

A CRITICAL ANALYSIS ON JUVENILE JUSTICE ACT, 2000

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ABSTRACT:

The Juvenile Justice Act, 2000 has indubitably been a savior for the rights of the children; however sometimes, the conflict of law with juveniles is there to stay, which is when inequity is doled out by the black quill on dull scrolls. Law without justice, after all, is nothing but a tarnished flesh-wound gaping at the dishonor it brings. On 17th July, 2013, the Supreme Court of India dismissed pleas to reduce the age for juveniles from 18 to 16.

The plea was a combination of seven writ petitions heard together which challenged the constitutionality of the Juvenile Justice Act, 2000 in response to which, the court refused to hold the act as ultra vires the constitution. Even though, this decision of the court was widely appreciated by one segment of the society due the virtue of it being an equitable safeguard of public morality and children's rights, the counter-offensive believed that this judgment is detrimental to holistic justice.

With the recent legal skirmish between the Apex Court and the people propounding equitable relief to all, focus has been shifted on either the lowering of the age of the juvenile or the categorical exemption of the children in the age bracket of 16 to 18 being exempted from the jurisdiction of the Juvenile Justice Act.

KEYWORDS: Juvenile Justice, constitutionality, public morality, children's rights, equitable safeguard.

OBJECTIVE:

- To trace the history and origin of the act
- To bring out the development of the act in the different phase
- To analyse the juvenile justice system in various countries
- To compare the JJ act of 1986 with the JJ act 2000
- To bring out the mechanism and the execution of JJ act 2000

HYPOTHESIS:

There is Definite and significant laws in india in the concept of juvenile justice act 2000. the government of india despite in best intentions and efforts lacked the power to order implementation.

RESEARCH METHODOLOGY:

This is a doctrinal research and materials collected are secondary data.

Research question: Whether there is no definite policy towards the manpower development of JJ?

INTRODUCTION:

Children are recognized worldwide as supremely assets of the Nation. The future of the nation lies in the hands of the Children, who have been recognized as the supremely assets of the nation but because of the indifferences of our society in all spheres, these future stakeholders are not brought up properly which leads to child delinquency. Child or juvenile delinquency is an alarmingly increasing problem causing a source of concern in all over the world. Children ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, it has not been so. Despite the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, the majority of children in India continue to live without a card, protected and meaningful childhood.

India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect,

right to information, right to expression and right to nutrition etc have been defined as basic rights of children by the Convention of the rights of the child. Accordingly, India has adopted a national policy on children in 1974 for achieving the above said rights for its children. The National Policy for Children has reaffirmed the Constitutional provisions for adequate service to children both before and after birth and through the period of growth to ensure their full physical, mental and social development. Through its National Policy for Children the government of India took the responsibility of children's nurture and solicitude saying that equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

India being a party and signatory to the world Declaration on survival, protection and development of children, 1990 and for the purpose of fulfilling its commitment made at the world summit a national plan of action for children has been formulated by the under the Ministry of Human Resource Development, keeping in mind the needs, rights and aspirations of approximately 300 million children in the country.

Almost all the countries have developed juvenile justice system to deal with their young offenders. In India scene for the children has changed a lot and their problems and related issues have been given attention and are being discussed at various forums. The question of providing proper protection and care to the children of such a big number is a big challenge. A good number of our children on account of socio-economic reasons have adding themselves in the list of delinquent child.

There is need to give specific importance to children in society. Importance of a child is well recognized since ages. Nowadays children are under tremendous social pressure due to new changing social perceptions.

The juvenile justice systems have been designed to respond to the needs of young offenders. One principle role has been to provide specialized preventive and treatment services for children and young persons as a means of secondary preventions, rehabilitations and improved socialization.

State's responsibility of Welfare of the children, with the passage of time has shifted to the social organizations and certain philanthropic bodies. To make the people aware of the right of child, United Nations Organization declared 1979 as "International Year of the Child" issuing a general appeal to all the nations to review their programmes for the well being of the children and to mobilize support for programmes according to the countries conditions, needs and priorities.

A report of UNICEF in 2005 on the state of world's children under the title "Child under Threat", speaking regarding India, mentioned that millions of Indian children are equally deprived their right of survival, health, nutrition, education and safe drinking water. This is what is happening to the most of the young children who if properly taken care of, would shine the future of the country. The cache statements "Children are supremely important national asset" and the greatest gift of humanity, in the present scenario and on ground level realities appear hollow. The children in India require double sided protection. The action is required on two fronts. Firstly, by preventing and arresting the increase in number of the juvenile delinquency, and secondly by giving the delinquent child or a juvenile in conflict with law proper opportunity to reform himself and join the mainstream of the society. Juvenile delinquency is difficult to be defined as to its behavioural connotations.

