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STUDY ON LEGISLATIVE DEVELOPMENTS PERTAINING TO JUVENILE JUSTICE IN INDIA AND UNITED STATES

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Abstract- The issue of juvenile delinquency had been a very relative phenomenon since crimes and offences by juveniles have taken a centre-stage in the present day society. The menace of these offences had been growing in scary proportions and although we have the required legal statutes framed with the sole object of rehabilitation of the juveniles in conflicts with law, little have taken place in the reality. Juvenile delinquents are such offenders which includes boys and girls who are under 18 years of age. A Juvenile delinquent is a young person incorrigible or habitually disobedient. The Juvenile Justice (Care and Protection of Children) Act 2015 treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime. A child of 16-18 years age, who commits a lesser offence (a serious offence), may be tried as an adult if he is apprehended after the age of 21 years. A heinous offence attracts a minimum seven years of imprisonment. This paper mainly focuses on study on Legislative Developments Pertaining to Juvenile Justice in India and United States.

Keywords: Juvenile System, Juvenile Delinquency, India & US, Juvenile Legislations etc.

I. INTRODUCTION

The United Nations Declaration of the Rights of the Child, adopted in 1959, states in its preamble that humanity owes children its best efforts and that, due to their physical and mental immaturity, children require special protections and care, including appropriate legal protection both before and after birth. The State must ensure that children, who are the most vulnerable and significant segment of the population, have the resources and opportunity necessary to reach their full potential while simultaneously taking precautions to prevent them from becoming involved with the criminal underworld and turning into delinquents. The State must create efficient policies, pass laws, and put them into effect to fulfil this role. Prior to 1986, India had a number of child laws that were passed in various provinces and under various conditions.

Many enactments have been promulgated by various State governments to treat the delinquent behavior of children differently by providing separate procedures to deal with them. It was felt that a child cannot be characterized as offender but his conduct warrants only treatment, rehabilitation and reformation; and punishment should be the last resort. This view is fortified by the dicta laid down in various cases as decided by the higher judiciary especially Supreme Court of India. This has been reflected in the difference in concept of responsibility for the prohibited act. In case of young and immature violators the reason given was that children do not possess sufficient maturity to know the consequences of their acts and hence it would be unfair to deal with them in the same manner as those, who do not have similar disabilities, i.e.the adult offenders. The role of Indian judiciary and the scope of judicial interpretation have expanded remarkably in the recent times. Besides the statutes judiciary also place an important role in protection of fundamental rights. The two most important pillars of human rights of freedom are the twin safeguards of equality before law and equal protection of laws. Almost all countries have accorded protection to these fundamental rights or human rights in their Constitutions, whether written or unwritten. India is the largest democracy of the world and has a comprehensive charter of rights written into its Constitution and the Supreme Court is the custodian of these fundamental rights. Under the Indian Constitution there is a single integrated system of courts for the Union and the States which administers both Union and State laws and the entire system is presided over by the Supreme Court of India. In the judicial hierarchy below the Supreme Court stand the High Courts of different States and undereach High Court there are subordinate courts. Supreme Court has the power to hold any law as void for being in contravention to the provisions of the Constitution. It has also been armed with the power to issue various writs such as Mandamus, Habeas Corpus, Certiorari, Prohibition and QuoWarranto. The jurisprudence of Supreme Court has in fact enhanced the importance of Article 32 further. The various decisions given by the Supreme Court have proven time and again that the Court interpreted the juvenile law in its right perspective regarding the treatment to be imparted to the juveniles and has always exhibited care, concern and protective attitude towards delinquent children.

Children Acts mainly the Juvenile Justice Act, 1986 (to be called the 1986 Actin short) and Juvenile Justice (Care and

Protection of Children) Act 2000 (to be called the 2000 Act in short) along with its Amendment in 2006 (to be called the 2006 Act inshort) are the major platforms for the juvenile justice system in India until 2016.Judiciary played a prominent role in proper application, interpretation and adjudication of juvenile justice laws in the country. Judiciary's Role in Bringing about Uniform Legislation on Juvenile Justice. It was noted that different States had different Children Acts in different forms and contents and there was an urgent need to bring about uniform child legislation throughout the country.

