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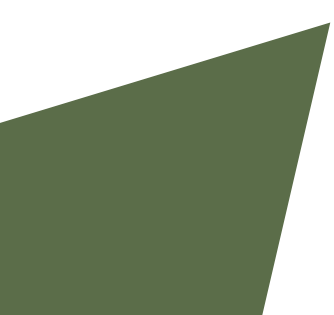
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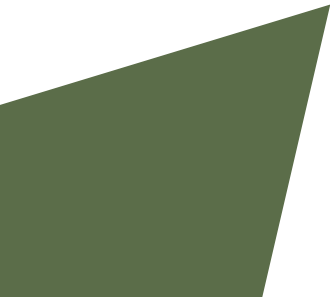
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Status of Juvenile Justice System: National & International Perspective

Nikita Sharma & Riddhi Chadha

ABSTRACT

Juvenile justice is a process which deal with children who are in conflict with the law. The Juvenile justice act 1986 was the first ever law which deals with the problems regarding Juvenile justice system. This article provides a comprehensive understanding of meaning of Juvenile justice, Juvenile and children in conflict with law. Juvenile justice system is made for care and protection of juveniles who are in conflict with law. One of the major concerns in Juvenile justice system is to provide proper treatment and care air to such child. It is imperative for or us to uplift such children. Children are innocent and they are not aware of good and bad. They are mentally physically not fit as compared to adult. Therefore, they need proper care and attention. This article aims to provide broad understanding of concept of Juvenile justice system in India. It also gave an overview of Juvenile legislation present in India such as children act, Juvenile justice act 1986, Juvenile justice care and protection of children act 2000, the amendments act of 2006 and 2011 and the latest Juvenile justice act of 2015. It discusses the international instrument related to Juvenile justice system and evolution of various Juvenile justice legislation in India. Purpose is to get an in-depth understanding of law established for Juvenile justice system and how these laws provided punishments for or juveniles who are accused of an offence. This article also provides an elaborate history of legislation in India relating to Juvenile justice. It also deals with provision of death penalty for such juveniles and how reformative measures are given at most importance in India. It also focuses on legal framework of different countries relating to Juvenile justice.

KEYWORDS: Juvenile justice, Doli incapax, rights of child, parent patria, reformative measures, rehabilitation,

“It is imperative to acknowledge that children in conflict with law are not just offenders but in many cases are in need of care and protection”¹

INTRODUCTION

In simple terms juvenile is referred to a child who has not completed a specific age in law of any country. The term is generally used in reference to a young criminal offender and minor is related to legal capacity of a person.² Juvenile delinquency is a serious issue which may hamper the stability of our society. In USA, different age criteria are used to determine the age of juvenile. For instance, in New York a person under 7 years can be considered as a juvenile delinquent; however, in India the age of juvenile for both male and female has been fixed at 18 years. The Juvenile Justice (Care and Protection) Act, 2015 was introduced after the frightful incident of the 'Nirbhaya Delhi gang-rape case'³ in 2012.

CONCEPT OF CHILD AND JUVENILE UNDER THE 2015 ACT

Child can be defined as a person who is not mature enough to know that what is right or what is wrong and who has not attained the age of 18 years. As per section 82 of the Indian Penal Code (IPC), nothing is an offence which is done by a child under 7 years of age. Under section 83 of IPC, nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the consequences of his conduct. The Juvenile Justice (Care and Protection) Act, 2015 gives the definition of child under subsection 12 of section 2. According to the section, child means a person who has not completed the age of 18 years. As per the act, the term child can be divided as :- “child in conflict with law”⁴ and child in need of care and protection⁵. When a child is under the age of 18 years and he or she has committed an offence, then the child can be defined as 'child in conflict with law'. Juvenile is a person whose age is between 16 to 18 years and he or she is tried as an adult in court proceedings. However, an accused who belongs to the category of 'child' is not tried as an adult. Such children are sent to child care centres. The meaning of juvenile and child is the same but the actual difference lies in the context of implication by the court.

