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Juvenile Justice and its Application: India and Abroad

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Juvenile delinquency is an international problem which has made its way into most of the developing countries as well as few developed countries. India is no stranger to this problem as, India has more than 50% of its population under 25 years of age and unemployment and lack of education usually turns this youth to crime. This paper is made to explore the recent developments that the National and International governments have made to counter this phenomenon and its fairness.

I. INTRODUCTION

An Irony in the Indian Legal proceedings that has created a way for loop hole for the masters of law to use it as a legal weapon to save the culprits of crime of highest degree. A culprit of 17 years 365 days is considered to be major but the culprit of 17 years 364 days is a minor. Just a Difference of one day in age creates the difference in the judgment criteria. Thus, a mere day changes his fate. What it means that a young boy can go and commit a heinous crime such as rape and murder but will not be punished with the maximum punishment as the law prescribes for the major. An excuse that safeguards the culprit from punishment if not attained the age of 18.

In the last few years there has been a high increase in the crimes by the children who are below the age of 16 years. The reason behind is lack of education, parental care economic condition etc. The most interesting fact is that the children of this age group are used as a tool for the commission of the crime. Since the children of this age has not attain the age of majority and their mind can be manipulated very easily. Not to mention that even the most heinous of crime awards a maximum punishment of 3 years. This is the primary reason why there has been a steady increase in the juvenile crime. According to the law someone who has not completed the age of 18 years are treated as child and he is not capable of understanding the difference between the right and wrong. They are not at the age of understanding the nature of the crime which he has committed.

Incident of “Nirbhaya Gang Rape” on December 16 2012 make the whole Nation shocked

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and the most debates were started among the socialist and the legal social worker. The reason behind the debate was that one of the accused who were involved in Nibhaya Gang Rape was just six month old to attain the age of majority i.e. 18 years of age. The involvement of accused (who were not attained the age of majority) in such a heinous crime of gang rape stressed the Indian Legislation to make the new laws to deals with such type of cases. Thus the Indian parliament came up with a new legislation which is commonly known as the “Juvenile Justice (Care and Protection of child) Act, 2015.

II. CRIMINAL PROCEDURE CODE AND INDIAN PENAL CODE

Indian Penal Code come into force on 1st may 1861 and it was regarded as the first codified law in the colonial India. Section 82 of the IPC states “Nothing is an offence which is done by a child under the age of seven years” and section 83 of the IPC states “Nothing is an offence which is done by a child above 7 years of age and under 12 years of age who is not able to understand the nature and the effect of the particular circumstances”.

Section 316 of the IPC states “Causing death of quick unborn child by act amounting to culpable homicide”. If a person perform such act which amount to culpable homicide which result into the quick death of the child then the person is liable for the offence of culpable homicide.

Section 437 of the Criminal Procedure code states “When bail may be take in case of non bailable offence”. It provides that a child in conflict with law can apply for the anticipatory bail. Kerala High court justice Narayana Pisharadi states that the child in conflict with law has all the right to apply for the anticipatory bail and by the juvenile justice Act there shall be no any bar on anticipatory bail.

Section 27 of the criminal procedure code states “Jurisdiction in the case of Juvenile”- Any offences is not punishable with death or imprisonment of life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be trail by the court of a chief judicial magistrate or by any court specially empowered under the children act 1960 or any law for the time being in force providing for the treatment of juvenile offender.

III. CONSTITUTION OF INDIA AND JUVENILE JUSTICE

The constitution of India is the supreme law of land and constitution of India provides certain rights and duties towards the Nation and these rights and duties are to be followed by the citizen of the country. Constitution provides the machinery for the working of the

government. Part IV of the constitution of India deals with the Directive Principle of State Policy- DPSP and the reason behind DPSP is to ensure the smooth functioning of the society. For the rights and welfare of the children following provision were provided by the constitution:-

- 1) **Article 47-** Right to be provided with proper standard of living and good nutrition.
- 2) **Article 24- Right** to be protected from any type of hazardous employment under the age of 14 years.
- 3) **Article 21A-** Right to free and compulsory education to all the children between the age group of 6 to 14 years of age.
- 4) **Article 39-** Right to be protected from the forced labor and human trafficking.

