



Juvenile justice system in India and contemporary challenges

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Abstract

The study of children under Juvenile Justice System in India. This research gives the perspective in the light of which the vast child rights has to be made. The concept of the juvenile justice system was derived from the concept of juvenile delinquency. The young children are unable to see the society in a broader sense as by adults so they fail and indulged in crimes. They are not easily consistive to the legal framework and the processes of criminal law. The Juvenile Justice System, therefore, are made for the care and protection of the juveniles for those who are in direct conflict with law. One of the main aspect of the juvenile justice system is to provide proper treatment of the children as by various institutions. The child is the national asset of the nation. Their need and care are our responsibility. Therefore, it is imperative for us to uplift children. Children are forever innocent and they are unaware of good and bad. In addition, they are not physically and mentally fit than adults. So the children are to be treated physically and mentally in a whole instance for their better upliftment so in this paper we will discuss the whole scope and parameter of the juvenile justice system according to the rising challenges in this century.

Keywords: constitutional law, juvenile justice system, parens patrias, preventive treatment service

1. Introduction

The dynamics of Juvenile offenders is completely different from that of other offenders. The role of the police officer in the Justice system is noteworthy and has an evident impact on the juvenile. In 21st Century India faces several number of challenges in the propogating and securing the interest of a Juvenile or accused as the case may be. Some glaring issues which our paper emphasis on is farcical implementation of Juvenile Justice Act leaves much to be desired. The researchers have used doctrinal method of research carrying out qualitative as well as quantitative data analysis, triangulating on major empirical sources. The researchers feel that there is an urgent need for us to fight against all that is degrading and demeaning our society today, for only and only then will we give our children something to fight for tomorrow. The need of hour is to identify the venerable group, create awareness and to educate the young population of India. The educated need to aware the uneducated, for the lack of awareness is a major challenge. The researchers have tried to address the issues subsequently identifying the strategies to deal with the same.

Children in conflict with law belong to one of the most vulnerable sections of children in India. Rule of law and access to justice are the basic requirements for a country's development and is as imperative for the reduction of social differences as the provision of basic services such as proper health and education systems. However, it has been recognised that children, when dependent on the same justice mechanism as adults may find themselves further victimised by the system itself. It is this recognition that has led to the development of a separate child justice system or juvenile justice system in many parts of the world. In some countries,

despite recognition of the need of a separate juvenile justice system, children in the higher age group may be treated through the adult criminal justice system for certain offences and in many punishment for heinous crimes committed by juveniles is stringent and at par with that prescribed for adults. The stage of development of the understanding, discourse and even the law in the area of juvenile justice vary from one region to another, depending on the history and culture of its citizens, their approach to human rights, their legal and technical capacities and their government. There are many aspects of a juvenile justice system, those who are involved in it, the way they act, the procedure, the physical and other facilities. For example, it is about the manner in which police apprehend or interrogate children, the attitude of lawyers and prosecutors; the way that judges make decisions about guilt or sentencing; handling by prison staff, the living; educational; recreational and safety conditions at places where children are being kept and programmes for rehabilitation and reintegration. Three models or approaches have been identified in the Juvenile Justice System across the world, the welfare or the parens patrias model, the Due Process Model and the Participatory Model. Many countries of the world have combined all these models to evolve their own. Even the understanding of what constitute juvenile justice differs. For example, the juvenile justice system in most countries deals only with children in conflict with law, while other social and state-specific laws are used for children in need of care and protection. In India, the Juvenile Justice (Care and Protection of Children) Act, 2000 deals with two categories of children. i.e. Who are in conflict with law and those who are in need of care and protection. The reason for including children in need of care and protection is that these are children who

are living on the edge and are vulnerable to come in conflict with the law, if there is no timely intervention to prevent them from coming into such situation ^[1].

