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Redefining juvenile justice: A comparative analysis of the United States, England, and India with UNCRC perspectives

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Abstract

A general worldwide concern over the rising graph of criminal austerity of juveniles, i.e., children below the age of eighteen years which has been accepted worldwide to be the age limit under which all persons were to be treated as children, has ushered the study of global momentum on securing child rights. A descriptive analysis of Juvenile Justice Delivery System of the U.S., England and India shall be covered, along with a comparative analysis with UNCRC, the most widely-ratified international human rights treaty in history. Each country's approach to defining delinquency and processing those who are labeled officially is different. For instance, different terms might bear different meanings in the justice delivery systems. Also, the criteria for fixing the age of criminal responsibility are diverse in different states, along with disparity in their procedural steps. This difference in approaches can however be well justified by their cross-cultural diversity, needs and ethics. In the modern civilized world, there is an increasing recognition of the need to protect children due to their vulnerability and an emphasis is laid on their guidance, whether educational, occasional or personal. As a result, there is a trend toward the legislation of legal rights for children, leading to rapid reformation in pre-existing juvenile laws across the globe. The author shall analyze the new legislations to understand their durability and also to check their resonance with globally accepted laws.

The juvenile justice system in India is specifically structured to offer care, protection, and rehabilitation to those who are minors and have become involved in legal conflicts. The Juvenile court (Care and Protection of Children) Act, 2015, is a legislative framework that seeks to establish a court system that is sensitive to the needs and rights of children, aligning with the principles outlined in the United Nations Convention on the Rights of the Child. The effectiveness of the juvenile justice system in India has been a topic of much discussion, despite the presence of a legislative framework in place. A prominent critique of the system revolves around its perceived inefficacy in rehabilitating adolescent offenders and mitigating recidivism rates. Concerns have been expressed regarding the insufficiency of resources and facilities within the juvenile justice system. Consequently, the aforementioned circumstances have resulted in a situation of over occupancy inside juvenile residential institutions, as well as a lack of sufficient resources and amenities for the purpose of effective rehabilitation. Moreover, there have been documented cases in which minors have been subjected to instances of abuse and mistreatment inside the juvenile judicial system. This situation prompts inquiries on the efficacy of the system in safeguarding the rights of juveniles involved in legal conflicts. Notwithstanding these problems, there have been notable advancements in the juvenile justice system in India. As an illustration, the system has recently exhibited an increased emphasis on restorative justice and diversion programs, with the objective of addressing the underlying factors contributing to juvenile delinquency and offering assistance to young individuals in order to deter engagement in criminal activities.

Keywords: Juvenile, delinquency, rehabilitation, offence, justice system, constitution, board, United Nations, convention

Introduction

The world fervently reformed its retributive form of justice into restorative nature, in the late 90's this transition period witnessed a series of reforms and developments that occur globally including international recognition of juvenile Protection as a byproduct of human rights. It refers a mechanism that responds to and rehabilitates susceptible children for their overall growth. In wake of this concept, on November 20, 1959, the United Nations General Assembly in a plenary session, adopted the Declaration of the Rights of the Child, first ever treaty in this regard. Subsequently, U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) was adopted by signatories in the 6th and 7th U.N. Congress on

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the Prevention of Crime and Treatment of Juvenile Offenders in 1985 in 1989, on the 30th anniversary of the DRC, the UN General Assembly adopted the 'U.N Convention on the Rights of the Child' (UNCRC)". Three years later, the 'U.N. Rules for the Protection of Juveniles Deprived of their Liberty' was adopted that emphasized or protection of juveniles and prevention of deprivation of their liberty. With the evolution of juvenile justice system on a global platform, the states started to respond by establishing separate court systems for juveniles; a class that they believe to have a capacity for change. Many states have since then adopted youth-based service delivery system to combat exposure of children to harsh criminal procedure. However, the major distinction in various countries' approach arises while fixing the age of criminal responsibility. This distinction in delinquency is the root cause of various debates on Juvenile laws. A descriptive analysis of the U.S.A, the UK and India along with a comparative study with UNCRC shall enhance the understanding of this diversity^[1].

