



“JUVENILE JUSTICE SYSTEM IN INDIA: A SOCIO-LEGAL STUDY”

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ABSTRACT :

The Juvenile Justice Act, 2000 was strongly criticized by scholars from all spectrums of the society for its perceived failure to hold the child offender accountable. Therefore, emphasis was laid on increasing the quantum of punishment, in order to act as an effective deterrent. In the backdrop of the Nirbhaya case, the Parliament of India rushed to enact the Juvenile Justice Act, 2015 as a fire-fighting measure, to mollify the public clamor. As per the new Act, children aged between 16 to 18 can be transferred to an adult criminal court, in the event they are alleged to have committed a heinous offence. An attempt has also been made to study how other nations around the world are addressing the problem of juvenile delinquency.



KEYWORDS : *Rights of the Child, Natural Justice, Juvenile Justice System, Constitutional Law.*

INTRODUCTION :

Children are recognized worldwide as supremely assets of the Nation. The future of the nation lies in the hands of the Children, who have been recognized as the supremely assets of the nation but because of the indifferences of our society in all spheres, these future stake holders are not brought up properly which leads to child delinquency. Child or juvenile delinquency is an alarmingly increasing problem causing a source of concern in all over the world. Children ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, it has not been so. Despite the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, the majority of children in India continue to live without a cared, protected and meaningful childhood.

India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect, right to information, right to expression and right to nutrition etc. have been defined as basic rights of children by the Convention of the rights of the child. Accordingly, India has adopted a national policy on children in 1974 for achieving the above said rights for its children. The National Policy for Children has reaffirmed the Constitutional provisions for adequate service to children both before and after birth and through the period of growth to ensure their full physical, mental and social development. Through

its National Policy for Children the government of India took the responsibility of children's nurture and solicitude saying that equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

India being a party and signatory to the world Declaration on survival, protection and development of children, 1990 and for the purpose of fulfilling its commitment made at the world summit a national plan of action for children has been formulated by the under the Ministry of Human Resource Development, keeping in mind the needs, rights and aspirations of approximately 300 million children in the country.

JUVENILE JUSTICE SYSTEM IN INDIA

In the modern era, a movement for the special treatment of juvenile offenders has begun all over the world, including many developed nations like the United Kingdom and the United States. This movement began in the 18th century. Before this, juvenile offenders received the same treatment as other criminals. For the same reason, the UN General Assembly also approved the Convention on the Rights of the Child on November 20, 1989. The best interests of juvenile offenders are the focus of this convention. To ensure their social reintegration, the Convention prohibits juveniles from participating in judicial proceedings or trials. The Indian Regulation takes cues from the Show and changes the Adolescent Equity Demonstration of 1986. As an outcome, the Adolescent Equity (Care and Security of Youngsters) Act, 2000, was brought into Indian regulation.

After Nirbhaya case many people are aware that a separate Justice System exists for Juveniles. 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 court. They demanded death sentence for the child involved in Nirbhaya case. There was up roaring in parliament and the new law (Juvenile Justice Care and protection of children 2015) came into existence in India. The constitution of India empowers and cast duty on the state to ensure that their minimum requirements are met and their basic human rights are fully protected. The state intended to upkeep the principle adopted in the constitution. 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.

CLAIM OF JUVENILITY

The "claim of juvenility" is the first and most contentious issue among socialists and the legal community. The Juvenile Justice Board will make a decision regarding the juvenility claim. The Board had to take into account Rule 12 of the Juvenile Justice Rules, 2007 in order to determine the claim of juvenility. However, the claim of juvenility can be raised before the court at any stage of the proceedings, including after the Board has resolved the matter. In *Kulailbrahim v. State of Coimbatore* AIR 2014 SC 2726, the Court noted that the accused has the right, in accordance with Section 9 of the Juvenile Justice Act of 2015, to raise the issue of juvenility at any time during the trial or even after the case has been resolved.

In *Deoki Nandan Dayma v. State of Uttar Pradesh* 1997 SCC 525, the court ruled that an entry in a school's register with the student's date of birth is admissible evidence for determining a juvenile's age or determining whether an accused is a juvenile or a child.

The Supreme Court reiterated once more in *Satbir Singh & Others v. State of Haryana*, AIR 2005 SC 3549 that the Juvenile Justice Board must take into account the date of birth recorded in school records when determining whether an accused is a minor.

In Krishna Bhagwan v. State of Bihar AIR 1989, the court ruled that the date the crime was committed should be considered when determining a juvenile's age for a trial under the Juvenile Justice Board.

