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Legislation and juvenile delinquency in India: A panoramic approach with reference to Karnataka

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Abstract

Historical background of juvenile justice system in India can be Traced back to the early 18th century. Various laws and rules which govern the children can be found in the texts of ancient Hindu scripts. Juvenile justice has been given some shape with Juvenile Justice Act 2000. Persons dealing with children need to sensitize themselves with this act. Due to rapid social change, industrialization, urbanization, increase in population has brought about a new class of delinquent, neglected, and dependent children needing formal intervention in the light of this there is a need for new legislation dealing with Children. This paper has made an attempt to interpret the legislative measures on juvenile from 18th century to 21st century till the passing of juvenile justice (care and protective of children) Bill 2015 which will help to control juvenile offences.

Keywords: Juvenile, Delinquencies, Legislation, Justice

1. Introduction

“As long as little children are allowed to suffer, there is no true love in this world”.

Kofi Annan state's that “There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and wants and that they grow up in peace.”

Delinquency is a kind of abnormality. When an individual deviates from the course of normal social life, his behavior is called “delinquency”. When a juvenile, below an age specified under a statue exhibits behavior which may prove to be dangerous to society and /or to him he may be called a ‘juvenile delinquent’. Each state has its own precise definition of the age range covered by the word juvenile’.

Definition

- i. Cyril Burt defines delinquency as occurring in a child “when his antisocial tendencies appear so grave that he becomes or ought to become the subject of official action.
- ii. Friedlander says, “Delinquency is a juvenile misconduct that might be dealt with under the law”.
- iii. The second united nations congress on the prevention of crime and treatment of offenders (1960) states, by juvenile delinquency should be understood the commission of an act which, if committed by an adult, would be considered a crime”.

The evolution of the juvenile law in India can be traced back to the early 18th century. The most important laws related to juveniles were passed between 1850 and 1919. The main purpose of these legislation is not to punish nor to take revenge upon the delinquent. The intention behind this is to help the delinquent children to get proper guidance and training so that they become normal children and never indulge in delinquent behavior again.

The measures taken by passing the legislative Act's from time to time has no doubt helps in controlling juvenile delinquency.

2. Legislative Act related to Juvenile delinquency

These are the measures taken for the prevention and treatment of Juvenile delinquency in India after 1850 till juvenile justice Act 2015 that are briefly examined below.

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2.1 Apprentices Act of 1850

This Act was passed as the first juvenile legislative in India to deal with the children.

- i. This Act provide for the binding of children, both boys and girls, between the age of 10-18 years as apprentices.
- ii. Orphans and poor children could take the benefit of the Act, employers could take such children as apprentices with the intention of training them in some trade, craft or employment by which they gain a livelihood later.
- iii. The father or guardian may bind a child above 10 years and under 18 upto 21 years of age for a period not exceeding 7 years.
- iv. A female child may be so bound until her marriage.
- v. The Act also dealt with children who commits petty offences.

Therefore it is suggested that the Authorities should take the Note of the deficiencies.

2.2 The Indian penal code 1860

This Act exempts child from all criminal liability who is under seven years of age (section 82)

- i. It also exempts child above seven years of age and under twelve years from all criminal liability, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct the occasions (section 83)
- ii. In the year 1969, the Indian penal code 1860 was amended with a view to provide protection to child from possible abuse of kidnapping or maiming a minor for begging.(section 363-A)

2.3 The Reformatory school Act of 1897

This act is considered as a land mark in the history of treatment of delinquency

- i. Under this Act courts were empowered to send for detention the youthful male offenders to Reformatory school for a period of more than three years. It could be extended to seven years also.
- ii. No child can be detained in it after he attains the 18 years of age.
- iii. Reformatory school must provide sanitary arrangements, water supply, food, clothing, bedding, industrial trainings and medical aid to the inmates.

