



Indian System on Critical Evaluation of Trial and Punishment for Juvenile Justice (Care and Protection of Children) Act

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ABSTRACT

The main aim of this study is to prevent juvenile delinquency by understanding the reasons that led to the commission of delinquent acts by juveniles. The entire future of the country depends on the children. Therefore, it is necessary to take effective measures to control juvenile offenders in conflict with the law and to provide basic rights to the juvenile. Today, juvenile offenders are continuously increasing in India as a major social issue. However, to prevent juvenile crime and provide proper care and protection to the child, the government has adopted the Juvenile Justice (Care and Protection of Children) Act, 2015, but lacks implementation and applicability of certain provisions of this Act. It is also believed that the judiciary plays an important role in the prevention of juvenile delinquency and anti-social behavior of the child.

Keywords: Act., Children, Govt., Care and Protection of Children etc.

1. INTRODUCTION

The juvenile justice system is child-centered, with the overall philosophy and goal being the rehabilitation and social re-integration of each child. The philosophy applies equally to both groups of children - children in need of care and protection and children in conflict with the law. The processes governing the juvenile justice system are socio-legal in nature and are designed in the context of child rights and the best interest of the child. The Juvenile Justice (Care and Protection of Children) Act, 2015 has ordered separate procedures for the two groups of children. All persons under the age of 18 are tried under the Criminal Justice System to be tried under this Act, which excludes retaliation and punishment.

Adherence to child rights is an integral part of the juvenile justice system. Chapter II 16 of the Act outlines the 'General Principles and Protection of Children' which includes rights like 'respect and rights', 'right to participation', 'best interests', 'principle of family responsibility' and 'principles of natural justice'. Therefore, it is imperative that all procedures, at every stage and stage of the child's case, from the time of apprehension / arrest to the final order through the process of investigation should be within the overarching principles as outlined in the Act.

All the procedures of the Act need to be based on two fundamental considerations -

"Best interest of the child" as defined under section 2 (9) of the Act as the basis for any decision taken in relation to the child, including basic rights and needs, identity, social well-being and physical, emotional and Complete intellectual development.

The "child-friendly approach", which is required to be demonstrated directly and indirectly by all officers associated with the juvenile justice system. It is defined under Section 2 (15) of the Act as any behavior, conduct, practice, procedure, approach, environment or treatment which is humane, considerate and in the best interest of the child.

The entire system for children is a vast network of many compulsory institutions and associated systems as opposed to the law. Each person, along with the child, acts as an important stakeholder. Each of these stakeholders play an important role towards ensuring efficiency and effectiveness. These include the Supreme Court Juvenile Justice Committee, the High Court Juvenile Justice Committee within each state, the National Commission of Protection of Child Rights (NCPDR), the State Commission of Protection of Child Rights (SCPCR), the Juvenile Justice Board, the police, among others. Ministry and State Government Departments, Superintendents / Probation Officers, Observation Homes and Special Home Staff, Free Legal Aid Lawyers, Integrated Child Protection Scheme (ICPS), NGO representatives and other experts related to child development.

It is the police who apprehend the children on the basis of the charges of crime, present them before the JJB, investigate, present a final report and produce the relevant documents and witnesses during the interrogation. They conduct preliminary checks, expedite age verification on the child and file necessary reports. They are expected to wear civilian clothes as opposed to their uniforms while they are with the child. The child is placed under the charge of a special juvenile police unit or designated welfare police officer and the presence of a female police personnel is ensured while appointing a girl child.

Children are recognized as the state's highest asset worldwide. The long tenure of the state is in the hands of the children, WHO is recognized, as the state's supreme asset although as a result of the uncertainties stated in all sectors of our society, these future stakeholders are not properly mentioned as a result of the child crime. Children or diligence are partners in nursing that are dangerously increasing the supply of stated anxiety around the world. However, in Asian countries, children should be the main focus of development designing, research and welfare, but this is not the case. Despite the constitutional vision of a healthy and happy child against abuse and exploitation, and a national policy for youth, the bulk of children in an Asian country still do not remain cared for, protected, and have an original childhood[1,2].

India can be a spirit in the World Organization, Declaration of the Rights of the Child, 1959 that various rights of children are outlined and recognized: right to health and care, right to protection from misuse, right to protection from exploitation, right to neglect, Right to Information, Right to Expression and Right to Nurture etc. are outlined by the Convention on the Rights of the Child as the basic rights of children. As a result, the Asian country adopted a national policy in 1974 for children to obtain the aforesaid rights for their children. The Primary Central Law on Juvenile Justice was passed by the Central Parliament in 1986, providing uniform legislation on juvenile justice for the entire country. Before these laws, many other laws existed in every country around the world on the same matter. But they were not the same or similar. So did the Primary Uniform Law on Juvenile Justice but failed to lead to any dramatic reform within juvenile treatment. This law remained a matter of great concern as, under the purview of human rights, adolescent girls were not able to follow the law in special homes and detention centers selected as juvenile homes.