II. THE JUVENILE JUSTICE LEGISLATIONS IN INDIA

In India's post-independence era, there were three different sets of rules that applied to socially disabled children, including those who are allegedly guilty of crimes and those who have been abandoned. Some states didn't have children's laws, therefore the Cr.P.C. applied there. The Children Act of 1960 applied in the Union Territories. There are two groups of Children Acts that are now in effect across the nation: those that were passed before the Children Act of 1960 and those that were passed subsequently. These Acts' concepts, practices, and outcomes varied from one enactment to the next and led to unequal treatment of children from various states. As a result, it was felt that the country as a whole needed to have a unified law on the subject that also adhered to international norms. This law was deemed necessary since the adult legal system is deemed unsuitable for youngsters.

1. The Juvenile Justice Act, 1986

In Sheela Barse v. Union of India, the Hon'ble Supreme Court of India ruled that it was preferable to enact a single piece of child-related law that would be applicable across the board in India, as opposed to each State having its own children Act with a varied procedure and content. In accordance with the aforementioned directive, the Parliament passed the Juvenile Justice Act, 1986, which took effect on October 2, 1987. The law was intended to accomplish a number of goals, including bringing the juvenile justice system in India into compliance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

1. Statement of Objects and Reasons

An analysis of how the then-current Children Acts functioned would suggest that considerably more attention has to be paid to kids who might be located in settings of social maladjustment, delinquency, or neglect. Additionally, a national juvenile justice system that is uniform and has enough provisions for addressing all facets of the nation's shifting social, cultural, and economic conditions is required. The Act sought to accomplish the following goals in this situation:

- To establish a unified framework for juvenile justice across the nation, ensuring that no child is ever detained in a jail or police station. Juvenile Welfare Boards and Juvenile Courts have been established to ensure this.
- To offer a specialised approach to the prevention and treatment of juvenile delinquency in all of its forms while taking into account the child's developmental needs in any case of social maladjustment.

- To describe the equipment and facilities needed for the care, protection, treatment, growth, and rehabilitation of the various types of children falling under the jurisdiction of the juvenile justice system. It is suggested that observation homes, juvenile homes for neglected children, and special homes for delinquent children be established in order to do this.
- To develop guidelines and rules for the administration of juvenile justice, including those related to care, treatment, and rehabilitation as well as investigation and prosecution.

Special Offences under the Act In Respect Of Juveniles

Special offences against adolescents are covered in sections 41 to 45. It states that anyone who has actual charge or control over a juvenile or child who attacks, abandons, exposes, or wilfully neglects the juvenile in order to cause needless mental or physical suffering will be held accountable and punished. Employing a minor for begging, providing them with alcohol, drugs, or psychoactive substances unless it is medically necessary, or finding them work and withholding their pay is illegal and will result in jail time and a fine.

Reasons for Failure of the 1986 Act

The Act's inability to accomplish the goals it set forth was due to a number of factors, including:

- The State Government did not show much interest in establishing and setting up the necessary number of Juvenile Courts, Juvenile Boards, or Homes, which directly resulted in a roadblock in the implementation of the Act. • discretion is given to the State Governments by using the expression "may" in the provisions for creating the infrastructure necessary for carrying out the objectives of the Act.
- It defied sense to set the age difference for boys and girls at 16 and 18, respectively.
- The Act is specifically silent regarding the relevant date for applying the provisions of the Act to a juvenile delinquent, i.e., whether the relevant date is the date of the commission of the offence or is it the date that such a juvenile is produced before the competent authority, leading to a great deal of confusion and conflicting judicial pronouncements.

2. Analysis of Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice Act of 1986 was passed in response to the Hon'ble Supreme Court of India's directives in Sheela Barsev, Union of India135, with the intention of providing care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles as well as for adjudicating cases involving delinquent juveniles. However, the Juvenile Justice Act, 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted with the aim and object of consolidating and amending the law related to "juveniles in conflict with the law" and "children." These changes were made in response to subsequent international developments, such as the standards prescribed in the Convention on the Rights of the Child 1989, Beijing Rules 1985, and the United Nations Rules for Protection of Children Deprived of Their Liberty 1990.

1. Statement of Objects of the Act

The juvenile justice system must be easily accessible to juveniles, and it is urgently necessary to build the necessary

infrastructure for the said Act's implementation with a greater involvement of informal systems like family, volunteer organizations, and the community. Additional suggestions have been made:

- To establish the fundamental guidelines for delivering justice to a juvenile or kid.
- To increase the juvenile justice system understands of developmental needs in relation to the adult criminal justice system.
- To bring juvenile legislation into compliance with the Child Rights Convention of the United Nations.
- To set the age of consent at 18 for both boys and girls.

