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Advancing juvenile justice: A comprehensive analysis of India's legal framework and international perspectives

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Abstract

The idea of juvenile delinquency served as the basis for the India of juvenile justice. They don't readily comply with the laws and processes of the criminal justice system. The juvenile justice system was thus developed specifically address the needs of juvenile offenders. One of the primary responsibilities of the juvenile justice system has been to provide children with specialized & preventive treatment programme. The provision of specialized and preventive treatment services for children has been one of the juvenile justice system's main functions. Delinquent children might use it as a tool for rehabilitation and sociability.

The youth of the country are it is greatest resource. We must take care of and meet their needs. Therefore it is essential that we help Youngsters. Children are always pure and have no concept of the right and wrong. They are less physically and cognitively fit than adults as well. Children developed in to responsible adult who were morally sound mentally sharps physically fit and equipped with the motive and abilities required by society. Pour goal should be to provide all children with equal possibilities for development during the age of growth. Since this well further our bigger goals of eradicating inequality and promoting social justice.

Keywords: Juvenile delinquency, India, juvenile justice system

Introduction

The supreme court of India ^[1] stressed that obviously. It cannot be denied that child welfare is important in a civilized society. Since the welfare of entire societies depends on the growth, welfare and children, s health and well-being. Therefore how a nation, s children grow and develop is crucial for that nation, s development ^[2].

The state is given the authority to create particular provision, s including those for children, under to clause (3) of article 15 & no kind under the age of fourteen may be worked in a factory, mine or engaged in age other hazardous- employment. According to article 24 clause (e) and (f) of article 39 require the state to focus its policies on ensuring among other things. That children's impressionable years are not exploited adult are not forced by financial necessity to work job that are not appropriate for their age and physical capacity and children are given the chance to develop in a healthy way in conditions of freedom and dignity, as well as protection from exploitation. These constitutional clause demonstrate how deeply concerned the constitution, s others were with the welfare and interests of children in the nation in accordance with these constitutional principles. The Indian government has also developed a national policy for the welfare of children. This policy starts with a goal-oriented program from development of children.

Meaning & definition of juvenile: It is not easy to give a precise definition of juvenile delinquency. Several factors are responsible for noy allowing a clear cut formulation. One hurdle is similar to that encountered. while defining crime is general i.e. the choice between the social and legal definitions sociologists insist that legal definition are of no help in understanding the true nature of delinquency and in knowing who are juvenile offenders, since the arrest or conviction of a child may depends upon various fortuitous circumstances. They also maintain that legal definitions differ from place to place and time to time and hence are not suitable for scientific studies the reason as to why legal definitions are to be preferred are the same as in the case of the definition of crime.

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The legal definition of juvenile delinquency is obvious, any act prohibited by law for children up to a prescribed age limit is juvenile delinquency and it follows. There fore that a child found to have committed an act of juvenile delinquency by a court is juvenile delinquency.

Juvenile: As an adjective juvenile means pertaining to youth or young people having or retaining characteristics of youth and as noun it is used in the sense of a youth persons [3].

Statutory definitions: The word juvenile may be understood in the terms of age maturity and other social conditions. The juvenile justice act 2000 explicitly recognizes that in terms of understanding commission of offences as eligibility and for others protection. All juveniles are equal. Accordingly it removed the gender differentiation by leveling the age of the child both of crimes and boys as 18 years [4].

This aspect is an improvement over the juvenile justice act 1986. Also in earlier state legislature relating to child specially those of Bihar, Madras and Bengal had been made no distinction between child of either sex. The word child which has restricted meaning in term of age was made wonder under. juvenile taking prospective and all sound, development of individual personality as the basis for the first time recognized in the UN - standard minimum rules for the administration of juvenile justice (Bujing rules 1985) also convention of the rights of the child 1989 and un rules for the protection of juvenile deprived of their liberty 1990, recognized youth and adolescent below the age of 18 years as juvenile without distinction as to sex [5].

Concept of juvenile delinquency: The word juvenile has been derived from latin term'' juvenis'' meaning there by young. The term delinquency has also been derived from term do (away- from) and liqueur (to leave) [6] the concept of delinquency has been viewed differently by various authors.

