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Juvenile Justice System

ZEBA DARVESH¹

ABSTRACT

This article conceptualizes the status of Juveniles in our society and the need for the legislations to keep their pace with the changing needs of the society. The position of Juveniles in India and the various legislations introduced namely: Children Act ,1960 , Juvenile Justice Act of 1986 , Juvenile Justice (Care and Protection of Children) Act, 2000 , Juvenile Justice (Care and Protection of Children) Act, 2015 and The Juvenile Justice (Care and Protection of Children) Act, 2015 replaced by Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 have been discussed with supporting case laws. This research paper also includes a comparative analysis which has been conducted to draw a comparison between the Juvenile Justice System in different countries and the legislations that have been implemented to ensure justice in their society. There is an emerging need to improve the Juvenile Justice system and to fill the lacuna in the legislations. Juvenile delinquency imposes a burden upon the society therefore, effective preventive measures should be taken by the State to ensure social upliftment and rehabilitation of Juvenile's who are exposed to such offences. Juvenile are not criminals of the society rather they too are the victim of the society.

Keywords: *Juvenile Justice, the legislations introduced, social upliftment and rehabilitation into society.*

I. INTRODUCTION

Juvenile is derived from a latin term 'Juvenis' that means 'young'. A child who has not attained the age of 18 is known as a Juvenile. During the past few years, it has been observed that there has been a significant rise in the number of crimes or offences committed by children especially between the age of 16-18 years. The psychology or the frame of mind of the child for the commission of any offence is mainly due to the lack of education, financial constraints, early-life upbringing or family havoc. Another important issue which is highly rising is the illegal use of children for unlawful purposes e.g. – selling of drugs. Since, the child lacks greater knowledge and is innocent, he or she can be easily manipulated and can be lured into the commission of any crime or offence.

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There have been various legislations in India for the protection of such juveniles namely: The Children Act of 1960, after which came in the Juvenile Justice Act of 1986 which was amended in 2000 which was again amended in 2015. After which, The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 had been introduced in the Lok Sabha. All these acts have been formulated for the sole purpose of protection of the interest of the juveniles by providing for a uniform policy to ensure that their rights remain protected and thereby prevent any kind of exploitation against them. But, due to the significant rise in the crimes being committed by such juveniles the law makers had to take an action to prevent the same which is why the recent amended legislation, Juvenile Justice Act of 2015 not only protects the interest of the such juveniles but also helps in their rehabilitation into the society.

A major incident that occurred which changed the face of Juvenile Justice in India was the case of Nirbhaya Delhi Gang Rape Case ² in which the major issue and question which arose being the Supreme Court of India was whether the accused who was six months short of attaining the age of 18 years could be sentenced for the same punishment as the other accused. In order to tackle this question a new law was introduced by the Parliament to cater to such questions, The Juvenile Justice Act of 2015. This act has brought in some significant changes in addressing the issues of juvenile justice one of which is the juveniles between the age of 16-18 years of age shall be tried as an adult in the court of law.

II. POSITION IN INDIA

Children Act ,1960 replaced by the Juvenile Justice Act of 1986

The Rights and position of Juvenile have been altered in the course of time. First came in the Children Act 1960, however this act was only limited to applicability in the Union Territories. The objective of this act was to protect and uplift the delinquent and neglected children of the society. Due to the inadequate applicability and discrimination on the basis of sex of this act, it was replaced by the Juvenile Justice Act of 1986. This act was applicable for the entire country of India and was enacted by the Parliament to ensure the protection, development or rehabilitation of the delinquent or neglected juvenile into the society. This act intended to meet the shortcomings of the Child Act,1960 by having a uniform justice law. Although, the Juvenile Justice Act of 1986 retained the primary features of the Child Act, 1960. However, it contained the sex-discriminatory definition of a 'child'. This act also provided for the establishment of an Advisory Body and an adjudicating body to resolve such disputes relating to juveniles.