1.1. Literature Review

Deepshikha Agarwal, (2018), Juvenile crime is a serious crime and it is detrimental to the social system in any country. There is an increasing trend in juvenile crimes around the world, with greater involvement of youth in violent crimes. India shows a similar trend to the increasing rate of violent crimes committed by adolescent girls. This is a very serious concern for the nation and solutions to the problem need to be sought very carefully. The Indian legal system and judiciary have responded to these trends and brought some amendments to the laws related to juvenile justice in India. The purpose of this paper is to look into the causes of juvenile delinquency and explanations to explain the problem by scholars from various fields. Analysis of statistical data available on official sites increases the involvement of juveniles in heinous crimes. To curb the problem of juvenile delinquents in India, the Juvenile Delinquency Act has been amended and now juveniles involved in heinous crimes are tested as adults.

V. R. Krishna Iyer (2017) The "Convention on the Rights of the Child" is an international document that helps nations understand the living conditions of children and how to improve and implement their countries.

Tyagi, Malvika, (2016), Due to this trend, the legal definition of child under the Indian legal system came under question. Malvika Tyagi (2016) also feels that with the tendency of juvenile involvement in violent crimes in India, there is a need for state intervention in the context of amendment and introduction of new legal provisions. The new Juvenile Justice Act of 2015 took cognizance of juvenile involvement in heinous crimes and made certain amendments. Under the new legal provisions, if a child of 16 years or more commits a heinous crime, his mental and physical maturity will be initially evaluated by the Juvenile Justice Board. The level of maturity will match his ability to commit the crime, his ability to understand the consequences of the crime and the circumstances under which he has allegedly committed the crime.

Maroof et al, (2015) There may be a strong connection between the psychological condition of youth and a fragile tendency. A study of female prisoners in Bangladesh noted a much higher incidence of psychiatric disorder among perpetrators of the Women's Juvenile Center. These offenders also showed high incidence of substance abuse.

Mousami Dey, (2014) Some authors have evaluated the origin and development of Juvenile Justice in India. Prior to coming of British in India, the actions of children were governed under existing Hindu and Muslim laws, where the respective families of the person concerned were held responsible for monitoring the actions of their children. In India, the need for new legislations for children was felt under the British rule. Some specific laws were passed between 1850 and 1919, like the Apprentice Act (1850), the Code of Criminal Procedure (1861) and the Reformatory School Act (1876 and 1897).

1.2 Research Objective

1. To study and understand the validity of 'Juvenile Justice (Care and Protection of Children) Act 2015'.

2. To understand the importance of 'juvenile justice system' in India.
3. To study and explore the scope of trial and punishment of adolescent girls in India.
4. To examine and evaluate the adequacy of existing practice and procedure in the context of testing of juveniles in India, among other nations of the world.
5. To find out the true nature of juvenile age as defined under Juvenile Justice (Care and Protection of Children) Act 2015.

1.3 Research Questions

1. Is the Procedure of Juvenile Justice Act competent to achieve the objectives listed in the Act?
2. What are the salient features of juvenile justice system in India?
3. What is the main process of trial and punishment in India in relation to juveniles?
4. What procedure is followed in juvenile cases in other nations of the world?
5. What is the actual nature of the juvenile age in Juvenile Justice (Care and Protection of Children) Act 2015?

1.4 Research Methodology

The important objective of the proposed research work is to analyze various aspects of juvenile delinquency. It includes other dimensions of meaning, history, type, philosophy, socio-legal that have emerged in the modern era with changing social, economic and technologies.

The proposed research work is doctoral research. Therefore, this Synopsis is purely based on resources from libraries, online databases, journals, newspapers, magazines and various learning resources. This synopsis is a combination of the following three legal research methods, where relevant:

1. Descriptive method;
2. Analytical method;
3. Comparative methodology;

The Sources of Data

This field of theory research does not require any field data or sample collection.

Primary Data

Not Required

Secondary Data

Data collection is limited to secondary sources only. Secondary collections include detailed analysis of various secondary sources. It includes various texts from legal and non-legal sections, relevant articles, research papers, reports, magazines, newspapers, magazines, important learning resources, relevant case studies, etc.

2. JUVENILE JUSTICE ACT HISTORY

In 1986, a statute came into force for the protection of adolescent girls, followed by many other laws. Prior to this law every state had its own law on juvenile justice, in which the law was treated juvenile by completely different state legal systems. Primary Uniform Laws on Juvenile Justice but failed to bring any dramatic improvement in the treatment of adolescent girls. In the areas of human rights, the law remained a matter of considerable concern, particularly as adolescent girls were treated in special homes and detention centers selected as juvenile homes [3–5]. After almost international attention to the problem of juvenile justice in the late 1990s, juvenile justice continued nationwide and regionally with a wide variety of counseling, even emotionally in the mid-level, in domestic circles.

