

Juvenile Delinquency in India: Comparative Study

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***Abstract---** Contemporary World has observed an increase in the rate of juvenile crime, which is an extremely serious issue, particularly in India, as these juveniles are their respective countries' future. Children who are not given proper guidance and who are in not a good influence are turning towards the criminal direction to lead their lives. Different factors are responsible for this juvenile approach. This work explores all aspects of Juvenile Delinquency in Major Countries and steps taken by these countries to tackle offenses committed by juveniles and further compare their laws for dealing with juveniles in India. This research paper also aims at studying the major differences between the Juvenile Justice Act, 2000 and Juvenile Act, 2015 which is recently passed Act relating to Juvenile in the Parliament. The goal of the research is to get the best way to deal with juveniles by comparative study among the major countries.*

***Index Terms---** Delinquency, Juvenile, Offences, Comparative, Crime.*

I. INTRODUCTION

An involvement in the illegal activities by minors or young people is known as Juvenile delinquency. Different legal systems around the world have implemented specific procedures for dealing with juvenile justice, detention homes, etc. In India, Juvenile delinquent is a person who is below the age of 18 and has committed acts which are prohibited under the Indian Penal Code 1860 and would otherwise have been charged with the crime if they were adults. Depending upon the severity of the crime and the state of mind of the juvenile when committing the act, people under the age of 18 may be tried as an adult.

Delinquency itself, on the individual's part, is socially insufficient adaptation to difficult situations. Together with the mental and physical circumstances that affect an individual's ability to adapt, the factors that make up these difficult situations are the causes of delinquency. Each juvenile offense is the result of a complexity of causes, some of whose origins date back years before the offense was committed, while others whose origins are more evidently and immediately linked to the act of delinquency. It has been shown that each case involves a different set of triggers. It is impossible therefore to state the group of causes which will invariably result in any particular offense.

Children under the age of seven were never held accountable for criminal acts before the creation of juvenile courts. They were deemed unable by the law to form the necessary criminal intent. Children between the ages of 7 and 14 were generally thought to be unable to commit a criminal act, but this presumption could be disproved by demonstrating that

the youth knew that the act was a crime or that it would cause harm to someone else and commit it anyway. Children over 14 years of age may be charged with a crime and treated in the same way as an adult. Many times, judges make this decision, or some countries allowing transfers require a hearing to assess the child's age and background, the type of crime, and the possibility that the juvenile court will support the youth. Because of a restrictive mentality toward juvenile crime, many countries have changed their juvenile codes to make it easier for young offenders to be referred to adult court.¹ Young people have seen a rise in serious crime in recent years. This included further acts of violence, such as murder, frequently associated with drugs, gangs, or both. Consequently, the age at which minors can be charged as adults has been further decreased in a number of states. Some people believe that if they commit certain violent crimes, all juveniles should be tried as adults.

II. JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

A person under the age of 18 is considered to be a juvenile in India, but it is clearly stated in the Indian Penal Code, 1860, that a child cannot be prosecuted for any crime before he reaches the age of 7. The Juvenile Justice Act in India deals with juvenile delinquency and was recently revised in 2015. 2As of January 15, 2016, the Juvenile Justice Act came into force. The act was the result of the 2012 Delhi gang rape case, also known as the 'Nirbhaya' gang rape case, which resulted in a great hue and cry among people lined the streets in protest against the victims of gang rape. In August 2014, the Juvenile Justice Act, 2015 was presented in Lok Sabha and justified on different grounds. The government argued that the Youth Justice Act, 2000 faced issues of enforcement and procedural delays in adoption, etc. National Crime Records Bureau data show a rapid rise in juvenile delinquency. According to data, a total of 33,526 cases (under IPC) have been registered in 2014 against children under the age of 18, compared to a total of 28, 51,563 cases registered in the country during that year.

The Juvenile Justice Act, 2000 provided the guidelines for dealing with children in dispute with the law and children in need of care and protection. The new Juvenile Justice Act, 2015 also includes guidelines that deal with both children's groups. It proposes that two main bodies be set up in each district to deal with these children: the Juvenile Justice Boards (JJBs) and the Child Welfare Committee (CWCs). The new act also calls for children between the ages of 16 and 18 to be prosecuted for hideous crime as adults.

Under the 2000 Act, any child in conflict with the law, irrespective of the type of offense committed, may spend a maximum of three years in institutional care (special home, etc.). The child can not be prosecuted for more than three years, nor be tried as an adult and sent to an adult prison, whereas the 2015 act handles all children under the age of 18 equally, except for one departure. This notes that as a criminal, any 16-18 year old who commits a heinous crime can be charged. The JJB shall determine the mental and physical capacity of the kid, the ability to understand the effect of the crime, etc.

