



A critical evaluation of juvenile justice system in India

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Abstract

Juvenile delinquencies/crime rates are rapidly increasing in India, and it has become a serious concern. A juvenile is a person who is under the age of 18 years. Juvenile delinquency refers to unlawful and antisocial activity of juveniles. The primary objective of this paper is to analyse Juvenile delinquencies & the Juvenile Justice System of India. For a juvenile to exhibit delinquent tendencies there are several underlying sociological, biological, and physiological factors and some of these factors behind the delinquent behaviour of juveniles have been identified by the researcher in this paper. One of the landmark cases which forced the judicial system of India to re-evaluate the laws relating to juvenile crimes was Nirbhaya gang rape case. This paper sheds light on the impact of this case on the Juvenile Justice System of India. The two most important facets of Juvenile justice system of India are Punishment and Rehabilitation. There needs to be a perfect balance between punitive and rehabilitative approach in the Juvenile justice system of India. The researcher has discussed if the Indian Juvenile Justice System leans toward Punitive approach or Rehabilitative approach. The present paper is concluded with some recommendations to rectify the current drawbacks present in the Indian Juvenile Justice System.

Keywords: critical evaluation, juvenile justice system

Introduction

Children are one of the most valuable assets and the future of every country. The future of the country is at peril as the children are committing heinous crimes and getting away with it with punishment that can be considered to a slap on the wrist. There is a popular saying, which says “What cannot be bent as a plant, can it be bent as a tree?”, this means that children need to be corrected for their faults at a young age, if not done so, then children will continue their delinquent behaviour even after they grow up, and once they attain maturity it is not possible to correct them, as they were not corrected when they were young. As the behavioural patterns of a person are developed at a young age, it is very important to teach children what is good & what is bad, to correct them for their mistakes and to punish them for the mistakes that cause harm to others.

The term ‘Juvenile’ is derived from a Latin word ‘Juvenilis’ which means youthful. A “Child” or a “Juvenile”, is a person who is below the age of eighteen years. In the last few decades, the number of juvenile crimes has considerably increased. To deal and to punish juveniles, for their crimes, a country sets up a separate judicial system – Juvenile Justice System and the law that governs it is “Juvenile Justice (Care and Protection of Children) Act, 2015”. The differential treatment between adults and children for their crimes is based purely on their age. But as the famous saying says “Old enough to do the crime, old enough to do the time” if they have the mental capacity to commit a heinous crime, then they should be punished accordingly.

Evolution of Indian Juvenile Justice System

The disparity in treating adults and children for their crimes can be traced back to the colonial times. The first centre for children was established by Lord Cornwallis in the year 1843, it was called the “Ragged School”. The objective behind establishing this school was to reform the arrested juvenile delinquents by urging them to work & learn through apprenticeship & vocational training, this laid the groundwork for enactment of Apprentice Act, 1850. This act was the first legislation that dealt with juvenile crimes in India. As per this act, juveniles in the age group of 10 to 18 years who were convicted for petty offences, were required to participate in vocational training for their rehabilitation. The Reformatory School Act of 1876 and 1897 were a significant legislation, which empowered the court to detain juvenile delinquents in reformatory schools for 2 – 7 years, and after attaining the age of 18 years they would be transferred to prison cells. The Criminal Procedure Code of 1898 provided that after the imprisonment of juvenile delinquents in reformatory schools till they attain 18 years of age, they will be required to keep them on probation till they attain 21 years of age. In 1919-1920, Indian Jail Committee was formed; it presented a report on establishing separate institution and conducting separate trials for juvenile delinquents. The committee opposed conducting trials for juvenile delinquents in adult court & suggested for establishing children’s court to hear cases of juvenile offenders. Following the recommendation of Indian Jail Committee, the Indian Children Act was enacted. Subsequently, provinces of Madras (1920), Bengal (1922) and Bombay (1924) passed their separate legislations for juvenile delinquents.

