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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"EVALUATING THE IMPACT OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 ON REHABILITATION AND RECIDIVISM IN INDIA"

AUTHORED BY - ARYA AGRAWAL & KHUSHI JHA

I. ABSTRACT

The juvenile's delinquents are so many, and their numbers keep swelling in India, posing a real threat to society and an equally real threat to its legal structure. Defined as illegal acts or antisocial acts committed by juveniles, juvenile delinquency is caused by many complex social, cultural, biological, and psychological factors. The article aims at a critical examination of juvenile delinquency and how it is dealt with under the Juvenile Justice System in India. It illustrates the major factors influencing the delinquent behavior of minors and investigates the response of the system after such cases as the Nirbhaya gang rape, which ushered legislative changes.

Behind this analysis are the two basic tenets of the juvenile justice system of India: punishment and rehabilitation. This research explores whether the system favors punitive approaches over rehabilitative measures, stressing that both should be given equal importance in the dispensation of juvenile justice to both deter the juveniles from crime and allow their smooth reintegration into society. Identifying lacunae within the juvenile justice system, some relevant recommendations are made in the paper to strengthen the mechanism so that it conforms both to legal conceptions of accountability and psychological concepts of child welfare.

Keywords: Juvenile delinquency, Juvenile Justice System, India, Nirbhaya case, Punishment, Rehabilitation, Sociocultural factors, Legal reforms.

II. INTRODUCTION

Children are regarded as highly valuable assets and represent the prospects of every nation. The well-being of a country hangs in the balance as children engage in atrocious acts and evade meaningful consequences, which could be deemed as mere symbolic reprimands. A well-known adage posits that just as a tree cannot be coerced into bending, similarly, it is imperative

to correct children's misconduct at a tender age; failure to do so will likely perpetuate their delinquency into adulthood, rendering it exceedingly difficult to rectify. Given that an individual's behavioral patterns are largely shaped during their formative years, it becomes of utmost importance to inculcate in children an understanding of right and wrong, rectify their mistakes, and administer appropriate punishment for actions causing harm to others. The term 'Juvenile' originates from the Latin word 'Juvenile' denoting youthfulness. A "Child" or a "Juvenile" is identified as an individual below eighteen. In recent decades, there has been a noticeable upsurge in juvenile offenses. To address and penalize juveniles for their transgressions, countries establish a distinct judicial system known as the Juvenile Justice System, governed by the "Juvenile Justice (Care and Protection of Children) Act, 2015".¹ Differential treatment between adults and children about their criminal acts predominantly hinges on age. However, as the famous saying suggests, "Old enough to do the crime, old enough to do the time," if a child possesses the mental capacity to commit a heinous offense, they should be subject to appropriate punishment for their actions.

III. EVOLUTION OF THE INDIAN JUVENILE JUSTICE SYSTEM

The difference in the treatment of adults and children about their criminal activities can be traced back to the colonial era. Lord Cornwallis established the first institution for children in the year 1843, known as the "Ragged School". The main objective behind the establishment of this school was to reform the young offenders who were arrested, by encouraging them to work and learn through apprenticeship and vocational training. This initiative laid the foundation for the enactment of the Apprentice Act in 1850². The Apprentice Act was the first legislation in India that specifically addressed juvenile crimes. According to this act, juveniles between the ages of 10 and 18 who were convicted of minor offenses were required to participate in vocational training for their rehabilitation. The Reformatory School Acts of 1876 and 1897 were significant legislations that empowered the court to detain juvenile delinquents in reformatory schools for a period of 2 to 7 years³. After reaching the age of 18, they would be transferred to prison cells. The Criminal Procedure Code of 1898 stated that after serving their sentence in reformatory schools until the age of 18, juvenile delinquents would be kept on probation until the age of 21.⁴ In 1919-1920, the Indian Jail Committee was formed, which

¹ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

² Apprentices Act, No. 19 of 1850, § 2, Acts of Parliament, 1850 (India).

³ Reformatory Schools Act, No. 5 of 1897, § 6, Acts of Parliament, 1897 (India).