¹ Justice D Y Chandrachud while speaking at National Juvenile Justice consultation programme (2019)

² Black Dictionary of Law

³ 1998 SCC, Del 879 : (1999) 77 DLT 181

⁴ Sec. 13 of Juvenile Justice (Care and Protection) Act, 2015

⁵ Sec. 14 of Juvenile Justice (Care and Protection) Act, 2015

JUVENILE JUSTICE SYSTEM IN INDIA

Juvenile justice system in India is adopted to provide protection to juvenile delinquency. System of Juvenile provides for specialised treatment Services for children as a means of secondary prevention. This concept was introduced to solve the problem of Juvenile delinquency and it also fulfils the need of young offenders. This system is based on the concept that children are not as mature as adults for children, it is difficult to understand the nature and consequences of an act. This idea is based on 'doli incapax' i.e, which means that a child cannot be made liable for illegal act. This Principle is adopted by legislature authorities in many act. Juvenile justice law is almost adopted by all countries in order to protect their young offenders. The main objective of this system is to promote rehabilitative measures over the punitive ones. In India, age determination pays an important role to find out whether the offender falls. Under the preview of juvenile justice or not like the other countries, India also promote rehabilitative measures to provide a chance to reform. In India trial for child in conflict with law is based on non-penal treatment⁶ for example special homes and observation homes.

LEGAL FRAMEWORK

In India, the history of juvenile justice can be traced back to the 18 century where Hindu Muslims laws were applicable on both adults and children. Punishments for children were different as compared to adults. When East India company was established, different legislations related to children were formed such the Guardianship and ward act 1890, Factories Act 1881, the vaccination act 1880 etc. As per these legislations, the juvenile were referred to learn trade in case of minor offences. These laws laid by Britishers provided a way for further legislations to follow welfare of children.

Seven years is the age of criminal responsibility in India as laid down by Indian penal code 1860⁷. If any offence is committed by children between the age of 7 to 12 years then they must be handled differently reformatory schools Act 1876, was enacted to provide reformatory school for offenders below the age of 15 years. Major developments in Juvenile justice system in India were seen during 1919 – 1950. Madras Children Act 1920 was the first law which dealt with age of children, prohibition against imprisonment, remand homes etc. Children act 1960, was the first Central legislation enacted by India after the UN declaration of rights of child⁸. It was amended in

⁶ Sec 2(13) of Juvenile Justice (care and protection) act 2015

⁷ Sec. 82 of IPC.

⁸ 1958

1977. It provides for welfare, maintenance, education and training of the delinquent child. It was a model of piece of legislation for whole country. The primary objective of the act was the all round welfare of child neglected or delinquent. It also provides for children's court⁹ and child welfare board¹⁰. This act also provides for legal procedure pertaining to juvenile delinquents under section 27 and 28 of the act. Juvenile justice act was enacted by parliament in 1986 to promote protection, treatment, development and rehabilitation of delinquent juveniles. Juvenile justice act introduced only minor changes to children's act 1960. It provides for the establishment of Juvenile rehabilitation fund¹¹, appointment of visitors to Juvenile institutions and establishment of advisory council. However, the Juvenile justice act 1986 was repelled and the Juvenile justice act 2000 was introduced. The Juvenile justice act 2000 promote the principal of UN convention¹². 1990 rules and the Beijing rules. The main objective of juvenile justice act 2000 is is rehabilitation of minor also provides for consultation of council and Juvenile justice board¹³. In Raj Singh versus state of Haryana¹⁴, it was held that in case dealing with Juveniles, the legislation dealing with juveniles, will be preferred over anything. While drafting the Juvenile act of 2015, the lawmakers have taken into consideration all the provisions of consultation for welfare and protection of light of children¹⁵.

