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Nautiyal



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Dr. Rinu Saraswat



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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUVENILE JUSTICE SYSTEM: A SOCIO-LEGAL CRITIQUE

AUTHORED BY- NITIN RAJ,
AMITY LAW SCHOOL, AMITY UNIVERSITY, PATNA

Abstract

The juvenile justice system is the most innovative and enlightened system that has been embraced by global citizens with regard to the holistic development of children. The unprotected child's care and the reform of the deviants are the main priorities. A youngster should be rehabilitated and brought back into the family as soon as is practical. The special court will decide cases involving children who are in legal conflict by applying the parents patriae theory. The paper assessed the juvenile justice system in India using international standards and constitutional thought.

Introduction

When someone is referred to as "Juvenile," it means that they are still acting like children. "Delinquency" refers to not abiding by social norms or neglecting obligations, which may entail breaking the law or doing anything improper. "Justice" is associated with equity, fairness, and sincere regard for human dignity. Seeking moral virtue and equitable treatment in opposition to unjust conduct is the goal. Within the field of criminal law, the Juvenile Justice System seeks to meet the requirements of minors who are not yet old enough to be held entirely accountable for their illegal behaviour. Juvenile delinquency is the result of young people acting in ways that are not acceptable to society. Ensuring children and young people get reasonable, fair, and equitable treatment in order to help them develop into contributing members of society is known as juvenile justice. The problems that children and society face are addressed by the juvenile justice system. Its main goal is to safeguard children by treating them appropriately and establishing an atmosphere that promotes healthy human development. It is a socio-legal strategy for creating circumstances that will allow young offenders to get back on track.

History must be consulted in order to comprehend the current status of the juvenile justice system in India. In India, the juvenile justice system was founded under the British Empire. In India prior to the British rule, families and society at large handled juveniles. Those turbulent times when juvenile issues weren't given their own system are long gone. It is evident from the past that the kids were imprisoned without being given a chance to defend themselves. They were imprisoned among seasoned offenders at the jail. Penologists recommended the same level of punishment for adults and juveniles in the eighteenth century. Juveniles were transported, executed, and imprisoned like adult offenders, according to history.

Over the past several decades, there has been a rise in the number of juvenile offenders under the age of sixteen. The environment in which children are raised, the state of the economy, a lack of education, and parental care may all be contributing factors to the rising crime rate. These are a few of the fundamental causes. The most upsetting aspect is that kids these days—especially those under the age of five or seven—are utilised as tools to commit crimes since, at that age, their minds are still very naive and susceptible to manipulation.

Following the Nirbhaya Case

The terrifying "Nirbhaya Delhi Gang Rape Case"¹ event that occurred on December 16, 2012, horrified the whole country and sparked a lot of discussion among socialists and the legal community. The accused, who was only six months shy of turning eighteen, was the primary cause and focus of the discussion. The Indian Parliament passed the "Juvenile Justice (Care and Protection), 2015" law as a result of the accused's involvement in the horrific crime of rape, which compelled the legislature to enact new legislation. The juvenile laws that were in effect before the Act's introduction have been superseded, along with several notable modifications. One of the most notable modifications is that juveniles who fall between the ages of 16 and 18 ought to be prosecuted as adults.

Historical Background of Juvenile

Juvenile criminals were treated the same as adult criminals in the modern age. Additionally, on November 20, 1989, the General Assembly of the United Nations approved the Convention on the

¹ 1998 SCC, Del 879: (1999) 77 DLT 181

Rights of the Child for the same purpose. The goal of this agreement is to safeguard young offenders' best interests. According to the Convention, there cannot be any legal actions or prosecutions against minors in order to safeguard their social reintegration. The Juvenile Justice Act of 1986 is being repealed and a new legislation is being made by the Convention on Indian Legislation. As a result, the Juvenile Justice (Care and Protection of Children) Act, 2000 was created by Indian legislation.

In order to implement the principles outlined in the Standard Minimum Rules for the Administration of Juvenile Justice, which were endorsed by the United Nations in November 1985, the Juvenile Justice, 1986 abolished the previous Children Act, 1960.² The aforementioned Act, which covered all of India with the exception of the State of Jammu and Kashmir, included seven chapters and sixty-three sections. The Act's main goal was to provide neglected young offenders with care, protection, therapy, development, and rehabilitation. The Act's primary goals were:

- The act essentially established a consistent framework for juvenile justice throughout the nation while safeguarding the rights and interests of minors.
- It discusses the equipment and infrastructure needed for the development, care, protection, and rehabilitation of young offenders.
- It outlined the fundamental guidelines for the appropriate and just enforcement of the criminal justice system when young criminals commit terrible crimes.

Present Juvenile Justice System

In an effort to address the issue of juvenile delinquency, India has also created legislative measures that deal particularly and specifically with the rights and protection of juvenile offenders. Key presumptions form the foundation of the Indian juvenile justice system. Young criminals should not be prosecuted in court; instead, they should get the greatest possible correction and not be penalised; instead, they should be given the opportunity to change their ways.³ ought to be predicated on non-penal therapy provided by social control organisations such as Special Homes⁴ and Observation

² Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 673, Central Law Publications, 17th edition, 2017.

³ Section 2 (13) of the Juvenile Justice (Care and Protection) Act, 2015

⁴ Section 48 of the Juvenile Justice (Care and Protection) Act, 2015

Homes⁵ in the community.

