

“Comparative Study between World’s Best Juvenile Justice System to Indian Juvenile Justice System”

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*'No civilised society regards children as accountable for their actions to the same extent as adults. The wisdom of protecting young children against the full rigour of the law is beyond argument. The difficulty lies in determining when and under what circumstances should it be removed.'*¹

- Professor Colin Howard

A. INTRODUCTION

A child is the country's future and an asset to emerge, every country, whether developed or developing, connects its future with its children's social position. A nation's future rests upon healthy, secured, educated and well-developed kids. They are prospective and useful for a nation's progress, Ignoring or neglecting the children means wasting the supreme asset of the nation. As plants need protection, sustenance, and the right climate to develop into large fruit-bearing trees *inter alia* children also need safety, encouragement, education, and a suitable environment to develop into productive and responsible citizens to serve the nation. In order to preserve this precious asset, the children should get the proper need, care and protection from the state. So, that they can grow up and become mentally, physically fit and morally healthy. Thereby providing proper protection and care to the children is highly imperative for a country. The statute that is used for the protection of children is called with a name of Juvenile Law. A Juvenile Law protects a child who is alleged to have committed an act or omission that is an offence in the eyes of law.

In this essay the author will introduce the Indian juvenile Justice system and Belgium juvenile Justice system that tops in the list of the best juvenile justice systems across the world (According to CRIN Report).² thereby proceeding further the author will present a comparative analysis between the two systems with an aim to highlight the lacuna in Indian juvenile justice system, to conclude author will be stating the suggestive measures that if implemented in Indian system then can probably cite Indian juvenile system as one of best juvenile systems in the world.

B. INDIAN JUVENILE JUSTICE SYSTEM

¹ *R (A Child) v. Whitty*, (1993) A Crim R 462.

² Belgium tops list of world's best juvenile justice system, *available at*: <https://belgium.euresidence.me/residence-permit-eu/belgium-tops-list-of-worlds-best-juvenile-justice-systems/> (last visited on february 16, 2016).

Hue and cry of people after the Nirbhaya Gang Rape Case³ forced the government to amend the Juvenile Justice Act (JJA) in 2015 that replaced the JJA 2000. The JJA 2000 was replaced by the JJA 2015 because the concept of the Hague Convention on Protection of Children and Cooperation in respect of Inter- Country Adoption 1993 was missing from the former act. The new JJA 2015 has the provision to deal with the children's who are in conflict with law and who are in need of care and protection. The bill mandates the setting up of these two bodies in each district with one women member in each:

- i. Juvenile Justice Board,
- ii. Child Welfare Committee.

The major change that was brought under this act was for the children between the age of 16-18 years who now be presumed as adults for the heinous crime after preliminary assessment by the Juvenile Justice Board under JJA, 2015.

C. LOOPHOLES IN THE INDIAN JUVENILE JUSTICE SYSTEM

The changes brought in the JJA due to the peer pressure from the society after Nirbhaya gang rape. Shashi Tharoor in his parliamentary debate said that the bill violates the UN convention by treating children between the ages of 16 to 18 as adult because most children who violates the law come from the illiterate and poor family⁴. Juveniles should be educated in spite of being punished. By amending the 2000 act the parliament not just broke its own tradition but also neglected the scientific and expert opinion on the matter. Lot of child right and woman right activists called the bill a regressive step.

according to the Prof. Sumantra Chatterjee (NCBS, one of the best neuroscientists in India) –

*“You are the product of your genetics and the environment. Family history, childhood abuse, poverty, deprivation. All these things can compromise brain development.”*⁵

National Crime Record Bureau statistics prove this point as the total juvenile offence recorded in the year 2014 among them 55.6% children belong to the families whose annual income is less than Rs. 25,000.

³ *Mukesh v. State of NCT Delhi*, AIR 2018 SC 3220.