The juvenile justice system in India assumes a pivotal role in meeting the requirements and facilitating the rehabilitation of juvenile offenders. In recent years, there has been an increasing acknowledgment of the significance of rehabilitating young offenders as opposed to just prioritizing punitive approaches. The change in viewpoint has resulted in the introduction of many rehabilitation initiatives that target the fundamental factors contributing to delinquency and promote the successful reintegration of young offenders into the community. The efficacy of rehabilitation programs implemented within the Indian juvenile justice system is a matter of considerable apprehension and scholarly attention. The primary objective of this research article is to assess the efficacy of these programs and analyze their influence on diminishing recidivism rates within the population of juvenile offenders^[2].

The juvenile justice system in India has had significant advancements, notably with the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act places significant emphasis on the ideas of rehabilitation and social reintegration for young offenders within the legal system. The legislation acknowledges the necessity of offering educational, occupational, and skill development prospects to young individuals involved in legal conflicts, with the objective of reducing recidivism rates and facilitating their effective reintegration into the community. The assessment of rehabilitation programs has significant importance in ascertaining their efficacy and pinpointing areas that require enhancement. Through a comprehensive evaluation of the effects of these programs on diminishing recidivism rates, enhancing educational and occupational achievements, and tackling mental health concerns, policymakers and practitioners may get vital knowledge regarding their merits and constraints. The user's text is too short to be rewritten academically^[1].

This study work aims to enhance the current knowledge base by conducting a systematic analysis of the existing literature pertaining to rehabilitation programs in India, and afterwards provide a complete assessment of their efficacy. Additionally, this study will illuminate the many problems and constraints encountered throughout the implementation of these programs, and will put forth a set of best practices and policy suggestions aimed at augmenting their effectiveness within the juvenile justice system in India. The primary objective of this analysis is to provide valuable insights that can guide

future changes and enhance the outcomes for juvenile offenders in India^[2].

The United Nations Convention on the Rights of the Child

The UNCRC, the most widely-ratified international human rights treaty in history, is an international milestone in outlining child rights. It contains 54 articles that set out a distinct set of rights instead of passive objects of care and charity, the civil, political, economic, social and cultural rights that all children, globally, are entitled to. Children were earlier considered as mere property of their parents and no emphasis was laid on their protection, rights or liberties. However, with time the countries realized the long term assets of protecting children and minimizing their vulnerability and thus the concern for children, which initially started as part of the concern for the future of individual nations, later grew over the boundaries of the nation states and became a universal concern. This is how UNCRC evolved since 1959, when the first global child rights treaty was adopted. However, various developments in laws and perspectives have rendered UNCRC lagging to certain extent.

The major lag of the convention is its generic nature. Child rights recognized under the convention have now later been recognized as basic human rights all over the world. Behind to extraordinary rights to be defended. The main reason behind evolution of juvenile justice was the large scope of children to be reformed. However, with the transformation of justice from retributive nature to reformatory one, there is no apparent theoretical distinction between the justice provided to children and justice provided to adults. It may now be argued that the reform homes and juvenile centers are not an exclusive feature of juvenile system because the entire justice system, including criminal justice system, has adopted the same approach. The reformatory mechanism provides same reformatory privileges to adults as were once available only to children. Any person in conflict with law is now subject to reformation irrespective of his age thereby generalizing the rights given to children. The other view however, which is relatively practical in nature, exposes the ground level reality that the adult criminals are principally heinous, hard to reform and cruel and thus the juvenile system helps to keep children who are much more tender away from them. Therefore, reformatory homes though not theoretically but, practically are the support system of juvenile justice system; helping to put immaturity driven juveniles away from criminals. Secondly, while the articles of the convention are to be observed by the ratifying states, it is not a Bible to them. The convention itself, by means of Article 41, allows the states to take any better safeguard with respect to the rights of a child. However, this clause overlooked the manipulative nature of the terms "better safeguards which in a way gives full power to states to disobey the convention. If a state has resources enough to prove any, whether reasonable or unreasonable law as a better idea than that of the convention it holds. Also given the excessive availability of legal recourse and the level of manipulation/interpretation that is insoluble in such disputes, it is easy to justify self-suiting laws. Moreover, even if the state is unable to prove its compliance with UNCRC, no legal hardship arises to the state. When a country is found to be in conflict with international standards to the extent that it 'seriously' condemns human rights, the UN may launch an investigation. However, this investigation largely depends on the cooperation/consent of the accused country. Furthermore, the alleged country has nothing grave at stake to be in fear.

