



CRITICAL ANALYSIS OF JUVENILE CRIMINOLOGY IN INDIA IN COMPARISON TO FOREIGN COUNTRIES

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INTRODUCTION

Children are considered to be the asset of every nation. The growth and development of every nation depends on the youth because the coming generation is the future of the nation. It is generally presumed that children or we can say teenagers are likely to get affected by the things they see in their surroundings or the way they are treated. Children during the tender age increase their capability to think hypothetically or abstractly and create their own philosophies regarding society. Children urge to have separate identity and for that they start getting indulge in long- term planning. During this age peer pressure influences the behaviour of children. These are normal phenomenon also affected by hormonal changes which contribute in changes in thinking, behaviour and also romantic ideas. It is quite normal until and unless juvenile develops

delinquent aptness and get indulge in illegal activities. Sometimes, due to such negative effect they tend to take the wrong direction of delinquency. The concept of juvenile delinquency is not a new one and is considered to be an important subject matter of criminology¹. The phenomenon of juvenile delinquency is a frightening one because it is very hard to handle the later procedure of punishment which is very difficult and requires a lot of delicacy for the same.

According to some studies, in the last few decades, the crimes done by teenagers under the age of 15 to 18 years have significantly increased². The general perception or psychology behind such acts may be due to the family upbringing or background, early life-experiences, financial havocs, lack of education and awareness, etc. Other issue of concern is that

¹ Rupaly Middha and Shashwat Tomar, *Juvenile Delinquency in India: A Critical Analysis*, The Lex-Warrier, <http://www.journal.lex-warrier.in/2017/09/22/juvenile-delinquency-india-critical-analysis/>.

² Purti Vyas, *An Analytical Study of Juvenile Justice System in India*, iPleaders Blog, <https://blog.iplayers.in/juvenile-justice-system-india/>.



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with the increase in crime people are using children under the age of 6 to 10 years as a tool for carrying out the illegal activities. It is very easy to manipulate the minds of children because they are not aware of the consequences of their acts.

Before the Act of 2015, in India the Children Act, 1960 was in force and had focused on uniform policies which protect the interest of children and had provisions for treatment, rehabilitation and development. While during recent times, the number of crimes committed by juveniles had increased at an alarming rate so the legislature was bound to come up with more strict laws to regulate juvenile crimes. This issue of concern was firstly debated after the frightful incident of “*Nirbhaya Case*” which shook the nation. Indian juvenile justice system was criticised and hence new laws were introduced.

WHO IS JUVENILE?

In general terms, juvenile is a child who has not attained the age of majority as prescribes by the law. Such child is not aware of does not have knowledge about the consequences of his acts or omissions. In India, the term ‘juvenile’ is defined under the Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2015 as

the person who is below the age of 16 years. Earlier, the majority age was 18 years. This age of majority is different in different countries and the cases related to it are dealt accordingly.

JUVENILE JUSTICE SYSTEM IN INDIA

In India, the subject of juvenile justice is dealt in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The very first regulation regarding the juvenile justice was Juvenile Justice Act, 1986 which was enforced after the adoption of United Nations Standard Minimum Rules for the Administration of the Juvenile Justice and Indian became the first country to grow its regulations as per the provisions and principles enunciated therein.

Then with the changes in society and passage of time, it was realized that the Act of 1986 is not adequate to deal with the current situation. Hence, the Juvenile Justice (Care and Protection of Children) Act, 2000 was enforced. It was believed that there had been several flaws and gaps in the administration of juvenile justice in India. Further, in the light of the most disturbed act of *Nirbhaya Case*, further amendments were made in the Act and the Juvenile Justice (Care and Protection of Children) Act, 2015 was



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enforced. It was enacted to replace the existing juvenile delinquency law so that the most debatable question of age was sorted. Here, as per this Act, any person between the ages of 16-18 can be tried as an adult for the heinous offences.

As the cases related to juvenile crimes are increasing in the country, the dismay and concern is growing rapidly. At present time, youth is much influenced from social media and all sort of reel world which is negatively affecting their budding minds. Due to all this it is high time to reconsider the juvenile laws in the country because by just showing the age of accused, they get a gateway from all the punishments which must be reared in the name of justice.

