



A critical study of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the status of Juvenile delinquency in State of Tripura

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Abstract

Children are vulnerable and we have an absolute obligation to protect and provide them a safe environment to live in. The future of the country depends on its children. The Indian legal system of child-centric legislation dates back to Apprentices Act, 1850 to various other legal instruments, aiming to protect them from abuse and exploitation. The Juvenile Justice (Care and Protection of Children) Act 2000 was the first legislation which defined “Juvenile” or “child” and recognised children as “rights bearing entities”, However, the brutal gang rape incident which took place in Delhi on 16th December 2012 proved to be the landmark case which changed the present law of Juvenile Justice System. Accordingly this law was amended in 2015, which empowered the Juvenile Justice Board to decide whether Children between the ages of 16 to 18 years to be tried as adults for committing heinous offence. This study look into the provision of Juvenile Justice Law in UK, USA and UK and make a comparative study of the juvenile law respectively. The study also include data analysis of crime committed by juvenile of Tripura as per National Crime Record Bureau report.

Keywords: Juvenile, child in conflict with law, rehabilitation, reformation, national crime records bureau

Introduction

Children are precious treasures of the future and they are most valuable asset of a nation and society. They are innocent and helpless and it is the duty of the state to look after them with a view to ensure complete development of their personalities. Since society expects them to grow as responsible citizens of the future, they need special care, protection, affection and facilities for their all round development. The International Convention on the rights of child recognised the rights of children and has stated that the children must be treated with decency and dignity. It has also held that if a child breaks the law he should be provided with legal help. Children develop emotions like love, affection, rudeness, anger, hatred, compassion, sympathy and empathy during their upbringing and experiences. Parents play a significant role in this aspect.

Last few decades, the crime rate shows that the delinquency among children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing of environment of the children, economic conditions, lack of education and the parental care. The most disappointing part is now children are used for perpetuating crime by the criminals and radical groups as the minds of the children are very innocent and can easily manipulated.

Juvenile delinquency -meaning

The term juvenile originally derived from the Latin word “Juvenis” which means young while the term delinquency has been derived from the Latin word “Delinquer” which means to omit but presently this word stands for those children who are indulge in wrongful and harmful activities. A child is the part of the society where he takes birth, grows, lives and dies. When he grows up, he is being motivated by seeing the environment and social context around him. A “Juvenile” or “Child” means a person who

has not completed eighteen years of age. According to International Law, a ‘Child’ means every human being below the age of 18 years. Today it is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of Child (UNCRC). Under the Indian Law, Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines “Juvenile” or “Child” as a person who has not completed eighteenth year of age.

Causes of juvenile delinquency

Juvenile delinquency is a behavioural aspect. Each and every person has different behavioural patterns so as in case with children also. The behaviour patterns develop in early childhood and at early stage and it is very difficult to identify any kind of behaviour. But, as soon as, child grows up and interact with real world, behaviour patterns changes from time to time and many circumstances or situation may arose the delinquent behaviour in them. However, the cause of juvenile delinquency are many and varied causes.

Disintegration of Family: Disintegration of family and lack of proper parental control is also one of cause for increasing juvenile delinquency. A child needs to remain emotionally dependent on a mother figure for a considerable period. Without this attachment we know that children will have difficulties in formation of relationship with other children. Delinquencies mostly come from functionally inadequate homes, divorce of parents, lack of parental control, lack of love and affections etc. Criminal acts of family members influence children and sometimes they themselves induct children into offenses are some of the major factors of juvenile delinquency.

Economic condition and Poverty: Poverty related circumstances like severe hunger, illness, addictions, parental neglect, aggravate the situation and became

breakup ground for delinquency. The parents or guardians fails to fulfil the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by crook and when their desires are not met they start themselves indulge in stealing money from homes or any other parents. Such Children are at greater risk of being inducted into other serious crime in future.

School dropouts: not attending school regularly results in truancy, indulging in unhealthy leisure activities and committing petty crimes to earn a living. Cheap literacy, free education and compulsory pass of students up to the age of 14 years also contributes to the growing trends of juvenile crimes.

Migration: Migration of deserted and destitute juveniles boys to slums areas being them in contact with some anti-social elements of the society that carries some illegal activities like smuggling of drugs or narcotics, prostitution etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.

Sex indulgence: The children those who have experienced sex assault or any other unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behaviour or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc.

