 47)
6. Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has consider all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

Criminal Justice (Reformative or Punitive) and Juvenile

According to the Indian Legal System, juvenile justice is defined by a legal framework. Juvenile delinquency is receiving preferential care and protection from the system. A crime committed by a young person under the age of 18 is considered juvenile delinquency. Everyone is aware of the rising number of juvenile crimes that is currently raising the contentious topic of age determination. The accused's age is one of the most crucial factors in assessing his or her level of maturity. The increasing crime rate is raising a question that whether the juvenile can be tried as an adult or not? The act itself answer to the question that no juvenile offender who comes under the definition of “ child with conflict with law” as defined under sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent to Child Care Centre or any Rehabilitation Centre (till the offender attain the age of 21 years and then he or she may shifted to the jail or prison).

Thus, the present Juvenile Law in India, considers Age Determination as paramount importance to find out whether the offender falls under the purview of Juvenile Justice Act.

According to the Act, the maximum tenure of punishment which can be given to the juvenile offenders is three years and this punishment is valid for heinous crime also. In case of an adult offender, the maximum punishment which can be given is 7 years or life imprisonment or death penalty. But, the Act, in case of juvenile offenders believe on Reformation of juvenile as much as possible. The reformation type of punishment under the Act includes: – Sending juvenile to Rehabilitation Centers, Juvenile Schools or making them involve in various program headed by government or NGO's.

In the present scenario, there is no need to give such a minor kind of punishment for a heinous and harsh offence just because of Age determination or Age factor. Rape is Rape, one can't walk away taking a plea of age factor or mental incapacity or mental unfitness.

Thus, the existing law in the name of Age determination or Age Consent, is not creating a deterrent effect on the anti – social behavior of youth. Juvenile offenders are in believe that committing heinous crime is no issue as they will get away very little or no punishment in name of reformation.

Adopting of reformatory theory of punishment by law, is giving an undue advantage to juvenile to perpetuate their ability to commit crime without facing any harsh consequences. Reformation is good but not always. If law is talking about reforming the juvenile offenders so that they can have a better life in future then law should also talks about the rights of the victim. Justice must be given to the victim. The theory of reformation is helping juvenile to reform but it is not helping the victim at all

The present juvenile system in India is created on believe that juvenile offenders can be reformed and rehabilitated, sending them to bars or prisons will going to reaffirm their status and identity as “criminals”. Now the question arises is that there is no guarantee that juvenile offenders will get reformed and will not show their anti – social behavior again.

The act is totaling focusing on the reformation rather than penalization. Penalization will definitely will create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

What role does the Police play

The Police in the Juvenile Justice System are known to be the gatekeepers, meaning that they are the ones who have the power to make initial decisions regarding how the case would be handled. The gatekeepers enjoy a huge amount of discretion, as a result, only a few cases come up from the plethora of acts committed and this is again a great matter of ignominy.

If a piece of information is received by the Police officer, then it is a provision that they should be kept in special homes and not lockups or jail, the matter is to be dealt with by a child welfare officer, who'll be reporting things to the Juvenile Justice board. In some of the cases, it is also observed that the Police officer may on prima facie facts & circumstances grant bail to the Juvenile.

The main reason for the appointment of a child welfare officer is because many of the research works have shown that the interaction between the Police and the young people are often characterized by high levels of fear, domination, mistrust, dissatisfaction, etc. Police on the other hand sometimes behave in a hectoring and stubborn way, which then results in the establishment of negative perceptions.

The aggressive, rude, abusive and uncooperative behaviour by both sides is an imbroglio per se.

Conclusion

The rising rates of youth crime in India are a grave worry that demand attention. Although the government has established numerous laws and regulations to reduce the number of juvenile crimes, the current juvenile laws do not have a deterrent effect on juvenile offenders, therefore the results are ineffective and the legislative goal is not being fulfilled.