International Legislations

The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000 says that the act was enacted with an object to incorporate the standards prescribed in the United Nations Convention on the Rights of the Child 1989, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985, the United Nations Rules for the Protection of Juveniles deprived of their Liberty 1990 and all other relevant international instruments. In the matter of construction of juvenile legislations, the Supreme Court observed that the Constitution is a source of, and not an exercise of, legislative power. The principles of international law whenever applicable operate as a statutory implication. In the matter of juvenile justice legislation, India followed the British pattern as well as the development taking place at the international level under the auspices of United Nations Organisation. Therefore, the origin, growth and development of Indian juvenile justice system can be traced back somewhere else and not in India itself. To facilitate understanding on the Indian juvenile justice system, the relevant international instruments are cited here with discussions at relevant places. The Third International Congress for the Welfare and Protection of Children (1902)-The Third International Congress for the Welfare and Protection of Children was held in London from 15th to 18th July 1902, under the patronage of His Majesty King Edward VII. The Congress considered the problems of neglected children and the probabilities of their turning towards delinquency if due care of them was not taken. Thus, this is the point where the Congress emphasized the linkage of neglected juveniles and juvenile delinquency. The Covenant of the League of Nations (1919)

Article 23 of the Covenant obliges the Members of the League to endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend. The Covenant also proposed that the Member of the League should establish necessary international organisations for that purpose. Of course, this provisions related to conditions of labour for children, however, this led to development of today's children's rights. The Human Rights of the Child under the Geneva Declaration (1924)-The Declaration provided that the child that is hungry must be fed, there should be no child without food and shelter ^[2].

National Legislation of Juvenile Justice System

As many acts has been passed from certain era or time as firstly in 1986 the act was passed which give a written form to it for the proper welfare of children as for their adjudication and how to be treated in same sense but due to some instant it is to be amended than comes amended act of 2000 it also made certain bodies as we can say the homes for their treatment but it also been amended in 2007 and again in 2015 as after the famous NIRBHAYA case which bring the great

revolution in the country against it and many major amendments are been done which we will discuss further. Nowadays, we all know that heinous crimes are being committed by juveniles and now we are in a situation debating about the juvenile' sage and punishment which is not given to them according to the crimes committed by them. Age determination is the most important factor to find out whether the accused falls under the purview of the Juvenile Justice Act. Accurate recording of the age is also important to form child welfare committees and institutes.

In the case of *Ram Singh and others v. State of Delhi* ^[3] also known as Nirbhaya or the Delhi Gang Rape case, 2012 created huge havoc regarding punishments given to the juvenile convict should be same as given to other convicts. Yes, the juveniles should also be treated in the same way because they have committed the same crime and also if they are below statutory age of majority they need to be punished for the crime they have committed, because if they get away with it will become a habit which will carry on till the later part of their life, definitely they should get same treatment. The sooner a child is held accountable for their actions, the sooner they will come to know there are consequences for their consequences for their actions. Giving punishment is a positive thing so they should receive this understanding and rectify them in their upbringing itself. They should be punished the moment they commit crime that is the best gift they can receive. The sooner the better while their minds are in developing stage.

Next issue arises, whether any special provisions should be made for juveniles? No special provisions have to be made for them, opposing this point because there is no inclusion of extra punishment for them. The difference is only that they are tried in juvenile courts now they will be tried in regular courts where they will be questioned the facts of the crime, their intention behind the crime, mensrea behind crime, etc.

Another issue that the age of a juvenile should be 16 or 18 so as to treat them adults:- as per National Crime Record Bureau in the year 2011-64 per cent of the crimes has been committed by juveniles between the age of 16 and 18. Many heinous crimes are committed between the age of 16 and 18. This age is highly volatile and highly unstable. Particularly during this period they don't know what to do, they don't know how to react. But rapid mental development occurs during that stage. If they keep on indulging in these type of activities their life is at stake. Whatever may be the age, they have committed a crime so they should be put behind the bars.

Despite the introduction of comprehensive beneficial schemes for children, the implementation is defective. Appropriate training is not there and the main concern is about the accountability. The police officers are highly brutal towards the juveniles and abuse in the observation homes. It is high time now that government should take necessary steps to seek charge of juveniles pending or on completion of inquiry.