However, in the subsequent case of Arnit Das v. State of Bihar, AIR 2000 SC 748, the Supreme Court overturned its previous decision and ruled that the accused should be brought before the appropriate authority on the date the claim of juvenility is decided.

The New Adoption Rules: Integrity of Parent-Child Relationship in the hands of Magistrate:

The Juvenile Justice (Care & Protection) Amendment Bill, 2021, introduces new components taking into account the existing lacunae within the law governing the acts of minors. Firstly, it provides for the law surrounding the adoption of such minors. Adoption is an act that separates the child from his biological parents, making them the legitimate child of the adoptive parents, giving the relationship a legal status of rights and privileges characteristic to parent-offspring alliances. Rehabilitation and social integration being the first of the best options of redressal mechanism, adoption has been made a part of the act to provide protection and care for children through means of a family wherever possible. According to the former 2015 Act, the child's adoption will be final on an order passed by the civil court. The 2021 Bill has expanded the scope of those who may adjudicate and issue adoption notices to include district magistrates.

A critical view of the expansion of authorities qualified to issue adoption notices:

On one hand, courts of law have been established to adjudicate disputes and pass orders, notices, and injunctions were deemed necessary. On the other, the role of a district magistrate is to overlook the general administration of his territorial jurisdiction. District magistrates are appointed after their successful completion of the Indian Administrative Services exam. Administrative Services Appointees are around the country in each and every district. They deal with administrative matters on a daily basis. What is to be questioned here is the reasonableness of pawning off adoption matters to magistrates when the judiciary can better interpret the law and take decisions. The question that is to be considered while evaluating their competency is not whether they have jurisdiction but whether they have the capability to try the issue. Adoption of a child results in creating a permanent and life-long relationship between the parents and child. This clause of the bill raises questions as to the justifications regarding the shift in authority. It was observed that in addition to the burden of cases on courts, there was also a significant delay in adjudication of disputes that made the system that existed before this amendment very inefficient.

The amendment provides for whoever is aggrieved by an adoption order passed by the district magistrate the choice to appeal to the Divisional Commissioner within 30 days, and the same shall be disposed of within a period of 4 weeks.

It's noteworthy that, ever since the Juvenile Justice (Care and Protection of Children) Act, 2000, including the replacement by the 2015 Act, the authority to decide on adoption orders has remained with the courts. In fact, in the United States, France, and Germany, the courts solely have the power to issue adoption orders. The Juvenile Justice (Care and Protection of Children) Act of 2000 and its subsequent amendment in 2006 constitute a significant legislative endeavor to acknowledge the adoption of orphaned, abandoned, and surrendered children by people of all religious backgrounds. It cannot be denied that it is a secular law under which any person, irrespective of faith, can adopt an orphaned, abandoned, or surrendered child. Unlike other laws, it is more centered on children by entrusting significant power to the district magistrates.

PROVISIONS REGARDING CRIMES COMMITTED BY MINORS:

While seriousness of a crime is to be independent of external factors, penalties shall take into consideration the wisdom or understanding of the perpetrators. This is why in criminal law and other statutes, the minimum prescribed age to hold a person liable is 18 years. It is deemed that below the age of maturity, they do not have the decision making capability or rational thinking. To scrutinize the

crimes committed by juveniles appropriately, the 2015 Act has divided criminal offenses into three categories: heinous, serious, and petty. The bill added through an amendment to Section 2 through clause 54 (a) the punishment of serious offenses, including acts warranting a sentence of more than seven years, and a minimum or not less than seven years or not prescribed.

In *Shilpa Mittal v. State of NCT of Delhi*, the Hon'ble Supreme Court held that the Juvenile Justice Act does not include within its scope of operation the fourth category of offenses, which carry a maximum sentence of more than seven years but no minimum sentence or a minimum sentence of fewer than seven years, which are treated as "serious offenses" under the Act. The court further instructed the Law Ministry and the Home Ministry to ensure that Parliament addressed the issue of the 4th Category of Offenses highlighted in this decision as quickly as possible.