⁴ Manoj C.J, “How Congress, TMC Got Spooked by Sentiment Ate Their Words” ,Indian Express New Delhi, December 23, 2015.

⁵ Bhavya Dore, “The real answer is rehabilitation : A neuroscientist explains the science of juvenile offences”, available at: <https://scroll.in/article/777250/the-real-answer-is-rehabilitation-a-neuroscientist-explains-the-science-of-jvenile-offences> (last visited on December 22, 2015).

First, gross mistake made in the 2015 act is not taking the fourth category offences in the IPC like counterfeiting and homicide not amounting to murder. The apex court decided that these crimes would not come under the heinous crime but will come under the serious crime. Second, gross mistake done while preparing this bill the board was expected to determine this without compulsory consultation of a psychologist or medical expert and the board was expected to assess the bill one month less than stipulated time in case of petty and serious crime. Third, the bill removes the prevention of disqualification. If the decision of the board will be reaffirmed by the children's court that the juvenile found to have committed heinous offence then it is beyond redemption even if they found innocent at the end of the proceedings or will be deemed to be sufficiently reformed at the age of 21, thereby making their reintegration and rehabilitation impossible. Damage takes time and reversal too but it's possible with rehabilitation.

D. BELGIUM JUVENILE JUSTICE SYSTEM

Belgium's Juvenile Justice System is not a system of juvenile criminal law, but Juvenile protection law. It focuses on the protection of the minors instead of awarding them with punishment. Belgium juvenile protection law is divided into two categories, *firstly*, minors living in problematic situations, *Secondly*, minors committed an act defined as offence. There is no uniform consolidated "act" on children's rights, provision can be found on both federal and community legislation. On one hand there is the Federal Youth Protection Act (YPA), 1965.⁶ and on other hand three communities have given their basic decree.

- *The decree on special juvenile assistance of the Flemish community (1990),*
- *The decree concerning juvenile assistance of the French speaking community (1991),*
- *The decree concerning juvenile assistance of German speaking community (1995).*

The principle of the criminal majority was introduced by the Belgium Child Protection Act in 1912, whereby the age of majority was set at 16.⁷ The Youth Protection Act, 1965, further raised the majority age to 18, that is also called Europe's highest age of criminal responsibility. In each particular case, the public prosecutor has to decide whether he/she shall proceed with prosecution, even if offenders are very young. In reality, it is strictly followed not to prosecute minors under the age of 10-12. The children's who are not considered capable of discerning good from evil. As soon as the minor attains the age of 18 years, juvenile protection measures come to an end, exceptions to this rule are regulation of waiver and the frequent offenders. The judge will always act to provide help and not punish the minors, at least in theory, after the investigation, the public prosecutor has to decide whether to refer the case to the youth court in view of trial

⁶ The United Nation Convention on the Rights of the Child, 1989.

⁷ International Juvenile Justice Observatory, "Alternatives To Custody For Young Offenders National Report On Juvenile Justice Trends" (2013).

and conviction to definite measure, or to refrain from prosecution. The juvenile protection measures are called measures of care, preservation and education. This is inspired by the protection model (prospective model) with an objective of this model is to handle problematic situations of minors through adaptive measures and at reaching social rehabilitation.

C. COMPARATIVE STUDY

- *Access to Justice*

All over the world Belgium attained first position in access to juvenile justice and India was ranked 43 by CRIN.⁸ In Belgium the children below the age of 12 are automatically invited by the judge to say what they feel is important, when their parents are in conflict.⁹ There is no obligation to convict the minor if the judge considers the fact to be proved under the common criminal procedure. The juveniles have throughout the same Judge to ensure the continuity and understanding of the best interest of the child.

In India, the major obstacle to justice can be found in the inapplicability of secular law to few parts of the country.¹⁰ corruption is also one of the major reasons for not getting justice.

- *Welfare of a Child*

Both countries look forward to the welfare of a child, they both work for the care, protection, welfare of the children by considering various measures.