Modern life style: The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong. It is a matter of ignominy that the children under the age of 6-10 are nowadays used as instruments for carrying out unlawful or illegal activities. Since the minds of the kids possess an innocent and manipulative character, they can be lured at a meagre cost.

Juvenile Justice in U.K

For the first time 1908 Juvenile Courts were established in England under the Children Act, 1908. the primary duty of these courts was to provide proper care and protection to child and young offenders and take all the necessary steps to remove all undesirable surroundings around the offenders and to ensure reformation of the offenders by providing education and training.

The Children and Young Offenders Act, 1933 confers the civil powers on the of the juvenile Courts in certain important cases to look into the matter. The Act also provides that any child under fourteen years of age and young person between age group of fourteen and seventeen years who have committed the crime should be tried in Juvenile Courts only. Further the Act provides the establishment of Remand Homes. UK Legislation also came with new Act that also deals with Rights of Juvenile Offenders. The Act came to be known as The Criminal Justice Act, 1948, the Act provides certain class of security to young offenders by sending them to remand homes.

Juvenile Justice in U.S.A

The working of Juvenile Courts in U.S.A is relatively less complex and easier as compared to the other nations. The

Courts of U.S.A. follow the informal way in the process of trial of offenders. At the first stage, the police officer in charge of the case has the full discretionary power either to keep the juvenile offender in the child custody or to immediately release him or to admonish the offender or to do the both.

In the second state police officer have to contact the Juvenile Courts to make them aware about the case and to place the matter in their hand.

Juvenile Offenders after the trial in court is being sent to Certified School or to the Children Homes if the order is passed by the Court. According to the Juvenile Justice System in U.S.A a Juvenile is tried as an adult only in those case where the age of the juvenile is close to adulthood as per the statutory provisions or any juvenile offenders who is found to be involved in repeated offences and is proven danger to the society.

Development of Juvenile Justice law in India

The General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This Convention seeks to protect the best interest of juvenile offenders. The Convention states that to ensure the social-reintegration of juvenile and no judicial proceeding and court trials is to be carried against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act of 1986 and to make a new law. Thus Indian Legislation came up with a new Act called "The Juvenile Justice (Care and Protection of Children) Act, 2000".

The Juvenile Justice Act, 1986 repealed the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1984. The above mentioned Act consisted of 63 Sections, 7 Chapter and is extended to whole India. The primary purpose of the Act was to provide care, protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were: -

1. To lay down uniform framework for the juvenile justice in country in such a way that it protects the rights and interest of juvenile.
2. To establish a machinery and infra-structure for the care, protection, treatment, development and rehabilitation of the juvenile offenders.
3. To set out the basis provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

The Juvenile Justice Act, 2000 was amended twice-first in the year 2006 and later in the year 2011. the amendment was made to address the gap and loopholes in the implementation. Further, the increasing number of cases of juvenile crimes in the recent years and frightful incident of Delhi gang rape has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning of juvenile system was also the major reason in preventing the juvenile crimes in India. The Act was replaced soon by the Juvenile Justice (Care and Protection) Act, 2015. The Act empowered Juvenile Justice Board to decide whether a juvenile aged between 16 to 18 years ought to be treated in Children's Court for heinous offences. The Juvenile Justice Board (JJB) can not sentenced to death or life imprisonment. Preliminary assessment by JJB is mandatory

to ascertain mental and physical capacity of a juvenile, his ability to understand the consequences in which he committed a heinous offences, before he is tried by a Court as an adult under Code of Criminal Procedure (Cr.P.C.). However, the Juvenile System in India is made on the basis of three main assumptions, young offenders should not be tried in courts, rather they should be corrected in all the best possible ways, they should not be punished by the courts, but they should get a chance to reform trial for child in conflict with law which should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

Comparative study of the provision of juvenile justice (UK, US and India)

In the United Kingdom

In England and Wales, police have the authority to use discretion in handling juvenile dispositions. Scotland's juvenile justice system is based on a policy that concentrates on rehabilitating accused juveniles. In Scotland, the Act which is used is the Criminal Responsibility (Scotland) Act 2019.

When the police get the juvenile into custody, the juvenile and their parents are interviewed to conclude whether the former should be referred to the Children's Panel. When a juvenile commits a minor offence, they are kept under police supervision. The case ends with police supervision, and no further referral into the juvenile justice system is made.

