

Protection of Juvenile Delinquents' Rights Especially in India

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Abstract - The selection of this subject for in-depth investigation was motivated by the desire to raise questions about the research into India's Juvenile Justice System. This article provides the context within which the specific decisions on children's rights may be made. Juvenile delinquency served as the inspiration for the creation of the juvenile justice system. Juvenile delinquency is a serious issue in today's society and a vital factor in determining the status quo. Additionally, most studies show an upward trend in adolescent criminality in the last several years. In this article, we explain the protections and rights provided by Indian law, as well as the gaps in India's juvenile justice system.

Keywords - Constitutional Law, Juvenile Justice System, protection, judiciary, Delinquency, Crimes

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INTRODUCTION

We all have a part to play in making our nation a safe place for its children, since they are its most valuable resource. There has been a dramatic increase in the number of juvenile offenders in a developing nation like India over the last decade. Juvenile delinquency now plagues modern society. When it comes to punishment, the Indian criminal justice system has its favorites and shows certain groups more mercy than others depending on the nature of the offense. The Indian Criminal Code specifically addresses these exemptions. There is no universally accepted definition of the term "juvenile," although the most recent Act, the Juvenile Justice (Care and Protection) Act, specifies that people who have not yet turned 18 are considered to be juveniles. Because of the widespread cultural consensus that young people are fundamentally different from adults in terms of both culpability and rehabilitative capacity, our legal system handles them in a special way via the juvenile justice system. However, in the juvenile justice system, rehabilitation rather than punishment is prioritized, despite concerns for public safety and making young offenders responsible for their acts. To "rehabilitate" someone is to return them to productive society by means of treatment and training. In the case of a juvenile offender, for instance, he could be mandated to attend therapy or a program designed to help him mature and make better choices in the future. Does the youngster actually "rehabilitate" in light of the current situation? The number of juvenile criminals is rising despite the existence of welfare rules for children. Children and adolescents are transferred to these facilities in the hopes of bettering their futures. As a result, facilities dedicated to rehabilitating

troubled youth exist in the hopes that the young people who are sent there might be transformed into productive members of society. So, it's important to consider whether the rehabilitation center is fulfilling its mission.

There is an emphasis on the rights of the juvenile and how the rehabilitation center operates in this study. This article begins with some history on the evolution of laws pertaining to minors, continues with a discussion of all the laws now in effect, then moves on to the role of NGOs and the present situation of minors in India, and finally concludes with the findings of the study.

Children are an integral aspect of every community and a solid foundation for any nation's future. And they need to grow into the nation's leaders, the people who build the country's riches and who watch out for the people who live in the place they call home. Young people everywhere grow up and form their perspectives in their own unique ways. They improve their capacity for abstract thought and the formation of their own convictions on social and political matters. Long-term planning and goal-setting become more accessible to them, and they are more likely to evaluate their own progress in relation to that of others. They want to carve out their own lives, free from their parents' influence. At this age, it matters a great deal whether or not you are liked by your peers. They have a penchant for romantic and sexual pleasure, as well as a dedication to committed partnerships. Therefore, statistics from the National Crime Records Bureau (NCRB) and other sources have been collected and analyzed to shed light on the most recent trends in

juvenile delinquency. It is also important to note that this information has been connected to the most recent revisions to the Juvenile Justice Act. However, we can't ignore the reality that it provides a more nuanced picture of the nationwide issue.

The Indian government has enacted a piece of law called the Indian Juvenile Justice Act after collecting and analyzing data on juvenile crime. A juvenile in conflict with the law is defined by the Juvenile Justice Act of 2000, section 2 (I), as a minor who is under the age of 18 (and above the age of 10 years) on the day of the conduct of crime. The legal status of children in India is unclear since different laws use different definitions of the term "kid." However, several shifts in the preexisting framework of juvenile delinquency have occurred in the wake of the Nirbhaya case. Therefore, there is another group of children called "Children in Need for Care and Protection," and they are specifically mentioned in section 2 (d) of the same Act due to the current state of juvenile delinquency. Those kids who don't have a permanent place to live and food on the table are considered to be homeless. They might be youngsters living on the streets or engaging in beggary, kids working in dangerous conditions, kids who have been mistreated or exploited, kids with physical or mental disabilities, or kids who have lost everything in war or natural disasters. All such children are given legal protection under the Indian J.J. Act. In his research on the issue of juvenile delinquency, R. N. Choudhary (2005) discusses the several laws in place in India pertaining to the treatment of young offenders.