In Belgium, it is impossible to impose a punishment on children under the age of 16, specifically because of the principle of welfare and protection. Under certain circumstances, a limited extension of the operative measure until the 20th birthday may be possible.

In India, by lowering the age of the juvenile from 18 to 16, India worked against the U.N. Convention of the Rights of the Child. Lowering age of the juvenile considered as a regressive step by the Child Right Activist.

⁸ Child Rights International Network, Access To Justice For Children: India, *available at*: https://archive.crin.org/sites/default/files/india_access_to_justice.pdf (last visited on June 12, 2013).

⁹ Belgium N° 1 For Children's Access To Court, *available at*: <https://focusonbelgium.be/en/international/belgium-ndeg-1-childrens-access-court> (last visited on June 12, 2013).

¹⁰ Access To Justice For Children: Global Ranking, *available at*: <https://archive.crin.org/en/access-justice-children-global-ranking.html> (last visited on June 12, 2019).

- ***Age of Criminal Responsibility***

The age of criminal responsibility is the point where a child may be prosecuted for a crime. It is the age at which the child is considered capable of knowing what they have done wrong, then subsequently, dealt with in the criminal justice system.

The low age of criminal responsibility and the national legislation relating to the administration of juvenile justice seem not to be compatible with the provisions of the Convention. [on the Rights of the Child (1989)], namely Articles 37 and 40.¹¹

The age of criminality in Belgium is considered at 16 years while in India it is 7.¹² The UN Committee has consistently advised the UK to raise the age from 8 to 10, thereby drawing an inference that India should also consider amending the age of criminal responsibility.

- ***Social Integration***

The emergence of social integration is influenced by restorative ideals. Re- engaging of the Juvenile in their community, social inclusion, group discussion, organising lectures and maintaining positive relationships is Social Integration.

In Belgium, the Youth Court tries to achieve social rehabilitation through measures such as care, preservation and education.

In India, the government has also taken various measure to restore the Social Integration of the Juvenile.

D. SUGGESTIVE MEASURE FOR INDIAN JUDICIARY

- The government may embark on reforming the juvenile rather than lowering the age of juvenile.
- The government should define the word ‘heinous’ in order to stop its misuse²⁰¹⁵.
- JJA,²⁰¹⁵, is dealing with reform issues but the problem can be seen in implementation. An individual care plan is prepared to reform the juvenile as per the act but the plan isn’t followed and implemented. so, the government should focus more on the implementation of the Act.
- The distinction between the age 16 and 18 goes against the U.N. Convention of the Rights of the Child, hence the government should consider making an amendment in order to make Indian juvenile law with the standards of UN conventions.

¹¹ The United Nation Convention on the Rights of the Child, 1989.

¹² Neal Hazel, “Cross-national comparison of youth justice”, Youth Justice Board for England and Wales (2008).

- To prevent juvenile delinquency the government should consider assisting the children and the family rather punishing them.
- The state should make sure to provide them a healthy rehabilitation atmosphere in order to prevent them from being bullied by the others.

E. CONCLUSION

It is concluded that the promise for efficient juvenile justice has not yet been fulfilled. Every child has the right to grow up in an atmosphere that is harmless and nurturing, with an aim of promoting happy and elated childhood. Despite reaching and codifying international statute agreements, the implementation of indicators and procedures for ensuring juvenile justice has lagged behind. The government amended the JJA in 2015 to provide care and protect the interest of the child which was not added in the JJA of 2000. After amending the act also, the government wasn't able to provide justice to all of the Indian juveniles. As data released by CRIN ranked India attained the position of 43 out of 197 countries and Belgium topped the list. The comparative study between India and Belgium will help us to locate lacuna in the Indian Juvenile system. Government can fill this lacuna by drawing up detailed rules in consultation with experts and non-governmental organisations with an aim to make Indian juvenile system at par with the best juvenile systems in the world.