There is difference of opinion given by the various authorities in the field and also in the type of offences and behaviour which is included in the juvenile delinquency. The concept of juvenile justice was derived from a belief that the problem of juvenile delinquency and related problem of youth in abnormal situations are not only amenable to the resolution within the framework of the traditional process of criminal law. The juvenile justice systems have been designed to respond to the needs of young offenders. One principle role has been to provide specialized preventive and treatment services for children and young persons as a means of secondary preventions, rehabilitations and improved socialization.

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If we can control juvenile delinquency we shall be controlling and checking the future criminals in making an open admitted fact is that tendency among young people to commit crime and indulge in anti social activities is increasing. The future, development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. Children are the most venerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social element in the community. The state has to difference of affording proper care and protection to children at all times. **The aim is to** Study of Juvenile Justice Act.

CHAPTER 1:

JUVENILE JUSTICE ACT: AN OVERVIEW

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. This law, brought in compliance of the 1989 UN Convention on the Rights of the Child (UNCRC), repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified the UNCRC in 1992. This Act has been further amended in 2006 and 2010.

The Act is considered to be extremely progressive legislation and the Model Rules 2007 have further added to the effectiveness of this welfare legislation. However, the implementation is a very serious concern even in 2013 and the Supreme Court of India is constantly looking into the implementation of this law in Sampurna Behrua V. Union of India and Bachpan Bachao Andolan V. Union of India. In addition to the Supreme Court, the Bombay and Allahabad High Courts are also monitoring implementation of the Act in judicial proceedings. In order to upgrade the Juvenile Justice Administration System, the Government of India launched the Integrated Child Protection Scheme (ICPS) in 2009-10 whereby financial allocations have been increased and various existing schemes have been merged under one scheme.

Introduction to the Act:

This is an act which aims to:

1. a) Consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection (Replace Juvenile justice Act, 1986)
2. b) Provide for proper care, protection, treatment and cater to their development needs
3. c) Provide a child-friendly approach keeping their best interest in mind while dealing with them

This act sources it's principles / has its foundations in:

1. a) The Constitution of India: Article 15(e), 39 (e) & (f), 45 , 47
2. b) United Nations Convention on Rights of the Child (UNCRC), 1989 (Ratified by India in 1992 (with a reservation on child labour eradication alone))
3. c) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)
4. d) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

About Juvenile in conflict with law:

- Sec 2(1): A Juvenile in conflict with law is defined as one who is below 18 years of age as on the date of commission of the offence.

About juvenile justice board and its functioning:

- Sec 4(1): A Juvenile Justice Board (or more than one) has to be established in every district in the country in 1 year (i.e. by 2007)
- Sec 4(2): At least, 1 woman should be there among the 3 members of the board
- Sec 4(3): The Judicial Magistrate (JM) or the Metropolitan Magistrate (MM) should have special knowledge or have received training on child psychology / child welfare & the two social workers on the board should have at least 7 years of active experience working towards issues of children.

- Sec 4(5)(iii): Members shall be disqualified if they do not attend continuously for 3 months or if overall attendance in a year is less than 75%.
- Sec 5(1) & Rule 9(3): juvenile justice board should meet on every working day of a week unless cases are less and such a specific order exists to that effect.
- Rule 9(5): every juvenile justice board session should be at least for 5 hours
- Sec 5(2): In case the board is not sitting, a juvenile allegedly in conflict with law can be produced in front of any single member of the board.
- Sec 5(3): Final disposal of a case in the juvenile justice board requires at least the JM / MM and one social worker to be present
- Sec 6(1): Juvenile justice board is the single exclusive authority for cases of juvenile in conflict with law
- Sec 6(2): A Session's court or a High court can take appeals or revisions against a juvenile justice board order and exercise the powers conferred on the juvenile justice board by this Act.
- Sec 7: In case, any case relating to a juvenile allegedly in conflict with law comes up in a court, the court shall redirect the same to the juvenile justice board.

About institutions for juvenile in conflict with law:

- Sec 8(1): observation homes are to be established in each district or group of districts for temporary reception of juvenile allegedly in conflict with law during pendency of inquiry.
- Sec 8(4): Initially, the juvenile allegedly in conflict with law has to be placed in the reception unit of the Observation home for:
 - Preliminary inquiry
 - Care
 - Classification based on age (7-12, 12-16 & 16-18), considering physical / mental health and degree of offence
- Sec 9(1): Special homes are to be established in each district or group of districts for reception and rehabilitation of JICWL which implies that orders have already been passed by a juvenile justice board in such cases.
- Sec 9(4): The juveniles shall be classified based on age, considering physical / mental health and nature of offence.