This provides a huge field scope to the countries to rift these international conventions and flee easily.

Legal Framework

The Apprentice Act of 1850 was the initial legislation pertaining to juvenile offenders, stipulating that individuals aged 10 to 18, who had been convicted by a court, were to receive occupational training as a means of facilitating their rehabilitation and reintegration into society. The enactment of the Reformatory Schools Act of 1897 succeeded its predecessor^[3].

The Indian Jail Committee (1919-20) underscored the imperative of equitable treatment and accountability for juvenile offenders. The proposals put forth resulted in the enactment of the Children Act in Madras in 1920. The Bengal Act and Bombay Act were enacted in 1922 and 1924, correspondingly, as a consequence. Between the years 1948 and 1959, the Madras, Bengal, and Bombay statutes, which are considered to be pioneering statutes, received substantial changes^[4].

The Children Act of 1960, a prominent legislative measure, was later enacted to cater to the need of the Union Territories. The Children (Amendment) Act of 1978 was enacted to address the deficiencies identified in the previously cited legislation. The need for comprehensive juvenile justice law applicable across the entire nation has been raised in several forums, including Parliament. However, the passage of such legislation has been hindered due to the fact that the subject matter falls under the purview of the State List as outlined in the Indian Constitution.

The Parliament has exercised its jurisdiction in accordance with Article 253 of the Constitution, in conjunction with Entry 14 of the Union List, to enact legislation applicable throughout India. This legislation aims to ensure compliance with international commitments by aligning the operations of the country's juvenile justice system with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (commonly known as the Beijing Rules, 1985). The Juvenile Justice Bill of 1986 was presented for consideration in the Lok Sabha on August 22nd^[5].

The objectives and extent of the study were clearly defined, and an analysis of the effectiveness of the existing Children Acts indicates a need for increased focus on children identified in circumstances of social mistreatment, poverty, or neglect. The use of the adult criminal system to minors was widely seen as wrong. There was a prevailing belief that the implementation of a consistent juvenile justice system was necessary to adequately prepare for the changing social, cultural, and economic conditions of the nation^[6].

The provisions of the Juvenile Justice Act of 1986 replaced previous state law, such as the Children Act of 1960, which had comparable obligations. As per the provisions outlined in the Juvenile Justice Act of 1986, the age threshold for classifying an individual as a juvenile differed based on gender. Specifically, males were required to attain the age of 16, whilst females were required to reach the age of 18. Furthermore, the enactment of the Juvenile Justice Act of 1986 may be attributed to the landmark case of *Sheela Barse v. Union of India*^[7]. This judicial proceeding highlighted the imperative need for a comprehensive legislation specifically designed to protect the rights and welfare of children. The Juvenile Justice Act of 1986 was enacted; nonetheless, several deficiencies persisted within the legislation. As anticipated, the 1986 Act proved to be inadequate over time and

necessitated its replacement with the Juvenile Justice (Care and Protection of Children) Act of 2000. This legislation established gender parity in the legal age requirement^[8].