Orders That May Be Passed Against a Juvenile

If the Board is certain that a juvenile has committed an offence during the summary procedural investigation, it may issue any of the following directions as allowed by the Act:

- allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- direct the juvenile to participate in group counselling and similar activities;
- order the juvenile to perform community service;
- order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

3. Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

Two Writ Petitions, Bachpan Bachao Andolan v. Union of India and Others190 and Sampurna Behrua v. Union of India and Others191 seeking direction for implementation of the 2000 Act, were filed in the Hon'ble Supreme Court in the public interest because it was felt that the state of the Act's implementation remained lax. The first petition was submitted in response to grave abuse and breaches committed against children who were held in circuses without their will, frequently without contact to their families and in dreadful conditions. The 2000 Act was not implemented properly in the second petition, which was also filed. The Hon'ble Supreme Court issued a number of directions as a result of these instances to improve how the Act was implemented. In order to coordinate and cooperate in the implementation of the Act, the Court enlisted the help of organisations including the National Commission for the Protection of Child Rights, the National Legal Services Authority, and State Legal Services Authorities. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, was enacted by Parliament as a result of flaws found in the operation of the 2000 Act after it had been in effect for over five years. The results of the consultations led to the proposal of a number of adjustments, including;

- The Juvenile Justice Act's full title was changed to reflect a wider range of rehabilitative services available under the Act for "children in need of care and protection" or "juveniles in conflict with the law" using both institutional and non-institutional methods.
- To make it clear that the Act will be applicable in any situation where a juvenile is being held or is being charged with a crime under another law.
- To dispel questions about the crucial date used to assess a person's juvenility and the Act's applicability.

- To exempt local authorities from laws allowing them to send a "juvenile in conflict with the law" serving a term to a special home or a suitable institution, or to discharge or transfer a "child in need of care and protection" or another "juvenile" from a children's home or special home.
- To have an appropriate process to follow when the issue of juvenility is brought up in court.
- To set a minimum 24-hour deadline from the time of arrest for bringing a "juvenile in conflict with the law" before the Board or a child before the Child Welfare Committee.

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

The Government believed that the Juvenile Justice (Care and Protection of Children) Act, 2000 was having implementation problems and procedural challenges with regard to adoption, etc. after the 2000 Act had been passed for over 14 years. Additionally, data from the National criminality Records Bureau (NCRB) was used to support the claim that adolescent criminality, particularly among those between the ages of 16 and 18, had significantly increased. Since the law in this area at the time was deemed insufficient, cases like the Nirbhaya case and the Delhi gang rape case led to widespread demands for stricter juvenile justice laws. The Juvenile Justice (Care and Protection of Children) Act of 2000 was repealed, and the Juvenile Justice (Care and Protection of Children) Act of 2015 was enacted as a result of all the aforementioned factors.

5. Indian Penal Code (IPC) 1960

The Republic of India's official criminal code is the Indian Penal Code. It is a comprehensive code that aims to address every aspect of criminal law. Despite the fact that the Princely kingdoms had their own courts and legal systems, it did not apply to them until it went into effect in all British Presidency in 1862. Visit the linked article to learn more about British India's other laws. The First Law Commission, led by Thomas Babington Macaulay, drafted the first version of the Indian Penal Code. The draught was based on a straightforward codification of English law and also included ideas from the Napoleanic Code and the Louisiana Civil Code of 1825.

The initial version of the Code was presented to the Governor-General in council in 1837, but it took another 20 years for adjustments and amendments to be made. The code was completely written in 1850, and it was presented to the Legislative Council in 1856. Due to the Indian Revolt of 1857, British India's official codification of it was delayed. Barnes Peacock, who later became the first Chief Justice of the Calcutta High Court, made numerous adjustments and amendments to the code before it was finally put into effect on January 1st, 1860. The majority of the Muhammedan law was in effect in India before to the arrival of the British. The East India Company did not interfere with the country's criminal law for the first few years of its rule, and even though it did so for the first time in 1772, under Warren Hastings' administration, and again until 1861, when the British Government occasionally changed the Muhammedan law, the Muhammedan law was unquestionably the foundation of the criminal law until 1862, when the Indian Penal Code went into effect, with the exception of a few specific cases. The period when Muslim criminal law was administered in India lasted for a sizable amount of time and even provided several phrases for the language of Indian law.