About process relating to juvenile allegedly in conflict with law:

- Sec 10(1): No juvenile for any reason can be lodged in a police lock-up or in jail.

CHAPTER II :

JUVENILES-WHO ARE THEY?

A “Juvenile” or “Child” means a person who has not completed eighteen years of age.

According to International Law, a ‘Child’ means every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC).

Under the Indian Laws,

Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act,2000 defines “juvenile” or “Child” as a person who has not completed eighteenth year of age.

Definitions of Juvenile/Child under various national legislations:

- Child Labor (Prohibition and Regulation) Act, 1986.

Section 2 (ii), “Child” means a person who has not completed the age of 14 years.

- Child Marriage Restraint Act, 1929.

Section 2 (a), “Child” means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age.

- Immoral Traffic (Prevention) Act, 1956.

Section 2 (a), “Child” means a person who has not completed the age of sixteen years.

Children/Juveniles need care and protection?(CCNP)

According to Section 2 (d) of Juvenile Justice Act, a child in needs of care and protection means:

- child who is found without any home or settled place of abode and without any ostensible means of subsistence.

- Child who is found begging or who is either a street child or a working child.
- Child who resides with a person, whether a guardian of the child or not, and such person has threatened to kill or injure the child or abused and there is a reasonable likelihood of the threat being carried out or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.
- Child who is mentally or physically challenged or children suffering from terminal or incurable disease having no one to support or look after.
- Child who has a parent or guardian, such parent or guardian is unfit or incapacitated to exercise control over the child.
- Child who does not have parents and no one is willing to take care of or whose parents have abandoned him or who is missing or run away child and whose parents cannot be found after reasonable inquiry.
- Child who is being grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.
- Child who is found vulnerable and is likely to be inducted into drug abuse or trafficking.
- Child who is being or is likely to be abused for unconscionable gain.
- Child who is a victim of any armed conflict civil commotion or natural calamity.

Juvenile/Child in conflict with law(JICL)

Section 2 (1) of the Juvenile Justice Act, 2000 has defined “juvenile in conflict with law” as a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.[iv]

JUVENILE DELINQUENCY

Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. Delinquency is a kind of abnormality. When an individual deviates from the course of normal social life his behaviour is called ‘Delinquency’. When a juvenile, below an age specified under a statute exhibits behaviour which may prove to be dangerous to society and / or for him, he may be called a Juvenile delinquent. Juvenile delinquents are those offenders including boys and girls

who are under 18 years of age. A Juvenile delinquent is a young person incorrigible or habitually disobedient.

Act of delinquency may include: Running away from home without the permission of parents, Habitual behavior beyond the control of parents, Spending time idly beyond limits, Use of vulgar languages, Wandering about railroads, streets market places, Visiting gambling centre ,Committing sexual offences, Shoplifting, Stealing etc.

A grave problem such as juvenile delinquency can't be solved by means of legislation and government efforts alone. As far as India is concerned in many of the states Children Acts have not been effectively enforced. Some of these Acts themselves have defects. Official machinery is not effectively used for controlling this problem. Government as well as private agencies must work hand in hand with all sincerity and seriousness to find an effective remedy for the problem of juvenile delinquency.

The first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the Reformatory Schools Act, 1897 and later came The Children Act of 1960. The Juvenile Justice Act, 1986 was the primary legal framework for juvenile justice in India. The Act provided for a special approach towards the prevention and treatment of juvenile delinquency and also provided a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. The law replaced the Children Act, 1960.

Juvenile Justice Act, 1986 was applied uniformly throughout India except state of Jammu and Kashmir. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. In a landmark step, the Government of India, repealing the juvenile justice Act 1986, introduced juvenile justice (Care and Protection of Children) Act in 2000 and further, amended , it in 2006, so as to make it responsive to the emerging needs in the field of juvenile justice, and making it, compatible with UNCRC standards. The Juvenile Justice Act, 2000 aims at consolidating and amending laws relating to juveniles in conflict with law, and children in need of care and protection by providing proper care, protection and treatment by catering to their developmental

needs, by adopting child friendly approach in adjudication and disposition of matters in the best interest of children, and for their rehabilitation through various institutional mechanisms established.

The concept of juvenile justice was derived from a belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional processes of criminal law. The term 'juvenile justice' has been given different meanings in different contexts.

The juvenile justice system thus performs the welfare cum criminal justice functions, in this duality of its roles; the system strives to achieve explicit social goals such as the provision of minimum standards of child care. The system also functions to safeguard the right of children as per the United Nations Declaration of the Rights of the child.