LITERATURE REVIEW

Dey, Mousumi, (2014) Because they represent our nation's future, children deserve to grow up in a secure community. However, the incidence of juvenile criminality in a developing nation like India has increased dramatically over the last decade. Juvenile delinquency is becoming epidemic in our modern culture. This article begins with a brief history of juvenile justice legislation in India, from the time before independence to the present day, focusing on the landmark Juvenile Justice Act of 2000 and its guiding principles. The number of juvenile criminals is rising despite the existence of that welfare statute for such youngsters. The thought occurred to us, though, to consider whether or not juveniles who commit particularly horrific crimes should be subject to the same legal standards as adults. The report also investigates the forms and root causes of juvenile crime. In the last section, we provide some recommendations for preventing juvenile crime.

Devarmani NG. (2016) Almost 19 percent of the world's children live in India. 35% or more of the population is under the age of 18. Because they will one day be the country's most valuable resources, children must be given every opportunity to grow up healthy, educated, safe, and successful. Forty percent of India's youngsters face significant obstacles or are

more susceptible in comparison to the general population. For more than a century and a half, Indian legislators have been concerned about juvenile delinquency. An indication of a sick society, the topic is. Some of the causes of the crime rate include urban overcrowding, the proliferation of slums, gambling, alcohol abuse, and other vices. Even though most Indians live in rural areas, they are not immune to the violence and disorder that urbanization brings. There are many factors, both internal and external, as well as psycho-pathological components in the person, that contribute to a child's development and trajectory in life. Though Juveniles' future is not bleak, it does need forethought and preparation. Our most fundamental constitutional protection is the right to life and freedom. When incarcerated, a person loses this liberty, yet doing so is essential from a reformation standpoint. It is particularly true with children because "a person cannot be disciplined by hatred but by love and compassion," as Gandhiji put it. This study focuses on the youngsters who need care and protection and who, if left unaddressed, may cause serious societal issues in the near future. The study attempts to represent the many treatment techniques (Institutional and non-institutional) for juveniles in India, despite the many challenges of penal administration. Inmates in correctional facilities should be seen like patients in hospitals; similar to doctors, they deserve fair care to help them recover and rejoin society as productive members of society.

Bajpai, Asha, (2017) Particularly vulnerable, disadvantaged, poor, neglected, and denied of their fundamental rights are the children we focus on in this chapter. Beginning with the Children's Act of the 1960s and ending with the Juvenile Justice (Care and Protection of Children) Act of 2015, this section provides a historical overview of juvenile justice laws in India. As the Juvenile Justice Act has developed to its current state, so too have the obstacles encountered in its administration and execution. This chapter explains how the law addresses the needs of children who are vulnerable and in conflict with the law. Included are both precedent-setting judicial rulings and recommendations for future judicial reform. United Nations rules on cases involving child victims and witnesses of crime, including UN Guidelines on Alternative Care for Children, are included in this chapter as well as international law pertaining to the administration of juvenile justice. Included are a few initiatives from members of civil society as well.

Dr. M. Khirale (2020) 'Children are the future of the countries and citizens of tomorrow, children are the asset of the country and must be safeguarded from every legal corner and developed in accordance with the mandate of the Constitution of India. India's founding document, the Constitution, envisions a harmonious community and, to that end, protects a wide range of youth-oriented liberties. Specific protections against various forms of abuse and exploitation, as well as rights to basic necessities like

food and shelter, were spelled down in the chapters on fundamental rights and Directive principles.

Adv Avnish Kumar Sharma et al. (2022) The field of criminal law known as "Juvenile Justice" operates on the premise that a minor lacks the maturity to intentionally harm anybody. Juvenile delinquency and children growing up in nontraditional environments present unique issues that can't be addressed with adult criminal justice systems. The juvenile justice system in India is at a turning point. There is increasing concern that the system has strayed from its original goal of rehabilitation and reform as a result of all the recent changes. This article looks at the problems plaguing the Juvenile Justice System, which are undermining its credibility, and offers viable solutions to these problems. Despite its origins in colonial authority and subsequent improvisations, the author argues that India's present juvenile justice system is lifeless and fails to confront the realities of increased criminal inclinations among young people. In order to bring about change and meet the ever-increasing demands of the modern world, the author proposes a few solutions. Our culture is seeing a meteoric rise in its crime rate. Despite having the required legislation in place, most projects fail at the implementation phase. In order to secure more justice and a more efficient juvenile justice system, it is important to confront the prominent group within society that is calling for tight restrictions.