The said Act has two approaches, one is regarding the constitutionality of the Act and reformation and second one is about the intolerant activities happening in the country. The critic of the Act believes that the provisions of the Act violate the essence of the juvenile justice criminology, it also affects the fundamental rights because of the irrational

classification regarding the age and it does not talk about societal effects, family background, medical, hormonal and emotional state of human brain. The reformist believes that the very concept of juvenile criminology is the care and protection to the juvenile which is in turn completely vanished when the child turns 16 years of age and will be treated as an adult. The objective of reformation will go in vain and the juvenile will be treated as hardened criminal. In the case of *United States v. Dancy*,³ the Court remarked that “the stigma of a criminal conviction may itself be a greater handicap in later life than an entire misspent youth”. It is important to give fresh start to the juvenile and ensure reintegration of juvenile offenders in the society⁴.

But on the other hand, the exponents of the law believe that it is important to have amendment in the law because of the change in time and situations. The increase in the crimes done by youth especially between the ages of 16 to 18 years is an issue of concern. These crimes are

³ *United States v. Dancy*, 640F 3d 455 (1st Cir 2011).

⁴ Yash Modi, Mahek Vasa and Dhvani Jain, *Constitutional And International Perspective Of Juvenile Justice System In India*, Journal On Contemporary Issues Of Law [Jcil] Volume 4 Issue 8,

<http://jcil.lsyndicate.com/wp-content/uploads/2018/09/Constitutional-and-International-Perspective-of-Juvenile-Justice-System-in-India-2.pdf>.



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grievous in nature like rape, murder, extortion etc. Hence, it is necessary to make laws strict for the same because what we had witnessed in Nirbhaya Case is not only one case but there are plenty of unspoken and undebated cases like that which needs to be dealt and justice must be served.

The principle must be followed while dealing with matters like Nirbhaya Case which is "*rarest among the rare*" is that gruesomeness of act must be seen because if the juvenile is competent enough to perform such act, then he is no more child and state of mind should be considered in all such cases rather than the age of the accused. Though the opponents of this reform are of the opinion that it is against the child rights and will affect his entire life from scratch. But if we really understand the gravity of the situation, can we answer questions on the inhumane act done with Nirbhaya by a juvenile? How is he supposed to be considered a child or a juvenile with such a mindset? The answers to all such questions are tough.

In my personal opinion, with the growth and development in technology children are no more innocent one and they do know about the ongoing situations in the world. The youth of 16 to 18 years of age is in my opinion is completely aware of the acts and its consequences and must be dealt in the same way. Because youth is the future of the nation and it cannot be taken lightly that in which direction youth is moving. Yet somehow the statutes are not conformity with Constitution and International Covenants.

INTERNATIONAL APPROACH ON JUVENILE DELINQUENCY

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, defines a juvenile as⁵:

"A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult."

The concept of juvenile justice as per international norms particularly deals with the

⁵ STA Law Firm, *International Perspective on Juvenile Justice*, Mondaq Blog, <https://www.mondaq.com/%20crime/793010/international-perspective-on-juvenile-%20justice#:~:text=The%20international%20juvenile%2>

0justice%%2020system,from%20the%20abuse%20of%20law.

criminal offences committed by juveniles that should be dealt in accordance with behavioral aspects and rehabilitation. Laws must be of such nature that it should focus on reformation rather than punishment. There are some international instruments that deal with International Juvenile Criminology system⁶:

1. International Covenant on Civil and Political Rights, 1966 – This covenant has an important provision that says *“sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”*.
2. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 also known as the Beijing rules, was adopted on 29 November 1985 for protecting the well-being of children.
3. The United Nations Rules for the Protection of Juveniles deprived of their Liberty, 1990 also known as the Havana rule which lays down the standard for the management of the juvenile justice system.
4. The United Nations Convention on the Rights of the Child (CRC), 1989 provides the guidelines for the protection of children by ensuring the rights available to them.
5. The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 also known as the Riyadh guidelines that deal with the prevention of juvenile delinquency.
6. The United Nations Guidelines for Action on Children in the Criminal Justice System, 1997 also known as the Vienna guidelines. It was adopted for the protection of children and it does not only address the member nations but also NGOs and media across the globe.

Hence, all these instruments were made with the motive of securing the interest and rights of juveniles and also focusing on the proper measures for the reformation of juveniles in borstal or juvenile homes.

⁶ Supra Note 3



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COMPARISON OF JUVENILE JUSTICE SYSTEM IN INDIA WITH OTHER COUNTRIES

When comparing juvenile justice system in India with other countries, we can see a similarity among them that is the case is handled as per the nature of crime. In most of the countries, like USA, UK, Germany, Canada, Japan, France etc. has the age barrier of 16 to 18 years and can be imprisoned as an adult in the cases like murder, rape and robbery. But in all these countries, no juvenile can be given imprisonment of more than 10 years or death penalty, the same is in India.