JUVENILE JUSTICE AND CONSTITUTION OF INDIA

The Constitution of India is considering as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. In the same way that the Constitution's Part IV contains Directive Principles of State Policies (DPSP), which serve as general guidelines for the formulation of government policies, the Constitution's Part III contains Fundamental Rights for its citizens. Constitution has given a few essential rights and arrangements particularly for the government assistance of kids. Like:

1. Article 21A: The right to education states that every child between the ages of six and fourteen must receive free and compulsory education in the manner that the state may, by law, determine.
 2. Article 24: The right to be protected from dangerous work for children under the age of 14
 3. right to be shielded from any form of adult exploitation. Section 39(e).
 4. Right to be shielded from forced bonded labor and human trafficking. Section 5 of Article 39
- Right to a healthy diet and an adequate standard of living (Article 47) According to Article 15(3) of the Indian Constitution, the State is granted special authority to enact any specialized laws for the benefit of women and children.

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

Criminal Justice (Reformative or Punitive) and Juvenile

Juvenile Justice is a legal framework which defines justice for juvenile under the Indian Legal System. The system is giving a special treatment and protection to juvenile delinquency. Juvenile Delinquency means a crime committed by youth who is under the age of 18 years. Everyone is aware that the number of crimes committed by minors is rising, and this rising number is raising the contentious issue of age determination. One of the most crucial aspects of determining an accused person's maturity is age determination. The question of whether juveniles can be tried as adults is being posed by the rising crime rate. The act itself provides an answer to the question by stating that any juvenile offender who falls under the category of "child with conflict with the law," as defined in subsection 13 of Section 2 of the Act, shall be tried as an adult and placed in a Child Care Center or Rehabilitation Center (until the offender reaches the age of 21 at which point he or she may be transferred to jail or prison). As a result, the current Juvenile Law in India places a high value on age determination when determining whether an offender falls under the jurisdiction of the Juvenile Justice Act.

The Act says that juvenile offenders can only be punished for a maximum of three years, and this punishment is also valid for heinous crimes. The maximum sentence for an adult offender is seven years in prison, life in prison, or the 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 talk 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 go 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.

CONCLUSION:-

The increasing rate of juvenile crime in India is a very concerning issue and need to be focused upon. Although government has laid various legislation and rules to stop the present laws on juveniles is not creating a deterrent effect on the juveniles and thus the results are not fruitful and legislative intent is not accomplishing.

The amendment aims to improve the protection of children, including those who need legal protection and those in legal trouble, as well as speed up the adoption process, indicating that the juvenile justice system has a promising future. The rising rates of juvenile crime in India are a significant concern that must be addressed. Although the government has passed a series of regulations to curb juvenile crimes, the existing juvenile policies have no impact on the youth. Thus the results are ineffective, and the legislative intent is not fully met. The impact of these measures will be determined by how it is implemented in the real world, even if it appears revolutionary on paper.

Long-standing failures to enforce juvenile laws have increased minor crimes, minor agency failures, lengthy adoption procedures, corruption, and other issues. The most recent amendment is a much-needed step that has been applauded by many. Nevertheless, it will not yield results until authorities, particularly District Magistrates, are adequately trained and monitored to implement the amendments stipulated within the bill of 2021.

REFERENCES

1. Dr. B.K. Das – Juvenile Justice in India – 1st Ed. 2011 at p. 10. Nirbhaya Case – https://en.wikipedia.org/wiki/2012_Delhi_gang_rape retrieved on 14.4.16
2. Beijing Rules 1985, United Nations Rules for the protection of Juveniles Deprived of their liberty 1990 etc.
3. The objective and reasons of JJ Act 2015.
4. Art. 14, 21-A, 15(3), 39, 45, 47 and 51 (A) of the constitution of India 1950.
5. Dr. B.K. Das, Juvenile Justice in India & POCSO Act-2012 2nd Edition 2014 & Dr. P.K. Singh, IBR, xxxi (3&4) 2004 at pp – 115-116 and Dr. G.S. Sharma, IBR, xxxi (3&4) 2004, P.447.
6. Kohlberg, L – Child psychology and child Education: A cognitive development view, 1987, New York, Longman
7. 1998 SCC, Del 879 : (1999) 77 DLT 181
8. Section 82 of IPC states that a child below the age of seven years is *doli incapax*
9. Bare Act, The Children Act, 1960, Universal Publication, 12th Edition

10. Article 1 of the UN Convention on the Rights of Child, 1989.
11. Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 662, Central Law Publications, 17th edition, 2017.
12. http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf
13. A person under fourteen years of age.
14. A person between the age group of fourteen and seventeen year.
15. Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 673 ,Central Law Publications, 17th edition, 2017.
16. AIR 2014 SC 2726
17. 1997 i0 SCC 525
18. AIR 2005 SC 3549
19. AIR 1989
20. AIR 2000 SC 748
21. Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.
22. Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 665, Central Law Publications, 17th edition , 2017.