Post-independence, the case of Sheela Barse v. Union of India, court addressed the necessity of treating juvenile criminals in jails with special care and recommended for enacting a uniform law for the entire country to deal with juvenile crimes and criminals. This led to the enactment of Juvenile Justice Act, 1986 for providing care, protecting and rehabilitating juvenile delinquents. To fill in the gaps and loopholes present in this act, Juvenile Justice (Care & Protection Act), 2000 was passed. This act was passed in compliance with the United Nations Convention on the Rights of the Child (UNCRC). The act contained provisions regarding protecting, rehabilitating and custody of juvenile offenders and ensured that adjudication & resolution of cases & issues related to juveniles were “child-friendly”. Due to the uproar witnessed subsequent to the Nirbhaya Case, the Juvenile Justice (Care & Protection of Children) Act, 2015 was passed. The highlight of this act is the provision regarding heinous offences committed by juveniles who are above the age of 16 years.

Literature Review

- In the Article “The Impact of Juvenile Justice Reforms in India”, the authors Sessa Kethineni & Tricia Klosky conducted research to find out if significant increase in the juvenile crime rate was the reason behind enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000. After a thorough and detailed research, they concluded that it was not the reason behind the enactment of the act, the main reason was to obtain centralized control & uniformity of laws. To minimize discrepancies in judicial processes & treatment of criminals throughout the country, as well as to diminish regionalistic control over particular issues, Juvenile Justice Act was passed. This literature is limited only to the changes made in the structure and procedure of the courts, different kinds of the cases processed and dispositions. It does not cover the types and causes behind juvenile delinquencies, hence the researcher of the present study has covered that aspect.
- Pragya Shukla, in her article “Juvenile Delinquency and Juvenile Laws in India” has attempted to find the reasons behind rising juvenile delinquency. Some of the reasons behind rising juvenile delinquency are abusive parents, child sexual abuse, drug-abuse, family violence, etc. The author states that the youth are the future of the country, hence measures should be taken to rehabilitate them and for the same reason should also be punished for their offences of grievous nature. This article is limited to meaning of juvenile delinquency, its issues and who can claim it. It does not discuss the impact Nirbhaya Case had on the Indian Juvenile Justice System; therefore, the researcher of the present study aims to shed light on that matter.
- The article “Juvenile Justice in India: A Historical Outline” is written by Dr. Jayanta Kumar Dash and Dr. Ratnaprava Barik in the year 2018. The author states that juvenile delinquencies have become a serious concern in the present society. In several cases, it has been witnessed that juveniles are also capable of committing grievous crimes such as rape, murder, dacoity, etc. Hence, it is not reasonable to be lenient on the juveniles who are capable of committing such atrocious crimes. This literature is limited to discussing the historical development of the juvenile laws in India, it does not cover the punitive and rehabilitative aspect of the present Indian Juvenile Justice System, hence, in the present study, the researcher has examined those facets of the Indian Juvenile Justice System.

Research Methodology

In the present study, Doctrinal Research Methodology & Analytical Study method has been opted to critically analyze the available information collected from secondary data sources.

Research Questions

- What are the types of Juvenile delinquencies & the causes behind Juvenile Delinquency?
- How has the Nirbhaya Case impacted Juvenile Justice System of India?
- What are the Punitive and Rehabilitative aspects of Indian Juvenile Justice System?

Discussion

Types and Causes of Juvenile Delinquencies

The term ‘delinquency’ has been derived from a Latin word ‘delinquer’ which means abandon or to leave. Juvenile delinquency means anti-social and criminal behaviour of juveniles. As per the Juvenile Justice (Care & Protection of Children) Act 2015, a juvenile delinquent is referred as a “child in conflict with law” which means “a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.”