Causes of juvenile delinquency: The problem of juvenile delinquency has become a hot issue for the world, s persists in every country across the globe. In order to deal with his issue and uproot it from our society. It is imperative to understand the fundamental causes and reasons of juvenile delinquency.

Advancement of technology and economic growth

1. Family issue.
2. Changing patterns in life style.
3. Biological factors.
4. Poverty.
5. Other factors-others factor like'' child Labour'' abusive childhood traumatic, experience, financial issues illiteracy unsoundness of mind e. t. c are responsible for delinquent behaviour in juvenile [7].

Juvenile justice in other countries

Juvenile justice in U.K: juvenile delinquency in the U. K (United Kingdom) was considered a transient phase meaning that it would vanish with age the Ragged Industrial School. Movement is considered to be the first iniative taken towards the prevention of juvenile delinquency this

movement led to the establishment of an industrial school for homeless destitute and delinquency children.

Miss marry carpenter in 1838 a Parkhurst prison was establishment for the treatment of juvenile. The enactment of the summary jurisdiction act 1879, in the country provided that a child under 7 years of age is incapable of committing a crime and hence must not be convicted. In 1907 that probation of offenders act 1907 was enacted which empowered the courts to release juvenile in certain offences, finally the juvenile courts established in 1908 under the children acct 1908. These courts were empowered deal with matters involving juvenile and take proper care and provided protection to the young offenders.

USA: In the United States of America the juvenile justice system was first established in 1899 in cook country Illinois. Which had a rehabilitative approach original [8] Juvenile system believed that youth commit crimes due to immaturity and impulsivity, so instead of viewing offensive juveniles as criminals the juvenile system in us engaged in their rehabilitation. The framework accepted that these adolescent can be changed to decent residents.

The child & youth welfare code precedential decree no 603 define a youth offender as one, who is above nine years of age but less than 21 years of age at the time of the commission of the offence.

In the case in re Gault [9] dealt with the rights of juveniles in the U S, it was held for the first time that juvenile have similar rights as adult like the right to an attorney notice of changes remain silent e.t. c.

The court held-absent a valid confession a determination of delinquency & an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross examination. The case also remains a crucial piece of fair procedural treatment entitled to juvenile.

India

In India when the increasing rate of juvenile delinquency started becoming an issue the government of India adopted a national policy resolution in 1974.this resolution provided children and set priorities to organize programmes for children, who were indulged in deviant behavior [10] the India state promulgated the juvenile justice act 1986. The act bought a uniform juvenile justice system in India. The act consisted of sixty three section and seven chapter. The concept of parent's patrial and means rea are the basis elements of the juvenile justice act.

Following the 1986 act juvenile justice (care & protection of children) got introduced in 2000. The main aim of this act was to add provisions related the care and protection later the cat was replaced by juvenile justice (care and protection of children) 2015. The 2015 act was informed by the Nirbhaya rape case. The accused was above 16. Thus the 2015 act introduced the provision where children aged 16-18 involved in criminal offences would get tried in aregular court. Case- Supreme Court legal aid committee v/s Union of India and others [11]:- The Supreme Court has recently directed all the States and Union Territories to establish or recognize, homes and institutions for juveniles as required by Section 2 (A) and (O) 9, 10 and 11 of the JAA. Such places, homes and institutions should give facilities for the development of the juveniles housed there. With the enforcement of the Juveniles Justice Act, it has become

illegal in entire India, to send a Juvenile to jail under circumstances. In the Sunil Kumar v/s State case, 10 (3) the Kerala High court.

In the Sunil Kumar v/s State ^[12] case, the Kerala high Court noticed that the orders disposing off the cases were signed by only one magistrate, who was one among the magistrates of the juvenile courts. The court said, "Even so the proceeding cannot be under the signature of only one magistrate as if he is the only one magistrate who has voice in the disposal of the case.