⁴ Criminal Procedure Code, No. 5 of 1898, § 562, Acts of Parliament, 1898 (India).

presented a report recommending the establishment of separate institutions and separate trials for juvenile delinquents. The committee opposed conducting trials for juvenile delinquents in adult courts and suggested the establishment of children's courts to hear cases involving juvenile offenders. Following the recommendation of the Indian Jail Committee, the Indian Children Act was enacted. Subsequently, the provinces of Madras (1920), Bengal (1922), and Bombay (1924) passed their separate legislation for dealing with juvenile delinquents. After independence, the case of *Sheela Barse v. Union of India* highlighted the need for special care⁶ in the treatment of juvenile criminals in prisons and recommended the enactment of a uniform law for the entire country to address juvenile crimes and criminals. This led to the enactment of the Juvenile Justice Act in 1986, which aimed to provide care, protection, and rehabilitation for juvenile delinquents. To address the gaps and loopholes in this act, the Juvenile Justice (Care & Protection Act) was passed in 2000. This act complied with the United Nations Convention on the Rights of the Child (UNCRC). It included provisions for the protection, rehabilitation, and custody of juvenile offenders, and ensured that the adjudication and resolution of cases and issues related to juveniles were conducted in a "child-friendly" manner. Due to the outcry following the Nirbhaya Case, the Juvenile Justice (Care & Protection of Children) Act was passed in 2015. The noteworthy provision of this act is regarding heinous offenses committed by juveniles above the age of 16 years.

IV. LITERATURE REVIEW

1. In the Article "The Impact of Juvenile Justice Reforms in India", the authors Sesha Kethineni & Tricia Klosky conducted research⁷ to find out if a significant increase in the juvenile crime rate was the reason behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000. After thorough and detailed research, it concluded that it was not the reason behind the enactment of the act, the main reason was to obtain centralized control & and uniformity of laws. To minimize discrepancies in judicial processes & and treatment of criminals throughout the country, as well as to diminish rationalistic control over issues, the Juvenile Justice Act was passed. This literature is limited only to the changes made in the structure and procedure of the courts, different kinds of cases processed, and dispositions. It does not cover the types and causes behind juvenile delinquencies; hence the researcher of the present study has covered that aspect.

⁶ *Sheela Barse v. Union of India*, (1986) 3 SCC 632 (India).

⁷ Sesha Kethineni & Tricia Klosky, *The Impact of Juvenile Justice Reforms in India*, 48 Int'l J. Comp. & Applied Crim. Just. 24 (2008).

2. Pragya Shukla, in her article "Juvenile Delinquency and Juvenile Laws in India,"⁸ has attempted to find the reasons behind rising juvenile delinquency. Some of the reasons behind rising juvenile delinquency are abusive parents, child sexual abuse, drug abuse, family violence, etc. The author states that the youth are the future of the country, hence measures should be taken to rehabilitate them and for the same reason should also be punished for their offenses of a grievous nature. This article is limited to the meaning of juvenile delinquency, its issues, and who can claim it. It does not discuss the impact the Nirbhaya Case had on the Indian Juvenile Justice System; therefore, the researcher of the present study aims to shed light on that matter.

V. OBJECTIVE

1. To assess the impact of the legal framework on various stakeholders involved in the juvenile justice system, including children in conflict with the law, their families, communities, and victims of juvenile crime.
2. To identify the strengths and weaknesses of the current legal framework and potential areas for reform.

VI. RESEARCH QUESTIONS

1. How has the legal framework for juvenile justice in India evolved, and what are the key features of the current JJA (2015)?
2. How does the legal framework balance the principles of rehabilitation and deterrence in dealing with children in conflict with the law?
3. How has the Nirbhaya Case impacted the Juvenile Justice System of India?

VII. RESEARCH METHODOLOGY

In the present study, the Doctrinal Research Methodology and Analytical Study method have opted to analyze the available information collected from secondary data sources critically.

VIII. TYPES OF JUVENILE DELINQUENCIES AND THEIR CAUSES

The Latin word "delinquer," which means to desert or flee, is where the word "delinquency" originates. Adolescent criminal and antisocial activity is referred to as juvenile delinquency. It

⁸ Pragya Shukla, Juvenile Delinquency and Juvenile Laws in India, 3 Int'l J. Legal Dev. & Allied Issues 42 (2017).

