



Juvenile justice in India: Analytical study

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Abstract

Juvenile Justice System is most progressive and enlightened system adopted by the world citizenry with all round growth of children. The prime focus is to reform the deviants and provide care to the unprotected child. As far as practicable, a child to be rehabilitated and restored to the family. The special court to adopt the doctrine of parents patria while adjudicating the matter of child in conflict with the law. The article evaluated the JJS in India in the light of general philosophy and other parameters.

Keywords: parents patria, rehabilitation, delinquency, juvenile justice system, constitutional law

Introduction

Children in India, because of their sheer numbers, ought to have been the subject of prime focus of development planning, research, and welfare in India but it has not been so. Despite the constitution's 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 childhood. The juvenile justice system, as conceived by legislation, aims at providing care, protection, treatment development, and rehabilitation of delinquent and neglected juveniles. But the care and services provided to them have been criticized as being insufficient and sub-standard.

Juvenile Justice System is the most progressive bit of legislation adopted for children. The newest amendment in this regard was the Juvenile Justice (Care and Protection of Children) Act 2015. The act came into force from 15 January 2016 after it received presidential assent on 31st December 2015. It was implemented with the hope of rehabilitating them, with their overall development.

Initially young offenders were treated in criminal law in the same way as adult offenders. It is unfair for a child who is not mature enough, to be punished with the punishment as that of an adult. He needs to be rehabilitated and as far as possible restored to his family with the minimal punishment possible. Due to this, the Juvenile Justice Act was passed. An age limit of 18 years was prescribed in this act well as punished by Juvenile Courts.

In a few days, the need for a more stringent system for juveniles was felt because of the many horrible crimes committed by them. There was a lot of public demand for punishing these juveniles as adult. Because of which the Juvenile Justice Act was amended. The latest in this regard is Juvenile Justice (Care and Protection of Children) Act, 2015. In this amended act, the age bar for juveniles has been lowered down to 16 from 18. Now, everyone above the age of 16 will be tried in the court of law for heinous crimes, as adult.

Meaning and Concept

Juvenile Justice System is a system coming within the area of criminal law administration of justice. This is a system adopted for the young person not old enough to be held responsible for criminal acts. It is adopted as correctional measures for Juvenile delinquency. The etymological term 'Juvenile' means young person or any young person's retaining the nature and characteristics of a child. The term 'Delinquency' connotes 'failure to observe norms of society or omission of duty, involving with crime or doing any wrong. The term 'Justice' means 'concern for justice, fairness, equitableness' or a concern for peace and genuine respect for people. It is a principle of moral rightness in the pursuits of fair treatment against unfair behavior. The meaning of the syntax 'juvenile delinquency' is doing of some act against society by young persons. The terms 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society. 'Juvenile Justice System' means a process to deal with the problem concerned with children and society. The main purpose of JJS is to insulate children by resorting to appropriate treatment and create an environment to develop a positive human personality. JJS is socio-legal measure to create an atmosphere for the treatment of delinquent juveniles. All most all countries of the civilized world have adopted Juvenile Justice Law to treat the young offender in the most equitable manner, so that they can lead a peaceful moral and democratic life. JJS applicable to the persons; those are under 18 years of age. Juvenile Justice is administered through Juvenile court, a court which is child friendly in nature. The main goal of this System is to adopt rehabilitative measure rather than punitive measures. If a child is commits or any wrong young person turns delinquent, the Juvenile court takes measures for foster care and soft treatment through special institutions. So that Juvenile offender can find a path to lead a decent life.

International Concern

In 19th century the Europe and U.S began with the movement

acknowledged by the role played in social and economic conditions in streaming the children with conflict in law. By this it resulted in the separate legal system for juveniles as by different juvenile proceedings in different part of world. As many problems as to the human rights as rape, theft, drug dealing, prostitution were not recognized till much time. As many declarations and conventions were been done for the proper upliftment of juveniles in different part of world as UN Declaration, 1959, as also the UN Convention for the rights of the child, 1989, Beijing rules, 1985 and Riyadh guidelines, 1990, than the universal declaration of human rights, American convention ad also African treaties as all these concerns internationally speaks about the health, mental and other things for the development of children in different parts as the juveniles are only the main asset of any country and also the main points of all these concern deals with the rehabilitation of juveniles who are indulge in different crimes and how they be different from adult offenders, so it is main point of juvenile justice system all over.

Constitutional Provisions

The Indian constitution which came into effect from 26th January, 1950, after independence of India from British regime on 15th of August, 1947 accorded a special status to children through various provisions made especially in Chapter - III under the Fundamental Right Chapter and Chapter - IV relating to Directive Principles of State Policy. It envisages for children a secured childhood free from exploitation and injustice. While the Fundamental Rights are guaranteed to both persons and citizens, the Directive Principles are fundamental in the governance of the country and it shall be the duty of state to apply these principles in making laws. In some cases these Directive Principles have a positive aspect as it supplement fundamental rights in achieving a welfare state.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: 15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

15 (3) Nothing in this article shall prevent the State from making any special provision for women and children ^[1].

Article 20 (1) No person shall be convicted of any Offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor he subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

Article 20(2) No person shall be prosecuted and punished for the same offence more than once.

Article 20(3) No person accused of any offence shall be compelled to be a witness against himself ^[2].

