

Legislations on Juvenile Delinquency

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Abstract-

The unusual status of children through Articles 15(3), 21A, 24, 39(e), 39(f) and 45 has been acknowledge by the Indian Constitution. The above articles grant special provision for the children by the states to protect their rights and liberties along with protecting them from every kind of abuse and injustice. The above articles preserve the rights of the children for their upliftment and development. The present paper aims to discuss the legislation with regard to juvenile justice system and the history of legislations that came into existence right from its inception. One after another how one legislation repealed the earlier one making a list of acts that covered the juvenile justice system. The changes which were adopted with time in these acts have been discussed in this paper. Critical analysis of the acts as to what made it insufficient to survive. Besides this, the loopholes in the acts which made way for repealing of the acts. What were the circumstances for passing the Juvenile Justice (Care and Protection of Children) Act, 2015? And at the end, the existing law on juvenile delinquency and juvenile justice system along with the conclusion has been discussed at greater length. The following research paper intents to study the history of legislations on juvenile delinquency.

Key words – Juveniles, Juvenile Delinquency, Legislation, Rehabilitation, Reformation, Juvenile Justice Act, International Conventions.

Introduction

It has been rightly said by the father of our nation that “if you want real peace in the world, start with the children”.

Children are the backbone of every country and are the constructors of progressive nation. The main assets of any of the country is their youth who will take the nation a step forward, then may it be a developing country or a developed country. But in the last few decades every country is facing hindrances because of the stumbling block of the children. Every country is dealing with the complications of juvenile delinquency as there is a major rise in the crime by juveniles. Every country has its own law pertaining to juvenile delinquency, and are trying their level best to get hold of it. Before discussing the legislations on juvenile delinquency, what is

juvenile delinquency also needs to be discussed. Juvenile is child who has not attained the age of majority as per the laws governing their country and delinquency implies crime. So together it makes the child who has not attained the age of majority and have committed an act that is forbidden by law.

At the cost of modernization and urbanization, India is facing the issue of rise in the crime rates committed by juveniles as nothing comes free. Like every coin has its two side, the same is the case with urbanization, in the name of urbanization and modernization, parents are losing control over their kids, leaving them to commit the act forbidden by law. Lack of parental control is one of the prominent reasons along with other reasons for juvenile delinquency. All the nations may it be a developed country or an underdeveloped country, they want to refrain their youth from committing the crimes that is forbidden by law. The issue of juvenile delinquency is not restricted to our country only, but every other nation is witnessing the same with their children which is undoubtedly tragic to the progressive nation. Each time when an act is passed, it some or the other way it proves to be inadequate which is backed by either amendment or the repealing of the law. In the case of juvenile delinquency, there is a separate juvenile justice system different to that criminal justice system only to protect the interest of the child along with his rights so that they can be reformed and can be integrated back into the society.

Time and again to refrain the juveniles from committing crime, nations are constantly defining and re-defining their local laws to suffice the need and the future of those juveniles. One cannot deny the fact that juveniles are the future and the hope of the country, and no country can leave their future and hopes going astray. With the change in time and nations on their way to development, there is drastic change in types of offences committed by these juveniles. It isn't easy to believe that these juveniles are involved in murder, rape, cybercrime, terrorism, theft and other heinous crimes. Ultimately the motive behind every juvenile law is not to punish the juvenile but to reform him and rehabilitate him so that he can be integrated back into the society, to evolve them as crime free human being.

If every saint has a past, then every criminal has a future- Mahatma Gandhi

Initial stages of legislations

The very first act of juvenile delinquency which was enacted for juveniles was the Apprentice Act, 1850 which provided that the children between age-group (10-18), if convicted should be sent to rehabilitation and reformation. In between various other laws happened one after another but only proved to be failure and could not suffice the need. These laws were Reformatory Schools Act, 1897 followed by Indian Jail Committee (1919-1920). Later on, the Children's Act in madras gave rise to the same in Bombay and Bengal in the year 1924 and 1922 respectively. The above acts witnessed amendments extensively in between 1948-1959.

Children's Act, 1960

After a call from union territories, a need was felt by the central government, and the central enactment of the Children's Act 1960 emerged. The loopholes of the said act were covered by the Children's Amendment Act 1978.

Juvenile Justice Act 1986

So-far the demand of uniform legislation for governing Juvenile justice across the whole of the country was felt even in the parliament. But still their hands were tied as the subject-matter falls under the category of State-list. Nonetheless they got their way by Article 253 of Indian Constitution read with Entry 14 of the Union-list where it clearly specifies Centre to make laws for the whole of the India to fulfil the International Obligation. And International Obligation here was of United Nations Standard minimum rules for the Administration of Juvenile Justice also known as Beijing Rules, 1985, and to bring the juvenile justice system in conformity with the above rules, Juvenile Justice Bill, 1986 was introduced in the lower house of the India's bicameral parliament.