is concerning the Juvenile Justice (Care & Juvenile offenders are referred to as "children in conflict with law" under the Protection of Children) Act of 2015, which implies "a minor who has not reached the age of eighteen and who is suspected or proven to have committed an offense" on the day that the crime was committed. Before the passage of JJA 2015, there were several situations when it wasn't clear whether to take the age of the juvenile when the offense was committed or the day they appeared before the juvenile justice board. In the Arnit Das v. State of Bihar case, the Hon. Supreme Court ruled that the date of the offender's appearance before the Juvenile Justice Board would be considered in determining his juvenility.⁹ With the historic ruling in Pratap Singh v. State of Jharkhand, the Supreme Court cleared the air.¹⁰ It was decided that, rather than the date of the offender's appearance before the JJB or the court, the date the offense was committed would be used to assess the offender's juvenility. Consequently, the 2006 amendment effectively ended the debate over juvenile determination. Just like adults, juveniles can commit every kind of violation, from infractions to serious ones. Juveniles' offenses are classified as delinquencies because of their age.¹¹ Three categories have been established by the Office of Juvenile Justice and Delinquency Prevention to classify juvenile delinquencies:

- i) Drug-related crimes include the use, possession, and sale of illegal drugs with addictive qualities;
- ii) Property crimes include the obtaining of property by minors through coercion or threats;
- iii) Violent crimes include murder, assault, rape, and serious bodily harm.

Every person, even kids, has distinct behavioral inclinations. An individual's behavioral tendencies/patterns begin to emerge from a very young age; nevertheless, in the early stages, it will be challenging to recognize aggressive or delinquent behavior since an individual's growth causes his behavioral tendencies/patterns to change. However, a child's behavior patterns can be significantly shaped if they are consistently exposed to situations, environments, and experiences. Biological, physiological, and sociological variables are important in determining how children behave. Delinquent behavior can stem from several factors, including:

⁹ Arnit Das v. State of Bihar, (2000) 5 SCC 488 (India).

¹⁰ Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551 (India).

¹¹ Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book (2020)

IX. IMPACT OF THE NIRBHAYA CASE ON THE INDIAN JUVENILE SYSTEM

On the sixteenth of December in the year 2012, the distressing occurrence of the "Nirbhaya Gang Rape Case" left the entire nation in a state of shock. Among the six individuals accused, one of them took his own life while in custody, four of them were sentenced to death, and one of the accused was of juvenile status. The juvenile offender was a mere six months away from reaching the age of majority. In the year 2013, a leader of the Bhartiya Janata Party (BJP) by the name of Mr. Subramaniam Swami lodged a Public Interest Litigation (PIL)¹² in the esteemed Supreme Court of India, beseeching that the juvenile be treated as an adult in a regular court. The three-judge bench of the Supreme Court, comprised of Chief Justice P. Sathasivam, Justice Shiva Kirti, and Justice Ranjan Gogoi, declined to interfere with the concept of "juvenility," even in instances where minors were found culpable of abominable crimes. The court maintained that the provisions of the Juvenile Justice (JJ) Act were by the guidelines set forth by the Constitution as well as international conventions.

The Supreme Court directed the Juvenile Justice Board to deliver a judgment in the best interests of the juvenile, by the law. The juvenile was tried separately in a juvenile court and was handed the maximum sentence of three years of incarceration in a reformation institution. The court's verdict incited a significant uproar within the nation; the public expressed their discontent with the court's decision to punish the juvenile offender with a mere three years of imprisonment and demanded that the juvenile involved in the gang rape be sentenced to death. It was argued that the age of the accused should not grant him immunity from the gravity of the violence inflicted upon the victim.

It was this individual who tormented the victim with an iron rod, causing internal bleeding. The victim's mother criticized the court's decision and asserted that by not prosecuting the juvenile as an adult for his atrocious crimes, juveniles would commit offenses without concern for severe consequences. The enactment of the Juvenile Justice (Care & Protection of Children) Act in the year 2015 was a direct result of the substantial public backlash against the failure to prosecute the juvenile offender as an adult for his heinous crimes and the subsequent punishment of only three years of imprisonment in a reformation home. This Act introduced several notable amendments to the legal framework for juveniles. One noteworthy change implemented by this Act is that juveniles between the ages of sixteen and eighteen can be tried

¹² Subramanian Swamy v. Raju, (2014) 8 SCC 390 (India).