Article 21. No person shall be deprived of his life or personal liberty except according to procedure established by law ^[3].

Article 39: Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing ^[4];

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment ^[5].

Law on juvenile justice in India

As far as legal protection is concerned, the first ever uniform law concerning juvenile justice in India was enacted in the year 1986. Prior to enactment of uniform legislation for the entire country, most of the States in India had special legislations in the nomenclature of Reformatory Schools Act and Children's Act which governed the subject of regulation of acts of delinquencies committed by children and their reformation. To some extent the Probation of Offenders Act 1958 in the post-colonial period also had a provision to discharge a person over 16-years who has not attained 21-years on probation at the time of conviction, provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order ^[6] [Section- 5 (1) (a)]. Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (2) or (3)) and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

While the Reformatory Schools Act 1897 made provision for establishment of the reformatory schools for male delinquent children up to the age of fifteen who were sentenced for an offence punishable with transportation or imprisonment for life, the Children's Act mostly made provision for establishment of special schools with provision of care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children along with manner of trial of the delinquent children . Considering, the unequal treatment meted out to Children under different state legislations under the title of Children's Act along with the central legislation enacted by Indian Parliament under the same title in 1960 only for Union Territories, the Supreme Court of India in Sheela Barse vs. Union of India ^[7], observed that instead of different state having different law there should be a uniform legislation on the Subject. Accordingly, the first ever uniform legislation for children in conflict with law was enacted by the Parliament of India, which has of course termed such children as Juvenile Delinquent along with a provision for neglected child, under the title of Juvenile Justice Act 1986 which came into operation in 1987. However, due to several deficiencies inherited in it the Act of 1986 was replaced in the year 2000 by the India Parliament. The changing attitudes towards criminality by children which was reflected in Supreme Court decisions like Amrutlal Someswar Joshi ^[8], Ramdeo Chouhan and Arnit Das ^[9] as well as the need for a child friendly juvenile system were some of the factors that also led to the passing of the new Juvenile Justice (Care and Protection of Children) Act 2000. As this act remain in force for many years but then felt the need to amend

this act as with changing scenario crime rate also changes with speed and after the NIRBHAYA Case ^[10] there is big revolution to change it then in 2014 a bill passed and in next year an act was passed as juvenile justice (care and protection) Amendment act, 2015.

Judicial Trends on Juvenile Justice System in India

Juvenile Justice (Care and Protection of Children) Act, 1986, 2000 and 2015 has been framed by parliament of India streaming its dedication towards the international community and also performing its international duty and showing its diligence towards different UN rules and guidelines. So in that conformity with the international standards and rules providing for upliftment of the children in need of care and protection and for the better treatment and early disposition of juveniles in conflict with the law. The role of the Supreme Court of India and various High Courts has been very appreciable in interpreting the provisions of the new enactment in such a way that advances the cause of the juvenile justice. The judicial trends set by the Supreme and High Courts are guiding factors for the lower judiciary. The beneficial provisions have been applied and benefit has been given to a number of juveniles whose cases had even attained finality and they were undergoing sentences. It has also been the efforts of the courts at the time of final disposition of the case that an opportunity for reforming himself is provided to the juvenile in conflict with the law by way of proper training and providing necessary care and protection for absorbing the juvenile in the mainstream of life.

Gaurav Jain v. Union of India ^[11], the SC while dealing with writ petition under Article 32 of the Constitution pertaining to the plight of the prostitutes or fallen women and their progeny, spoke about the Preamble of the Constitution and stated that it is an integral part of the Constitution of India and that the juvenile have the right of proper care and protection and also of rehabilitation with the proper right of dignity and equality in the society and the people should welcome them in a mainstream of social life without any pre stigma joined on them in any of the way,

In Laxmikant Pandey v. State ^[12], the Apex Court of India observed that the juvenile should have the right of love and affection and also of proper security and this is possible only when they are brought up in proper family background and also there should be inter country adoption as by making proper laws over that point.

Subramanian Swamy VS. Raju Thr. Member ^[13] Juvenile Justice Board, some incidence that become so revolutionary that they shook the society or nation. One of such incidence Delhi Gang Rape Case which held in December 2012 in running bus where some persons rape and murder a girl but the irony is that one of them is juvenile and he is to be released after small punishment of three years and that also to be imprisoned in special homes as after the brutal rape and murder. In same case Dr. Subramaniam Swami, a senior lawyer of Supreme Court moved to the Supreme Court of India and put the point of not releasing the juvenile in any case seeing crime but the SC told its inability to do the same as there was no proper law for it and tell him to approach the parliament for it and in the same the amendment was done changing the age for heinous crimes. And also they change

there by their company as by living with criminals in special homes. And it also been seen that juvenile leaving special homes do more heinous crimes so, it is been a question on the authorities that the work for which they are ment is fulfilling properly.

Conclusion

All the stake holders to be guided by the principles, while discharging function concerning children. In India, social legislations are always proved abortive due to improper infrastructure and co-ordination Different homes prescribed, does not have an environment of home. These clogs of JJS need to be resorted to. Juvenile Justice System is based on the principle of social welfare and rights of the child. The prime focus of the JJS is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order. Children are the future resources of the country. They must be transformed from negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carry the dreams, we need to make the dream reality

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