JUVENILE JUSTICE ACT 2015

Juvenile act of 2015 was enacted after the Nirbhaya case of December 16, 2012. Juvenile justice act of 2015 brought many changes and it was enacted with almost no hurdles within the parliament, since the situation in India was very volatile. The minor in Nirbhaya case was going to get off easy as the maximum punishment that could be awarded was 3 years in remand home due to technicality in age. Due to this reason, the Masses demanded a change in law. Apart from this, the increase in number of crimes (especially rapes) Committed by juveniles (aged 16 to 18) I was also one of the main reason to introduce this act. The act of 2015 provide for provisions for teenagers who commit heinous crime. As per the act such teenagers must tried as adult but in Juvenile court. Such child must be sent to a safe place until the age of 21, after which he can be transferred to prison. Act of 2015 brought many changes to Juvenile justice system in India such as:

⁹ Sec. 5 of the Children act 1960

¹⁰ IBDI. Sec 4.

¹¹ Sec. 52, 53, and 54 of Juvenile Justice act 1986.

¹² CRC (principle of UN convention)

¹³ Sec. 4 of Juvenile Justice act of 2000

¹⁴ Criminal Appeal NOS. 701-702

¹⁵ See Article 21A, 24,47 and 39 of Indian Constitution.

- It permits Juveniles between the age of 16 to 18 years who are accused of committing an heinous offence to be tried as an adult.
- Team of psychologist is required in Juvenile justice board to ensure that the right of juveniles are protected.
- Each district must consist of a Juvenile justice and welfare committees. This act also mentions about children's court and in case of absence of children's court, the court of session will be incharge. After this act, the 'juvenile' word was no longer used in legislation. In place of 'juvenile', the words 'child' or 'child in conflict with law' is used. Its a feature of this act that it removes the negative connotation attached to the word 'juvenile'. This act also laid emphasis on adoption of child¹⁶. Further this act also laid emphasis on offence committed against children like illegal adoption, sale and kidnapping, abduction etc. However, a lot of critical observation from child rights can be seen after the establishment of this act.

JUVENILE JUSTICE SYSTEM IN DIFFERENT COUNTRIES

Today, Juvenile justice has become a vital area of law but it was not given much importance until the late 19th century, with increase in crimes committed by juvenile many countries have adopted child protection measures within their legal framework. In 20 th November 1989, convention of rights of child was adopted by general assembly of UN. It prescribed general standards that should be adhered by all its members to serve the best interest of child. Apart from this many international conventions have contributed to protect child abuse.

JUVENILE JUSTICE SYSTEM IN US

American Juvenile system is more flexible as compared to other countries. In USA, only cases where juvenile is close to adulthood is tried as an adult or cases where such Juvenile is a habitual offender. Laws in America are highly influenced by laws in England. Drastic changes in Juvenile justice system can be seen during 19th century. House of refuge¹⁷ and Chicago reform schools¹⁸ were opened in New York and Chicago respectively. They were concerned with separating juveniles from adult hardened criminals. The first Juvenile court was established in cook country in US¹⁹. After 25 years USA has also established Juvenile court system. The main objective of this

¹⁶ Sec. 2(2) of Juvenile Justice (care and protection) act 2015

¹⁷ 1825

¹⁸ 1855

¹⁹ 1899

court was to reform and rehabilitate offender rather than using penal measures²⁰. Julian Mack J²¹ has also described the goal of Juvenile court. According to him “the child who must be brought into court should, of course be made to know that he is face to face with the power of the state, but he should, at the same time and more emphatically be made to feel that he is the object of its care and solitude. The judge on a bench looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit seated at the desk, with a child at his side, where he can on occasion put his arms around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work”²²

During the 1970's and 1985, decriminalization policies were adopted in all states relating to juveniles. Currently the slogan “adult crime adult time” is adopted in US upper age of juveniles is 17 years in 38 States of US. However, the age is 15 years in other remaining 3 states. Various forms of penalties are given to juveniles as per the seriousness of crime. Life imprisonment can be granted for heinous offences to child aged 12 years. If a child around 13 commits a grievous offence then in such case, he is shifted to adult court. Jurisdiction of Juvenile court is varied in such cases where grave and heinous offences is committed.