According to Section 16 of the Children and Young Person Act, 'A child under the age of 10 years should not be arrested'. Plus, if a juvenile is charged and detained, they must be brought in front of the Magistrate's Court according to Section 46(1) of the Children and Young Persons Act.

In the United States

In the United States of America, the juvenile justice system was first established in 1899 in Cook County, Illinois, which had a rehabilitative approach for the juveniles found to be involved in crimes.

The original juvenile justice system believed that youth commit crimes due to immaturity and impulsivity. So instead of viewing offensive juveniles as criminals, the juvenile system in the US engaged in their rehabilitation. The framework accepted that these adolescents can be changed to decent residents.

Adolescent courts frequently centred around the eventual benefits of the minor, with the state taking a *parens patriae* or 'parent of the nation' approach. The early adolescent equity framework valued its absence of custom and adaptability and didn't have numerous procedural shields for minors. The Illinois Juvenile Court Act of 1899 established special rules and procedures for dealing with children under the age of sixteen. This was the recent Act according to which the Juvenile justice operated.

Further, Individual States set their own age of majority in the US. A person who is below the age of 18 is a minor. But in some areas, it is even considered minor if a person is below twenty-one.

The Child and Youth Welfare Code, Precedential Decree No. 603 define a youth offender as 'one who is above nine years of age but less than 21 years of age at the time of the commission of the offence'.

It was observed that the Court consistently limited the death penalty to the ones who commit heinous crimes. Justice Kennedy pointed out some general characteristics that separated children from adults and those juveniles who committed heinous crimes. First, juveniles lack a sense of responsibility and maturity and are not in a position to understand the consequences of the Act they committed. Second, juveniles are easily influenced by negative people and peer pressure. Third, a juvenile's character is not as similar to that of adults. Therefore, the former possess far more potential for rehabilitation.

Juvenile Justice system in India

In the Constitution of India, the Directive Principles of State Policy under Article 39(f) also provide that the state shall, in particular, 'direct its policy towards securing that the childhood and youth are protected against exploitation and moral and material abandonment'.

The Act brought a uniform juvenile justice system in India. However, the Indian Juvenile Justice Act provides for establishment of Juvenile Justice Boards and assigned with certain powers and function to pass order in matter relating to juveniles. However, in US and UK if a child is held guilty the Juvenile Justice Court may order incarceration as a penalty.

Observation Homes are established by the Govt. as well as by certain registered organization for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding alleged offence committed by juvenile, on the other hand there is no such homes and the judge may pass order for home confinement to the minor with exceptions to attend school, work, counselling etc.

The Govt. Established homes where juveniles are kept for reception of child during pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. on the other hand the judge can send the minor to a juvenile detention facility.

In US and UK there is procedure for electronic monitoring of juvenile where juveniles may be required to wear a wrist or ankle bracelet that verifies their location all times. But there is not such procedure in juvenile law in India.

The home provide for the management of special homes, including the standards and various types of services to be provided by them necessary for re-socialization of a juvenile. On the other hand place the minor to live with a relative or guardian.

Role of Judiciary

In *Arnit Das (1) v. State of Bihar* the Supreme Court that a juvenile in conflict with law is a person who was juvenile on the date of when he was produced before the competent authority and not the one who was juvenile on the date of commission of offence. This was corrected by the constitutional bench of the Supreme Court in *Pratap Singh v. State of Jharkhand* whereby it was held that the crucial date to determine whether a person is a juvenile or a child conflict with law is the date of alleged offence and no other date shall be relevant in this regard.

In *Sampurna Behura v. Union of India* the Supreme Court emphasised on creation of a child-friendly ambience and environment within the Juvenile Justice Boards even for a child in conflict with law. The Supreme Court also urged the Chief Justices of High Courts to seriously consider establishing child-friendly courts in every district.

In *Devilal and Ors v. State of Madhya Pradesh* the Supreme Court held that a Juvenile was found guilty by the juvenile Justice Board and with which he was charged and sentence of life imprisonment. The Supreme Court set aside and matter remitted to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine to be levied on the juvenile.

In *Ashok Kumar v. State of Uttar Pradesh* the Supreme Court held that if a juvenile commits an offence and the age of the juvenile is below 18 years at the time of commission of the offence and the provisions of Act would apply in full force and will be entitled for the benefit of Juvenility. The impugned judgment of conviction was set aside in this. The matter was remitted to the Juvenile Justice Board.

