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Transformation of the Juvenile Justice System in India

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ABSTRACT

The Juvenile Justice System in India has evolved rapidly over the years, bringing about significant changes in the legislations safeguarding the rights and well-being of juveniles. Initiating its long journey from The Children's Act, 1960 to the recent amendments, namely The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the Indian Juvenile Justice System has substantially ameliorated itself to adapt to the unique needs and challenges faced by juveniles. This evolution creates a balance between both punitive and reformative measures, emphasizing the reintegration of juveniles into society while keeping in mind the need to punish those who commit serious offenses. The Juvenile Justice (Care and Protection of Children) Act, 2000, which emphasized reformation rather than punishment, was deeply criticized because of cases like the Nirbhaya Case and the Shakti Mills Gang Rape Case. These cases showcased the need for reforms, leading to the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2015, that allowed juveniles who committed heinous crimes to be tried as adults. Moreover, to keep up with the dynamic nature of the juvenile world, several amendments have been made to the pre-existing acts to reinforce them to serve juveniles better. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 is one such recent amendment made to The Juvenile Justice (Care and Protection of Children) Act, 2015. Additionally, this article highlights recent judicial interpretations and the impact of new criminal laws on the Juvenile Justice System. Thus, this article provides a deep insight into the evolution of the juvenile justice system in India and portrays the transformation that India has undergone over the years. It further highlights the challenges faced on its way and the methods implemented to overcome them.

Keywords: Juvenile, Justice, Legislation, Changes, Evolution.

I. INTRODUCTION

As rightly said by Nelson Mandela², "There can be no keener revelation of a society's soul than the way in which it treats its children."³ Children are the building blocks of society and are quite

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² WIKIPEDIA, https://en.wikipedia.org/wiki/Nelson_Mandela (last visited Apr. 12, 2024).

³ Tal Gur, *There can be no keener revelation of a society's soul than the way in which it treats its children*, ELEVATE SOCIETY (Apr. 12, 2024, 7:15 PM), <https://elevatesociety.com/there-can-be-no-keener/>.

predominant in shaping future trajectories. Children embody hope for a better future. Many even consider them to be the most valuable resources of a country. Therefore, the nature of treatment meted out to children in a country is extremely crucial in determining whether a country will progress or regress in the future.

II. LEGISLATIONS CONCERNING CHILDREN ENACTED IN INDIA

In India, several legislations have been enacted over the years to safeguard the rights and well-being of children. These legislations have not only provided laws for the protection, education, and rehabilitation of children but also imposed penalties for offenses against children. Some of them are The Juvenile Justice (Care and Protection of Children) Act, 2015; The Protection of Children from Sexual Offences (POCSO) Act, 2012; The Child Labour (Prohibition and Regulation) Act, 1986; The Right of Children to Free and Compulsory Education (RTE) Act, 2009; The Prohibition of Child Marriage Act, 2006 and The National Commission for Protection of Child Rights (NCPCR) Act, 2005.

(A) Meaning of juvenile:

Before delving further, let us first understand the meaning of the term “*Juvenile*.” Section 2(35) of The Juvenile Justice (Care and Protection of Children) Act, 2015, states that “*Juvenile*” means a child below the age of eighteen years.⁴ Therefore, any person who has not attained eighteen years of age in India may be referred to as a juvenile without any discrimination.

(B) Evolution of the juvenile justice system in India:

The juvenile justice system in India has witnessed steady development over the years by the enactment of several legislations improving the overall well-being of children. It dates back to the time before 1960 when there were no national legal frameworks regarding children and each state had its own laws.

The first national legislation to be enacted in India regarding children was The Children’s Act, 1960 which aimed to protect children and juvenile offenders by establishing observation homes, special education systems, juvenile courts for children under 16 years of age who did not commit capital offenses and so on.

However, this act was soon replaced by The Juvenile Justice Act, 1986 which aligned with The Standard Minimum Rules for the Administration of Juvenile Justice (1985)⁵ that India had

⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(35), No. 2, Acts of Parliament, 2016 (India).

⁵ Office of the United Nations High Commissioner for Human Rights, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*, 1, 17 (1985), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf>.

adopted because of signing The UN Declaration on Children's Rights (1959)⁶.

The beginning of the 21st century further strengthened the juvenile justice system in India by replacing The Juvenile Justice Act, 1986 and enacting The Juvenile Justice (Care and Protection of Children) Act, 2000 which was amended twice in the years 2006⁷ and 2011⁸ introducing provisions for a speedy trial process for heinous crimes committed by juveniles and addressing concerns related to child trafficking as well as abuse respectively. It was finally replaced by The Juvenile Justice (Care and Protection of Children) Act, 2015 which in turn, was also amended once in the year 2021⁹.

