A Study on Juvenile Justice System in India before and after NIRBHAYA Case

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Abstract

A child who has not completed 18 years of age is called juvenile. India is a developing country. Now a days juvenile crimes are increasing day by day. The Juvenile Justice Act 1986 was enacted by the Parliament to provide care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. The Juvenile Justice Act, 1986 in India and hence, Juvenile Justice Act, 2000 was enacted. The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. This act has been further amended in 2006 and 2010. In the wake of Delhi gang rape (16th December, 2012) the law suffered a nationwide criticism owing to its helplessness against crimes where juveniles get involved in heinous crimes like rape and murder. The Juvenile Justice Bill, 2014 was passed by the Parliament in December, 2015 and it became the Juvenile Justice Act, 2015. It came into force from 15th January, 2016. Under the Act of 1986, Section 2(a) defined the term juvenile as a “boy who has not attained the age of 16 years and girl who has not attained the age of 18 years”. Meanwhile, India signed and ratified the UN Convention on the Rights of the Child (UNCRC), 1989, which treated a person as a juvenile who is below 18 years of age.

Key Words: Doli Incapax, Child rights, juvenile justice, minor, child welfare commission.
1. Introduction

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) nowadays are used as a tool for committing the crime as at that stage their mind is very innocent and can easily be manipulated.

The frightful incident of “Nirbhaya Delhi Gang Rape Case”[1], on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “Juvenile Justice (Care and Protection), 2015.” PRAGATI GHOSH The Introdution of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as the Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed by Lok Sabha on 7th May, 2015; was passed by Rajya Sabha on 22nd December, 2015 and received Presidential assent and came into force on 31st December 2015, to whole India except the state of Jammu and Kashmir[13]. The JJ (C&P) Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. And in the new Act some important and many new definitions also included such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children; clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC); clear the timelines for inquiry by Juvenile Justice Board (JJB); special provisions for serious offences committed by children above the age of sixteen year and also included a new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions. The researcher have tried to study the provision related to juvenile justice system in India and to study the juvenile justice system in Arab countries. To compare the juvenile justice system in India with Arab country.

2. Hypothesis

Juvenile justice system in India when compared with the juvenile justice system in Arab countries is inadequate in providing punishment to offenders.
3. Methodology

The present study is a doctrinal study and is based on secondary sources which includes books e sources newspaper articles, journals etc.

4. Review of Literature

The book explores socio-legal and human rights dimensions of Juvenile Justice System (JJS) in India. Addressing the issue from a wide range of perspectives--sociological, demographic, legislative, judicial, and interventionist--The Juvenile Justice System in India attempts a macro level examination of these issues in a multidimensional perspective (Kethineni, 2007) An unprecedented comparison of juvenile justice systems across the globe, Juvenile Justice in Global Perspective brings together original contributions from some of the world's leading voices (Zimring, Langer, & Tanenhaus, 2017). An unprecedented comparison of juvenile justice systems across the globe, Juvenile Justice in Global Perspective brings together original contributions from some of the world's leading voices. While American scholars may have extensive knowledge about other justice systems around the world and how adults are treated, juvenile justice systems and the plight of youth who break the law throughout the world is less often studied (Roberson, 2016). This important volume fills a large gap in the study of juvenile justice by providing an unprecedented comparison of criminal justice and juvenile justice systems across the world, looking for points of comparison and policy variance that can lead to positive change in the United States. This paper deals with the juvenile justice theory and practise gives a complete review of the framework that oversees the indictment of youthful guilty parties Careers in (Holsinger, 2011) This book provides descriptions of the wide range of jobs, correction officers, youth advocate, lawyer, judge. The many carrier options available to young people interested in pursuing work within the field in juvenile justice (Poe-Yamagata, Butts, & National Institute for Juvenile Justice and Delinquency Prevention, 1996). This paper deals with the female offenders in the juvenile justice system in India more frequently a younger age. (Guarino-Ghezzi, 2017) This paper deals with the United States has become a determinations rather than a remedial exper one that often reinforces youths defines of authorities (Gulati, 2013). This paper deals with the Nirbhaya case law. There were stories on the girls and the pain endured by herein different stage of her life (Roberson, 2016). This paper deals with the a bill of juvenile justice system in India for care and protection. In lok sabha propose To introduce a judicial waiver. This paper deals with the juvenile justice system in India for welfare of rights . It explores a social legal and human rights. The entire article discuss with the juvenile justice from welfare of rights (Kumari, 2010). This article deals with the entitled with the amended to the juvenile justice act 2015. The other major changes in the juvenile justice act 2015. Comparision of penalties in juvenile act 2015 to juvenile act 2000.
This article entitled with a women who is victim of a sex related crime courts injustice. The Nirbhaya case still dragged on and its took more than nine months for the trial court to reach a verdict. (Talwar, 2013). walking towards ourselves Indian women tell their stories contributors write an issue such as love, literacy and marriage for women. The pieces explores what it to be an Indian won (Mitchell, 2016). This book explore the digital media for gender activism in India. It has formed an alternate platform for dissent in Delhi 2012 Nirbhaya case as a study and keeping gender disclosures and its core. (Dey & Orton, 2016). The United States has become a deterntal rather than a remedial experience one that often reinforces youths defence of authority. (Bernard, 1997) This paper deals with the juvenile justice system in India emergency of juvenile justice system in India The Ipc and CRPC unitednations riles are juvenile fp deprived of their liberty. This article deals with a women who is vicitm of sex related crime. Courts injustice. the Nirbhaya case still dragged and it took for me or trial court. offences are punishable with imprisonment for 7 years. Ten things need to know about the the new juvenile law. the child welfare committee. child welfare committees in every district.