Case- Sheela Barse v/s Union of India ^[13] case, the Supreme Court had to issue the directive, that in case of offenses punishable with less than 7 years, investigations must be completed within 3 months, failing which the case must be closed. The maximum length of trial was fixed at six months. The basic aim of juvenile justice is to rehabilitate and reform delinquent children and the ordinary penal sanctions are therefore, absolutely excluded from the system. In the Satto v/s State of U.P. case 5 (6), three boys of ages between ten and fourteen, committed rape on an eleven year old girl. The trial court passed a sentence of two years imprisonment to be served out by detention in an approved school. Due to the seriousness of the crime there was no justification to release the accused on probation.

Case-Dr. Subramanian swamy & other v/s raju member juvenile justice ^[14]

Is a landmark case that caused May developments and changes in the juvenile justice system of India. Swamy one of the petitioners had sought that in the Nirbhaya Rape Case. The fifty accused a juvenile must not be tried under the J j act owing to the severing. He had also argued that juvenile justices was not meant for such heinous - crime there force, he was not entitled to the benefits that extend from the j j act. The Supreme Court dismissed the petition by stating that the aim behind treating a person below 18 years of age as a juvenile is to ensure, their rehabilitation and transform them into better citizens of the country.

Case-Gopinath ghosh v/s state of west Bengal ^[15] is another case where respondent Gopinath was convicted under section 302 of IPC, it was urged before the Supreme Court that the accused was under eighteen on the day he committed the offence. Hence the appellant was a child according to the west Bengal children act 1959 and the court had no jurisdiction to deal with the case. Thus again the case was heard in sSupreme Court. The court called for a finding the age of the respondent & held that Gopinath was less than 18 years and the magistrate was directed to proceed as per the west Bengal children act 1959.

Juvenile justice (care & protection) amendment act 2021

Recently parliament passed the juvenile justice (care & protection) amendment act 2021. the amendment provides strength to the provision of protection and adoption of children. There are many adoption case pending before the court and to make proceedings of the court faster now the power is transferred the district magistrate.

Amendment provides that the district magistrate has the authority to issue such adoption orders ^[16].

Other legal from frameworks for welfare of the children

1. The protection of children from sexual offences act (POCSO) 2013.
2. Child labour (protection and regulation) act 2016.

3. United nation convention on the right of the child (UNCRC).
4. National commission for protection of child right 2005.

What's the concern association with the juvenile justice amendment act 2021: Specially the amendment under challenge is the one to section 86 of the J J Act, according to which crime under the special law with punishment between three to seven years have been re-classified as non-Cognizable.

Which the victims themselves re unable to directly report them due to the imbalance in power most such crimes are reported to the police by either parents or child rights bodies and child welfare committee (CWC).

Statistics: according to the national crime records bureau (NCRB) since it started recording these crimes in 2017 they had risen by over 700 percent by 2019.

The NCRB in 2017 recorded 278 cases of crimes committed by cci- in charges across India involving 328 child victims these cases rose to 1968 by 2019 involving as may as 2.699 child victims.

Protections in Indian constitution

Right to against exploitation article 23-24

Article 23: Prohibition of traffic in human being and forced labour: Traffic in human being and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24: Prohibition of employment of children in factories etc.: article 24 say that, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

This article forbids the employment of children below the age 14 years in any hazardous industry or factories or mines without exception.

Laws that were passed in pursuance of article 24 in India

- The factories act 1948.
- The mines act 1952.
- The child labour (prohibition & regulation) act 1986.
- The child (prohibition & regulation) amendment act 2016.
- The child labour (prohibition & regulation) act 2017.

Orders that can be passed in relation to Juvenile: ^[17]

Section 15 of this Act mentions the orders that can be passed by the Juvenile Justice Board in relation to a juvenile who violates the law after any investigation. The Board may pass the following orders in relation to a juvenile: Will be able to pass orders

1. After proper investigation and consultation with the juvenile's parents or guardian, the juvenile will be instructed to go home after admonition or reprimand.
2. Can direct the juvenile to participate in group counseling or other similar activities.
3. Can order to do community service.
4. If the juvenile who violates the law is above 14 years of age and earns money, then the Board can itself order such juvenile to pay a fine, but if the juvenile is below 14 years of age or has earned money. If he does not do

