



Juvenile Justice System in India

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ABSTRACT

Juvenile Justice System is most progressive and enlightened system adopted by the world citizenry with all round growth of children. The prime focus is to reform the deviants and provide care to the unprotected child. As far as practicable, a child to be rehabilitated and restored to the family. The special court to adopt the doctrine of parents patria while adjudicating the matter of child in conflict with the law. The article evaluated the JJS in India in the light of constitutional philosophy and International parameters.

KEYWORDS

Rights of the Child, Parents Patria, Natural Justice, Rehabilitation.

Introduction:-

Understanding the present state of the Juvenile Justice System (JJS) in India requires recourse to the history. The JJS in India originated during British rule. Before British regime in India, Juveniles were treated by the family and society in general. The institutional treatment of Juvenile was not visibly witnessed. Therefore, JJS and correctional measure was the direct consequence of western philosophy and development of prison reforms. The culture of crimes by youthful offender is as old as the society. Owing to doli incapax and adventurous attitude, the youth often come in conflict with law and indulged in crimes. Gone are those stormy days when the problems of Juvenile were not considered as a separate system. It can be witnessed from the past that, the children were thrown into prison without trial. They were locked in the jail along with hardened criminals. In the nineteenth century penologists prescribed equal punishment for both adult and Juveniles. History reveals that, juveniles were hanged, transported and imprisoned like adult criminals. The records reveal that, in 1833, death sentence was passed on nine years of child for stealing goods worth two pence. Hanging, whipping and torture of the pillory were common practices for petty offences. The punishments were commonly made before public as a method of deterrence.¹

Gradually the problem of youth offender was given separate treatment. Some leading penologists have suggested for correctional measure in place of penal measures. India got independence in 1947. It becomes the signatory to UDHR 1948. Being a signatory to the UNO, India has adopted measures as per the international standard. The constitution makes of India provided separate treatment for the children and women. The assumption that reported in social milieu is under taken to make a strong JJS in India. In this article an attempt is made to analyze the special treatment adopted by India for Juveniles in the light of its constitutional philosophy and the international conventions.

Meaning and Concept:-

Juvenile Justice System is a system coming within the area of criminal law administration of justice. This is a system adopted for the young person not old enough to be held responsible for criminal acts. It is adopted as correctional measures for Juvenile delinquency. The etymological term 'Juvenile' means young person or any young person's retaining the nature and characteristics of a child. The term 'Delinquency' connotes 'failure to observe norms of society or omission of duty, involving with crime or doing any wrong.

The term 'Justice' means 'concern for justice, fairness, equitableness' or a concern for peace and genuine respect for people. It is a principle of moral rightness in the pursuits of fair treatment against unfair behavior. The meaning of the syntax

'juvenile delinquency' is doing of some act against society by young persons. The terms 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society. 'Juvenile Justice System' means a process to deal with the problem concerned with children and society. The main purpose of JJS is to insulate children by resorting to appropriate treatment and create an environment to develop a positive human personality. JJS is socio-legal measure to create an atmosphere for the treatment of delinquent juveniles.

All most all countries of the civilized world have adopted Juvenile Justice Law to treat the young offender in the most equitable manner, so that they can lead a peaceful moral and democratic life. JJS applicable to the persons; those are under 18 years of age. Juvenile Justice is administered through Juvenile court, a court which is child friendly in nature. The main goal of this System is to adopt rehabilitative measure rather than punitive measures. If a child is commits or any wrong young person turns delinquent, the Juvenile court takes measures for foster care and soft treatment through special institutions. So that Juvenile offender can find a path to lead a decent life.

Aftermath of Nirbhaya Case:-

Today (After Nirbhaya case) many people are aware that a separate Justice System exists for Juveniles.² Many people are not yet aware how JJS works. After the incidence of Nirbhaya people turned sentimental and expressed their hostile attitude towards the decision of court. They demanded death sentence for the child involved in Nirbhaya case. There was up roaring in parliament and the new law (Juvenile Justice Care and protection of children 2015) came into existence in India. It is a comprehensive provision for children alleged and found to be in conflict with the law. It also deals with children in need of care and protection. This law is enacted taking into consideration of conventions of Rights of the child and other related international instruments.³ The government of India acceded the convention of Rights of the Child (CRC) on 11 Dec.1992. The constitution of India empowers and cast duty on the state to ensure that their minimum requirement are met and their basic human rights are fully protected.⁴ The state intended to upkeep the principle adopted in the constitution.⁵

According to the international treaties and constitutional parameters, it is responsibility of the state to treat the children with all softness and for the best interest of the child. However, there is a strong public demand for harsher punishment for youths who commit adult crime i.e. serious crimes like murder, rape, robbery, dacoit etc. Such youths should be punished like adults. Of course, there is inflammatory rhetoric about youth crimes and there is increased public cynicism about the present JJS. Since the adoption our constitution a lot of efforts

were made to understand the philosophy of the JJS and accordingly various laws were enacted. But all the efforts are half-hearted and need serious consideration. The stakeholders of Juvenile Justice Administration must take note of the serious conditions that prevail in our JJS. Intellectuals criticize about the poorly conceived policies and squandering of huge precious resources.⁶ The main criticism is the poorly treatment process and poor infrastructure.⁷ It need viable response from all quarters.