2.4 Provision in the criminal procedure code

- i. Section 399 of the Indian criminal procedure code convicted young offenders below the age of 15 could be sent to the Reformatory schools established by the State government.
- ii. Section 562 of the criminal procedure code also permitted to discharge of certain convicted offenders on probation. It also permits to release with advice.
- iii. Section 82 of the IPC, children under seven years cannot be held responsible for their criminal acts.
- iv. Section 83 of the IPC relaxes the age up to 12 years under some conditions.

2.5 Juvenile smoking Act, 1919

- i. This Act prohibits the sale of tobacco by children below 16 years of age.
- ii. Children below 16 years are not supposed to smoke in public places.

2.6 Suppression of immoral Traffic Act, 1956

- i. This Act is passed in order to protect young girls and to suppress prostitution.
- ii. This Act prohibits certain practice connected with prostitution such as soliciting in public places, using residential premises for running brothels, forcibly detaining young women in brothels etc.
- iii. Provisions are also made to protect girls from brothels or from moral danger.

2.7 The probation of offenders Act, 1958

- i. It restricts courts in awarding imprisonment to offenders under 21 years of age and to direct removal of all disqualification attaching to conviction.
- ii. Section 361 of the code of criminal procedure 1973 requires that in any case where the court could have dealt with the secured person under the provisions of the probation of offender Act or under section 360 of the criminal penal code and yet the court decides not to do so, it shall record in his judgment, special reasons for not having done so.

2.8 The central children Act, 1960

The basic principles to deal with the destitute and delinquent children were followed in the Juvenile Justice Act 1986.International Conventions and Declaration. The General Assembly of the United Nations adopted and proclaimed the Universal of the Rights of the child on 20th November 1959.It endorsed that everyone is entitled to all the rights and freedom set forth in this declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The General Assembly of the United Nations adopted the CEDAW on 18th December 1979 and it came into force on 3 September 1981. It states that states parties shall take all appropriate measures to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. United Nations Standard Minimum Rules, 1985 (popularly Known as Beijing Rules)

The Beijing Rules encourage

- i. The use of diversion from formal hearings to appropriate community programmers:
- ii. Proceeding before any authority to be conducted in the best interest of the Juvenile :
- iii. Careful consideration before depriving a juvenile of liberty.
- iv. Specialized training for all personnel dealing with juvenile justice cases.
- v. The considered of release both on apprehension and at the earliest possible occasion there- after.

The UN Convention on the Right of the child, 1989, includes three 'p'.

- i. Provision: the right to be provided with the certain things and services e.g. Nationality, a name, health, cares, education.
- ii. Protection: From torture, exploitation, arbitrary detention.
- iii. Participation: in decision affecting their lives and society as a whole.

The United Nations Guidelines for the provision of the Juvenile Delinquency, 1990 (Known as the Riyadh Guidelines)

- i. These deal with almost every social area; family, school and community, the media, social police, legislation and juvenile justice administration.
- ii. These guidelines describe social and economic strategies to prevent children from entering into conflict with law.
- iii. The guidelines stress the importance of improving the overall situation of children in crime prevention.

2.9 Juvenile justice Act, 1986

Considering the views of the united nations standard minimum Rules for the administrations of juvenile justice [Beijing Rules 1985], the Government of India enacted the Juvenile Justice Act in 1986 for the whole to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles and to ensure that no child under any circumstance is lodged in jail or police lock-up.

2.10 Juvenile justice (care and protection of children) Act, 2000

The Juvenile justice Act 2000 is intended to protect the best interest of juvenile. One of the important, Objective of Juvenile Justice Act 2000 is to introduce the Juvenile justice system in the country in conformity with United Nations standard minimum rules (Beijing Rules 1985) for the administration of Juvenile Justice and the United Nations Rules for the protection of juveniles deprived of their liberty, 1990.

- i. Section 10: Apprehension of juvenile in conflict with law may send to an observation Home.
- ii. Section 12: Bail of juvenile.
- iii. Section 49: Presumption and discrimination of age.

