EXPANDING HORIZONS OF THE LAW ON JUVENILE DELINQUENCY AND ITS PRACTICE

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Abstract

Introduction

Juvenile delinquency had been the most discussional topic in the present societal backdrop. The Juvenile Justice Act of 1986 and subsequently upon its repeal, the Juvenile Justice (Care and Protection of Children) Act, 2000 had stressed upon a uniform framework of juvenile justice law in India. The concept of juvenile delinquency ranges from the period of the Vedas although the nature of the offence to be classified as a wrong for the juvenile differed in its scope, extent and gravity from the present day classifications. The recognition of a remedial system involving a restorative punishment had been adopted in our country following the international viewpoint. From the time each State had its own child protection laws till the identification of an unified code of juvenile justice, the journey had been characterized by different developments and researches in consonance with the international standards. Considering the problems faced in the implementation and operation of the Juvenile Justice Act, 1986, the present JJ Act, 2000 had been formulated after experimentation with the problems and issues raised in the operation of the previous 1986 Act on the basis of the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their liberty, 1990 (Riyadh Guidelines) and all other relevant international instruments. This Act was again amended in 2006 in respect of certain provisions.

Object of the Study

I have taken up this study with a view to analyze the situations and problems of juvenile delinquency as this issue had been a burning problem in the present
societal set-up with its growing menace and expanding dimensions. The study also seeks to evaluate how far the present legislation on juvenile delinquency had been successful in combating the practical problems of the juveniles in conflict with law as also in the achievement of its rehabilitative objective. The rationality of understanding in children in this sphere of globalisation with unlimited access to the media is surely required to be re-assessed since upon such understanding, the knowledge and realization of crime and criminology depends to a considerable extent. This study into juvenile delinquency traverses through the origins and recognition of juvenile delinquency in India, after giving glimpses of its existence and identification in the international level, examines the concepts of juvenile delinquency – the reasons for its growth and magnitude and also its various trends with an overview of the trends in different parts of the world. It seeks to discuss the present notified provisions of the Act of 2000 and its various measures designed upon international model to make best efforts for rehabilitating juvenile offenders, it delves into institutional and non-institutional measures of rehabilitation, intends to emphasize the individual roles of police, probation officers, courts and NGOs. The various judicial decisions pronounced by the Courts addressing relevant corners of the Act are also a part of this study.

**HYPOTHESIS**

The recent spurt of juvenile delinquency had been under scanner for continuous consideration. The rehabilitative aspect had been given a special recognition in the JJ Act, 2000 which had based its first mode of reformative approach upon non-institutional treatment, like community service, probation and other activities, all of which is centred towards the best interests of the child. But although such a widespread notion had come notified in the pages of the statute with the operation of the Act, yet there have been problems in every sphere which requires research and investigation into the subject. Perfunctory infrastructure have resulted in improper functioning of the agencies classified under the Act. I have tried to bring out the practical situation prevailing in some
parts of the country which will reveal the disheartening picture. In this manner, I have adopted the empirical method in working upon this study. I have personally visited some of the observation homes and collected information about their present status and condition. I have discussed about the difficulties and limitations faced in the operation of the Act and have also given some suggestions about its remedies according to my thinking and opinion.

**CHAPTER OVERVIEW**

Chapter 1 is the introductory chapter wherein I have attempted to provide a glimpse into the history of juvenile delinquency from its recognition in the international scenario and its adaptation in India following the trail. I have also discussed about acceptance of the subject in India and the coming into operation of the Juvenile Justice Care and Protection of Children Act, 2000, besides commenting upon its reformative objective.

Chapter 2 gives an overview of the Concepts and Trends of Juvenile Crime. It deals with the different causes of juvenile crime concerned with economic, financial and other circumstantial factors affecting the environment. The chapter entails a detailed classification into the different causes of juvenile delinquency. I have appended herein various data dealing with the incidence of crime in the recent years and have further given pictorial representations in order to give an idea of economic status prevalent according to the different income strata in our country. The various trends of juvenile crime have also been discussed in this chapter. Certain examples into the types of juvenile crime as is prevalent in the present day have been given to make it apparent about the development and increase in the nature of juvenile crime. A global overview of the delinquency system in different countries is also provided in the chapter.

Chapter 3 is concerned with Juvenile Delinquency and Juvenile Justice (Care and Protection) of Children Act, 2000 extensively deals with the different
provisions of the Juvenile Justice (Care and Protection) of Children Act, 2000 inclusive of the Juvenile Justice (Care and Protection of Children) Rules i.e. Model Rules propagated as a uniform Rule in the year 2007, right from its fundamental concepts and principles to its various laws and principles, the standards set in and the procedures to be adopted. The provisions of the Act involving the set-up of the Juvenile Justice Board, the Observation Homes, Special Homes, After-care Homes, the setting up of Juvenile Police Unit in every police station with a police officer being designated as the Junior Welfare Officer, the concept of a social investigation report digging into the family history of the juvenile in conflict with law which will be helpful in analyzing the roots of the crime and the creation of authorities as the District Child Protection Unit, State Child Protection Unit have been very innovative and novel. But inspite of all these provisions, the Supreme Court had to step in with the aid of *Sampurna Behrura vs. Union of India, Writ Petition (Civil) No.473 of 2005, 12th October 2011* to enforce the implementation of the Act in its true perspective by issuing strict compelling provisions after it was observed that the States have not taken the Act seriously enough. Although the implementation of the provisions of the Act had been regulated under the stringent supervision of the judiciary, there remains a lot to be done especially in improving the infrastructure of the juvenile homes to bring the same in consonance with the Act. This chapter also discusses the shortcomings and weaknesses of the Act.