- so then such a juvenile cannot be ordered to pay the fine himself. In such a situation, the parents of the teenager can be ordered to pay the fine.
5. Orders to release a juvenile on probation of good conduct for a period of up to 3 years can be given in two ways.
 - a. A surety may be executed by the parent, guardian or other competent person to keep the juvenile under the care of the parent, guardian or other competent person. During this period, the adolescent will remain under the care of his parents, guardian or other qualified person.
 - b. The juvenile may be kept under the care of a qualified institution for a probation period of good conduct. If a juvenile has been released on probation of good conduct, then the Board can also order that the juvenile remain under the supervision of a designated probation officer and can also impose necessary conditions for this. If a juvenile has been released on good conduct probation in this manner and he does not remain well behaved during the period of supervision, then after necessary investigation the Board may order the juvenile to be sent to a special home.
 6. In the original Act, there were the following provisions for the order of sending a juvenile to a special home.
 - a. If the age of the juvenile is more than 17 years and less than 18 years, then he will be sent to a special home for a period of at least 2 years.
 - b. If the age of the juvenile is below 17 years, then he will be kept in a special home until he becomes a juvenile^[18].

Thus, the minimum period of keeping in the special home was 2 years, but if the Board considered it appropriate in the nature of the crime and the special circumstances of the case, it could also reduce the period of keeping in the special home by a positive order. Under the Juvenile Justice Amendment Act, the maximum period for keeping a juvenile in conflict with the law in a special home has been set, which can be three years. Before the amendment, where the minimum period of being kept in a special home was fixed, after the amendment, instead of the minimum period, the maximum period has been fixed, now if a 12 year old juvenile has to be sent to a special home, then he too can be kept for a maximum period of only 3 years. Can be sent to a special home for this. Before the amendment, such a juvenile could be sent to a special home till he completes the age of 6 years i.e. 18 years.

Before passing any order under section 15(1), it is mandatory for the Board to obtain a social investigation report in respect of the juvenile through a probation officer or a recognized voluntary organization or in any other manner and such report will pass the order only after consideration. In fact, mandatory provisions for receiving and considering such investigation reports have been made so that after the investigation, while passing any order in relation to the juvenile, the Board can pass appropriate orders in relation to the juvenile. On the basis of such report, the Board will be able to have basic information about the social and economic background of the juvenile and the measures necessary for his improvement etc.

Orders which cannot be passed against the juvenile

While Section 15 describes positive provisions i.e. it tells what orders can be passed in relation to the juvenile, Section

16 presents negative provisions i.e. it tells what orders cannot be passed in relation to the juvenile. Can go. A juvenile who violates the law cannot be punished with death or life imprisonment, nor can he be sent to jail in default of paying fine or in default of giving security. It is clear from the provisions prescribed in this section that no order other than the order prescribed in Section 15(1) can be passed against any juvenile below 16 years of age, but in relation to such a juvenile who is more than 16 years of age, Considering the nature of the crime and his conduct, he should be kept in a safe place other than a special home. Orders for keeping can be given. Such teenagers should be kept in a safe place. The maximum period cannot exceed three years. This means that if a juvenile above the age of 16 years has committed a crime like murder in a gruesome manner and his conduct has not been good, then due to the provisions of Section 16 of this Act, he cannot be given death penalty or life imprisonment or imprisonment, but he can be given 3 years imprisonment. Orders can be made to keep him in a safe place for a period up to. Thus, this section describes the powers of the Board to pass orders under the orders passed under Section 15 in relation to any juvenile above 16 years of age, but it is important to keep in mind that such a juvenile cannot be sent to jail. It will not be kept in a warehouse but will be kept in a safe place arranged by the state government^[19].

