



A critical study on the juvenile justice system in India and it's origins, growth and development upto present stage.

Krishna Moni Sarma

J.B. Law College, Guwahati, India.

Abstract

This paper represents the origins and development of Juvenileism and also Juvenile Justice system in India as incorporated under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended. From the critical study of the subject it has become crystal clear that the concept of juvenile justice has its origins as old with the passing of resolution in the U.N. Convention on the right of child (CRC) and the African charter on the rights of Child (ACRWC). The constitution of India provides several provisions for safeguarding the right of the children. In this paper attempt has been made to highlight the law relating to juvenile justice system in India and also steps taken by the state to reform the juvenile who are in conflict with law by amendment of the juvenile justice (Care and Protection of Children) Act in the year 2015, which leads to amendment after the gang rape of paramedical student at encluse of where accused got the benefit of juvenileism only for few months to complete 18 years and in this amendment whole act was recast to make comprehensive provision for children in conflict with law taking into consideration the standard prescribed in the convention of the right of the child. By this amendment though the child is defined as a person who hasn't completed 18 years but when he or she is found in conflict with law the juvenile justice board will decide examining physical appearance whether the child will be tried by the ordinary criminal court or by the juvenile court.

Keywords: Juvenile, Juvenile Justice System, Growth of Juvenile Justice System, Rights of Child, Juveniles in conflict with law and Juvenile Justice Board.

1. Introduction

Article 15 of the Constitution of India, inter alia, confers upon the State powers to make special provision for children. Articles 39(e) and (f), 45 and 47 further makes the state responsible for ensuring that all needs of children are met and their basic human rights are protected. The Indian Penal Code provides for an absolute exemption for a child below the age of seven years taking into account the immaturity of his mind and a qualified one for a child above seven but below twelve.

The age of twelve years was considered the age of discretion under the ancient Saxon Law. In the Roman law the age of fourteen years and twelve years were taken to be age of discretion and, therefore,

children above these ages were held liable for the offences committed by them. The maturity of understanding and discretion of the child might be proved by the nature of his act, his subsequent conduct and his demeanour and appearance in the court. To assert the current relevance of the provision in IPC, it argued that if more than 150 years ago, when IPC was enacted, the age of precocity was considered to be twelve years; there cannot be any question as to its relevance and appropriateness in the current epoch where due to the advancement in technology, use of television, computers and mobile phones, focus on extracurricular activities at school as well as at home, spirit of competition; children mature faster and they act like adults. However, while awarding punishment

regard must be had to his tender age.

It follows, thus, that the infliction of punishment must vary on the footing of the severity of crime committed and balance must be in favour of punishment so as to get the desired impact. If IPC has set the minimum age for criminal liability what remains undone is to have regard to the circumstances of each case such as age, gender of the convict, nature of offence, circumstances rendering the commission of the offence possible, etc. to award the required punishment. In this regard it is necessary to pay some regard to the circumstances which affect sensibility, sending a convicted juvenile to a reformation home instead of imposing punishment would result in absolute failure of justice, criminal jurisprudence and the spirit of the code, especially when the nature of the offence and circumstances of the case make it clear that the accused possesses the required precocity to act upon discretion, to have *mens rea* and to understand the nature and the consequences of the act, as in the case of juvenile in Delhi Gang Rape Case. Bentham visualizes reformation of the offender in the very punishment, according to him it is one of the merits of punishments to contribute to the reformation of the offender, not only through fear of being punished again, but by a change in his character and habits. Moreover, the success of the re-socialization model adopted under the act depends on due implementation of the same and in India, since many of the laws have turned out to be a failure due to lack of proper implementation, one cannot take a chance and frustrate the well founded principles of the criminal law for the sake of an impractical and disputed approach.

2. Concept and scope of the domain

Contemporary scientific research in juvenile delinquency has verified the existence of the following crime related postulates; the incidence of crime has been soaring, particularly in the second half of the last century and juvenile delinquency has increased; recidivism has been soaring but the recidivism among juveniles is even greater; the age limit of crime and other related sociopathological phenomena (alcoholism and drug abuse, in particular) in hitting the bottom; the involvement of juvenile offenders and juveniles who were patients in the clinic of modern diseases of young people (drug abuse, alcoholism, prostitution, sexual deviations, vagrancy) committing offence as adults is greater.

Statement of objects and reasons:

1. Article 15 of the Constitution, inter alia, confers

upon the State powers to make special provision for children. Articles 39(e) and (f), 45 and 47 further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.

2. The United National Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of other(c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
3. The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment sale of children for adoption purposes, etc. have highlighted the need to review the existing law.
4. Further, increasing case of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group 16-18 years have increased especially in certain categories of heinous offences.
5. Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the above-mentioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children)

Act, 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children, and offences committed against children. This legislation would thus ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstances by adopting a child-friendly approach keeping in view the best interest of the child in mind.