JUVENILE JUSTICE SYSTEM IN UK

In 1908, Juvenile courts came into existence and their main objective was to provide protection and care to children. Children act 1908 created a distinct justice board system. The two main acts in England which deals with Juvenile justice are the criminal justice act 1948 and children and young offenders act 1993. Criminal justice act 1948 was mainly established to iacur rights of Juvenile offenders. It also deals with matters such as hard labour prison, penal servitude and it also reforms the existing method of dealing with offenders. On the other hand children and young offenders act 1993, provided that the young offenders should be tried in Juvenile court itself and not in any other court. Criminal justice administrators have preferred to deal with the case of Juvenile delinquency outside the framework of criminal law. In English courts child age between 10 to 14 is presumed not to know the difference between right and wrong hence, he or she is incapable of committing a crime.²³

²⁰ Doctrine of parens patriae was applied to states

²¹ United State Circuit Judge (1866 – 1943)

²² “The Juvenile Court” Harvard Law Review, vol 23 (1909),1201

²³ Principle of Doli Incapax.

INTERNATIONAL INSTRUMENTS FOR JUVENILE JUSTICE SYSTEM

International instruments help countries to develop basic guidelines and minimum standards and principles to administer juvenile justice system. These instruments ensure that government of member countries undertake the responsibilities of child protection in their country, it deals with need of care and protection and conflict with law by addressing best interest of child. It plays an integral role in protecting children from exploitation, involvement in delinquent behaviour. Child abuse the most significant international instruments related to juvenile justice includes UNCRC²⁴, JDLS²⁵, Riyadh guidelines²⁶, and Beijing rules²⁷. UNCRC 1989 was the UN initiative on rights of child (CRC). It was adopted on 20th of November, 1989. It is universally accepted, foundational document of all the time. It lays down fundamental human rights of children. India with other 192 countries have ratified it while ratifying the convention, a state accepts an obligation to promote and protect rights for children. This convention sets out 54 articles which includes numerous rights and two optional protocol. The difficult significance of CRC is that it adopts whole range of human rights into the realm of child rights. Most articles are applicable to juvenile justice system. However, article 37 and 40 have more relevance with regard to juvenile justice system.

In 1990, UN rules for the protection of juvenile deprived of their liberty was established. It is popularly known as JDL. It lays principles to protect Juveniles who are detained in any institution. It helps countries to determine condition under which children can be detained. However, countries should avoid detaining juvenile as per JDL. These rules are non-binding but they provide minimum standards for juvenile justice system in various countries. The Riyadh guidelines²⁸ took precedence over 'beijing rules' in 1990 since it lays down emphasis on prevention of juvenile delinquency. The significance of Riyadh guidelines is that it deals with prevention of crime in deals with prevention of crime in society. It focuses more on preventive measures to prevent juvenile delinquency. It also lays down guidelines for Government best interest of child. These guidelines are not binding on the states like the convention on the rights of the child. Beijing rules²⁹ was established as a standard minimum rule which deals with Juvenile offenders without any discrimination on basis of nationality, language, religion, gender, etc. Deprivation of liberty is

²⁴ UN convention on rights of the child (1989)

²⁵ UN rules for the protection of juvenile deprived of their liberty (1990)

²⁶ 1990

²⁷ 1985

²⁸ UN guidelines for prevention of juvenile delinquency

²⁹ UN standard minimum rules for administration of juvenile justice

considered in form of punishment is considered as a last resort. It has also defined Key concepts such as Juvenile, Juvenile offence, age of criminal responsibility etc. Rights of child were divided into six parts namely (1) general principles, (2) investigation and prosecution, (3) adjudication and disposition, (4) non institutional treatment (5) institutional treatment and (6) research, policy formulation and evolution. Each of these principles laid down guidelines for countries and it stresses on the significance of rehabilitation through various means.