**Historical Background**

It was the principal law which required that youngsters between the ages of 10-18 sentenced in Courts, to be given professional preparing as a major aspect of their restoration procedure 1897 – Reformatory school Act, Under the Act, the court could confine delinquents in a reformatory school for a time of two to seven years yet after they had achieved the age of eighteen years, the court would not keep them in such organizations. 1920 – Madras Children Act, The Juvenile Court theory was first presented in the Madras Children Act 1920, (trailed by the Bengal Children Act (1922) and the Bombay Children Act (1924), from that point by numerous other Children Acts). 1923 – Amendment in Criminal Procedure Code The Criminal methodology code (CrPC) was corrected to give a unique system to settling criminal cases concerning tyke guilty parties. 1960 – The Children Act, The youngsters demonstration was passed to work as a model enactment and for use in association domains. This Act built up particular Child Welfare Boards to deal with cases identifying with dismissed kids. It likewise made the situation of a post trial agent who could "prompt and help dismissed or reprobate children."[5] moreover, it built up partitioned Children's Courts for cases identified with reprobate adolescents, in this manner isolating the legal procedure for reprobate and disregarded kids. 1986 – The Juvenile Justice Act The Juvenile Justice Act, 1986, was instituted to accommodate mind, security, treatment, improvement and restoration of dismissed and reprobate adolescents and for the mediation of specific issues identified with the demeanor of reprobate adolescents. It canceled every single other Child Acts and accommodated a uniform legitimate structure for the adolescent equity framework all through the nation. 2000 – The Juvenile equity (care and assurance) Act, The Juvenile Justice (Care and Protection) Act was re-sanctioned with a few changes. It happened in April 2001. The 'Focal Rules'
were informed in June 2001. The Juvenile Justice (Care and Protection) Act (2000) has guaranteed that regardless of religion, youngsters needing consideration and assurance are given the advantages of a different legal process. Be that as it may, notwithstanding the Juvenile Justice (Care and Protection) Act (2000), Hindu and Muslim individual laws likewise represent youngsters in India. (Bajpai, 2017)

**National Human Rights Commission and Juvenile Justice System**

The National Human Rights Commission (NHRC) is a self-ruling body to check the advancement and assurance of human rights in India. Since the beginning of National Human Rights Commission, the predicament of adolescents who come in class of contention with law and kids who need care and assurance was their worry. The National Human Rights Commission screens the grievances against youngsters; Projects and Programs Division and arrangement making and usage of the strategies at the national level. It likewise contemplating and prescribing powerful use of those universal instruments which fundamental for development of general working of the adolescent equity framework in India. In the year 2005, the Registrar General of the High Court Patna educated the National Human Rights Commission that the usage of the Juvenile Justice Act 2000 was greatly poor in Bihar. The National Human Rights Commission have given bearings in regards to the matter of adolescent equity to be audited speedily in each state and U.T. Alongside this, the National Human Rights Commission in a joint effort with a NGO had attempted an examination concerning the execution of the Juvenile Justice Act 2000 of every 16 states. What's more, after research the actualities uncovered that the execution of the Act was poor in the entirety of its angles and should have been fortified. The National Human Rights Commission likewise sorted out a National Conference on Juvenile Justice System in India in 2007 in New Delhi. In the Conference number of proposals and recommendations made to enhance the working of the framework in India. Concern was laid on the execution of the Act 2006 in both letter and soul, likewise guidance the states and UTs to set up the required foundation under the adolescent equity framework and furthermore guarantee zero pendency and the request ought to be finished inside the particular day and age. It likewise underlined on giving due care, security, development and advancement of youngsters.

**Constitutional Provisions**

Post Independence, the constitutional provisions have encouraged the developments in the field of juvenile justice system in India. Part III and Part IV of the constitution of India which deal with “Fundamental Rights” and “Directive Principles of State Policy” respectively and contain special provisions with respect to care and protection of the children.

**Article 15 (3):** It allows the State to make special provisions for children and women.
Article 21-A: The state shall provide free and compulsory education to all children of the age of six to fourteen years.

Article 23: Prohibits the traffic in human beings and forced labour.

Article 24: Prohibits the employment of children below the age of fourteen years in factories, mines and other hazardous employments.