Before the enactment of JJA 2015, in several cases, the issue that was faced was whether to consider the age of the juvenile when he committed the offence or the date when he was presented before the Juvenile Justice Board. In the case of Arnit Das v. State of Bihar, the honourable Supreme Court held that to determine the juvenility of the offender, the date on which he was produced before the Juvenile Justice Board will be taken into consideration. The Supreme Court put an end to this confusion in the landmark judgement of Pratap Singh v. State of Jharkhand. It was held that the date that will be taken into consideration while determining the juvenility of the offender is the date when the offence was committed and not the date when he was produced before the JJB or the court. Subsequently, the issue regarding determining juvenility was officially put to an end by the 2006 amendment.

Children/ Juveniles are capable of committing offences just as adults, from minor offences to grievous offences. Due to the age of juveniles, their offences are considered to be delinquencies. The Office of Juvenile Justice and Delinquency Prevention has categorised juvenile delinquencies into 3 categories: i) Drug related crimes, which involves using, possessing and selling of illegal narcotics which have addictive property; ii) Property crimes, which involves juveniles obtaining property belonging to others by threatening or by using force; iii) Violent crimes, such as murder, assault, rape, grievous hurt.

Every individual, including children, has unique behavioural tendencies. The behavioural tendencies/patterns of an individual start developing from a very young age, but in the early ages, it will be difficult to identify violent or delinquent behaviour as an individual keeps growing, which results in altering of his behavioural tendencies/patterns. However, if a child is regularly exposed to certain circumstances, environment and experiences, then it plays a significant role in shaping the behavioural patterns of a child. Sociological, biological and physiological factors play a crucial role in behavioural patterns of children. Some of the causes that result into delinquent behaviour are: i) lack of moral values ii) poverty iii) violent parents iv) sexual abuse at a young age v) mentality of seeking revenge vi) sadistic tendencies (deriving pleasure by inflicting pain and suffering on others).

Impact of Nirbhaya Case on the Indian Juvenile System

On December 16, 2012, the horrific incident of “Nirbhaya Gang Rape Case” left the entire country in shock. Out of the 6 accused, one of them committed suicide in jail, four of them were given death penalty and one of the accused was a juvenile. The juvenile offender was just six months away from attaining majority. In 2013, a BJP leader - Mr. Subramaniam Swami had filed a PIL in the hon'ble Supreme Court of India requesting that the juvenile should be tried as an adult in a regular court. Supreme Court's 3 Judge-Bench comprised of CJ P. Sathasivam, Justice Shiva Kirti and Justice Ranjan Gogoi, refused to meddle with the “age of juvenility”, even in cases where minors were guilty of heinous crimes. The court held that the provisions of the JJ Act were in accordance with guidelines of constitution as well as international conventions. The SC ordered the Juvenile Justice Board to give judgement in the juvenile's best interests in accordance with the law. He was tried separately in a juvenile court and was given maximum sentence of three years imprisonment in a reform institution.

The court's verdict caused a huge uproar in the country; the public expressed their discontent with the court's decision to punish the juvenile criminal with only 3 years of imprisonment, they demanded death sentence to the juvenile criminal involved in the gang rape. It was argued that the age of the accused should not be a free pass for him to obscure the magnitude of violence that was inflicted by him to the victim. He was the one who had tortured the victim with an iron rod and caused internal bleeding to the victim. The victim's mother criticized the decision of the court and stated that by not prosecuting the juvenile as adult for his heinous crimes, juveniles will commit any offence without worrying about serious repercussions.

Major public backlash for not prosecuting the juvenile criminal as an adult for his heinous crimes and punishing him with only 3 years imprisonment in the reform home resulted in enactment of the Juvenile Justice (Care & Protection of Children) Act, 2015. This Act brought various significant modifications in the legal regime for juveniles. One of the remarkable changes introduced by this act is that juveniles in the age group of 16 – 18 years, can be tried as adults if they are accused of heinous crimes.