3. JUVENILE SYSTEMS IN OTHER COUNTRIES

The United States has drawn a transparent distinction between adolescent people in nursing unresponsive societies and those who are conscious of the inhumanity of their crimes.

The laws of the country allow juvenile offenders as adults, keeping in mind the inhumanity of crime in certain cases. The rationale behind this release is to recognize the implicit and every essential principle of planning or mobilization.

Another justification is that the state has a major responsibility to protect the society from such criminals. By waiving its jurisdiction, the Tribunal recognizes that there is scope for rehabilitation of the wrongdoing juvenile and wrongly legitimizes the release of jurisdiction as a largely protective society.

Australia also follows a system similar to that of Britain. As the Asian country and hence the Juvenile Justice Act 2000 is coming back, it is straightforward to note that instead of multifaceted procedures for sentencing we have opted for a stricter and broader option. This is often a system within which the maximum amount of sentence given by a homogeneous WHO participates in the heirs to feed themselves is the same, as a resolution given to a serial malefic or murderer; Each is under eighteen years of age with great care [6,7].

4. JUVENILE JUSTICE (CARE AND PROTECTION) Act, 2015

The delightful incident sparked many debates. And so the major issue of these was the involvement of juvenile delinquents, six months younger than when the OHO turned completely into an adult. Davis draws on the Juvenile Justice (Care and Protection) Act, 2000 law and therefore sentenced the offender to just three years by the court. There were several protests against this call from the Apex court, seeking amendments within the current juvenile justice law.

However, this case is not the only reason for the government to introduce this bill. The Ministry of Girls and Children's Development also introduced the bill with several alternative reasons. The main two reasons for all were, first, the Juvenile Justice Act, 2000 was facing implementation and procedural delay 146. Secondly, the National Crime Records Bureau (NCRB) report shows an increase among 16–18 year olds within juvenile crime (ie% in 2003. Toone.2% in 2013). Apart from the big proponents, some children have also been active, with the WHO criticizing the act on several grounds: initial, describing it as not retaliatory, helpful [8–10].

The introduction of The New Juvenile Justice (Care and Protection of Children), 2015, has introduced many extraordinary changes within the current Juvenile Law. One of such major changes is to try a juvenile aristocratic group of sixteen to eighteen like an Associate in nursing adult. Also, one who has attained the age of twenty-one, while sentenced to prison for the remaining term at the time of conviction. However, among these options are taken by the Juvenile Justice Board. This synopsis highlights various polar problems in relation to the new Juvenile Justice Act with special reference to the views of various juvenile activists. In addition, the synopsis focuses on the anticipated scenario, once the new Juvenile Justice Act, 2015 may arise, with the Protection of Children from Sexual Offenses, 2012 and the Prohibition of Children Marriage Act, 2006 [11–16].

5. THE EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA

1) Pre-independence era

The differential treatment for children can be traced much earlier to the Code of Hammurabi in 1790 BCE, the responsibility for their supervision and maintenance lies on the family. During colonial rule, in 1843, the first center for these children was established by Lord Cornwallis called "Ragged School". After 1850, the Apprentice Act was passed, chronologically the first law to require children aged 10–18 to be convicted in courts, providing them with vocational training as part of the rehabilitation process. Go Another landmark law was the Reform Schools Act, 1876 and 1897. Under the Act, the court had the right to stop delimitation in a correctional school for a period of two to seven years, but after attaining the age of eighteen years, they were not to be placed in these institutions. In addition, the Criminal Procedure Act, 1898 provided special treatment for juvenile offenders. The Code granted the offenders probation for good conduct until the age of twenty-one. The Indian Children's Act was then enacted by the Jail Committee of India (1919–1920). Under the act, the individual provincial government got the right to enact separate laws for juveniles in their respective courts. The provinces of Madras, Bengal and Bombay passed their own Children Acts in 1920, 1922 and 1924 respectively. These laws overturned provisions for the creation of a special mechanism for the treatment of juveniles.

2) After independence

The most important post-independence legislation was the Juvenile Justice (Care and Protection of Children) Act, 2000 ("Act"), which was brought into compliance with the Child Rights Convention 1989. It was under the act that anyone under 18 years of age was considered as a child and was

never tried as an adult. This was the provision that created a furore in India after the "Nirbhaya Delhi gang rape case", which took place on 16 December 2012 and shocked the entire nation. This not only shook and disgusted the nation, it also questioned the applicability of the law within the purview of juvenile justice as the age of an accused was 6 months below 18 years. The involvement of a person in such a heinous crime of raping a person less than 18 years of age compels the Indian Legislature to introduce a new law and as such, Parliament has come up with a new law called "Juvenile Justice (care and Protection) ". Act, 2015 The Act changed the existing juvenile laws and introduced some notable changes. One of the notable changes was that juveniles between the ages of 16 and 18 could be tried as adults if charged with committing heinous crimes. With this historic change, another change made by the Legislature was the Criminal Law (Amendment) Act, 2013, which was a direct result of the country's fight for the Nirbhaya incident.