According to the Juvenile Justice Act

In India, the Juvenile Justice (Care and Protection of Children) Act of 2000 serves as the basic legislative foundation for juvenile justice. The purpose of this law is to safeguard and care for children who have been neglected or who have committed delinquent acts, so that they may reach their full potential as adults. As part of the process of bringing the United States into conformity with the Child Rights Convention, this statute replaced the Juvenile Justice Act of 1986. In 2006 and again in 2010, further changes were made to this Act.

Juvenile is defined as "any child or juvenile who has not completed the age of 18 years" under Section 2(k) of the Juvenile Justice Act of 2000. Children are divided into two groups under the Juvenile Justice Act of 2000: those "in dispute with the law" and those "in need of care." No minor may be condemned to death or imprisonment or put to jail for any offense under the Indian Penal Code, as stated in section-16 of the Act. When a juvenile was 16 or older at the time of their offense, the United States of America allowed for their death. In the case of Christopher Simmons, the Supreme Court ruled 5-4 that executing juvenile criminals was cruel and unusual punishment in violation of Amendments VIII and XIV to the United States Constitution and violated standards of public decency.

To guarantee that minors are not punished or regarded as hardened offenders, the Juvenile Justice

(Care and Protection) Act, 2000 established a number of safeguards. The rights include, among others:

- There will be a Juvenile Justice Board to hear matters involving minors (section-4 & 14)
- Juvenile bail regulations (section-12)
- Adolescents will not face incarceration. (Children and Youth Care and Protection Act Section 10)
- No juvenile and adult cases may be tried together (section-18)
- This includes the lifting of any restrictions imposed by a prior conviction (section-19)

Social Protection

The Juvenile Justice Act also includes provisions designed to provide a juvenile offender with a fair chance to change his or her ways. (Section-40)

- The Construction of a Separate and Observational Residence (section- 8 &9)
- Places of Learning and Instruction

Preventive Measures

- The Juvenile Justice Act has made it illegal to employ minors in hazardous occupations, to coerce minors into begging or stealing, to provide minors with intoxicating drugs, or to publish a minor's name or other identifying information when doing so would violate the law. (Section 23–26)
- Probation Officer monitoring to protect a minor from negative peer pressure. (Section-15)

The Act requires that the Juvenile be returned home after counsel or admonition, released on probation of good behavior and put under the care of parent or guardian, or placed in a special home. The burden of proof is on the prosecution to displace the presumption of innocence of a juvenile when they seek to do so using circumstantial evidence. Sakha Ram v. State of M.P. is another case that demonstrates this. The defense of infancy was first advanced in Gopinath Ghosh v. State of West Bengal.

According to R. Rathinam v. Kamala Vaiduriam, the court has an obligation under Section 9 of the Juvenile Justice Act, 1986 to find a safe place for a girl juvenile who has been brought before the court and is not claimed by anyone and who is not a delinquent juvenile until she reaches the age of majority. Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act" is Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000), as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006). No newspaper, magazine, news-sheet, or visual media shall publish any picture of any juvenile or child in conflict with the

law or in need of care and protection under this Act, nor shall any report in any such medium disclose the name, address, or school of such juvenile or child, or any other particulars calculated to lead to the identification of such juvenile or child.

Lacunae in the Juvenile law in India: - A critique

Waiver for minors was at the center of *Kent v. United States*. The Supreme Court ruled that a judge must hold a hearing on a motion to waive, that the juvenile is entitled to legal representation during the hearing, that the juvenile's attorney is entitled to review all evidence considered by the court in reaching a decision, and that the judge must stipulate in writing the reasons for the waiver. The most important decision of the 20th century, *in re Gault*, was decided in 1967 and established some safeguards for adolescents' right to due process. Juveniles have the right to counsel, the ability to confront and cross-examine witnesses, and the right to get official written notice of the allegations against them, all thanks to a Supreme Court ruling. The right not to incriminate oneself was extended to minors as well. Having a jury trial for minors was deemed unnecessary in *McKeiver v. Pennsylvania*, which was decided in 1968. The Supreme Court's ruling in *in re Winship* from the 1970s established that the same severe reasonable doubt threshold must be used to both juveniles and adults for proving guilt in criminal prosecutions.

In India, the juvenile justice system developed from the adult judicial system. That's why there's always been friction between juvenile justice's emphasis on protecting young people and law enforcement's preference for a more hands-off approach to criminal behavior when dealing with young people. The Juvenile Justice Act fails to take into account the complexities of juvenile misbehavior and the exploitation of children as a whole. This measure thus does not qualify as progressive legislation. Despite how clear it may seem; it is not primarily concerned with resolving the issue of children.

