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Juvenile Justice in India

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ABSTRACT

This paper has in deep dealt with the juvenile justice system in India, the juvenile justice (Care and Protection) Act of 2000 being the basic legal framework for juvenile laws in India which primarily focuses on children who are in conflict with law and children who are in need of care and protection. The authors in this paper have stressed on the first kind of juveniles. The 2012 Delhi gang rape case has triggered various changes into the existing juvenile laws. The paper also chalks in detail about the amendments made in Juvenile Justice Act, 2015 and how reformative has it evolved to the previous Juvenile Act in 2000. The paper also unravels about the causes of juvenile delinquency and has addressed the general question of whether mental sickness is the sole reason for their criminal acts. A comparative study of juvenile laws in India and other countries across the globe is made. The authors have tried to answer the burning question regarding, lowering the age of criminal responsibility and also emphasized on how important it is for the judiciary and the human rights to go hand in hand to solve this issue and to reduce the crime rates effectively.

I. INTRODUCTION

Juvenile refers to immature or young offenders unlike minors who are young and teen persons. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice defines “Juvenile” as a child or a young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult. According to Section 2(k) of the Juvenile Justice act 2000, “juvenile” or “child” is a person who has not completed 18 years of age. The Juvenile Justice in India has evolved after the gruesome incident of Nirbhaya Delhi gang-rape case. The exploitation of innocence has become quite common today and criminals below the age of 16 have increased. This paper takes us through a route map of juvenile delinquency and laws related to it.

The frightful Delhi gang rape case had a great impact on people’s view towards the act. One of the accused Pawan was a under the age of 18 and was therefore tried in the juvenile court after which several demands for reduction of age of juveniles were put before the Supreme

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court which were eventually turned down. However, on 31st August 2013 the juvenile was awarded a sentence of 3 years in a reform by the JJ court.

The Ministry of Women and Children development on 12th august 2014 introduced the Juvenile Justice (care and protection) bill in the Lok Sabha after an elaborative consultative process with the regional, state and national governments. The proposed amended version of the bill would replace the juvenile justice act,2000 by identifying and classifying offences as serious, heinous and shall have differentiated processes for each category. In case a juvenile commits a heinous crime the Juvenile Justice board along with its psychologists and social experts will examine if the crime was committed as an “child” or as an “adult” in order to ensure that the rights of juvenile are duly protected. It was passed by the Lok Sabha on 7th may 2015. In spite of the parliamentary standing committee recommending removal of clause 7 which relates trial of a juvenile as an adult for committing heinous offence the government moved the bill ahead and it was passed by the Rajya Sabha on 22nd December 2015. The amended was essential in order to take in penal approaches in the existing juvenile laws which were until then rehabilitative and reformative.

The present Juvenile Justice act, 2015 came into effect from 15th January,2016. The newly enacted juvenile law provides provision for both children in need of care and child in conflict with law. A few key features of the law are to remove the negative undertone related to the word Juvenile, differentiated definitions for orphaned, abandoned, surrendered children and defines degree of serious and heinous offences. The act also elaborately describes the powers, functions and responsibilities of child welfare committee and lays down procedures regarding inquiry of juveniles by the Juvenile Justice Board. Several other amendments were also made to the juvenile justice act some of which are listed below.

- If a minor commits a heinous crime and has been apprehended before the age of 21 then he shall be prescribed 3 years of imprisonment in a special home with counselling, if the minor had been apprehended after the age of 21 he shall be tried as an adult and awarded a maximum of 7 years of imprisonment.
- A new clause relating to fair trial is included under which assessment of child with special needs must be done in a child friendly environment.
- Life imprisonment or death sentence cannot be awarded to a juvenile.
- Inquiry of child with charge of heinous crime must be done within 60 days from the first production of child before the JJB.

- Amendments relating to adoption were also made. The act states that “*inter-country adoption allowed if adoption cannot take place within the country, within 30 days of the child being declared legally free for adoption.*”
- “*Any child who has been abandoned by biological parents due to unavoidable circumstances will not be considered to be wilfully giving up the child.*”

II. CAUSES OF JUVENILE DELINQUENCY

Juvenile delinquency refers to a violation of law committed by a juvenile. It is an antisocial behaviour that is beyond the control of parents and are subjected to legal action.

School problems, economic problems, lack of adult interaction, physical abuse and substance abuse and peer pressure are the main reasons which can lead a minor to criminal activity.

School problems are one of the main causes of juvenile delinquency. There exist diverse and multiple reasons related to schooling that can lead a minor to criminal activity. Absenteeism in schools is the reason why children lack the benefit from education or learn discipline.

When there is no monetary support, children tend to steal. If a minor is not in a position to have the basic needs, there is high probability for many types of illegal activities to occur.

Children are influenced by the people around them. When they lack interaction with adults, they do not get moral guidance. It is very important for any child to have bond with good adult who shows them what is acceptable behaviour and what is considered wrong.

Compared to non-abused adolescents, juveniles exposed to physically abusive and psychologically aggressive parenting have been found to have high rates of self-reported delinquency, involvement in serious and violent delinquent behaviour. (Kelly Thornberry & Smith, 1997)

When parents and family members are engaged in drug and alcoholic practices children in that circle get involved in the same practice as they get altered in decision making.