Each and every provision of the constitution which guaranteed the legislation for the welfare of the children and for the protection of the rights of the children. Since part IV of the constitution dealt with the DPSP like likewise part IV of the juvenile justice board deals with the various provisions which aimed at the welfare and betterment of the children and also for the juvenile offender in every possible situation.

IV. JUVENILE JUSTICE SYSTEM IN INDIA: HISTORY

In the present time, a rise for the treatment of juvenile offenders has adopted throughout the world including the countries like U.S.A., U.K. This rise has been seen around 18th century. Before this juvenile offenders were treated same like the criminals .For the reason above on 20th November 1989, General Assembly of United Nation has adopted a convention on the Rights of a Child. Right of Child seeks to protect the interest of juvenile offenders in its best possible way. This convention provides, in order to protect the social integration of juvenile, there shall be no any court trails and the judicial proceedings against the juvenile. Thus, **The juvenile justice (care and protection of children) Act, 2000** were introduced by the Indian Legislation which seeks to deals with the juvenile offenders.

Children Act, 1960 were replaced by **the juvenile justice Act, 1986**, which provide the guideline for the administration of the juvenile justice adopted by the U.N. countries in November 1985². The mentioned Act consists of 63 sections, 7 chapters and is extended to whole India. The main aim of the Act is to provide care and protection, rehabilitation, development, treatment of the juvenile delinquent. The main aim of the Act are as follows:-

² Prof. N.V. Paranjape, criminology, Penology, with Victimology, page no 673, central law publications, 17th edition 2017.

- 1) The Act laid down the proper procedure for the treatment of juvenile justice in such a way that it protect the interest and right of the juvenile.
- 2) It gave the provision for the proper and fair administration of the criminal justice in the case of the heinous crime committed by the juvenile.
- 3) It let us know about the process and working structure for the development, treatment, protection of the juvenile offenders.

V. U.S.A.: JUVENILE JUSTICE SYSTEM

In USA the working of juvenile justice court is easier and less complex as compared to the other Nation and its working of juvenile justice court. The USA court follows the informal way in the process of the trial of juvenile offender. At the very first stage, the police officer who is in charge of the case empowered with the full discretion of power that either he will keep the juvenile offender under child custody or to immediately release him or to rebuke the offender or to do the both. In the second stage the police officer contact the juvenile court and make them aware about the case and then after he will take the case into his hand. After the court trial the juvenile offender is sent to the children home or to the certified school if the court has passed the order. A juvenile is treated as an adult in juvenile justice system in USA only in the cases where the juvenile offender is nearer to the adulthood as per the provision of the juvenile justice system or the juvenile offender who is found to be a part of repeated offences which is proved as the danger for the society.

VI. UK: JUVENILE JUSTICE SYSTEM

In 1908 Juvenile Court were established in England for the first time under the Children Act, 1908. The first and foremost duty of this court is to provide protection to the child and young offender and to take all the steps which deems necessary for the removal of undesirable surroundings around the offender and to make ensure for the procreation of child by providing education and trainings.

- 1) UK Legislation passed an Act which deals with the Rights of Juvenile Offenders. This Act is known as **The criminal Justice Act, 1948**, this act provides certain security to the juvenile offender by sending them to the remand homes.
- 2) **The Children And Young Offender Act, 1933**. This act gave civil powers on the juvenile court of system in important cases to look into the matter. The act provides that any

child³ and young person⁴ who have committed the crimes should be tried in the juvenile court only.

VII. INDIA: JUVENILE JUSTICE SYSTEM

India had also made some legal provisions that specially deal with the protection and rights of the juvenile offender which rebuke to deals with the problems of juvenile delinquency. On the basis of some assumptions the juvenile justice system in India is made:

- 1) The trial of the young offender should not take place in the court besides this they should be corrected in the possible ways.
- 2) The juvenile offender should not be punished by the court rather they get another chance to reform himself/herself.
- 3) Trial for the child in conflict with law⁵ should be processed through a non penal treatment through the communities based upon the social control agencies e.g. Observation Home⁶ and Special Homes⁷.

The role of NGOs and other organization were dealt under *Section 8, 9, 34, 37 and 45* of the Juvenile Justice Act. Under this act the organization is certified to maintain the Observation home and Special Homes.

Section 45 of the Juvenile Justice Act gave power to state Government to make rules and regulations in order to ensure smoothly linkages between the various corporate and other agencies, non Governmental and Government for the proper sake of social interest of child and rehabilitation.