² **Mukesh v. State (NCT of Delhi)** [(2017) 6 SCC 1]

Introduction of the Juvenile Justice (Care and Protection of Children) Act, 2000

But this act too had various inadequacies such as the discriminatory definition and the two different adjudication bodies for the purpose of dealing with different categories of juvenile which created confusion which is why the Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. This act dealt with offences committed by the juvenile which must be resolved in a manner which differed from the adults. Section 4³ of this act was also empowered for the creation of a Juvenile Justice Board. In the case of Delhi High Court Legal Services Committee vs Union of India and Another⁴ it was held by the Trial Court that it might pass orders for custody of minor victims without taking into consideration mandatory provisions provided under Law For safe custody of Victims, they should be kept in such place or manner which was fit as per provisions of the Act and decided by Court No investigation required to be conducted under Section 17A of the Act. This act was criticized because of its non-applicability for dealing with heinous crimes committed by such juveniles and an effective method for rehabilitation into society.

Enactment of The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, a new legislation was introduced. This legislation brought forth an era wherein the needs of the child were catered to, principles of protection, care and social upliftment were given importance. This legislation particularly Section 3⁵ of this Act speaks about principle of non-discrimination, principle of best interest of the child, principle of presumption of innocence, principle of right to maintain privacy and confidentiality, principles of natural justice, principle of diversion, principle of dignity and worth, principle of safety, principle of family and responsibility and principle of a fresh start. These principles played a key role in ensuring the safety and protection of each child however, the major disadvantage was the deficit financing which crushed the Act of 2000 and negatively affected the act of 2015 and its policies of rehabilitation and reformation of the child.

The Juvenile Justice (Care and Protection of Children) Act, 2015 replaced by Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021

Even after the Juvenile Justice (Care and Protection of Children) Act, 2015 was comprehensively established by the legislators it had certain drawbacks which were

³ Juvenile Justice (Care and Protection of Children) Act, 2000 (India) Sec 4

⁴ Delhi High Court Legal Services Committee vs Union of India and Another on 12th Aug (2014)

⁵ Juvenile Justice (Care and Protection of Children) Act, 2015 (India) Sec 3

addressed in the **Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021** that would seek to strengthen the provisions relating to protection and enforcement of rights of juveniles. This amendment acts also addressed certain issues for example –. The National Commission for Protection of Child Rights (NCPCR) audited the Child Care Institutions (CCIs) in 2020 and it was articulated that 90% of the CCI's are run by NGOs and even after the amendment of 2015 was brought in ,39% CCIs were not registered. This depicted the lack of implementation and enforcement of the Act of 2015.

- It also found that less than 20% CCIs, especially for girls, had not been set up in some states, 26% child welfare officers were not there.
- Moreover, three-fifths have no toilets, one-tenth have no drinking water and 15% homes don't have provisions of separate beds, no diet plans.
- Rehabilitation of children is not a priority for childcare homes and children are reportedly kept in such institutions to get funds.

Earlier an offence which is punishable with imprisonment for 3 to 7 years is a cognizable offence and non- bailable, this bill amends this provision and states that such an offence would be non- cognizable. This bill also introduced Child Welfare Committees (CWCs) to promote the welfare and well-being of the child.

III. SCOPE OF IMPROVEMENT

The development of a country depends upon the overall development of a juvenile however, there has been a significant rise in the crimes associated with juveniles therefore, immediate measures are necessary. In India there have been various legislation but no justice system can be perfect, similarly the legislation relating to juvenile also suffer some drawbacks. Firstly, the juvenile's mental health must be given due consideration as it is interrelated with them being vulnerable. Secondly, addressing and acknowledging the mental health and reason which led the juvenile to commit the offence must be given importance as it would help to examine the root cause thereby, preventing the commission of a similar offence in the long run. Thirdly, one of the most important reason for the failure of effective legislations is the lack of proper implementation, the Juvenile Justice Care and Protection of Children) Act of 2015 addresses the issue of mental health and well being of the juvenile but this has not been effectively implemented. Fourth, the lack of understanding of child psychological and behavioural aspects by the social worker and child care institutions limit the growth and development of the juvenile. Fifth, lack of knowledge and training of child care institutions and the workers regarding the mental health and well being of a child can lead to serious

consequences for example being subjected to bullying by senior inmates, sexual abuse therefore there should be regular monitoring over the juvenile to ensure that all the provisions of the act are being implemented.