The aforementioned legislation enacted a comprehensive structure aimed at safeguarding, tending to, and rehabilitating minors subject to the authority of the juvenile court system. Furthermore, it advocated for an innovative methodology in addressing the prevention and intervention of juvenile delinquency. The aforementioned legislation was enacted in alignment with the 1989 United Nations Convention on the Rights of the Child (UNCRC), therefore revoking the preceding Juvenile Justice Act of 1986 subsequent to India's signing and ratification of the UNCRC in 1992.

The case of *Partap Singh v. State of Jharkhand*^[9] is a significant ruling by the Constitutional Bench of the Supreme Court of India. This judgment extensively examined the matter and concluded that the "date of commission of the offense" should be considered as the reference point for determining the age of a juvenile. The Court arrived at this decision due to certain ambiguities and omissions in the new Act, particularly regarding the determination of a juvenile offender's age. Consequently, the legislation pertaining to this issue underwent revision in response to the aforementioned judgment rendered by the esteemed Supreme Court^[10].

The Juvenile Justice (Care and Protection of Children) Amendment Act of 2006 was implemented on August 22, 2006. At the time of the alleged incident, the amendment provided optimism for those who exceeded the age of 16, since the Juvenile Justice Act of 1986 remained in force. The Juvenile Justice (Care and Protection of Children) Act, 2000 resulted in an increase in the age threshold for those awaiting trial from 16 years to 18 years^[11].

The Juvenile Justice (Care and Protection of Children) Amendment Act of 2006 addressed this concern by incorporating a specific provision in Section 20. In contrast, juveniles exploited this legal framework to their benefit, resulting in the perpetration of abhorrent acts by young individuals on a widespread level inside the country. The culprits demonstrated a partial understanding of the defense presented by the amended Act^[12].

The Juvenile Justice (Care and Protection of Children) Act enacted in the year 2000

The Act of 2000 represented a genuine endeavor by the Indian government to include the principles outlined in many United Nations agreements, such as the Convention on the Rights of the Child (CRC), the Beijing Rules, and the 1990 Rules. The Juvenile Justice (JJ) Act of 2000 was enacted by the Supreme Court of India with the objective of addressing offenses committed by individuals under the age of majority in a manner distinct from the legal framework applicable to adults^[13].

The framework of the Act exhibits a preference for rehabilitation as opposed to the adversarial approach commonly employed in courts. The successful implementation of this initiative necessitated a fundamental paradigm change in the mindset of those occupying positions of authority, as their active support was vital for its realization. Without such backing, the attainment of its objectives would be very challenging^[14].

In the case of *Jameel v. State of Maharashtra*^[15], the Supreme Court determined that the appellant's assertion on the applicability of the JJ Act, 2000 is irrefutable, since it is shown that the appellant was 16 years old at the time of the

occurrence. Due to the occurrence of the offense of unnatural intercourse on December 16, 1989, the applicability of the JJ Act of 2000 was precluded^[16].

As per the provisions outlined in the Juvenile Justice Act of 1986, the term "juvenile" refers to an individual who has not attained the age of 16 or 18, depending on their gender, as specified in the Act. Hence, the contention that the applicability of the JJ Act, 2000, is warranted based on the fact that the accused was below the age of 18 at the time of the incident lacks persuasiveness, as the accused had already beyond the age of 18 when the JJ Act, 2000, came into force. Due to the fact that the individual in question was 16 years of age at the time of the occurrence, it might be argued that the Juvenile Justice Act of 2000 holds no relevance in this particular case^[17].

The establishment of a Juvenile Justice Board (JJB), henceforth referred to as the JJB, is within the purview of the state government, which may choose to establish it for a district or a group of districts. Section 4 of the JJ Act, 2000 provides comprehensive coverage on the establishment and makeup of the board. As per the stipulations outlined in Section 5(2), it is permissible for a kid who has engaged in delinquent behavior to be presented before a designated member of the Board in the event that the Board is not currently convened. The exclusive jurisdiction to adjudicate all matters pertaining to juveniles in dispute with the law under the 2000 Act is vested in the Board, as stipulated in Section 6(1)^[18].