And also there are been certain provisions in the constitution of India which firmly deals with the children as to their rights etc and how they to be dealt in certain circumstance as it is been mentioned in certain articles as in Art. 15, 21, 21(a), 23, 24, 39(e), 39(f) etc so these all deals with the children or juveniles and their protection as to care and assistance ^[4].

Judicial Trends

As from time to time many trends had been made over the juvenile justice system in India as by different judgement by various courts and legislations and some out of that are as follows-

The Supreme Court of India in *Gaurav Jain v. Union of India* ^[5] while dealing with writ petition under Article 32 of the Constitution pertaining to the plight of the prostitutes or fallen women and their progeny, spoke about the Preamble of the Constitution and stated that it is an integral part of the Constitution of India and that the children have the right to equality and the opportunity for all well beings, dignity and care for the proper protection and rehabilitation by the society with open hands open to make them onto the particular way of social life without any mark based on them for no fault.

In *Laxmikant Pandey v. State* ^[6] the hon Court of India observed that every juvenile has a right to proper care and assistance and affection and of morality and proper security and this is only claimable only when the juveniles will be brought up in proper family and good environment.

In *Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board* ^[7].

Some incidence becomes milestone that shook the psyche of the society or nation.

One of such is the case of the Delhi gang rape as where the 5, 6 persons rape a girl though brutally and killing her by putting rod in private part and the justice system is as such the juvenile involve in it is to be released after small imprisonment. In the particular case *Dr. Subramaniam Swami* a senior lawyer of Supreme Court moved to the Supreme Court of India requesting the court for an order restraining the release the set juvenile from special home. The Supreme Court of India maintain that they are unable for the same as due to the law made for it not tend to do son and affirm him to move to parliament and make proper law for it. Here, it would not be out of context to mention that set juvenile was kept in a special home along with an accused Delhi Blast Case. Thus, one can easily imagine the influence of the blast case accused on the sad juvenile and vice versa.

It has further been observed that juvenile released from observation home and special home were found to commit a more heinous crime. Thus, a question naturally arises whether this reformatory home is capable serving the objectives for which these homes were established.

Conclusion

The heinous nature of the crime. The cover-up afterwards. The denial. They were all, to me, earmarks of someone who was acting as an adult.”- Gary Gambardella The above quote summarizes the methodology adopted to hoodwink the Indian criminal system by hardcore criminals. The law of the juvenile justice act like a system of opportunity which can be taken easily to any instance and can be mould in any way. Section 16 of the JJ Act lays down provisions for orders that may be passed regarding a juvenile, wherein the maximum penalty a juvenile has to pay is to remain in the observation home for three years or till he attains the age of twenty-one. In *Bhoop Ram. V. State of UP* ^[8], although the Supreme Court found that the accused had in fact committed the offence but had to quash the sentence as the accused was already twenty-eight

years of age and could not be sent to an observation home. *Arnit Das v. State of Bihar* ^[9] has been a highly controversial case and has been criticized to the core but the court seems have to have taken a contrary view from the earlier case because it is known to have taken same set of persons which evolve juvenile justice action till they turn 50 years of age. The problem with this decision was that it set the same yardstick for everyone – whether a serial criminal or a petty offender So, an amendment in the existing act is definitely necessary in order to thwart any attack on the nation. Apart from terrorists taking advantage of the lacuna in the system, serious crimes like rapes and murders also go unpunished with the offender wearing the garb of juvenility. The legislators of the country have their task cut up as they need to work out a middle path that takes the country’s and society interest into account but does not go to extremes like in the case of *Arnit Das*.

References

1. Research scholar, B.A.LL.B(H), Law College Dehradun, Uttarakhand University
2. Chaudhary RN. Law Relating To The Children And Juveniles, Allahabad law Agency
3. Bajpai, Asha, Child Rights In India, Oxford University Press
4. AIR 1959 SC 518
5. Pandey JN. Constitutional Law Of India, seventh edition
6. AIR 1990 SC 292
7. AIR 1992 SC 118
8. AIR 1955 SC 661
9. AIR 1989 SC 1329
10. AIR 1989 PAT 217