The new act recognizes the need for care and protection of children. When an infant is found to be orphaned,

¹ Franklin, Zimering. American Juvenile Justice 1st. Chicago: Oxford University Press, 2005.23. Print.

² Zimering E. Franklin, American Juvenile Justice(Oxford University Press, 2005)

neglected, or surrendered, within 24 hours he will be taken to a Child Welfare Committee. A report on social assessment is undertaken for the child, and the Committee agrees either to send the child to the home of a child or any other institution it considers appropriate, or to make the child free for adoption or treatment. For prospective parents, the act outlines the eligibility criteria. The new act calls for JJBs to include psychologists and sociologists to determine whether a juvenile delinquent can be tried as an adult in the 16-18 age group.³ The Act also introduced numerous provisions of the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, which were excluded from the previous act. The act has been widely criticized for implementing the 'Judicial Waiver System' that requires minors to be tried and punished as adults under certain conditions.

III. COMPARITIVE STUDY OF JUVENILE DELINQUENCY ACROSS THE WORLD

In New Zealand, child and youth law has not differentiated for a long time between delinquent and needy children. Therefore, before the Children, Young People and their Families Act (CYPFA) was passed in 1989, New Zealand had no legal provisions that applied only to young offenders. Today, this Act is the major legislation in New Zealand relating to juvenile justice⁴, controlling, among other items, prosecutions against young offenders before the Youth Court and having various legal consequences for dealing with young people who have offended against the law. The CYPFA has been introduced to amend the legislation on children and young people needing care or protection or acting against the law. Accordingly, the new legislation sets certain specific targets and brings into legislative form' a comprehensive set of general principles regulating both state intervention in children's and youth's lives and youth justice system management.' The goals of the Act are: to promote the well-being of children, youth, their families, and family groups by offering accessible programs and mechanisms that attempt to address cultural needs and assist families in caring for their youth; to assist families when the partnership is formed.

The Crimes Act 1961 sets the age brackets for criminal responsibility. The age of criminal responsibility under section 21(1) of the Crimes Act is 10 years, which ensures that no person under the age of 10 may be convicted of an offence. However, this does not impact any other person's responsibility claimed to be a party to the offense.

The date on which the crime in question is said to have been committed is the appropriate date to assess the young offender's age. A child offender is a person who, when he or she committed the crime, was 10, 11,12 or 13 years old. However, by virtue of the Crimes Act 1961 and the CYPFA, a child between the ages of 10 and 14 years cannot be prosecuted for any offence other than murder or manslaughter, and cannot be convicted for murder or manslaughter unless he or she knew either that the act or omission was morally wrong or that it was contrary to law. This is the prosecution's duty to show that the perpetrator understood the act or action was illegal or contrary to the law. The preliminary hearing of the complaint shall be held before the Court of Justice. In such cases, with certain exceptions, the

³ Ian Blakeman, 'The Youth Justice System of England and Wales', 139TH INTERNATIONAL TRAINING COURSE VISITING EXPERTS'

⁴ Zimering E. Franklin, American Juvenile Justice (Oxford University Press, 2005)

CYPFA regulations apply as if that child were a young person.

A key element of the youth justice system in New Zealand is diversionary processes at different levels. The new system under the CYPFA promotes relief from trials and detention and, while keeping young people accountable, encourages the development of solutions aimed at rehabilitating and reintegrating young people, supporting their families, and taking into account victims' needs. Enforcement officers can deal with minor and first-time juvenile offences while a more serious or repeated crime has to be taken before a judge at the Juvenile Court. Evidence suggests that approximately 44 percent of New Zealand's young offenders are dealt with by police warnings (by either front line or Youth Aid police officers), approximately 32 percent by Youth Aid diversion police, approximately 8 percent by direct referral to a Family Group Conference (FGC), and approximately 16 percent by youth court charges and a FGC.⁵

Throughout Germany, as a result of the historical development of German legislation on youth, there is now a strict separation between laws on the one hand dealing with young offenders and on the other hand children and young people in need of care and protection. Thus, in Germany, the German Juvenile Justice Act (JJA) deals only with young offenders.

The JJA of 4 August 1953, as revised on 11 December 1974 and partly modified in 1990, is the legal basis of the juvenile justice system.⁶ Similar to the laws of New Zealand on juvenile offenders, the JJA is not a separate rule of criminal law for juvenile crimes. Instead, the other act specifically defines criminal offenses (whether committed by juveniles or adults), whereas the JJA contains the substantive law and the jurisdiction's special procedural provisions.