(C) The Juvenile Justice (Care and Protection Of Children) Act, 2000:

Previously, The Juvenile Justice (Care and Protection of Children) Act, 2000 allowed the maximum period of detention for a juvenile offender to be only three years, emphasizing reformation rather than punishment. This act impeded juveniles from being treated as adults notwithstanding the gravity of the offences they committed. By establishing a separate legal framework for juvenile offenders, it aimed to promote the rehabilitation and reintegration of juveniles back into the society rather than focusing solely on punishment. In short, the act aimed to provide all juveniles, regardless of their crimes, a second chance, believing they had a higher probability of reintegration into society.

(D) Factors that led to the replacement of the 2000 act:

However, the 2000 Act turned out to be a bane rather than a boon as proved in several cases, two of the most important ones being the Nirbhaya Case (2012)¹⁰ and the Shakti Mills Gang Rape Case (2013)¹¹. In both these cases, the victims were gang raped by men, consisting of juveniles. The juveniles were found guilty and were sentenced to three years in a correctional facility, the maximum penalty under the existing 2000 act while their adult co-accused were either sentenced to death or life imprisonment.

These cases sparked widespread outrage and debates about the adequacy of the juvenile justice system in dealing with serious crimes committed by juveniles. The popular opinion was to

⁶ United Nations Commission on Human Rights, *Declaration of the Rights of the Child (1959)*, 1, 3 (1959), <https://www.childlineindia.org/pdf/Declaration%20of%20the%20Rights%20of%20the%20Child-1959.pdf>.

⁷ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, No. 33, Acts of Parliament, 2006 (India).

⁸ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2011, No. 12, Acts of Parliament, 2011 (India).

⁹ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, No. 23, Acts of Parliament, 2021 (India).

¹⁰ Mukesh & Anr vs State For NCT Of Delhi & Ors, AIR 2017 SC (CRIMINAL) 899.

¹¹ The State Of Maharashtra vs Vijay Mohan Jadhav @ Nanu And Ors, 2021 Latest Caselaw 15065 Bom.

punish those juveniles who committed such outrageous atrocities by trying them as adults. These factors paved the way for amendments to the existing legislation, leading to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, which introduced changes regarding the trial and punishment of juveniles involved in heinous offences.

(E) Major changes introduced by the juvenile justice (care and protection of children) act, 2015:

The 2015 act introduced a significant change regarding serious offences committed by juveniles aged 16 to 18 years. In such cases, the Juvenile Justice Board has the discretion to conduct a preliminary assessment to determine whether the juvenile should be tried as an adult based on the nature and circumstances of the offence. If it determines that a juvenile should be tried as an adult, the case is transferred to the appropriate adult criminal court, and the juvenile may be subject to the same trial and punishment procedures as adults. Its importance was recently reiterated by a Supreme Court bench consisting of Justices B.R. Gavai and Sandeep Mehta, who observed that the Juvenile Justice Board's preliminary assessment is imperative in determining whether a child, who has completed or is above the age of sixteen years, has the mental and physical capacity to commit the heinous offense alleged against him.¹²¹³

This change did go a long way in addressing concerns regarding juveniles involved in heinous crimes as proved by cases like the Gurugram school murder case (2017)¹⁴ where the 16-year-old juvenile accused was tried as an adult considering the gravity of the offence as decided by the Juvenile Justice Board.

(F) Dissenting public opinions about the 2015 act:

However, not everyone is of the same opinion. Many believe that juveniles should not be tried as adults as they are immature and have great potential for rehabilitation. They believe that juveniles can easily be reintegrated into the society and therefore, should be helped in whatever manner possible instead of being punished. Their main argument was that no child is born with a criminal intent, it is the atmosphere they grow up in, their family, friends as well as factors such as poverty, unemployment and illiteracy that drive these juveniles to commit such crimes.

¹² Thirumoorthy v. State Represented by The Inspector of Police, 2024 LiveLaw (SC) 262.

¹³ Yash Mittal, *JJ Act | Juvenile Accused Can't Be Tried As Adult In Absence Of Preliminary Assessment & Report By JJB : Supreme Court*, LIVE LAW (Mar. 26, 2024, 7:49 PM), <https://www.livelaw.in/supreme-court/jj-act-juvenile-accused-cant-be-tried-as-adult-in-absence-of-preliminary-assessment-report-by-jjb-supreme-court-253459>.

¹⁴ Bholu v. Central Bureau of Investigation, CRR-452-2023.

(G)Enactment of the juvenile justice (care and protection of children) amendment act, 2021:

Now, with changing time, there arose a need to enhance the 2015 Act to address the gaps and discrepancies present in it. This led to the introduction of the Juvenile Justice Amendment Bill, 2021 in the Lok Sabha on 15th March, 2021 followed by its acceptance in the Rajya Sabha on 28th July, 2021. The Juvenile Justice Amendment Bill, 2021 received the assent of the President of India on 7th August, 2021 and thus became The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. This marked the symbolic beginning of a new phase in the development of the juvenile justice system in India and brought about major changes regarding several important aspects of juvenile justice in India.