In the case of Dharamveer vs. State (NCT of Delhi) and others 5, the incident of murder took place on 25th August 1991 and on that date the appellant was 16 years 9 months 8 days old. The appellant was found guilty under sections 302 and 307 of the Indian Penal Code and was sentenced to life imprisonment and the said conviction was also confirmed by the High Court. The Supreme Court, considering the Appellant as a juvenile delinquent, determined that the period of detention as per Section 16(2) cannot exceed the period of three years given in Section 15 and in this case, since the Appellant had served 2 years, 4 months and 4 Days to serve sentence and he is 35 years old. Therefore, it would not be appropriate to refer him to the Juvenile Justice Board for sending him to a safe place and accordingly orders were given to release the juvenile. This decision makes it clear that in view of the provisions of Section 15 and Section Chapter 8 of the Code of Criminal Procedure contains sections 106 to 124. In fact, there is a preventive provision in the said Chapter 8. The Executive Magistrate has been given the power to order the person concerned to give security of good conduct merely on suspicion of commission of a crime. Instead of punishing the accused after the crime has been committed, appropriate provisions have been made in Chapter 8 to prevent such accused from committing crime even before the crime occurs. Section 17 of the Juvenile Justice Act makes a clear provision that neither any proceeding will be instituted nor any order will be passed under Chapter 8 of the Code of Criminal Procedure in relation to a juvenile. The effect of this section is that any action can be taken against a juvenile under the Act only if he has committed a crime. Preventive action cannot be taken by the Executive Magistrate under Chapter 8 of the Code of Criminal Procedure against a juvenile found guilty of violating the law.

16 (2), a person who was a juvenile delinquent at the time of the incident and has become older by the time the trial or judgment is passed, can still be sentenced to a maximum of

three years. The order to be kept in a safe place for a period up to one year may be given by the Juvenile Justice Board. Chapter 8 of the Code of Criminal Procedure contains sections 106 to 124. In fact, there is a preventive provision in the said Chapter 8. The Executive Magistrate has been given the power to order the person concerned to give security of good conduct merely on suspicion of commission of a crime. Instead of punishing the accused after the crime has been committed, appropriate provisions have been made in Chapter 8 to prevent such accused from committing crime even before the crime occurs. Section 17 of the Juvenile Justice Act makes a clear provision that neither any proceeding will be instituted nor any order will be passed under Chapter 8 of the Code of Criminal Procedure in relation to a juvenile. The effect of this section is that any action can be taken against a juvenile under the Act only if he has committed a crime. Preventive action cannot be taken by the Executive Magistrate under Chapter 8 of the Code of Criminal Procedure against a juvenile found guilty of violating the law ^[20].

Section 223 of the Code of Criminal Procedure describes the circumstances when several persons can be jointly charged and tried. Where several persons are charged with separate offences, and those persons do not fall into any of the categories specified in this section, the Magistrate may try all such persons together, if such persons so desire by application in writing and with the consent of the Magistrate. It is resolved that it will not have any adverse effect on such persons and it is expedient to do so. Section 18 of this Act not only prohibits joint trial of a juvenile with a person who is not a juvenile but also prohibits the filing of joint charges. If a juvenile is accused of an offense for which there was joint trial under the common law with an offender who was not a juvenile, then the Juvenile Justice Board taking cognizance of the offense and will order for the other person to be tried separately. Thus, under the Act, the Board has been given the power to order separate trial of the juvenile and any other person. Therefore, in my opinion, in those places where the Act has become effective and the Board has not been constituted and the case is triable by the Sessions Court, then it would be appropriate for the concerned Magistrate to hand over the case to the Sessions Court and the Sessions Court, after such handing over, in the case received, it can order separate trial of the juvenile and any other person under the powers granted in Section 6 (2) of the Act ^[21].

Conclusion

India had started working in the field of providing protection and rehabilitation of children long before the United Nations Convention, but at that time the states used to make different laws for the children of their respective states like the United Nations. This system is seen in some states of India but it is not very suitable because the Supreme Court of India in the case of Sheela Barse gave special instructions regarding making a law related to the safety of children, some every state has its own law. It would be more appropriate that the Parliament make a

Law which can be applied to the entire nation so that the provisions related to children can be applied with uniformity. The Government of India, following the instructions of the United Nations in 1986, Juvenile Justice Act 1986 was made following the guidelines of the Supreme Court and all the provisions related to Juvenile Justice were

included in this Act, but the biggest shortcoming of this Act is that it does not provide a separate approach for delinquent children and neglected children. After this, Juvenile Justice Act 2000 removed this deficiency, but after some time Nirbhaya case happened, due to this, this Act was once again amended and Juvenile Justice Act 2015 was brought. This Act also had some shortcomings like children Instructions for adoption were given by the court; it would be better if some work is handed over to the magistrate. Keeping this in mind, the Juvenile Justice Act 2021 was brought so that the burden of the court is also reduced and the process of Juvenile Justice Act is streamlined. Can be implemented with propriety but still not much improvement is seen.