In reality, the German youth justice system is a changed form of adult criminal justice. There is no special venue for decision-making (such as JJBs). Therefore, the usual decision-making place in Germany is the courtroom where prosecutors and judges can assess the appropriate response to offending behaviour. In recognition of the principles of the diversion model, the nationwide expansion of the application of diversionary provisions is based on the assumption that diversionary responses to juvenile offenses avoid or reduce stigma because the young offender does not go through the entire criminal procedure and is treated annually' educationally.

Since America has been ruled by England for many years, American laws are heavily influenced by England's Common Law. The slogan "adult adult crime time" is being adopted in the United States. The upper age of juveniles is seventeen years in 38 U.S. states, while it is fifteen years in other three states.

In almost all U.S. states, there is unanimity in prosecuting juveniles on a par with adults on juveniles who reach fourteen years of age in certain cases except states such as Vermont, Indiana, South Dakota where even ten years of age can be tried as adults. There are various forms of penalties given to juveniles as far as the penalty component is concerned. Even life imprisonment can be granted in heinous crimes to children aged twelve years who are considered the maximum punishment. In a secure and sustainable environment, juveniles who have the potential to try serious offences are detained and made to participate in rehabilitation programmes. To control young juveniles, all this is done. In addition, rigorous punishments have been introduced for drugs and gang-related offenses, rigorous treatment such as boot camps and blended sentence to correct them. With regard to the jurisdiction part, if a child is usually 13 or 15 to commit a serious

⁵ <http://www.nolo.com/legal-encyclopedia/juvenile-court-sentencing-options-32225.html>

⁶ Preventing and Reducing Juvenile Delinquency : A Comprehensive Framework, Howell c.James

and grim crime, their case is automatically transferred to the adult court. In such cases, juvenile court jurisdiction is automatically waived.

IV. CONTRAST BETWEEN INDIA, UNITED KINGDOM AND UNITED STATES OF AMERICA

India

In India the act provides following powers of Juvenile justice Board.

- Observation homes (Section 8). Set up for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.

They are to be established by the State Govt.

- Special homes (Section9). To be established by the state Govt. to provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialization of a juvenile.
- Children's homes (Section 34).The State Government may establish and maintain itself or in association with the voluntary organizations, children's homes (Section 34)
- The state Government may establish and maintain itself or in association with the voluntary organizations, children homes, in every district, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.
- Shelter homes (Section37) The State Government may recognize, reputed and capable voluntary organizations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.⁷
- Adoption (Section 41) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.
- Foster care (Section42) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes.

United States and United Kingdom

There are a wide range of sentencing options for juveniles or young offenders.

- Incarcerating Juvenile Delinquents.
- After a child is held delinquent a JJ Court may order incarceration as a penalty. But this incarceration is different from those used in adult criminal justice system. Some common ways that the judges can order confinement for a juvenile who has been found delinquent:
- Home confinement: The judge can order the minor to remain at home, with exceptions (attend school, work, counselling, and so on).

⁷ Rajya Sabha passes Juvenile Justice Bill; Jyoti's parents welcome development. TheIndian Express.

- Placement with someone other than a parent or guardian: The judge can require that the minor live with a relative or in a group or.
- Juvenile hall/juvenile detention facility: The judge can send the minor to a juvenile detention facility.
- Counselling: Often, judges require juveniles to attend counselling as part of a disposition order.
Community service: Juveniles may be ordered to work a certain number of hours in service to the local community.
- Electronic monitoring: Juveniles may be required to wear a wrist or ankle bracelet that verifies their location at all times.⁸

V. CONCLUSION

Each child has the right to a happy, uplifted and rejoicing childhood, the right to grow up in a pleasant and nurturing environment, the right to be free from the intricacies and convolutions of life, etc. But there are some poor and doomed children who are deprived of these things and grow up to be unwanted children or to call them otherwise juvenile criminals. Several laws are made globally to deal with these juvenile offenders. In India, the Juvenile Justice Act, 2015 is far from being a perfect law for protecting and upholding children's rights. In the present statute, the flaws in the earlier legislation were repeated.

The system of juvenile justice is currently in limbo. Finally, by drafting comprehensive rules in collaboration with child rights experts and non-governmental organizations, the respective governments can fill the lacunae. Under Section 70, the Central Government is allowed to eliminate any difficulties that obstruct its successful operation within two years of the Act's entry into force. Let's put the Juvenile Justice Act (Care and Children's Protection) to the test, and make most of this provision to streamline its efficacy, keeping children at the center stage.

The 2015 Juvenile Justice Act (Care and Protection of Children) provides the primary legislation not only for the care and protection of children, but also for the adjudication and treatment of children in conflict with the law. The system of juvenile justice is limited in its scope to the delinquent children and others in need of care and protection. The word youth justice covers all aspects of the complicated system that involves the care of underage children and youth.

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⁸ SC agrees to examine plea to base juvenile culpability on mental age. The Times of India.

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