Punitive and Rehabilitative aspects of Indian Juvenile Justice System

A Juvenile Justice System is usually framed in such a way that it focuses on rehabilitation as well punishment. The Indian Juvenile Justice System leans more toward rehabilitation than punishment. The reason behind leaning more towards rehabilitation is because it is often believed that children are not capable of understanding the nature and consequences of their act. This theory is based on the legal principle “*doli incapax*” which means that children are not capable to form intention to commit crime because of their age.

The theory of rehabilitation in juvenile system is based on the principle that a juvenile who commits an offence can be corrected and may give up his delinquent conduct with the help of proper guidance and not by threatening to punish him/her. As the delinquent conduct of juveniles arise from factors like sexual/ physical abuse, poverty, violent parents, etc., it is possible to improve their conduct or behaviour by several reform policies. Children who are in “conflict with the law” should be treated as children in challenging situations and the Juvenile Justice System's approach should be geared towards resolving children's vulnerabilities and facilitating their rehabilitation.

The Juvenile Justice (Care and Protection of Children) Act, 2015 defines three types of offences: i) petty offences- for which maximum punishment is imprisonment up to three years; ii) serious offences- for which maximum punishment is imprisonment is for three to seven years; iii) heinous offences- for which maximum punishment is imprisonment is up to seven years. The approach of rehabilitation is suitable for the juveniles who has committed petty offences. But juveniles who have committed serious and heinous offences need to be punished in order to rehabilitate them.

Adopting a reformatory philosophy of legal punishment gives juveniles an unfair edge in perpetuating their ability to commit crimes without incurring serious penalties. The rehabilitation approach focuses on the accused whereas the punitive approach focuses more on the victim. It is necessary to punish the juvenile offenders who are guilty of committing serious and heinous offences to provide justice to the victim. Indian Juvenile Justice System is based on the belief that it is possible to rehabilitate & reform juvenile delinquents; putting them behind

bars will result to identifying them as ‘criminals’, which will stay on their record forever which will impact their future. However, there is no surety that the juvenile offenders will not engage in criminal activities in the future. The JJ act focuses more on rehabilitation than punishing the juvenile offenders. But, to reduce the rate of juvenile offences (heinous & serious offences), penalization is a more effective approach.

Conclusion and Recommendations

In the present society, the rate of juvenile crimes is rising at a concerning pace. Children are the future of our country, hence the juvenile justice system plays a significant role in shaping the future of our country. In the recent years, it has been witnessed that children are also capable of committing crimes of grievous nature like murder, rape, dacoity, etc. Age should not become a factor from which juvenile criminals escape serious punishment. If the juvenile offenders are not punished or punished with a lighter sentence, then the juveniles will not fear from committing such crimes again. For some juveniles, the living condition in reform homes can be much better than their living conditions outside, and they might even get comfortable in the reform homes and won't even blink an eye while committing such crimes again. Hence, it is important to punish the juvenile offenders as per the gravity of the offence committed by them and considering their maturity level & capacity to understand the nature of their act & its consequences. If at a young age they are not punished for their delinquencies, then they develop a mindset that they can get away with anything because of the loopholes present in the law and will have no fear of law.

A child learns from what is seen, hence it is crucial for the parents and the care givers of the children to provide them healthy environment, love & affection, proper living condition, good education and moral values. Schools should pay closer attention to violent behaviour of children and if such behaviour is noticed, root of such behaviour should be discovered so that the children can be protected from further impact and the violent behaviour can be eliminated from the root level itself by proper counselling. The juveniles in the reform houses should be put to community service and should be made to understand how grievous offences can affect the victim and their family with real life examples, to build a sense of empathy in them to prevent them from committing crimes in future. As the young minds are very vulnerable to being corrupted, the juvenile delinquents should be assessed & watched carefully, so that instead of reforming & rehabilitating they are not getting influenced or corrupted by fellow delinquents to commit crimes. Regular counselling of the juvenile delinquents in reform homes should be done to assess the progress made by them towards their reform or rehabilitation.

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