Chapter 4 discusses about the *Rehabilitation and Treatment of Juvenile Delinquency*. This chapter has been divided into two parts, the first gives an analytical overview and the second part deals with an empirical note. Both are dealt with the institutional method of treating juvenile delinquency. The former is a theoretical interpretation of the provisions of the JJ Act, 2000 and the Rules made thereunder regarding the juvenile homes namely observation homes, special homes and after-care institutions while in the next part, I have tried to share my experiences about the present conditions and status of the juvenile homes in some parts of our country including West Bengal. The standards of
care and management of the juvenile homes including its basic requirements of nutrition, medical facilities, accommodation have all been very well defined in the Juvenile Justice (Care and Protection of Children) Rules 2007 which have been accepted as the Model Rules. I have discussed about the present status of the juvenile institutions in these two chapters as also whether their set-up and functioning is compatible with the provisions of the Act, the reasons for the improper implementation of the provisions of the Act and so on.

The working of juvenile justice under the JJ Act, 2000 had not been a steady process and such can be characterized by the fact that several times the jurisdiction of the court was sought for in solving complex issues. The effect was the amendment of certain provisions in the Act by the Amendment Act of 2006 which had been successful in curbing certain issues. The amendment of 2011 marks a special provision relating to the juveniles of unsound mind. Chapter 5 is the judicial approach towards juvenile delinquency, how far it had helped to build up the status envisaged under the present Act and also the enormous issues raised in the implementation of the Act. The chapter reads as Issues raised in the Implementation of the JJ Act, 2000. If the age-related issue of the juveniles regarding reducing of the age from 18 years to 16 years, reaches a consensus, a further amendment of the Act is contemplated.

Chapter 6 is with regard to the role of different stakeholders envisaged by the JJ Act, 2000. This chapter gives a vivid discussion into the various Roles of the NGOs, Police and Probation Officers in dealing with juvenile Delinquency. The police, probation officers and also the NGOs have been assigned specific roles under the Act to rehabilitate and reform the juveniles. Sensitization had been advocated in all levels and as already explained above, the judiciary had not also remained a mute spectator. The chapter had discussed about these and also the shortcomings faced by them in their working.
Chapter 7 is the concluding chapter or Conclusion. A congregation of the working of the Act coupled with the provisions, the burning issues of the present society and also suggestions according to my opinion have been stated here. The JJ Act 2000 is intended to put an end to the juvenile delinquency situations by corrective reformative techniques rather than being merely a symbolic exercise undertaken without any grasp of social reality and without any philosophical or ideological base. The nature, manner and frequency of juvenile delinquency had undergone a sea-change from that of the past. The number of juvenile offenders had increased to a considerable extent. The reformative approaches which are presently in vogue, requires an overhaul, depending upon the present magnitude and extent of juvenile delinquency. The Act should also be susceptible to changes according to the growing requirements of the society. The practice procedures into the field of juvenile justice, which is mainly based on the old concepts and normal methods of adult criminal system, are required to be changed. Regular sensitizations of police personnel are therefore considered eminent and such process have already started by the State and District Legal Services Authority under the supervision of the NALSA.

The Report on Key Recommendations and Guidelines in the Reform of Juvenile Justice 2009¹ laid it very clearly that the failures in the juvenile justice system predominantly relate to the entrenched criminalisation and institutionalisation of children in conflict with the law and children in need of care and protection. There was a breach in child’s rights in the procedural processes for adjudication, disposition and placement of children as well as within existing institutional care, rehabilitation and detention facilities and most importantly it was felt that there was a fundamental lack of recognition within the juvenile justice system that (i) children in conflict with law are also children in need of care and protection, (ii) children in need of care and protection are also at risk of becoming children in conflict with law and (iii) all ‘at risk’ children are also

potential entitlement holders of the juvenile justice system and these deficiencies undermined the ability of the system to implement strong preventive and rehabilitative measures.

With a view to broaden the application of the Act and its output further, the concept of Blended Sentencing, quite in vogue in the U.S. may be experimented wherein juveniles guilty of grave offences may be tried according to the adult standards wherein the juvenile court imposes a sentence that blends a juvenile disposition and an adult sentence for certain such serious offenders. Researches are to be constantly made into this field to arrive at a more practical-oriented approach having regard to the present circumstances, technological as well as physical and mental development of individuals including the juvenile delinquents. The need of the hour is a sensitive and deterrent juvenile justice system which will cater to the specific needs of the children through a sensitive police, informal and flexible judiciary ready to intervene in the best interest of the child and institutions who are well equipped to design and implement the individual rehabilitation and reintegration programs. The dream of making alive the true spirit of the Act can only be fulfilled with the above objectives being set in place in an appropriate manner.