6. CONCLUSION

Thus on the basis of the above discussion, we can say that mere cherished principles will not do any good to the society. Actual practice should be given importance. Lack of cooperation and supervision among various officials is a major drawback of the Act. Many individuals (also police officers, lawyers and judicial officers) are unaware of the concept and philosophy of the juvenile justice system related to the implementation of this Act. An effective implementation is required to see the desired law. Society should be encouraged to give adequate space and opportunities to children for their development and improvement. The judiciary has played a very commendable role in the proper implementation of the juvenile justice system by interpreting the provisions of various legislations to provide maximum benefit and relief to juveniles. Serious implementation of the marvelous law can certainly reverse the trend of crime in teenagers.

References

- Khushi Khandelwal (2020), JUVENILE JUSTICE SYSTEM, Burnishedlawjournal.in, VOLUME 1 ISSUE 3 2020 2582-5534
- Pragati Yadav (2020), "Comparative Study between World's Best Juvenile Justice System to Indian Juvenile Justice System", <http://www.penaclaims.com/>, Volume 11, July 2020 ISSN 2581-5504
- Durga v State of Rajasthan D.B. Criminal Appeal No. 27/2019 (High Court of Rajasthan).
- Radhika v State of Uttar Pradesh 2019 SCC OnLine All 4911 [46]. Although the High Court found an issue with experts not being used for the assessment, it upheld the decision of the JJB, without conducting any new assessment.
- Ujjwala Sakhalkar, Dr. Jyoti Dharm, The Juvenile Justice System In India: Reviewing Laws, Policies And Programmes For Children In Need Of Care & Protection. Journal of the Gujrat Research Society, ISSN: 0374-8588 Volume 21 Issue15, December 2019.
- Shailesh Kumar (2019), Shifting Epistemology of Juvenile Justice in India, Contexto Internacional vol. 41(1) Jan/Apr 2019 <http://dx.doi.org/10.1590/S0102-8529.2019410100006>
- Deepshikha Agarwal, (2018), JUVENILE DELINQUENCY IN INDIA- LATEST TRENDS AND ENTAILING AMENDMENTS IN JUVENILE JUSTICE ACT, PEOPLE: International Journal of Social Sciences ISSN 2454-5899. Pp-1365-1383
- Williams, K. S. (2012) "Criminology", U. K., Oxford University Press.
- Knoester, Chris and Dana L. Haynie, (2005) Community Context, Social Integration into Family, and Youth Violence. Journal of Marriage and Family 67 (3): 767-780 <https://doi.org/10.1111/j.1741-3737.2005.00168.x>
- Tyagi, Malvika, (2016) Analysis of Juvenile Crime, Economic and Political Weekly, 51 (51): 17-21
- Maruf, Mohammad Muntasir, Farzana Rhaman et al (2015) "Socio- Demography, Substance Abuse and Offence Among Inmates with Psychiatric Disorder in Female Juvenile Center, Bangladesh". PEOPLE: International Journal of Social Science. 1 (1): 500- 508
- Sharma RN (2008) Criminology and Penology. Surjeet Publications.
- Witerdyk AJ (2004) Juvenile Justice System: International Perspectives, Models and Trends.
- Government of India (2000) The Juvenile Justice Act, 1986' and The juvenile Justice (Care and protection) Act, 2000' Publication Division New Delhi.
- Madras Children Act (1920).
- Bengal Children Act (1922).
- Bombay Children Act (1924).

Mahrugh A (2006) Child and Protection and Juvenile Justice System: for Juvenile in conflict with Law. Children India Foundation.

Government of India (2000) The Juvenile Justice (care and Protection of children) Act. Publication division, New Delhi.

Government of India (1860) The Indian Penal code. Publication division, New Delhi.

Government of India (2000) The Juvenile Justice (care and Protection of children) Act (2000). Publication division, New Delhi.

Government of India (2000) Supreme Court cases', In Jaya mala V. Hom Secretary, (2010) Bhoop Ram V. state of UP case, (1989) Babloo Passi and V. state of Jharkhand, (2010) In Umesh Chandra. V. state of Rajastan, (2005) Arnit Das V. state of Bihar.

Government of India (2000) Supreme Court cases', Bhoop Ram V. state of Up, (1989) and Arnit Das V. state of Bihar.