Development of JJS:-

The Juvenile Justice System developed throughout the world with a conception that, children are not mature like adult. They failed to understand the nature and consequence of their acts. This idea is based on the legal 'principle of *doli incapax*' i.e. child do not have capacity to form criminal intention. Therefore, a child cannot be made liable for acts which are illegal. An adult is commonly understood to mean a person who has reached maturity of mind. In the psychological perception, a person is mature 'who possesses certain skills that are the product of both cognitive development and the nature of the person's interactions with his or her environment'.⁸

According to Jean Piaget – 'the ability to understand and interpret his or her world proceeds in a series of stages, beginning with sensimotor period, which lasts roughly from birth until age 2 and ending with the formal operations period, which lasts from roughly age 11 through adulthood'. During this period, the child is able to understand and interpret the world differently because of his or her ability to engage in more abstract thought. In addition, the development of the child's cognitive abilities is, to some extent, influenced by the in child's environment.¹⁰ Legislative authorities adopted this principles different Acts. It is to be noted that there is no general consensus about the definition of youth and child. Different statute have different mandate in the matter of age or attaining adulthood.¹¹ There is policy shift in the new Juvenile Justice legislation. It is very progressive Act, designed to adopt the philosophy of parents' patria and prescribe institutionalized care/protection. The only shift witnessed is to punishing delinquents involved in case serious offence. JJS is adopting policy for the reformation and socialization of the young person and punishment is an exception. JJS is essentially different from ordinary criminal courts, adopting informal hearing.

JJAct 2015 under lying following principles:-

JJ Act 2000 is replaced by JJ Act 2015, with a view to update JJS in accordance with the International conventions and present social development. The new Act under lying following basic principles:-

1. Presumption of innocence.
2. Principles of dignity and worth.
3. Principles of participation with due regard to maturity.
4. Principles of best interest of the child.
5. Principles of family responsibility to take care.
6. Principles of ensuring safety without my abuse of the child.
7. Positive measures for wellbeing and development of child.
8. Principles of non-accusatory or non-stigmatizing semantics.
9. Principles of non-waiver of rights.
10. Principles of equality and non-discrimination.
11. Principles of right to privacy and confidentiality
12. Principles of institutionalization should be last resort.
13. Principles of Repatriation and restoration.
14. Principles of fresh start-erasing of past records.
15. Principles of diversion (without resorting to Judicial proceedings)
16. Principles of natural justice.¹²

Conclusion:-

All the stake holders to be guided by the principles, while discharging function concerning children. In India, social legislations are always proved abortive due to improper infrastruc-

ture and co-ordination.¹³ Different homes prescribed, does not have an environment of home. These clogs of JJS need to be resorted to.

Juvenile Justice System is based on the principle of social welfare and rights of the child.¹³ The prime focus of the JJS is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order. Children are the future resources of the country. They must be transformed from negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carry the dreams, we need to make the dream reality.

Foot Note:-

1. Dr. B.K. Das – Juvenile Justice in India – 1st Ed. 2011 at p. 10.
2. Nirbhaya Case – https://en.wikipedia.org/wiki/2012_Delhi_gang_rape retrieved on 14.4.16
3. Beijing Rules 1985, United Nations Rules for the protection of Juveniles Deprived of their liberty 1990 etc.
4. The objective and reasons of JJ Act 2015.
5. Art. 14, 21-A, 15(3), 39, 45,47 and 51 (A) of the constitution of India 1950.
6. Dr. B.K. Das, Juvenile Justice in India & POCSO Act-2012 2nd Edition 2014 & Dr. P.K. Singh, IBR, xxxi (3&4) 2004 at pp – 115-116 and Dr. G.S. Sharma, IBR, xxxi (3&4) 2004, P.447.
7. Hiralal Mallick vs State of Bihar, AIR 1977 SC 2236
8. Kohlberg, L – Child psychology and child Education: A cognitive development view, 1987, New York, Longman
9. Samples jpbub com/9780763762513_CH01_Elrod3E.pdf retrieved 14.4.16
10. Ibid (See-Mayer, R.E. (1987) – Educational Psychology. A cognitive approach, Boston-Little Brown & co) note 17
11. Indian penal code – 1860 prescribes (ss.83) that a child above 7 yrs and below 12 yrs may be liable, for an offence if attained sufficient maturity. The people's representation Act 1955 prescribes a person can cast his vote at the age of 18 years. JJ Act 2015 provides sec 2(12) that child means a person who has not completed 18 yrs of age. The marriage law prescribes age of 18 and 21 yrs for girls and boys respectively.
12. Section -3
13. Supra note -4
14. Constitution of India – 1950 (preamble, fundamental right and DPSP of part VI)