III. THE JUVENILE JUSTICE LEGISLATIONS IN UNITED STATES

1. Model Penal Code

The Model Penal Code (MPC) is a model act designed to stimulate and assist U.S. state legislatures to update and standardize the penal law of the United States. The MPC was a project of the American Law Institute (ALI), and was published in 1962 after a ten-year drafting period. The chief reporter on the project was Herbert Wechsler, and contributors included Sanford Kadish and numerous other noted criminal law scholars, prosecutors, and defense lawyers.

The ALI performed an examination of the penal system in the U.S. and the prohibitions, sanctions, excuses, and authority used throughout in order to arrive at a cohesive synthesis to the extent possible, and the best rules for the penal system in the United States. Primary responsibility for criminal law lies with the individual states, which over the years led to great inconsistency among the various state penal codes. The MPC was meant to be comprehensive criminal code that would allow for similar laws to be passed in different jurisdictions. The MPC itself is not legally-binding law, but since its publication in 1962 more than half of all U.S. states have enacted criminal codes that borrow heavily from it. It has greatly influenced criminal courts even in states that have not directly drawn from it, and judges increasingly use the MPC as a source of the doctrines and principles underlying criminal liability. **Kev Features**

Under the MPC, crimes are defined in terms of a set of "elements of the offense," each of which must be proven to the finder of fact beyond a reasonable doubt. There are three types of elements conduct of a certain nature, attendant circumstances at the time of the conduct, orthe result of that conduct. The elements are those facts that are included in the definition of forbidden conduct as provided by the statute, or establish the required culpability, ornegate an excuse or justification for such conduct, ornegate a defense under the statute of limitation, or establish jurisdiction or venue. All but the last two categories are material elements, and the prosecution must prove that the defendant had the required kind of culpability with respect to that element.

2 Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) is a United States federal law providing formula grants to states that follow a series of federal protections on the care and treatment of youth in the juvenile justice and criminal justice systems.

Legislative History and Reauthorizations

Enacted in 1974, the original JJDPA was the first comprehensive federal juvenile justice legislation enacted in the United States. The "DSO" and "sight and sound" protections were part of the original law in 1974.Congress reauthorized the JJDPA in 1977, 1980, 1984, and 1988. The 1980 reauthorization legislation added the "valid court order" exception to the DSO requirement and also enacted the jail removal requirement, in response to research on the negative outcomes for youth incarcerated in adult facilities, including high suicide rates; frequent physical, mental, and sexual assault by adult inmates and staff; inadequate educational, recreation, and vocational programming; negative labeling and self-images; and contact with serious offenders or mentally disturbed inmates. The "DMC" requirement was added in the JJDPA in the 1992 amendments to the Act, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 1992. The 1992 reauthorization also established new requirements for states to identify and address gender bias.

The bill was again reauthorized in 2002, as the Juvenile Justice and Delinquency Prevention Act of 2002, enacted as Title II, Subtitle B, of the 21st Century Department of Justice Appropriations Authorization Act. The 2002 legislation extended the various JJDPA grant programs through fiscal year 2007 (for some programs) or fiscal year 2008 (for others). This was the last authorization in many years. Bills to reauthorize and reform the juvenile delinquency prevention programs of the JJDPA were repeatedly introduced by Senators Patrick Leahy, Charles Grassley and Sheldon Whitehouse, but did not receive floor votes in the Senate. After the authorization expired, Congress continued to make appropriations for particular JJDPA grants and activities, but only on a sporadic basis.

State Participation and Non-Participation

States that are compliant with the JJDPA receive a formula grant. Specifically, eligible states those that comply with the Act's terms, "establish plans for the administration of juvenile justice in their states and agree to submit annual reports to OJJDP concerning their progress in implementing the plans"—are allocated annual formula grants based on a formula determined by the state's proportion of juveniles (persons under age 18).

3. The Juvenile Justice and Delinquency Prevention Act

The system that is currently operational in the United States was created under the 1974 Juvenile Justice and Delinquency Prevention Act. The Juvenile Justice and Delinquency Prevention called Act for а "deinstitutionalization" of juvenile delinquents. The act required that states holding youth within adult prisons for status offenses remove them within a span of two years (this timeframe was adjusted over time). The act also provided program grants to states, based on their youth populations, and created the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Through reauthorization amendments, additional programs have been added to the original Juvenile Justice and Delinquency Prevention Act. The following list highlights a few of these additions.