Still most of the districts have not taken the proceedings of Juvenile Justice Board and Juvenile Justice Act seriously. Juvenile Justice Board and Child Welfare Committee of most of the districts are not doing their work with full responsibility due to which child crimes are increasing day by day in the society. Today's children are being greatly influenced by the changing society. Today's parents do not have time for their children to tell them about moral and immoral things and contribute to making them a gentleman citizen. Children of today commit crime as if it is a fashion. Today's electronic resources have so much influence on children that they want to adopt the films and videos shown in electronic resources in their lives. Such Juvenile Justice Act has been passed. The negligence on the part of the nodal implementing departments will turn out to be a big problem for the children of the society due to which children will become more juvenile delinquent and oriented. If the situation like this continues then the future of the country will also be in trouble somewhere in the future. Therefore, there is a need to implement the Juvenile Justice Act in a more powerful manner. Even after looking at the provisions of other countries, I did not find any very good situation that the law of this country is sufficient for the juvenile. Some or the other problem related to juvenile is being found in the laws of all the states. Due to many national and international efforts. Despite this, the problem related to juveniles remains the same as it was. There is a need to implement the provisions of protection and rehabilitation of children with more vigor. Along with this, the parents of our society also need to give a moral education to their children. So that he can become an example for the society and children look at him and behave well. Children often have the habit of copying others. Children often adopt what they see around them, hence, children are provided with a safe and respectful environment. Should be provided so that children learn to respect their elders and stay away from immoral activities.

Suggestion

In view of the presented study, some of my suggestions are as follows.

1. Special training programs should be made under Section 4 of the Juvenile Justice Act and the Principal Magistrate and other officers of the Board should be trained in child psychology and child welfare.
2. The Board should be provided with a list in which the psychologists, Counselors, Clinical Psychiatrists, Voluntary Organizations, Advocates, List should be from appropriate institutions and persons, special observation homes and voluntary organizations who

work with dedicated spirit in this field. The services of such persons should be availed. The Pita Singh Adhikari of the Juvenile Court should be informed about this. There should be knowledge that new discoveries and research etc. can be encouraged for the benefit of the adolescent girl so that the number of new child molesters can be reduced.

References

1. Lakshmi Kant Pandey V/S union of India 1992 AIR118 1991 SCR (3).
2. Lakshmi Kant Pandey V/S union of India 1992 AIR118 1991 SCR (3).
3. Chamber S, Dictionary New Delhi: Allied publishers p.v.t LTD 1968.
4. Sanyukta Singh the juvenile system in India a critic (2003) CR.LJ54-63.
5. Shubham Kar dam juvenile at eighty (2006) 48 JILI 232.
6. P.W. Tappan delinquency (New York McGraw Hill Book Company 1949 at 30.
7. Blog.ipleader.in.
8. lawetopus.com.
9. In re Gault 387 USI (1967).
10. lawetopus.com.
11. Report of the Indian jail committee 1919-20cmmd 1303page no 1195 [1921].
12. 1989[1] SCAIE page no.268.
13. 1983Cri.L.J 99.
14. [1986]3 SCC page no.598.
15. Subramaniam Swamy & others Raju the members juvenile justice AIR2014 SC 1649.
16. Gopinath Ghosh v/s state of west Bengal AIR 1984 SC 237.
17. <http://www.Drishtias.com>.
18. Shivakant Prajapati. Close thread Child rights in India in the context of juvenile justice laws.
19. Smita S. Karve.Mass Media as a Causative Factor for Juvenile Delinquency.
20. Pitts, John, the Politics of Juvenile Crime Sage, London.
21. Fried Mann, W., Law in Changing Society Universal Law Publishing Co. Pvt. Lad 200.