Juvenile Justice Board

A board constitution is required in order to investigate and hear cases involving minors who are in legal trouble.⁶ The Principal Magistrate and two social workers, one of whom should be a woman, will make up the Board.⁷ According to the Act, the Board is not permitted to govern or conduct business from ordinary court grounds. The Principal Magistrate's choice will be the last one.⁸

The Juvenile Justice Board's Special Procedure is outlined in the Act and applies to juvenile offenders. The primary special procedures are as follows:

- The police or a person cannot file a complaint to start the process.
- The hearing needs to be casual and completely private.
- After being detained, the offenders ought to be placed under observation at home.
- The lady magistrate will preside over the youngster in conflict with the law's trial.
- When the Board is not in session, a minor who is in violation of the law may appear before a single member.⁹

Causes of Juvenile Delinquency

Studies and research indicate that adolescent delinquency in India has a variety of factors. Everybody exhibits distinct behavioural tendencies, and children are no exception. Early infancy is when behaviour patterns emerge, and it may be rather challenging to recognise any form of behaviour at this time. However, when a kid grows older and enters the real world, their behaviour patterns occasionally shift, and a variety of events or situations may give rise to delinquent behaviour in them. Some of the reasons of juvenile delinquency include the following:

1. **Adolescent Instability:** A number of significant elements influence an adolescent's behaviour pattern, including biological, psychological, and social aspects. Teens at this age start to feel

⁵ Section 47 of the Juvenile Justice (Care and Protection) Act, 2015

⁶ Section 4 of Juvenile Justice (Care and Protection) Act, 2015.

⁷ Section 4(2) of Juvenile Justice (Care and Protection) Act, 2015.

⁸ Section 5 of Juvenile Justice (Care and Protection) Act, 2015

⁹ Section 7(2) Of the Juvenile Justice (Care and Protection) Act, 2015

more self-conscious about their play, eating, enjoyment, looks, and fashions, among other things. And at this age, adolescents seek independence and freedom, but occasionally, their parents, instructors, and elders offer them opportunities and chances, which causes them to develop antisocial behaviour. Juvenile delinquency is thus caused by a variety of factors, including antisocial behaviour, biological changes, and psychological issues.

2. **Disintegration of the Family System:** The primary reason of the rising rates of juvenile delinquency is also the breakdown of the family system and a lack of strict parental supervision. The main causes of juvenile delinquency are often parental divorce, a lack of parental supervision, and a lack of love and affection.
3. **Poverty and economic conditions:** A major contributing factor to the rise in juvenile crimes is poverty, which occurs when parents or guardians fail to provide for their children's needs. At the same time, children want their needs to be met by parents, who may cook or hook them up. Once their needs are satisfied, they begin to steal money from other parents or from homes. And this leads to the development of a habitual urge to steal, which culminates in widespread thievery.
4. **Migration:** When boys from abandoned and impoverished families migrate to slum regions, they come into touch with anti-social elements of society who engage in illegal activities such as drug smuggling and prostitution. The young are particularly drawn to these kinds of activities, and they could participate in them.
5. **Sex Indulgence:** Children who have been subjected to unwanted physical violence, whether it be sexual or otherwise, throughout their early years may exhibit unattractive behaviours in both their behaviour and mentality. They could wish to have sex experiences or turn into more vagrants at this age. An excessive amount of sex variance might push the guys towards crimes like rape and abduction.¹⁰
6. **Modern Lifestyle:** Children and teenagers find it extremely difficult to adapt to the new ways of living due to the fastchanging patterns of society and modern lifestyle. They struggle with cultural tensions and lack the ability to distinguish between good and bad.¹¹

¹⁰ Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.

¹¹ Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 665, Central Law Publications, 17th edition , 2017

Claim of Juvenility

The "claim of juvenility" is the first and most contentious issue among socialists and the legal community. The Juvenile Justice Board will decide if the allegation of juvenileness is valid. The Board must make a decision about the claim of juvenility prior to the court proceedings, although the claim may be brought before the court at any point during the process, even after the Board has concluded the issue. To decide whether to grant the claim of juvenility, the Board was required to take into account Rule 12 of the Juvenile Justice Rules, 2007.

The court noted in *Kulai Ibrahim v. State of Coimbatore*¹² that the accused is entitled to bring up the issue of juvenility at any time throughout the trial or even after the matter is resolved in accordance with Section 9 of the Juvenile Justice Act, 2015.

In the case of *Deoki Nandan Dayma v. State of Uttar Pradesh*¹³, the court decided that information found in the student's birth certificate kept on file at the school might be utilised to establish the juvenile's age or whether the accused is a child or a juvenile.

The Supreme Court reaffirmed in the *Satbir Singh and others v. State of Haryana* case¹⁴ that the Juvenile Justice Board would examine the date of birth listed in the school records when determining whether or not the accused is a juvenile.

In *Krishna Bhagwan v. State of Bihar*¹⁵, the court held that the date the offence was committed should be used to determine the juvenile's age for the purposes of a juvenile justice board trial.

However, the Supreme Court later overturned its earlier ruling in the *Arnit Das v. State of Bihar*¹⁶ case, holding that the date on which the accused is presented before the appropriate authorities shall be considered to determine whether or not a claim of juvenility exists.

¹² AIR 2014 SC 2726

¹³ 1997 i0 SCC 525

¹⁴ AIR 2005 SC 3549

¹⁵ AIR 1989 SC 217

¹⁶ AIR 2000 SC 748

Conclusion

The foundation of the juvenile justice system is the idea of social welfare and children's rights. The JJS places a strong emphasis on rehabilitation and reformation. The goal is to provide the youngster chances to grow into his own self. After all, the objective is to move forward with the creation of a highly ordered egalitarian society. The nation's future resources are its children. They need to go from having bad personalities to having positive ones. But, based on prior experience, we must close the significant gap that exists between theory and practise. We must establish a strong foundation and an effective juvenile justice administration during this process. The new laws represent dreams; it is up to us to bring those dreams to pass.