It is clear from the Standing Committee Report that the Government made an honest effort to hear from affected parties. Under closer inspection, however, it becomes clear that the Ministry has not given sufficient weight to significant issues such those relating to children's provisions in conflict of law and the main premise for abolishing the Act of 2000[19]. The Committee voiced its disappointment and dismay that the Ministry had ignored the recommendations and concerns submitted by interested parties throughout the legislative drafting process.

Imbalances & Irritants

- Treatment and related procedures might vary by state. This becomes a barrier to national conformity. According to the J.J. Act, several facilities are to be set up for the care, assessment, and prosecution of minors. The

failure of governments to establish such institutions is a fundamental obstacle to the effective execution of the JJ Act.

- The careless and apathetic attitudes of the authorities affiliated with this statute continued to be a significant irritation in its efficacy. It turns out that a deciding factor is that these authorities haven't received enough training on child welfare issues. The lack of coordination amongst the several entities engaged in the implementation of this legislation has also contributed significantly to its failure.
- Another problem stated as slowing down this law's implementation is the financial strain on the relevant organizations. The success or failure of this Act is also tied to the professional development of the employees responsible for carrying it out.

Lacunae: -

1. Lacking explicit language in the Act, the minimum age below which the Act would not apply is a major flaw. Very little room for minor infractions to be dealt with locally is left under the notion of juvenile delinquency.
2. Separation on the basis of age or the seriousness of the offence is not practiced. It would be awful to put a juvenile offender who has committed a serious crime together with a juvenile offender who has committed a minor offense.
3. Under this law, parents are absolved of any blame for creating an environment where criminal behavior is likely to flourish. Frequently, parents put their kids in dangerous circumstances where they are at risk of being used or abused. Before a kid is exposed to the wider world, his or her parents serve as his or her primary educators and trainers, therefore it stands to reason that the purity of parental behavior has the greatest impact on the child's ability to avoid acquiring negative social inclinations.
4. Children in observation homes have not been given with enough opportunities for learning and play. This Act should take into account not just the elementary and secondary education of these children, but also their postsecondary education and training.
5. Faulty procedural protections like the right to counsel and a timely trial are not included in the Act.
6. The Act disregards the Supreme Court's rulings and directives.
7. The juvenile justice system flourishes in the shadow of the adult criminal justice systems (like the police). In addition, state judges are recruited to serve as juvenile justice adjudicatory cadres. Having juvenile

delinquency matters judged by the same panel of judges that hear cases involving adult criminals is likely to push the juvenile cases to the back burner.

8. The legislation provides no recourse for children who have been harmed by issues like as HIV/AIDS, drug misuse, militancy, natural disasters, etc. Child marriage, female feticide, homeless children, and youngsters who labor outside the home are not addressed either.
9. The Act imposes no legal duty on the state. This law is lacking an important dimension: a right-based worldview. As it is, protecting children is more of a charitable act than a serious commitment. The wellbeing of these children, rather than a right, is prioritized. Juvenile Justice Act does not include measures guaranteeing educational, medical, legal, or social assistance for youth.
10. There must be continuous collaboration between government entities operating in comparable regions in order to meet the requirements of these youngsters. The overarching goal of juvenile justice policy is being undermined by a lack of coordination and convergence of programs. There are no provisions in the J.J. Act that would allow for the consistent oversight, monitoring, and assessment of the juvenile justice system as a whole. The act's reach is narrow, and many kids aren't properly included in its protections. Considering the size of the people and the areas that are supposed to be governed by this legislation, the amount of money and manpower needed to put it into action is wildly disproportionate. Many kids who are stuck in the system have no way out and no one to turn to for support.

CONCLUSION

We may claim that when the culprit is a juvenile, even the most heinous acts, such as rape or murder, are not punished. Only by efficient execution and modifications to the Juvenile Justice Act can juvenile crime be reduced or eliminated. We can now say that juvenile delinquency in India is a major social and political problem. Juvenile criminality is rampant nowadays among today's kids. While the Indian government has been making strides to address the issue and has made some innovative and daring moves in this regard, there is room for improvement in terms of how these policies are actually put into practice. Furthermore, numerous provisions for juvenile justice have been set and followed appropriately, as discovered in most studies. No one concept of "kid" exists in India. According to the 2011 Indian Census, children are classified as those less than 14 years old. Programs offered by the government tend to focus on younger children (those under the age of 14). This law is lacking an important dimension: a right-based worldview. As it is, protecting children is more of a charitable act than a serious

commitment. The wellbeing of these children, rather than a right, is prioritized.

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