Juvenile Justice System in United Kingdom⁷-

The Juvenile Courts in U.K. were established in 1908 for the first time. The primary concern and obligation of these Courts is to provide proper care and protection to juvenile and to ensure reformation by providing education and reformatory measures as per the law. The provision of remand homes is very important in U.K. and the juvenile is not tried in the court but rather presented before the Board.

Juvenile Justice System in United States of America-

The juvenile justice system is United

States of America is considered to be easiest one than from other countries. Here, the police officer has the power to first analyze the matter and then decide whether to address the issue to Juvenile Court or send the juvenile after admonition. Further, when the case is addressed to Juvenile Court, Court will direct a certificate to provide proper education to the juvenile and sent to certified schools or juvenile homes. Further, the juvenile can be tried as an adult if it is found to be involved in repeated offences or done a serious crime which is dangerous to society and has attained the age where he is close to be an adult.

Juvenile Justice System in France⁸-

In France, the law mainly deals with juvenile in the reformatory matter. Generally, children of 13 years of age are not to be tried and left with admonition. While youth like age of close to majority can be tried in the cases of serious crimes but can never be given death penalty or imprisonment of more than 10 years and it is also important to provide proper education to the juvenile so that after the punishment, he will be able to enjoy the normal life.

⁷ Supra Note 2

⁸ Supra Note 4



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Juvenile Justice System in Canada⁹– the laws in Canada regarding the juvenile delinquency is dealt in according to the provisions of Youth Criminal Justice Act, which emphasize on the reformation and correction of the juvenile. But the youth aged between 14 to 17 years of age can be tried as an adult under some special conditions but the procedure will be followed as per the Youth Criminal Justice Act only.

Juvenile Justice System in Pakistan¹⁰– In Pakistan, no child under the age of 15 years can be detained or arrested. The children above the age of 15 years can be tried as an adult in very special cases only like if the case is serious, heinous and gruesome in nature. Yet, the educational and reformatory measures are lacking due to improper implementation.

In India, the provisions are having a similar nature like other countries after the amendment of 2015. Earlier, there was no provision of juvenile tried as an adult before the Act of 2015. Earlier, in every case the juvenile is presented before the juvenile court and will be punished accordingly. But the Act of 2015 has completely

changed the scenario. But, talking about the reality, in India whether before or after the amendment of 2015, juveniles were subjected to exploitation.

Children coming from slum area or poor background were treated brutally by the authorities and no proper educational or reformatory measures were taken for the same. While, children belonging to upper class were benefitted and do not go through the process of punishment. Further, the added provision regarding the foster care is just a provision which will have just a little or no implementation in reality. Because in India the concept of adoption and foster care is still a taboo and people are not so much motivated to take such steps. It is necessary to make people aware about the same until and unless the provision will go in vain.

SUGGESTIONS

1. It is important for the Court to have reformatory approach in dealing with the cases rather than punitive one.
2. The case should not be transferred to Courts but should be dealt by juvenile

⁹ Rohit Pradhan, *Critical Analysis: Juvenile Justice (Care and Protection of Children) Act, 2015*, Lex Forti, <https://lexforti.com/legal-news/juvenile-justice-act-2015/>

¹⁰ Supra Note 9.



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Courts even in cases with different circumstances while keeping the reformative approach in mind.

3. It is important to give training in child psychology to the members of Juvenile Board including the judges and authorities which will deal with child after the procedure.
4. It is important to categorize children's homes in two different categories i.e., "children in conflict with law" and "children in need of care and attention". It is significant to separate these two in reality rather than just on papers.
5. It is necessary to keep CCTV surveillance in juvenile homes to have a constant watch on any kind of exploitation with children.

among youth which makes them do certain acts which must not be done. The Act of 2015 is a great step of legislation to bring changes in the society. Although it is heavily criticized by some people but it has both negative and positive impacts. So, the duty lies on the administration and Juvenile Justice authorities to eliminate the negative impact and focus on the positive one like the provision of adoption and foster care. It is important to show our young generation the path of righteousness.

CONCLUSION

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Children behave in the way they are nurtured at homes. It is widely known that India is a country where values and morals are given the supremacy even till today. People try to embrace their children with ethics and morals. But in my opinion with the advancement in technology, youth is certainly affected by the reel world which is shown in social media. There is a race