Juvenile Justice Act 2015

The main aim to associate the law relating to the children who are found to be in conflict with law and children in need of protection by considering their basic need through proper protection and care, social integration, by providing children friendly environment approach in the disposal of the matter in the best interest of juvenile offender. The act also put some effort on the recreation of juvenile offender by sending them to the Observation Home and the social institution. The subject under this Act is as follows:-

Juvenility Claim

³ A person under 14 years of age.

⁴ A person of age group between 14 to 17 years of age.

⁵ Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015

⁶ Section 47 of the Juvenile Justice (care and protection of children) Act, 2015

⁷ Section 48 of the Juvenile Justice (care and protection of children) Act, 2015

“Claim of juvenility” is first and foremost arguing question among the socialist and the legal fraternity.

Juvenile Justice Board decides the claim of juvenility. Before the proceedings of the court the Board has to decide the claim of juvenility and the claim of juvenility can be raised at any stage of judicial proceedings and even after the declaration of matter by the Board. **Rule 12 of juvenile justice Rules 2007**, the Board take above rule in consideration before the declaration of claim of juvenility. In the case of *Kulailbrahim v. state of Coimbatore*⁸ the court observed that under section 9 of the Juvenile Justice Act, 2015 the accused has the right to raise the question of juvenility at any point of time during the trial of judicial proceeding and even after the disposal of case.

In *Deoki Nandan Dayma v. state of uttar pradesh*⁹ the court held that in order to determine the age of juvenile or to show that weather the accused is juvenile or child the entry in the school register where the date of birth is mentioned is taken as the admissible evidence.

In the case *Krishna Bhagwan v. state of bihar*¹⁰ the court held that for the purpose of trail under juvenile justice board, the relevant date for the consideration of age of juvenile should be on which the offence has been committed.

Constitution of Juvenile Justice Board

For the purpose of investigation and hearing of matters of juvenile in conflict with law¹¹ there shall be a need of juvenile justice board.

There shall be a Principle Magistrate and two social worker among them one should be women¹². The decision which is given by the Principle Magistrate shall be considered as the final decision.

Special procedure of juvenile justice board: - Against the juvenile offender this Act provide the main special procedure which are as follows:

- 1) Complaint which is registered by the police or the citizen, on the basis of such complaint the proceedings cannot be initiated.
- 2) The hearing must be strictly confidential and informal.
- 3) The juvenile offender should be kept under the special home after detention.

⁸ AIR 2014 SC 2726

⁹ 1997 SC 525

¹⁰ AIR 1989

¹¹ Section 4 of Juvenile Justice(Care and Protection)Act, 2015

¹² Section 4(2) of Juvenile Justice(Care and protection)Act, 2015

- 4) Only the lady magistrate conducts the trial of juvenile in conflict with the law.
- 5) A child in conflict with law may be prosecuted before the individual member of the juvenile justice board, when the board is not sitting.

Changes with the new law (Juvenile Justice Act, 2015) came into effect:

- 1) The law allows that the child of age group 16 to 18 years will be treated as adult in the case heinous crime such as rape, murder etc.
- 2) According to the new law each district will get Juvenile Justice Board and child welfare committees.
- 3) Duty of Juvenile Justice Board and social welfare is to ensure that the rights and interest of the juvenile is protected if the crime is committed by the child.
- 4) In the year 1850 the first legislation on juvenile justice came in India, which provides that the children who were 10 to 18 years of age group and convicted by the court should be provided with a vocational training as a part of their social interest and rehabilitation process.

VIII. CONCLUSION

The rate at which there is an increase of juvenile crime in India is a very concerning issue and it is needed to be figured out the solution for the same. Though the government has provided certain legislation and rules to take control over the juvenile crime but the present laws which were laid by the government is not able to control such issues of the Nation. There is also a requirement of activities for the child rights and a group of social workers to take an initiative for the betterment and the transformation of the juvenile offenders and indirectly this step boosts up the process and helps in bringing of the desirable change at a very large perspective.

The measures which are mentioned in the above article regarding the removal of crimes which were committed by the juvenile require special attention and implementation of the same. As the current rate in which the juvenile are found to be the accused of the crime, it is expected that it may increase in the coming times also thus there is a need to be stopped at its very initial stage.