2.11 Juvenile Justice (care and protection of children) Amendment Act, 2006.

The legal foundation of the child protection mandate in India. The Juvenile Justice Act first came into force in 1986 was renamed and rewritten in 2000 to be called the Juvenile justice (care and protection for children) Act is the premier law related to all individuals “children juveniles” below 18 years of age in India. The Juvenile Justice (care and protection of children) Act, 2000 was amended in 2006 to ensure better care and protection for children. The Juvenile Justice (care and protection for children) Rules, 2007, were also made by the government for effective implementation and administration of the Act.

The Juvenile Justice (Amendment) Act, 2006, states that Juvenile Justice boards and child welfare committees (CWCS) are to be set up by state government in all the districts within a year of this Amendment Act. The amendment prohibits placement of a juvenile in conflict with law in police custody / lock-up and has to be produced before a Juvenile justice board within 24 hours.

The act also protects the privacy of the child juvenile in conflict with law by prohibition the publication of names etc. in any print or visuals media. It also provides the speedy disposal of cares through regular review of pending cases every six months by the CJM/CMM.

2.12 Juvenile justice (care and protection) Act, 2015.

To amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-interparty, by adopting a child a child –friendly approach in the (adjudicator) and disposal of matters is the best internet of children and for their rehabilitation through processes provided, and institutions and bodies established, here in under and for matters connected them with or incidental threats. Juvenile justice (care and protection) Act, 2015 in the legislation of replace existing the existing Indian Juvenile Delinquency law, Juvenile Justice (care and protection of children) Act, 2000, so that Juvenile in conflict with law in the age group of 16-18 years, involved in heinous offence, can be tried as adults, 25 was passed on 7th may 2015 by the Loksabha and on 22nd December 2015 by the Rajyasabha after the Nirbhaya case accused Juvenile was released.

3 Discussion and Analysis

All the Acts mentioned above that was passed between 1850- 2015 were analyzed below.

This act is one of the innovative and creative Acts in the history of juvenile rehabilitation and reformation. The act emphasis on providing right to employable skills in the formative years of the children’s aged between 10-18yrs. The Children so trained will be our national assets for future country development. The Trade, craft or skills on which children’s gain the benefit through training will make them self-reliant after attaining the majority. The guardian is allowed to kind the children up to 7years. In case if female child till her marriage. The Present feature of Apprentices Act was that even children who have committed petty offences need to be trained on certain skills in order to make them productive citizen of the country.

However, the sad part of the Story in the geographical area of the Study is that, In the Observatory Homes of Karnataka no educational and occasional training facilities for the inhabitants aged between 10-18years. As per the Right to Information (RTI) received from the concerned authorities, educators and occasional trainers have not been appointed in Observatory Homes of Karnataka State. Therefore it is suggested that the Authorities should take note of the deficiencies.

Based on the prevailing circumstances in the year 1860, The Indian Penal code was enacted with the view to exempt child above 7years of age and under 12years from all criminal liability because of inadequacy, immaturity and understanding. Further the act provided protection for children from the abuse of kidnapping a maiming a minor for begging. The Act was appropriate to the prevailing circumstances then On the contrary in Today’s globalized world, the circumstances have changed drastically bringing in more maturity at the year part of or formative years of the children. Further in the present context children are exposed to a variety of experiences on account of technological innovations and media intervention. They are inclined and prompted to commit minor, major and heinous crimes. The case in point is Nirbhaya’s Episode. Therefore it is suggested that the India penal code need to be Revamped and restricted to meet the present day changing circumstances.

Apart from this the India Penal Code also says children who are between 7- 12 years of age need to be exempted from all criminal liabilities, but in various observatory homes of Karnataka it was observed that there are many children who are below 12 years of age which is contradictory to the Act.

The reformatory school Act was good in letter but not in spirit. When it comes to OH of Karnataka, the sanitary arrangement, water supply, food and clothing, bedding are in shambles, shallow and highly in a disciplined delivery mechanism. The ordeals of the inmates are immeasurable and inexpressible. The situation is very pathetic; the inmates were suffering from untold miseries.