3. Objectives of the study

The particular topic selected for this research paper has immense importance and it is quite relevant in present day context. The growing danger for crimes committed by the juveniles is bringing attention to the Indian Criminal Justice System. After the gang rape of a paramedical student by a juvenile attention has been brought to the legislature to make laws applicable for a juvenile keeping in mind the psychology of a child below 18 years. Keeping in mind the UN Convention of Rights of Child, 1989, the laws should be framed by the legislature to reform the character of a child by giving appropriate punishment. It is high time to take adequate and proper legal measures to control and combat the criminal activities committed by the juveniles. This research paper covers more or less the development of concept of juvenile justice system in the world and also few suggestions how to combat this criminal activities.

4. Research methodology

The methodology adopted in preparation of this research paper is doctrinal in nature and comprises of secondary sources. Secondary sources includes text books by various authoritative writers, news papers, law journals, Supreme Court law journals, articles etc.

5. Growth of juvenile justice system in India

The establishment of the First Juvenile Reformatory Institution in India can be traced to Bombay in 1843, seven years before the passing of the Apprentices Act of 1850. In that year a Ragged School was establishment at Sewri (in East Bombay) as an as lum for orphans and vagrants. The objects of the school were:

1. Reformation of juvenile offenders arrested by

police; and

2. Encouragement of apprenticeship among young persons coming from the working class.

The Indian Jail Committee's Recommendations (1919-1920) laid the foundations of the first child welfare law-the Madras Children Act, 1920. Bengal followed in the footsteps of Madras in 1922; and Bombay followed soon in 1924. The Bombay Children Act was a relatively more progressive, more improved piece of legislation.

In 1924, a voluntary, namely, the Bombay Children's Aid Society, was formed to implement the provisions of the law within its municipal limits. The society began functioning on 1st may, 1927. The Bombay Vigilance Association and the society for the Protection of Children in Western India had already been serving, in their own way, for the cause of socially-deprived children in Bombay. So selfless was the voluntary social workers' interest in and so single-minded was their devotion to, the new avenue of statutory child welfare, which they discovered in the establishment of the new organization, that their ready and whole-hearted cooperation ensured the success of the new agency and of the children act itself. Indeed, this ungrudging, voluntary participation in establishing the agency was a tribute to the great race of selfless, dedicated social workers who blazed the trail in many areas of social reform and social service during the year 1875-1945. To them the cause was greater than their selves; and the well-being and welfare of the needy and the distressed counted for more than self, power or prestige.

The Madras Children Act was passed in 1920. The junior certified school, designed for the training of the non-offender child was, however, not established in Madras till 1923. The madras Children's Aid Society did not come into existence till 1928; and it was not until 1939 that the first juvenile court constituted under the act started functioning in Madras.

The Government of Madras was the first among the then provincial (presidency) governments to think of enacting appropriate legislation to take care of young offenders and neglected children. Sir Harold Stuart, with the assistance of J.G. Melville of the Madras Education Department, drafted a bill on the lines of the English Children Act of 1908. Among its objects, the important ones are;

1. To rescue children from undesirable surroundings;
2. To give them a sound education in a reformatory school or an industrial school;
3. To prohibit imprisonment of young persons under

- 14 years of age;
4. To restrict it in the case of those between 14 and 16 years of age;
5. To set up juvenile courts; and
6. To establish reformatory and industrial schools for the reception, training and education of juveniles.

In 1922, the Bengal Children Act was passed. The important provisions were:

1. Nobody under 12 years of age was to be sentenced to death, transportation or imprisonment for any offence;
2. Penal measures were to be substituted for all juvenile offenders by educational treatment; and
3. For such educational treatment, two separate types of institutions were proposed to be established, namely, industrial schools for children (a) under and (b) above twelve years of age. The Bengal law, however, remained almost a dead law until it was received and began functioning eighteen years later.

As a result of the States' Reorganisation Act of 1956, and thereafter, some of the recognized states such as the then bilingual Bombay state, with which were merged some areas of the defunct states of Saurashtra, Hyderabad and the old Madhya Pradesh, came to have more than one law in the particular field of statutory child welfare. Consequently, such states inherited, alongwith the enactments, different administrative arrangements responsible for implementing the legislation. The recognized states concerned gradually unified these enactments into common state wise laws and the different administrative arrangements into a single, uniform implementing agency.

With the States' Reorganisation also came a hopeful development which was to have an important bearing on the enactment of Child Welfare Laws of States which had none before. The cumulative fact of the development was the passing of the Central Children Act, 1960.

The statement of objects and reasons of this act was as follows:

"Children are the most vulnerable 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 elements in the community. The state has the duty of according proper care and protection to children at all times as it is on their physical and mental well-being that the future of the nation

depends. It should also be remembered that children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training it is possible to reform his anti-social attitudes and to mould him into a responsible citizen".

The object of the Children Act, 1960 was, "An act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories."

But the Apex Court in *Sheela Barse Vs Union of India* suggested that:

"Instead of each State having its own Children's Act, different in procedures and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject so that there is complete uniformity in regard to various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by parliament should contain not only provisions for investigation and trial of offence against children below the age of sixteen years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have a legislation on the subject but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip-service is not paid to such legislation and such justification for non-implementation is not pleaded on ground of lack of finance on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation."