1975 – Programs were developed to assist children with learning disabilities who entered the juvenile justice system.

1984 – A new missing and exploited children program was added.

1984 – Strong support was given to programs that strengthened families.

1988 – Studies on prison conditions within the Indian justice system.

1990 – The OJJDP began funding child abuse training programs to instruct judicial personnel and prosecutors.

1983 - A juvenile boot camp program was designed to introduce delinquent youth to a lifestyle of structure and discipline.

1992 – A community prevention grants program gave startup money to communities for local juvenile crime prevention plans.

Trends as of 2000

From 1992 through 1997, forty-four states and the District of Columbia passed laws making it easier for juveniles to be tried as adults, calling attention to the growing trend away from the original model for treatment of juveniles in the justice system. A study from 2000 of pretrial services for youth tried as adults in 18 of the country's largest jurisdictions found that the decision to try young offenders as adults was made more often by legislators and prosecutors (at a rate of 85%) than by judges, the people originally endowed with the responsibility for such discretion.

The decreasing distinction between how youth and adults are tried in the criminal justice system has caused many within the legal system, as well as other activists and organizers, to criticize the juvenile justice system. The "tough on crime" attitudes of these legislative events reflect the stance's popularity in public opinion. This is true of the majority of criminal justice reform policies in the 1990s and 2000s, including California's infamous Three Strikes Law.

Criticism of Juvenile Justice

Critics of the juvenile justice system, like those in the wider prison abolition movement, identify three main markers of the system for critique and reform. They hold that the juvenile justice system is unjust, ineffective, and counter-productive in terms of fulfilling the promise of the prison system, namely the protection of the public from violent offenders.

Criticisms of Racism

Critics of the juvenile justice system believe that the system is unfairly stacked against minority youth. Minority youth are disproportionately represented in incarcerated populations relative to their representation in the general population. A recent report from the National Council on Crime and Delinquency found that minority youth are treated more severely than white youth at every point of contact with the system-from arrest, to detention, to adjudication, to incarceration-even when charged with the same crime. In 1995, African American youths made up 12% of the population, but were arrested at rates double those for Caucasian youths. The trend towards adult adjudication has had implications for the racial make-up of the juvenile prison population as well. Minority youth tried in adult courts are much more likely to be sentenced to serve prison time than white youth offenders arrested for similar crimes.

Criticisms Based on Adverse Effects

Juvenile detention facilities are often overcrowded and understaffed. The most infamous example of this trend is Cheltenham centre in Maryland, which at one point crowded 100 boys into cottages sanctioned for a maximum capacity of 24, with only 3–4 adults supervising. Young people in these environments are subject to brutal violence from their peers as well as staff, who are often overworked, underpaid and under stress. The violence that incarcerated youth experience fights, stabbing, rapesis well known to those who work in the criminal justice system, and those who oppose it.

Congregating delinquent youth has a negative impact on behavior—it actually serves to make them more deviant and more of a threat to themselves and others. Social scientists call the phenomenon "peer delinquency training", and have found significantly higher levels of substance abuse, school difficulties, delinquency, violence, and adjustment difficulties in adulthood for offenders detained in congregated settings versus those that were offered treatment in another setting.

V. CONCLUSION

The juvenile delinquency has been defined legally but it is ordinary, because from the legal definition, clear-cut picture of juvenile delinquency is not coming out. As per the provision laid down in the Act, an act forbidden by law for children up to the age of eighteen years is juvenile delinquency. Therefore we can say that if a child is found to have committed an act of juvenile delinquency by a court, is juvenile delinquent. In India, the definition of juvenile delinquency presents no such problems as are faced in the US and some other countries. The concept is confined to the violation of ordinary penal law of the country so far as the jurisdiction of the Juvenile Court is concerned. The present law which governs the juveniles who are in conflict with law and children who needs the care and protection is called the Juvenile Justice (Care and Protection of Children) Act, 2015. The Convention laid stress on social re-integration of child victims, to the extent possible, without resorting to judicial proceedings. In India, the Juvenile Courts are criminal courts unlike in the US and England where they are regarded as courts of a civil nature. Reasonable restrictions can be placed on the fundamental rights and the restrictions on the rights of juvenile offenders laid down in Children Acts are likely to be upheld by the Indian courts.

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