Peers effect young people’s decision. It is important to quantify the extent to which a criminal behaviour is in nexus to a delinquent peer. Children are more influenced by criminal peer than adults. Peer pressure is associated with adolescent risk-taking activities delinquency, drug abuse, sexual behaviours etc.

Is mental sickness the only cause of juvenile delinquency?

Psychological factors such as aggression, restlessness, hyperactivity, risk taking are some of the issues primarily related to Youth violence. However, these factors are not solely

responsible, disorders like worrying, nervousness and anxiety and other external factors can be largely correlated to recidivism in juveniles. Childhood trauma and exposure to violence show connection to the antisocial behaviour of the child which include substance use, delinquency, gang involvement, stress disorders, depression and aggression. Relying on the fact that poor mental health is a major cause of juvenile delinquency, will solitary confinement and rehabilitation away from family in the juvenile home help reform children in conflict with law? Juvenile detention and correctional facilities may have further impact on mental health since they are being detained from their family and friends, restricted housing and may find difficulty in cohabiting among the large crowd with other juveniles. Alleged barriers may deter the willingness of juveniles to pursue the treatment. Thus, juvenile homes must overcome these drawbacks and treat juveniles who commit crime due to disturbed mental condition by treating them with extra personal care and individual attention so that they feel secure and comfortable in pursuing the rehabilitative treatment.

III. COMPARATIVE STUDY OF JUVENILE ACT IN OTHER COUNTRIES

COUNTRIES	NAME OF THE ACT	AGE OF CRIMINAL RESPONSIBILITY
United States of America	Juvenile Justice and Delinquency Prevention Act	Ranges from six to ten years
Sri Lanka	Children and Young People Ordinance	Above twelve years
United Kingdom	Children and Young Persons Act of 1963(Amended)	Above ten years
United Arab Emirates	Juvenile Delinquents and Vagrants Act	After seven years
Brazil	The Statute of the Child and Adolescent	Above twelve years
Singapore	Children and Young Persons Act of 2001	Above seven years
South Africa	Child Justice Act	Above ten years
Australia	Young Offenders Act, Youth Justice Act, Children and Young People Act	Above ten years

IV. CASE LAWS

- SAMPURNA BEHRUA V. UOI

This is one of the landmark cases on juvenile justice where the battle fought for 12 years came to a conclusion by the Supreme Court delivering the judgement stating the numerous suggestions for the State and Central Governments and other relevant players to improve the condition of juvenile justice in the country.²

- MUNNA V. STATE OF UP

Juvenile delinquency is by and large the product of social and economic maladjustment. Even if it is found that these juveniles have committed any offence, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail. Moreover, the objective of the punishment being reformatory, we fail to see that what social objective can be gained by sending them to jail where they come in contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments.³

- For the claim of juvenility, in case of DEOKIS2NANDAN AND ORS. V. STATE OF UP, the Supreme Court reiterated that the date of birth recorded in the school record can be taken into consideration in order to determine if the accused is juvenile or not.⁴

- DR. SUBRAMANIAN SWAMY AND ORS. V. RAJU THR.MEMBER JUVENILE JUSTICE

The trial procedure and sentencing principles are equally applicable not only to the adult offenders but also to the juveniles who are transferred to the adult criminal court. However, juveniles cannot be given death penalty or life imprisonment without possibility of parole.⁵

- HARI RAM V. STATE OF RAJASTHAN & OTHERS

The court shall decide the juvenility or otherwise of the juvenile or child in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to jail or observation home.⁶

- SHAKTI MILLS GANG RAPE AND MURDER CASE

The 3-adult accused who committed the offence of gang rape, disrobing and unnatural offences were sentenced to death and the minor accused was tried by the Juvenile Justice

² (2018) 4 S.C.C. 433

³ A.I.R. 1982 S.C. 806

⁴ (1996) CriLJ 61

⁵ A.I.R. 2014 S.C. 1649

⁶ (2009) 13 S.C.C. 2011

Board and convicted, and sentenced to three years in Nashik Reform School.⁷

V. CONCLUSION

Juvenile crimes have been growing rapidly through decades. There has been several controversial debates and discussions regarding determining age of juveniles and the degree of punishment being awarded to them. From the last decade, heinous crime committed by the juveniles during late adolescence has tremendously increased. The sole reason being not only lack of education and mental illness, but also the poor environmental condition in which they are brought up due to insufficient parental care. This stage of one's life being the most crucial one, needs proper counselling in order to mould them as a better citizen. But out of anxiety and exposure to substance abuse, pornography and peer pressure the teens are triggered to a wrong path. This is due to combination of both social and biological factors. Hence, they must be handled in a way such that their rights are not being violated, as well as, the laws in force and the punishments imposed do not go against them. Thus, the Human Rights and the Judiciary must go hand in hand and work towards reforming the juveniles rather than debating among themselves.

This paper concludes by penning that there must be a consonance between Human Rights and the Judiciary for an effective Juvenile Justice in India.

⁷ (2019) A.L.L.M.R.(Cri) 2889

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