(H)Major changes introduced by the juvenile justice (care and protection of children) amendment act, 2021 act:

The amendment act considered offences having maximum period of punishment more than 7 years of imprisonment to be “*serious*” offences even if there is no prescribed minimum punishment for the same or if the minimum punishment is less than 7 years of imprisonment.¹⁵

The Act further reclassified certain offences against juveniles from cognizable to non-cognizable.¹⁶ In layman terms, a cognizable offence is one for which the police can make an arrest without a warrant or prior permission from the court while a non-cognizable offence is one in which the police cannot make an arrest without prior permission from the court.

Moreover, the Act also accelerated the process of adoption by allowing the District Magistrate to supervise and approve adoptions. It also positively affected various other aspects related to the adoption of juveniles. These, in turn made the adoption process more efficient, thus, improving the well-being of juveniles waiting to be adopted.

(I) Recent judicial insights into the juvenile justice system:

Over the years, several important landmark judgments have been passed by various High Courts and the Supreme Court of India related to juvenile justice. Two recent cases further illuminate the complexities of this issue.

In *Jomi v State of Kerala*¹⁷, Hon'ble Justice A. Badharudeen of the Kerala High Court held that teachers cannot be prosecuted under the Juvenile Justice (Care and Protection of Children) Act,

¹⁵ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, § 2(vii), No. 23, Acts of Parliament, 2021 (India).

¹⁶ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, § 26, No. 23, Acts of Parliament, 2021 (India).

¹⁷ *Jomi v. State of Kerala*, 2024 LiveLaw (Ker) 407.

2015, for using simple corrective measures to enforce discipline in schools. However, he noted that if a teacher greatly exceeds their authority and causes serious injury or physical assault, the penal provisions of the JJ Act would apply.

In the *Pooja Gagan Jain v. State of Maharashtra*¹⁸, also known as the Pune Porsche Accident case, a 17-year-old allegedly driving under the influence of alcohol lost control of his car, resulting in the deaths of two individuals. Initially, the Juvenile Justice Board (JJB) granted bail to the minor driver but later remanded him to an observation home. Eventually, the Bombay High Court ordered his immediate release, stating that the JJB's orders were illegal and emphasizing the full implementation of juvenile law. Additionally, the boy was later required to submit an essay on road safety to the JJB.

These cases highlight the ongoing tension between discipline, rehabilitation, and the appropriate application of juvenile law. The Kerala case underscores the need for a balanced approach to disciplinary measures in educational settings, while the Maharashtra case illustrates the challenges in handling severe offenses committed by minors. Both cases reflect the delicate balance that must be struck between upholding the law and considering the potential for rehabilitation in juvenile offenders.

(J) Impact of the new criminal laws on the juvenile justice system:

From 1st July 2024, three new criminal laws—the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagrik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA) have replaced the Indian Penal Code (IPC) of 1860, the Criminal Procedure Code (CrPC) of 1973, and the Indian Evidence Act of 1872, respectively. These new laws, passed in Parliament last December, introduced significant changes to the Juvenile Justice System in India.

One notable addition is Chapter V in the BNS, which focuses on offenses against women and children. This chapter is given chronological precedence over offenses against the human body and other major crimes, highlighting its importance within the Indian Criminal and Juvenile Justice Systems. By prioritizing these offenses, the legal framework underscores the commitment to protecting vulnerable populations and addressing crimes against them with greater urgency.

Another significant advancement is the official introduction of community service as a form of punishment in the BNS. Previously, this concept remained largely within the realm of the Juvenile Justice Act. The integration of community service into the broader criminal justice

¹⁸ *Pooja Gagan Jain v. State of Maharashtra*, 2024 BHC 24700.

system represents a progressive step towards rehabilitative justice. This approach aims to instill a sense of responsibility and social contribution in offenders, fostering their reintegration into society.

These changes mark a substantial evolution in India's approach to juvenile justice. By emphasizing offenses against women and children and incorporating community service as a punishment, the new laws are poised to strengthen the Juvenile Justice System. These reforms reflect a shift towards a more balanced and rehabilitative approach to justice, promoting both accountability and the potential for positive societal reintegration.

III. CONCLUSION

The juvenile justice system in India is continuously evolving from its very beginning to accommodate the unique needs and challenges faced by juveniles in India. Its dynamic nature can be easily ascertained by tracing its progress from The Children's Act, 1960 to The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. This ongoing development makes India's juvenile justice system a relevant case study for contemporary legal discussions on how to address the complexities of juvenile delinquency while upholding child rights.