as adults if they are accused of abhorrent crimes.¹³

X. PUNITIVE AND REHABILITATIVE ASPECTS OF THE INDIAN JUVENILE JUSTICE SYSTEMS

The Juvenile Justice System is typically structured to prioritize both rehabilitation and punishment. In the context of the Indian Juvenile Justice System, the emphasis leans more heavily towards rehabilitation rather than punishment. This inclination is motivated by the belief that children cannot fully comprehend the nature and consequences of their actions. This belief is rooted in the legal principle known as "doli incapax," which asserts that children are unable to form the intention to commit a crime due to their age. The concept of rehabilitation in the juvenile justice system is predicated on the notion that a juvenile offender can be reformed and encouraged to abandon their delinquent behavior through appropriate guidance,¹⁴ rather than through the threat of punishment. Given that delinquent behavior in juveniles often arises from factors such as sexual or physical abuse, poverty, and violent parenting, it is feasible to improve their behavior and conduct through various reform policies. It is essential to treat children who are in "conflict with the law" as individuals facing challenging circumstances, and the approach of the Juvenile Justice System should be focused on addressing their vulnerabilities and facilitating their rehabilitation.

The Juvenile Justice (Care and Protection of Children) Act, 2015 categorizes offenses into three types: petty offenses, which carry a maximum punishment of up to three years of imprisonment; serious offenses, which carry a maximum punishment of three to seven years of imprisonment; and heinous offenses, which carry a maximum punishment of up to seven years of imprisonment. The rehabilitative approach is appropriate for juveniles who have committed petty offenses. However, juveniles who have committed serious and heinous offenses must be subjected to punishment to facilitate their rehabilitation. By adopting a reformatory philosophy of legal punishment, juveniles are granted an unfair advantage that allows them to continue engaging in criminal activities without incurring significant penalties. The rehabilitation approach places the focus on the accused, while the punitive approach centers more on the victim. It is imperative to punish juvenile offenders who are found guilty of committing serious and heinous offenses to ensure justice for the victim. The Indian Juvenile

¹³ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15, No. 2, Acts of Parliament, 2016 (India).

¹⁴ Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights, 3 Child. Legal Rts. J. 11 (2007).

Justice System is based on the belief that it is feasible to rehabilitate and reform juvenile delinquents. Incarcerating them would label them as "criminals," which would have a lasting impact on their prospects.

However, there is no guarantee that juvenile offenders will not engage in criminal activities in the future. The Juvenile Justice Act places a greater emphasis on rehabilitation than on the punishment of juvenile offenders. Nevertheless, to reduce the incidence of serious and heinous juvenile offenses, a punitive approach is more effective.

XI. CONCLUSION AND RECCOMENDATION

In contemporary society, the incidence of juvenile crimes is escalating at an alarming rate. Children, being the future of our nation, necessitate the juvenile justice system to assume a prominent role in shaping the prospects of our country. In recent times, it has been observed that children also possess the ability to perpetrate heinous crimes such as murder, rape, dacoity, and the like. The age factor should not serve as an avenue for juvenile criminals to evade severe penalties. Failure to punish juvenile offenders or administer lenient sentences will only embolden them to commit such crimes once more. For certain juveniles, the living conditions in reform homes may surpass their external living conditions, potentially leading them to become complacent in the reform homes and show no remorse while reoffending.

Consequently, it becomes imperative to punish juvenile offenders by the gravity of their offense, considering their level of maturity and comprehension regarding nature and consequences of their actions. By refraining from penalizing them during their formative years, they develop a mindset that they can elude accountability due to the loopholes present in the legal system, thus undermining their fear of the law. Since children learn from their surroundings, it becomes pivotal for parents and caregivers to provide them with a nurturing environment, love and affection, suitable living conditions, quality education, and ethical values. Schools should pay close attention to any violent tendencies exhibited by children, and if such behavior is observed, the underlying causes should be identified to shield the children from further harm and eradicate the violent behavior at its roots through appropriate counseling. Juveniles residing in reform homes should be assigned community service and be exposed to real-life examples showcasing the repercussions of grave offenses on victims and their families, to instill a sense of empathy in them and deter them from future criminal

activities.

Due to the susceptibility of young minds to corruption, it is essential to diligently assess and monitor juvenile delinquents, ensuring that instead of being reformed and rehabilitated, they are not being influenced or corrupted by their fellow delinquents to engage in criminal behavior. Regular counseling sessions for juvenile delinquents in reform homes should be conducted to evaluate their progress toward reform or rehabilitation.¹⁵



¹⁵ Ministry of Women and Child Development, Govt. of India, Model Rules Under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2016).