Subramanian Swamy And Ors v. Raju Thr. Member Juvenile Justice is a landmark case that caused many developments and changes in the juvenile justice system of India. Swamy, one of the petitioners, had sought that in the Nirbhaya rape case, the fifth accused, a juvenile, must not be tried under the JJ Act owing to the severity.

He had also argued that juvenile justice was not meant for such heinous crimes. Therefore, he was not entitled to the benefits that extend from the JJ Act.

The Supreme Court dismissed the petition by stating that the aim behind treating a person below 18 years of age as a juvenile is to ensure their rehabilitation and transform them into better citizens of the country.

Position of juveniles in Tripura

According to the National Crime Records Bureau, Ministry of Home Affairs, A total of 30,555 cases have been registered against Juveniles during 2022, depicting decline of 2.0% over 2021 (31,170 cases). The crime rate depicts a decline from 7.0 in 2021 to 6.9 in 2022. A total of 37,780 juveniles were apprehended in 30,555 cases, out of which 33,261 juveniles were apprehended under cases of IPC and 4,519 juveniles were apprehended under cases of SLL during 2022. Majority of juveniles in conflict with law apprehended under IPC & SLL crimes were in the age group of 16 years to 18 years (78.6%) (29,690 out of 37,780) during the year 2022 [1]. Majority of juveniles in conflict with law apprehended under IPC & SLL crimes were in the age group of 16 years to 18 years.

Tripura also witness cases of crimes committed by juveniles during 2022. However it is very low compared to other states of India. The crime committed by Juveniles of Tripura year wise from 2018 to 2022 are enumerated in the table.

Table 1

| Sl.no. | Year | Total number of Juveniles apprehended under IPC &SLL | Nos of Juveniles discharged by courts | Juveniles sent to home after advice | Juveniles sent to Special Home | Cases Pending |
|--------|------|--|---------------------------------------|-------------------------------------|--------------------------------|---------------|
| 1. | 2022 | 55 | 6 | 10 | 25 | 13 |
| 2. | 2021 | 32 | 11 | 3 | 4 | 14 |
| 3. | 2020 | 103 | 52 | 8 | 27 | 16 |
| 4. | 2019 | 104 | NIL | 27 | 3 | 74 |
| 5. | 2018 | 94 | NIL | 22 | 3 | 56 |

The data of 2022 shows that 25 Juveniles were sent to the Special Home out of 55 Juveniles apprehended during the year.

Table 2: Percentage of Crime in last five years 2018-2022

| Sl. No. | Year | Total Crime | Percentage |
|---------|------|-------------|------------|
| 1. | 2022 | 33 | 2.7 |
| 2. | 2021 | 16 | 1.3 |
| 3. | 2020 | 28 | 2.3 |
| 4. | 2019 | 29 | 3.2 |
| 5. | 2018 | 44 | 3.6 |

The analysis of National Crime Records Bureau data of last five years shows that percentage of crimes committed by Juveniles in Tripura in last five year shows that 2018 recorded the highest number of crime and 2021 recorded the lowest percentage of crime in the state.

Conclusion

From the study it is evident that Law has been enacted from 1850 to the new Juvenile Justice (Care and Protection of Children) Act,2015, with that the Juveniles are protected, rehabilitated and re-integrated in the society. There are various International Conventions that mandates the states to protect the child from physical and sexual abuse, economic exploitation or any other forms of cruel, inhuman or degrading treatment or punishment or armed conflict. A full around efforts are made by the international organisations as well as states to handle child delinquency

with care and efforts are being made to reintegrate and rehabilitate them in society.

India being signatory to these conventions have taken every care in drafting provisions concerning child delinquency so as to ensure their reintegration and rehabilitation in society as effective and productive. Further it is evident from the data mentioned in the table 1 of the research paper that there is a dedicated effort on the part of courts as well as Government. That every opportunity must be explore for integrating the child in the society.

The JJ Act of 2015 is modern and progressive legislation that intends to bring change and restore the juveniles, this legislation brings forth a whole set of guidelines for adjudication and prosecution of children in conflict with the law, not just for the care and protection of children. In its scope, the criminal justice system is limited to delinquent children and those who need treatment and safety.

It is suggested the stakeholders to organize training for the officer responsible for the implementation of the Act. Juvenile justice personnel like Principal Magistrate, Probation Officer, Member of JJ Board, Protection Officer must be given special training and orientation in the field of behavior and skill development techniques so that the juveniles be reformed and rehabilitated to become a useful member of the society.

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