The Apex Court further observed:

"If a child is a national assets, it the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the Statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from society."

6. Significance of the study

The major significance of the Convention on the Rights of Child 1989 is that it represents a commitment to improving the situation of children. India ratified the convention on 11th December 1992. Thus it can be used by public advocates to force the government to take action on child issues. Although law in the form of international conventions or national legislation can contribute considerably towards the child rights what matters is how laws are actually implemented, what is done to reach the ideals contained in these laws. Ways must be found, therefore, to enforce the implementation and to ensure that children experience true childhood.

7. Findings and discussion

Juvenile delinquents have been looked upon differently by persons. To a lawyer they are minors who are accused of offences from which they are immune to the punishments that are usually administered to adults. To psychologists they are youngsters whose social behaviour patterns show deviations from acceptable norms. Juvenile delinquency is indeed a social problem. Economic insecurity, under-nourishment, inadequate clothing and lack of medicare may lead to delinquency. The State has to give these children better care and make them good citizens.

Drug abuse, alcoholism, prostitution, sexual deviations vagrancy are so common in youngsters that these activities bound to make these children delinquent.

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than animal. Education is the foundation of good citizenship.

The government of India by Constitutional (86th amendment Act), 2002 has added a new article 21A which provides that the State shall provide free and compulsory education to all children of the age of 6-14 years and further strengthened this article 21A by adding clause (K) to article 51A which provides that who is a parent or guardian will provide opportunities for education to his child or ward between the age of 6-14 years.

The Constitution of India and Supreme Court have declared that the education is now a fundamental right of the people of India.

We can reduce these crimes by imparting proper education to the children.

8. Suggestions

After a brief concept of the juvenile justice system and the significance of it, the following suggestions can be made,

- (i) The Governor and legislatures should consolidate juvenile anti crimes in a single agency to provide strong leadership and accountability for results.
- (ii) The Governor and legislatures should adapt legislation directing the Board of Education in conjunction with the department of education to evaluate and promote the use of effective and conflict resolution curriculum in public schools
- (iii) The Governor and legislatures should direct all state agencies involved in anti crime efforts to make early intervention and prevention programmes a top priority.
- (iv) The Governor and legislatures should adapt legislations that restrict the remand process to maximise judicial flexibility to make appropriate disposition of juvenile cases.
- (v) The Governor and legislatures should adapt legislations that creates a system that allows judicial scrutiny and dispositions of cases where juveniles reach maximum state custody and are still considered to be a threat to society based on their commitment offence, their conduct while incarcerated and nature and circumstances of their crime.
- (vi) The Governor and legislatures should adapt legislations eliminate confidentially for all juvenile adjudication and disposition processes involving serious crimes for those 14 years and older.

9. Conclusion

The Juvenile Justice (Care and Protection) Act 2000 is far from being a perfect legislation to protect and promote the rights of children. The Act was amended therefore, twice in 2006 and 2011. But the 2015 amendment has brought a little change to this Act after the Nirbhaya's case. The 2015 amendment has stated that the child between 16-18 years will be treated as adults for heinous crimes. The Board for Juveniles will pay some regard to the circumstances which affect sensibility, the *mens rea*, whether the accused possesses the required precocity to act upon discretion and to understand the nature and consequences of the act and then decide whether to treat him under the Juvenile Board or by the ordinary criminal court.

The Juvenile justice system is presently in limbo.

Let us hope that respective State governments fill the lacunae by preparing comprehensive rule in consultation with child rights experts and non-governmental organisation.

Today it is principal instrument in awakening the child to cultural value, in preparing him for later

professional training and in helping him to adjust normally to his environment. It is said that the child is the future of the nation.

As quoted by Mahatma Gandhi-”Be the change you wish to see in the world”

References

Bajpai Asha. 2006. Child Rights in India-Law, Policy and Practice. Second Edition, Oxford University Press, New Delhi.

Kumari Ved. The Juvenile Justice System in India from Welfare to Rights, Second Edition, 2010, Published in India by Oxford University Press, New Delhi.

Jain M.P. Indian Constitutional Law, Sixth Edition, 2010, Re-printed 2013, Lexis Nexis Butterworth Wadhwa Nagpur Brand.

Juvenile Justice (Care and Protection) Act, 2000 with Juvenile Justice (Care and Protection of Children) Rules, 2007 and the National Charter for Children, 2003.

Juvenile Justice (Care and Protection of Children) Act, 2015.

Professor (Dr.) Hussain Saheb Mohammed and Mashamba Clement J. – Protection of the Rights of the Children in Conflict with the law : Human Right Perspective, Published in Journal Section of Supreme Court Cases 2012 (3) SCC.

Mitra N.L., Juvenile Delinquency and Indian Justice System, Deep and Deep Publication, New Delhi, 1988.