Article 39(e): It directs the State to safeguard the tender age of children from entering into avocations unsuited to their age or strength.

Article 39(f): Directs the State to give opportunities and facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

Article 45: The State provides early childhood care and education to children below the age of six years.

Article 47: It is the duty of the state to raise level of nutrition and standard of living and to improve health.

Criminal Justice (Reformative or Punitive) and Juvenile

Adolescent Justice is a legitimate structure which characterizes equity for adolescent under the Indian Legal System. The framework is giving an extraordinary treatment and security to adolescent wrongdoing. Juvenile Delinquency implies a wrongdoing submitted by youth who is younger than 18 years. At introduce, everybody realizes that there is an expanding rate of adolescent violations and this expanding rate is making a begging to be proven wrong issue of age assurance. Age assurance is considered as a standout amongst the most imperative factor to decide the development level of the charged. The expanding wrongdoing rate is bringing up an issue that whether the adolescent can be attempted as a grown-up or not? The demonstration itself reply to the inquiry that no adolescent guilty party who goes under the meaning of "tyke with struggle with law" as characterized under sub – segment 13 of Section 2 of the Act should not be attempted as grown-up and might sent to Child Care Center or any Rehabilitation Center( till the wrongdoer achieve the age of 21 years and after that he or she may moved to the correctional facility or jail).

Accordingly, the present Juvenile Law in India, considers Age Determination as a vital significance to see if the guilty party falls under the domain of Juvenile Justice Act. According to the Act, the most extreme residency of discipline which can be given to the adolescent wrongdoers is three years and this discipline is legitimate for egregious wrongdoing too. In the event of a grown-up wrongdoer, the most extreme discipline which can be given is 7 years or life detainment or capital punishment. In any case, the Act, if there should be an occurrence of adolescent guilty parties accept on Reformation of adolescent however much as could reasonably be expected. The investors reorganization...
sort of discipline under the Act incorporates: – Sending adolescent to Rehabilitation Centers, Juvenile Schools or influencing them to include in different program headed by government or NGO's. In the present situation, there is no compelling reason to give such a minor sort of discipline for an intolerable and cruel offense due to Age assurance or Age factor. Assault is Rape, one can't walk way taking a request of age factor or mental inadequacy or mental unfitness. Thus, the current law for the sake of Age assurance or Age Consent, isn't making an obstacle impact on the counter – social conduct of youth. Adolescent guilty parties are in trust that carrying out terrible wrongdoing is no issue as they will escape next to no or no discipline in name of reformation. Adopting of reformatory hypothesis of discipline by law, is giving an undue preferred standpoint to adolescent to sustain their capacity to perpetrate wrongdoing without confronting any brutal results. Transformation is great yet not generally. In the event that law is looking at changing the adolescent wrongdoers so they can have a superior life in future then law ought to likewise discusses the privileges of the casualty. Justice must be given to the casualty. The hypothesis of reconstruction is helping adolescent to change yet it isn't helping the casualty at all. The show adolescent framework in India is made on trust that adolescent wrongdoers can be improved and restored, sending them to bars or detainment facilities will going to reaffirm their status and way of life as "culprits". Presently the inquiry emerges is that there is no assurance that adolescent wrongdoers will get improved and won't demonstrate their against – social conduct again. The act is totaling concentrating on the reorganization as opposed to punishment. Punishment will make a hindrance impact on the adolescent and expanding rate of wrongdoing by adolescent will back off.

5. Conclusion

Juvenile crimes are a harsh reality, and to reduce them, the Act must be effectively implemented, along with that awareness must be created. The approach and the thinking of the essential players in the system, like the police needs to change from punishing to reforming the juveniles in conflict with law. There are psychological, biological, physiological and personal factors which are responsible for juvenile delinquency, along with other factors such as peer pressure, physical disability, love for adventure, dissatisfaction with school. Family is the one of the oldest and most important units of society, it is responsible for the socialization of the child. A child learns from his family the difference between good and bad, right and wrong, appropriate and inappropriate. Family is the role model for a child, it is the grass root level which makes or breaks a child’s character. Parents should not only teach but also set a good example in front of their children. They can also see whether their kids are in good company or not. Imparting of sex education in schools can also be an answer for juvenile delinquency. Change is possible through better social, economic conditions, creation of awareness and also through change in people’s attitudes towards juveniles. The Nirbhaya gang rape case shook the
collective conscience of the people. Among five accused, one was minor aged 17 years. The crime woke the people from their slumber to the glaring reality of the juvenile justice legislation in India. Being a minor, he got away with just 3 years imprisonment for crime of such a brutal nature. A bill was introduced in the Parliament in 2014 by Maneka Gandhi, for allowing 16 year olds to be tried as adults. After getting clearance from the Cabinet, the bill was introduced in both the houses and finally came into force from 15th January 2016. According to the 2015 Act for a crime committed by a child, who is of sixteen years, the Juvenile Justice Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. Along with this provision, the Act has also been criticized for its opaque age determination system and poor draft.

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