The Karnataka State Rules on Juvenile Justice Act 2010 then outline detailed and specific mandates for the provision of basic facilities to all children in juvenile homes that will ensure the maintenance of a basic standard of living. Several studies have shown that basic facilities are far from being met in juvenile homes of Karnataka including the present study.

In the provision of criminal procedure code under Section 562 envisages the positive aspects of relieving certain juvenile offenders on probation with certain advice. But, in the present scenario the probation officers' opinion is not suitable taken into consideration by the justice dispensation institution for four entities that is girls home, boys homes, balamandir and observatory homes, a single probationary officer is in place. How can a single officer observe all the reformatory centers because the span of observation and control by a single person is about 10-12 children to achieve effectiveness. Therefore for each center a dedicated and well-trained probation officer is required.

Prohibiting both the sale of tobacco products and consumption was the appreciable intention of the Juvenile Smoking Act 1919. But the below 16-year children shall be kept away from tobacco products. The facts of the case in certain centers are that one can find cigarettes and Beedi bites in toilets and washrooms which indicates that these products are openly and secretly supplied and utilized. Adding salt to the injury, drug and abusive substances are used and found in certain centers. If this is the case then where is the question of juvenile offenders? This act deals with the specific pattern of antisocial behavior among children. But this act is where it is enforced in any of the States.

Some of the suppression of immoral traffic Act offenders, especially the young girls, are sent to observatory homes. By the juvenile courts after undergoing the inmate tenure, what is the status of those suppression of immoral traffic Act girls? They need to be unearthed. The Act suppresses physical and sexual abuse of the child. The media regularly reports this physical and sexual abuse of children housed in the juvenile justice home across the state. The number of unreported cases of girls after the completion of the tenure is said to be more and more questionable.

Though the United Nations declaration of juvenile justice prohibits discrimination on the basis of race, region, religion, caste, creed, color, language, gender etc. But the actual fact is that in certain observatory homes as per this study it is found that few of them are discriminated. Under these Acts juvenile courts can place the youthful offenders under the supervision of a probation officer, but there will be only one probation officer and he has to supervise all the government reformatory homes. This limits the supervisory role to discharge his/her duties to the optimum level.

When the child is arrested under the Act he has to produce before the juvenile justice board within 24 hours, actually juveniles

were in police lock-up more than 1 week in certain observatory homes of Karnataka.

As though this Act is facing issues with respect to implementation, procedural delays and prescribes the maximum punishment of 3 years detention in juvenile homes irrespective of the nature of the offense. But in Karnataka OH for certain offenders the bailing procedure is delaying and there are so many juveniles in observatory homes more than 3-6 years.

The act states that all institutions whether that in state or government or voluntary organizations for children in need of care and protection are to be registered within six months of the act being passed. The act has made the adoption process simpler and allows for adoption of children from juvenile homes.

No child is adopted from juvenile homes as though the Act has made the adoption process simpler in Karnataka observatory homes. Not even a single case has been reported.

As though the new bill seeks to segregate the adolescent in the age group of 16-18 years by categorizing them into petty, serious and heinous offenses by treating the juvenile accused of heinous offenses as adults. For the first time petty serious and heinous offenses based on provisions of the Indian Penal Code have been clearly defined in the said bill which provides that a heinous offense is one for which the minimum punishment for 7 years of imprisonment under any existing law. In reality imprisonment between 3-7 years falls under the category of serious offense in Karnataka observatory homes. It is a landmark act which maintains juvenile justice. Some remedial measures have to be taken up by the authorities concerned.

4. Conclusion

Different legislative acts discussed above aim to strike a balance between children alleged and found to be in conflict with law and children in need of care and protection by taking into account their basic needs through proper care, protection, development, treatment, social re-interpretation by adopting a child-friendly approach. These are the positive steps for preventing the children from committing an offense. But juvenile delinquency is a grave problem in India cannot be solved by means of legislations 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. Governmental 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 in India. The public attitudes towards juvenile delinquents must also change. A juvenile delinquent is a product of an unwholesome environment congenial for the development of his (faculty) in conformity with the social expectations.

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