The central functions of the juvenile justice system are: to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of matters relating to, and disposition of delinquent juveniles in the light of the avowed policy of providing opportunities to such Children to become useful citizens for any country.

Crime and the Treatment of Offenders identified three models of juvenile justice system on the basis of contemporary approaches to dealing with juvenile offenders namely; The due procedural model, The social welfare model, and The participatory process model.

The juvenile justice movement appears to have owed more to the slowly changing conceptions of childhood which came to maturity during the seventeenth and eighteenth century. The concern for the children had grown during the nineteenth century on account of the recognition of special needs of children. By the end of nineteenth century these ideas were firmly backed by legislation, and thus courts for children were required to be set up to give expression to humanitarian beliefs.

The present Juvenile Justice legislation in India has tried to move out of the derogatory nomenclature and introduced the concept of 'children in conflict with law' and 'children in need of care and protection'.

There are many theories of juvenile delinquency. Some are: Biogenic Theory, Psychogenic Theory, Psychoanalytical and Psychiatric Theory, Medico-Biological Theory, The classical Theory, Multi-causal Theory

There are mainly following causes in juvenile delinquency: Biological, Socio Environmental, Psychological., Physiological or Personal. A few other causes of delinquency[v] may also be mentioned as Bad Company, Adolescent instability and impulses, Early sex experiences, Mental conflicts, Excessive social suggestibility, Love of adventure, Motion pictures, School dissatisfaction, Poor recreation, Street life, Vocational dissatisfaction, Sudden impulses, Physical condition.

There are various programmes and strategies which may be undertaken to control and prevent juvenile delinquency. Broadly the programmes can be categorised under two heads Individual Programme and Environmental programme.

Police has also important role to play to control juvenile delinquency. There are following major areas of police dealing with Juvenile namely; Discovery, Investigation of Delinquency, Case disposition, Protection of juveniles, and Delinquency prevention.

The approach of the Supreme Court towards juvenile has been very liberal. It was way back in 1977, when Supreme Court in a case held that penalty of death should not be imposed on a person below 18 years of age. Borstal Acts and Reformatory Schools Acts had the children guilty of offence punishable with death or life imprisonment in their focus. Though the judicial opinion was not uniform on the issue when these Acts could apply to such children[vii]. The Supreme Court with a view to advance the cause of justice has allowed the plea of juvenility being raised for the first time before it[viii]. In Pratap Singh vs. State of Jharkhand and another[ix], the Supreme Court had to decide on conflicting views expressed in Arnit Dass and Umesh Chandra's case(supra). The Constitution Bench of Supreme Court to which the matter was referred overruling the decision in Arnit Dass's case upheld and re-affirmed its view taken in Umesh Chandra's case holding that the relevant date for determination of age of juvenile is the date of an offence and not date of his production before the court. The Supreme Court and the High Courts have lent in favour of jurisdiction of the Board in preference to the jurisdiction of any other court.

Regarding apprehension and production of the juvenile also the Supreme Court has been very sensitive. In *Sheela Barse and Anr. (I) v. Union of India*, the Supreme Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit there respective jails and ascertain how many children below 16 years of age were confined and what were the charges against them.

CONCLUSION AND SUGGESTIONS:

The Ministry of Women and Child Development started contemplating bringing several desired amendments in 2011 and a process of consultation with various stakeholders was initiated. A draft Bill in this regard was prepared and was pending before the Ministry of Law and Justice for scrutiny and was put up on the official website of Ministry of Women & Child Development in June 2014 for public inputs. The Delhi gang rape case in December 2012 had tremendous impact on public perception of the Act. Contrary to the reality, Media highlighted that the juvenile allegedly involved in this case was the “Most Brutal” of all accused persons. Eight writ petitions alleging the Act and its several provisions to be unconstitutional were heard by the Supreme Court of India in the second week of July 2013 and were dismissed, holding the Act to be constitutional. Demands for a reduction of the age of juveniles from 18 to 16 years were also turned down by the Supreme Court, when the Union of India stated that there is no proposal to reduce the age of a juvenile.

Many experts and activists viewed post December 2012 Delhi Gang Rape responses as creation of media sensationalization of the issue, and cautioned against any regressive move to disturb the momentum of Juvenile Justice Legislation in the Country. However some sections in the society felt that in view of terrorism and other serious offences, Juvenile Justice Act of 2000 needed to be amended to include punitive approaches in the existing Juvenile Justice Law, which so far is purely rehabilitative and reformatory. In July 2014, Indian Express reported that Pakistan-based terrorist organization Lashkar-e-Taiba had asked its members to declare their age to be below 18 years. This would ensure that they are tried under the Juvenile Justice Act instead of the Indian Penal Code (IPC). The maximum punishment under the Act is three years.

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