The establishment of observation houses in each district or cluster of districts is proposed as a means to accommodate minors involved in legal disputes on a temporary basis, pending the completion of investigations^[19].

The legislation also implemented additional governing bodies and institutions, such as specialized residential facilities, which categorized minors according to their age, taking into account their physical and mental well-being, as well as the nature of their transgressions. This technique exhibited a greater emphasis on reform compared to previous methods^[20].

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

The incident of the gang rape assault in Delhi, commonly referred to as the Nirbhaya case of December 16, 2012, garnered significant attention nationwide and shed light on the existing deficiencies within the juvenile legislation. The current legislation pertaining to juvenile law has faced significant criticism nationwide due to its perceived inadequacy in deterring criminal activities committed by children, namely those aged 16 to 18, who are involved in heinous offenses such as rape and murder. This tragic incident has prompted widespread scrutiny and condemnation of the existing legal framework^[21].

Following the incidents in the Nirbhaya case, there arose a pressing need to amend the existing legislation that mandates the trial of individuals aged 16 and 17 as adults. The Juvenile Justice (Care and Protection of Children) Act, 2015, was enacted by the Indian Parliament in 2015 as a reaction to public outrage. However, its approval was accompanied by much controversy, discussion, and criticism from the child rights community, mostly due to concerns about many clauses within the Act^[22].

The aforementioned legislation, namely the Juvenile Justice (Care and Protection of Children) Act of 2000, was

superseded by the current law under discussion. The previous act addressed the issue of juvenile delinquency in India and allowed individuals between the ages of 16 and 18, who were involved in criminal activities of a grave nature, to be subjected to adult legal proceedings. As per the aforementioned legislation, the Juvenile Justice Boards, comprising a metropolitan magistrate or judicial magistrate and two social workers, were vested with the jurisdiction to determine whether the offender should be prosecuted in the adult court as an adult or as a juvenile^[23].

The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 was not present in the previous legislation until its incorporation into the recent measure. The legislation also sought to enhance the efficiency of the adoption process for children who are orphaned, abandoned, or voluntarily surrendered. The law was adopted by the lower house, or Lok Sabha, on May 7, 2015, and the upper house, or Rajya Sabha, on December 22, 2015. The bill was signed by the President of India on December 31, 2015, and subsequently came into force on January 15, 2016^[24].

Consequently, the enactment of the new legislation was undertaken in order to fulfill India's commitments under three international treaties, specifically the United Nations Convention on the Rights of the Child (CRC), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (commonly referred to as the Beijing Rules, established in 1985). The reference to "Havana Rules, 1990" is made^[25].

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021

The subject of discussion pertains to the proposed legislative change known as the Juvenile Justice (Care and Protection of Children) change Bill of 2021. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, was successfully ratified by the Lok Sabha on March 15th, 2021. This bill seeks to provide modifications to the existing Juvenile Justice Act of 2015. The proposed law was introduced by the Minister of Women and Child Development, Ms. Smriti Zubin Irani, and was strongly appreciated by both the ruling party and opposition members. On July 28th, 2021, the Rajya Sabha granted approval for the amendments to the Child.

JJ Boards and Child Welfare Committees

The act established Juvenile Justice Boards and Child Welfare Committees to handle cases involving children in conflict with the law and children in need of care and protection, respectively. The state government has the authority to create a Juvenile Justice Board (referred to as the JJB) either for a specific district or for a group of districts. Section 4 of the JJ Act, 2000 encompasses the provisions pertaining to the creation and composition of the board. As per the stipulations outlined in Section 5(2), it is permissible for a minor who has engaged in delinquent behavior to be presented before a designated member of the Board in the event that the Board is not currently convened. The exclusive jurisdiction to adjudicate all issues pertaining to minors in violation of the law, as stipulated in Section 6(1) of the 2000 Act, rests solely with the Board. Adolescents involved in legal conflicts: Observation houses are to be created in each district or cluster of districts to serve as temporary receiving facilities for

adolescents for the course of an ongoing inquiry. The legislation also included a range of other entities and resources, such as specialized residential institutions, which categorized young individuals according to their age, taking into account their physical and mental well-being, as well as the specific characteristics of their transgression. This strategy exhibited a greater emphasis on reform compared to previous approaches [26].