In order to address the above stated drawbacks there must be proper training and knowledge provided to the child care institutes and the workers associated with such institutes especially regarding the mental health as this plays a crucial role in the well-being of the juvenile. The outlook and approach of the society towards such juveniles who have been engaged in offences is a major challenge in the reintegration and rehabilitation of such children. Generally, the society look down on such children and degrade them further which lowers their self-esteem. This leads to lack of social integration, which may cause stress, inferiority complex, or other mental health related issues in the children which is why there must be awareness of the problems faced by the juveniles and counselling sessions for juveniles to overcome such problems.

In the case of Delhi High Court Legal Services Committee vs Union of India & Another⁶ made the Supreme Court consider the need to re-enact the existing law i.e. The Juvenile Justice (Care and Protection) Act of 2000 and to ensure juvenile justice. There were also many proposals and suggestions made to improve the procedure for administering the justice which should be meted out to juvenile's who are engaged in such offences not only for their personal betterment rather for the betterment of society at large. Some of the suggestions made in this case are listed below:

- (i) to establish a juvenile justice system which caters to the needs of the child and meets the developmental needs as compared to the criminal justice system which is applicable to the adults.
- (ii) to ensure that the legislations for juveniles in a particular country is in conformity with the United Nations Convention on the Rights of the Child
- (iii) to ensure the cases pending before the court of law relating to the juvenile or child are addressed in a manner to ensure speedy disposal of cases by the authorities and place a limitation period of four months.
- (iv) to fix the responsibility of the State to act as a facilitator rather than simply exercising the function of the implementation of the proposed legislation;

⁶ on 12th Aug (2014)

This decision was played a huge role in the change in the procedure which had to be followed in ensuring justice was delivered to every juvenile and the same was enforced upon the State.

IV. COMPARATIVE ANALYSIS

Belgium

Belgium is known for having the best juvenile justice system in the world according to the survey conducted by the Child Rights International Network (CRIN). A global study was conducted on children's access to justice which ranked countries according to how effectively minors can use the law to challenge violations to their rights Belgium was number one in the list, according to the CRIN study, followed by Portugal, Spain, Finland and the Netherlands.

Belgium has an upper hand as compared to other countries for particularly its child friendliness in the family courts where even children are heard in divorce cases and their opinion plays a huge role. Secondly the provision of free youth attorney. Belgium has framed such a protection model for the purpose that children or minors are unable to take responsibility for the crimes or offences they commit which is where the FEDERAL YOUTH PROTECTION ACT OF 2006 comes in and represent the core of Belgium Juvenile Justice system.⁷

The Juvenile Protection measures are also known as measures of care, preservation and care, according to the Belgian Law a person cannot be held liable for commission of an offence and they would fall under the ambit of Juvenile Protection system⁸ rather than criminal law system. In the case of *Nortier vs The Netherlands*⁹ the European Court of Human rights supported the contention that the youth court judge forms a better perspective and takes appropriate measure in order to deliver justice to the juveniles because of his prior knowledge in handling cases relating to juveniles.

France

France is a country which places a priority and caters upon the educational and emotional upliftment of the youth. The first juvenile legislation that was passed by France was the Juvenile Court Legislation in 1912, by this legislation a special court was established which handled cases relating to juveniles. A more detailed approach was introduced in the legislation since 1945 which created Tribunals for Children which generally composed of three members

⁷ Cartuyvels, Y., Christiaens, J., De Fraene, D., & Dumortier, E. "Juvenile Justice in Belgium seen through the sanctions looking-glass" 2010

⁸ In F. Bailleau & Y. Cartuyvels "The criminalisation of youth, Juvenile justice in Europe, Turkey and Canada" (pp. 29–58) 2010

⁹ *Nortier v. the Netherlands* 3924/88 on 24.8.1993

out of which one was a Juvenile Judge¹⁰. The lesser degree offences that were committed by juveniles were adjudicated and handled by a special children's judge and plays the role of a magistrate and conducts both investigating and judging minor cases involving juveniles¹¹. France has created three stages which explain the position of minors with respect to the offence they commit, first comes the infant without the perception and understanding of the act committed which is why they cannot be convicted because of the lack of understanding and mental element. Second, a minor between the age of 7-13 years of age has a sense of discernment however, no criminal action can be taken against them rather educational measures can be taken according to the law of 2002. Third, the minor between the age of 13-18 years of age when commit and offence generally educational measures are taken but in special cases criminal action can be taken too.¹²

A parliamentary report in 1998 on "responses to juvenile delinquent" highlighted two important limitations faced by France firstly that the police forces did not have clear vision of the State's policy with respect to minors and secondly the French Judiciary lacked judges or any specialisation in order to deal with juvenile delinquents¹³ France has implemented measures like the creation of closed educational centres which are effective as it is an alternative to imprisonment.