DEATH PENALTY FOR JUVENILES IN INDIA

The first case of death penalty for juvenile offender was in the year 1642 Where a boy aged 16 years was hanged for having sexual intercourse with animals. However in the modern Times the concept of Juvenile delinquency is quite complex. In India crimes committed by the juvenile has increased in last few years. Apart from this (NCRBC) National crime record bureau³⁰, recently stated that percentage of juveniles committing heinous crimes has increased by 86 % between the year 2008 to 2014. In S. Puneet versus state of Karnataka (2019) it was stated that the board has exclusive power to decide heinousness of crime committed by juvenile and other factors like age concept. Apart from this the board has power to take assistance from psycho social workers, psychologist and other experts board can also try the accused itself as per the provision of CRPC³¹. In most cases, age plays a major role as what age is too young for some child to be to subject to death penalty. However as per the international human right law, death penalty is prohibited for people who are below the age of 18 years. Almost thirty States had abolished death penalty of all offenders for those who are below the age of 18 years. In India Juvenile court has discretion in deciding when to have Main case to session court. While deciding punishment, Juvenile judge need to take following points into consideration: -

- . The majority of juvenile in respect to his home life, upbringing, environmental situation, emotional attitude.
- . History and records of juvenile and prospect for protecting public and rehabilitating the juvenile.
- . Seriousness of crime committed and the manner in which it was committed by him or her.

³⁰

<https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.amp&ved=2ahUKewj1wqPSjqXqAhVtILcAHcAhBdQQFjABegQIDBAH&usg=AOvVaw2GOFXSCoEQTtwi3gVnnHyM&cf=1>

³¹ Sec. 101(5) juvenile justice act 2015

However, in India Juvenile between the age 16 to 18 years of age are tried as an adult for heinous offences like murder or rape³². In 2012 Delhi rape case, the youngest accused was not hanged since he was 17 years old at the time of crime. However, India is criticized many times for treating juveniles between age of 16 to 18 years as adult for serious offences. Since India is a signatory to the UN convention on the rights of child. As per justice Madan B lokur ³³ “Juvenile councils cannot be handed down to capital punishment in every case pertaining to heinous crimes such as rape and murder. Furthermore, he added that “judgement in such cases had to be delivered on the basis of evidence. It is not that for every murder, for every rape, the only penalty is death penalty. I mean we are not savage in this country”. On the basis of above information, it is noted that the capital punishment in case of Juvenile accused only based when he or she is 17 years old or close to 18 years old while committing a crime. Apart from this, it is difficult to take decision of capital punishment in case of juveniles.

CONCLUSION

Juvenile crimes are a harsh reality of our society. In modern era Juvenile crimes are continuously increasing in order to reduce them, law of all countries must be implemented effectively. Awareness regarding Juvenile crime must be created in in countries where this concept is neglected. There are many international convention which deals with the concept and implement basic guidelines for all member countries. In India rate of crimes by Juvenile are increasing on a higher rate, policies needs to adopt reformative measures for punishment. There are many factors which are responsible for Juvenile delinquency. These factors are personal, psychological, biological and sociological. Family and conditions where the upbringing of child is done plays an important role in understanding the mind-sets of a juvenile offender. A family teaches his child the difference between good and bad and right and wrong. Most of the Juvenile justice approaches focus on treatment of juvenile convicts by reformative measures, however reintegration child into to society and making him understand his responsibility e in a society is important. However, these measures can only be implemented properly if there is proper linkage between the state and district government. Child rights activities should be initiated to boost up reformative measures. Death penalty is seen as necessary to abolish evils of the society, however in case of children extra question is to be taken due to the presence of possibility e off change and existence of a chance to turn a new leaf.

³² Amendment after delhi rape case 2012

³³ While serving as chairman of SC Juvenile Justice Committee