Conclusion

In conclusion, India has made significant strides in its approach to juvenile justice and rehabilitation, with a focus on the welfare and rights of children. However, there are still challenges to overcome, such as improving awareness, reducing overcrowding, and enhancing the effectiveness of rehabilitation measures to ensure a brighter future for juvenile offenders. The established rule encompasses acts, declarations, or conventions that are meticulously crafted and presented as policies, reflecting the refined quality of the purpose. However, there exists a significant deficiency in the execution of the implementation procedure. In instances where there is a breach of regulations, the stipulations specified in the legislation, regulations, or guidelines have not been duly considered. The populace exhibits a readiness to vocalize their support and engage in advocacy on behalf of individuals facing accusations, imprisonment, and conviction, particularly in relation to the safeguarding of human rights. However, it is noteworthy that only a select subset of individuals actively dedicate themselves to championing the welfare of the younger generation, who are widely regarded as the prospective cornerstones of the nation. The legal system places greater emphasis on safeguarding the rights of the accused and prioritizes the examination of human rights violations committed by the accused. However, it fails to adequately address the infringement upon the fundamental rights of minors. There have been documented instances before the Honorable High Court pertaining to child care, specifically with child labor and bonded labor. The judges exhibit a heightened level of attention in resolving these matters, placing significant emphasis on issuing orders, providing directives, and ultimately concluding the proceedings.

The subject about the efficacy of religion and education in the rehabilitation of offenders remains a significant area of inquiry, as a considerable proportion of individuals who engage in wrongdoing possess a solid educational background and hold strong spiritual convictions. The fulfillment of rehabilitation and reformatory measures is contingent upon the collaborative involvement of non-governmental organizations (NGOs) and volunteer groups. In order to support individuals engaged in the promotion of the welfare and development of young individuals, it is imperative for the government to formulate policies that incentivize the operations of non-governmental organizations (NGOs) through increased financial assistance and associated advantages.

Let us commence the process of altering our mindset and redirect our focus towards our cherished individuals who anticipate our support and require urgent attention, care, protection, and adoration from our innermost sentiments. Given their lack of information of their rights and responsibilities, it is imperative that we collaborate in order to initiate efforts aimed at raising awareness and facilitating the provision of essential resources such as healthcare, financial

stability, and opportunities for a prosperous future.

Suggestion: The primary aim of justice is not to eliminate the criminal but to preserve life and remove crime in the society. Subjecting juvenile offenders to harsh punishments only shows the inability of the country and the society to channel the positives in a person and removes all negativity in them. The theory of positive criminology focuses on restorative justice has proven to be successful. Faith in Judiciary and focus on causes and prevention of Juvenile crimes, Juvenile delinquency in the society may explore various initiatives and may possibly suggest measures for rehabilitating and reintegrating the Juvenile often towards a better society. Change in the society is inevitable, but any change should be for the good of the people. However, changes in the context of juvenile justice should be necessarily keeping in mind the following

1. Mental condition of the minor.
2. Social responsibilities.
3. Adaptation to change.
4. That the legislations made should be actually and practically followed.
5. The aim is to create a better society where the children get an opportunity to grow and prosper.
6. Awareness / Educational programs to sensitize the parents and Children equally.
7. Understand the reasons and causes of Juvenile offense.
8. Getting both, the Govt. and the NGOs along with the society to work for the cause of Juvenile offenders.

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