The Act came with its own objects and scope which laid that more emphasis needs to be given to the children found in neglect, destitution social ill-treatment. As per this act, 18 years of female and 16 years of male are to be treated as juveniles. Juveniles cannot be tried similar to that of adults so there was a separate justice system for juveniles. To change the cultural, social and economic situation of the country, a strong uniform juvenile justice system was required which was fulfilled by the Juvenile Justice Act, 1986. The current Act replaced the corresponding laws i.e., Children Act, 1960 and also all the other Acts enacted by the state. It can also be said that other than the demand for central legislation on juveniles, the above act was also the result of *Sheela Barse vs. Union of India*¹

Juvenile Justice (Care and protection of Children) Act, 2000

The above discussed Act could not do justice to the system making way for the Juvenile Justice (Care and Protection of Children) Act, 2000. The earlier law was repealed by the latter law. Now the age was made uniform for both and a lot of changes were introduced.

Under this Act, special approach was given to the treatment and prevention of the juveniles and also the rehabilitation of those children. In the year 1992, India signed and ratified the United Nations Convention on the Rights of the Child (UNCRC). The above law was passed with compliance to the 1989 UNCRC.

As there was some of the spaces which was left uncovered, i.e., the law was silent, in some of the issues, more commonly when it comes to determining age of the juvenile, honourable Supreme Court of India's landmark judgement by

Constitutional Bench in the case titled as *Partap Singh v. State of Jharkhand*,² was pronounced addressing this issue in detail and held that "*reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court*". Thus, in light of the above decision by the Hon'ble Apex Court, the law pertaining this issue was amended.

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

The unfortunate and brutish gangrape incident of Delhi (Nirbhaya Case) put the entire nation into shock and grief. The whole of the India was standing by her side and the nation witnessed the highest number of candle march by the citizens. The act had nation-wide criticism because of its leniency and flaws in the existing juvenile law for the age-group of (16-18) years. The

¹ 1986 (2) Scale 1

² 2005(3) SCC 551

children of 16-18 years of age were more involved in heinous crimes like murder, rape. Urgent need was felt looking at the number of heinous crimes committed by juveniles after looking at the series of events. So, the earlier law could not pass the test of time leading to the ultimate Juvenile Justice (Care and Protection of Children) Act, 2015, which allowed the juveniles in conflict with law above 16 years of age to be tried as an adult, if involved in heinous crime by the Juvenile Justice Board after conducting a preliminary enquiry in which the board finds him fit and mature enough to understand the gravity and the consequences of crime. The Juvenile Justice Board will be comprising of judicial magistrate or a metropolitan magistrate along with two social workers will have the discretion of whether the juvenile who committed heinous crime as defined in the act should be tried like an adult or juvenile.

The above Act was the result of public sentiment, which led the parliament of India to pass the Juvenile Justice (Care and Protection of Children) Act, 2015 despite various controversy, protest and debates for some of the provision of the said act by the Child Rights fraternity. The said law got assent from the upper house i.e., Rajya Sabha on 22nd of December, 2015 much latter to that of lower house i.e., Lok Sabha on 7th of May, 2015. The said Act got its final assent on 31st of December, 2015 by the president of India and came into force on 15th of January, 2016. The said act also found notion from *The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993*, which were not present in the earlier legislations. The above act also discusses the procedure for legally adopting the abandoned, orphaned or surrendered child.

Conclusion

After discussing the various acts on juvenile delinquency and on juvenile justice system, it can be easily understood that time and again, the legislations need to be amended with the changing needs and situation in the society. The need for the legislations arises when the situation turns out to be out of hands in controlling the certain types of cases and also when the citizens of the country clearly demand it. When despite the repeated warning, the outcome of the crime cannot be controlled, a need for the new act with stringent punishment is required. Same is the case with juveniles. Earlier all the juveniles were treated with leniency irrespective of the crime they committed, but after introducing the changes in the act, law has become stringent for the juveniles above 16 years of age, if committed heinous crime under the act. Change is the law of the nature which needs to be adopted with time. Also, now the governing act of the juvenile Justice System is the Juvenile justice (Care and Protection of Children) Act, 2015 and is applicable to the whole of the India. In addition to this, the said act has one more motive i.e., to achieve India's international Obligation arising out of the conventions to which India is a signatory. **India is signatory to three of the conventions dealing with juveniles, they are: -**

- i. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990).
- ii. United Nations Convention on the Rights of the Child (CRC)
- iii. the new United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985),

To comply with the above conventions, this new act came into existence.

At the end of the article, I would add something which has been said by Q'orianka Kilcher³, ***"I think it's important for us as a society to remember that the youth within juvenile justice systems are, most of the time, youths who simply haven't had the right mentors and supporters around them because of circumstances beyond their control."***

Rehabilitation of juvenile and integrating them back into the society is still the primary goal of every country. Distinguishing the juvenile justice system from that of Criminal Justice system proves the above statement. Therefore, the current act prevailing in the country can be considered to be progressive legislation and the Model Rules, 2016 proved to be the icing of the cake, as it added effectiveness to the legislation. The Apex Court of India has not failed in monitoring the execution of the above law. In fact, many of the high courts are too keeping an eye through the judicial proceedings. It is perceived that there is a constant need for larger involvement of informal systems and community-based welfare agencies in the care, protection, treatment, development and rehabilitation of juveniles.

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³"Q'orianka Kilcher, BBAACSS1'Firelight Star, on playing a Latina Juvenile Delinquent". Interview with Lee Hernandez