Germany

The cases relating to Juveniles are treated separately from the cases against adults which is practiced all over the world. Similarly, Germany has adopted this method too as it ensures equity and protects the innocence of minors by providing the necessary educational measures and to uphold the concept of prevention rather than punishment. However, the conflicts against juveniles were rising in 1800's, Germany adopted and established a separate system of Juvenile Courts in 1923. German law has categorised the juveniles into three sections: children (under the age of 14 are not responsible because of their youth and innocence) juveniles (between the age of 14 to 18), and adolescents (between the age of 19 to 21). Generally, adolescents are considered more accountable for their actions than juveniles and are generally subject to criminal punishment.¹⁴ The juveniles that are between the age 14-18 years are adjudicated by the Youth Court. The youth courts have been empowered with the duty of considering the

¹⁰ Vol. 39, No. 2 Catherine Blatier "JUVENILE JUSTICE IN FRANCE: The Evolution of Sentencing for Children and Minor Delinquents" *The British Journal of Criminology* (Spring 1999), pp. 240-252

¹¹ State Party Reports- https://www.unicef-irc.org/portfolios/documents/382_france.htm

¹² Sénat in French

¹³ Réponses à la Délinquance des Mineurs C. Lazerges et J.-P. Balduyck

¹⁴ Dünkel, F "Juvenile Justice in Germany: Between Welfare and Justice". In: JungerTas, J., Decker, S. H. (Eds.): "International Handbook of Juvenile Justice" p. 225–262 Berlin, New York: (2006)

young adult's maturity, developmental stage, and circumstances when determining the best avenue of treatment to ensure justice is meted out.

The German Juvenile system is characterized mainly by education , reformative measures, minimum intervention and the priority is given to diversion¹⁵ The Federal Supreme court of Germany has held that the juvenile's generally commit crime when enraged by anger "spontaneous acts resulting from the developmental forces of juvenile age," which has included a case where a 20-year-old young adult killed his 3-month-old baby due to being angered by the baby's crying¹⁶ Furthermore, the Federal Supreme Court has ruled that a young adult has the maturity of a juvenile if his or her personality is still developing¹⁷

V. CONCLUSION

The United Nations has set up a separate convention known as United Nations Convention on the Rights of Child (CRC) to ensure that the rights of the child are being protected irrespective of their country, colour, religion, sex or nationality Convention has defined the term 'child' as a person who has not attained the age of 18. The CRC aims to establish a balance between the rights granted to children and those of the parents or adults or guardians that are responsible for the overall growth, development and survival of such a child and this can be implemented by allowing the children to participate in decisions concerning them and their future, by doing so it would the child more aware and responsible. The implementation of such a convention depicts awareness and greater attention towards children which is why every country has developed a juvenile justice system to transform and protect juveniles that have committed offences. There is a ray of hope that juveniles engaged in the midst of crime come out of that horror and can once again reenter into the society.

"The only effective way to reduce and prevent juvenile crimes is to balance tough enforcement measures with targeted, effective and intervention initiatives"¹⁸

¹⁵ Clarke, E *Germany's 'Normalized' juvenile facilities a success.* (July 25, 2021 19:12 p.m.) <http://jjie.org/2015/03/17/op-ed-germanys-normalized-juvenile-facilities-a-success/>

¹⁶ Pruin, I., & Dunkel, F. (€ 2015) "Better in Europe? European responses to young adult offending" <https://www.t2a.org.uk/research/better-in-europe-european-responses-to-young-adult-offending>

¹⁷ International Centre for Prison Studies. (2010) "Young adults and criminal justice: International norms and practices" <https://www.t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf>

¹⁸ Janet Reno – The Attorney General of USA