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“INFLUENCE OF NATURAL LAW AND SOCIAL ENGINEERING THEORY OVER JUVENILE JUSTICE ACT 2015”

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ABSTRACT:

This study examines the impact of natural law and social engineering theory on the Juvenile Justice Act of 2015. Natural law theory posits that there are certain inherent, universal principles that should guide legal systems, while social engineering theory suggests that laws should be designed to engineer social outcomes. By analysing the provisions of the Juvenile Justice Act of 2015, this study explores the extent to which these two theories have influenced the legislation's objectives and implementation. The findings reveal that the Act reflects elements of both natural law and social engineering theory, striving to strike a balance between the rights of juveniles and the need to maintain social order. Additionally, the study highlights the challenges and controversies that arise from the application of these theories in practice, including questions of culpability, punishment, and rehabilitation for juvenile offenders. Overall, the study contributes to the ongoing discourse concerning the philosophical underpinnings and practical implications of juvenile justice systems.

INTRODUCTION:

The Latin word "juveniles," which meaning "young," is where the word "juvenile" first appeared. The history of juvenile injustice can be traced back to the Hammurabi Code of 1790 BC. Regarding the period prior to independence, Lord Cornwallis founded the first homeless children's centre, or "Ragged School," in 1843. Even when they don't deserve it, children still need love. A child is innocent at birth, but because of inadequate care and direction, as well as

unfavourable societal and environmental influences, his mind may be predisposed to criminal behaviour.¹

As all children are precious and valuable assets for a country's future, it is important to give them a healthy atmosphere in order for them to grow up to be well-mannered citizens. Government, society, and the kid's parents all have an obligation to ensure that the child grows up to be physically and intellectually healthy, involved in social activities, and capable of making a positive contribution to the nation rather than turning to crime.

Every nation has a juvenile justice statute that outlines the government's responsibility to rectify and reform minors involved in criminal or illegal activities, as opposed to imposing punishment. A juvenile is defined as a youngster who has not reached a particular age specified by national legislation and who is not yet old enough to be considered an adult. Each country has a different juvenile age limit.

¹<https://www.collinsdictionary.com/dictionary/english/juvenile#:~:text=A%20juvenile%20is%20a%20child,be%20regarded%20as%20an%20adult>. Last seen 20/04/2024

History of Juvenile Justice

Minors beyond the age of seven who were suspected of crimes were transported to adult jails, where they learned more about crimes rather than reforming, before to the nineteenth century when minors were seen as young adults and tried as adults in court. For this reason, several states began to establish reform schools and child labour farms. Following that, in Chicago, the United States established the first juvenile court in 1899, making legal history by acknowledging that children are not as developed as adults but can nevertheless be transformed into morally upright individuals. Then, in 1985, the United Nations standard minimum rule for the administration of juvenile justice was introduced. It defines a juvenile as a young person under the jurisdiction of the relevant legal system who must be dealt with for any offences. It also stipulates that the age at which a juvenile becomes criminally responsible must be established based on the juvenile's intellectual, emotional, and mental integrity. Perhaps most importantly, it mandates that a juvenile be kept apart from an adult. Then, starting in the 1990s, a lot of nations implemented juvenile justice systems. The United Nations Convention on the Rights of the Child, which was adopted in 1989, granted every child four categories of rights: civil, political, cultural, social, and economic. Then criticism of children's court surfaced, claiming that minors are not informed of their crimes and that their trials are conducted without legal representation. The United States Supreme Court ruled in *Kent v. United States* in 1966 that minors have the right to know about their offence and to be advised by an appropriate council. The juvenile court system then saw an increase in procedural formality in the 20th century thanks to the Supreme Court.²

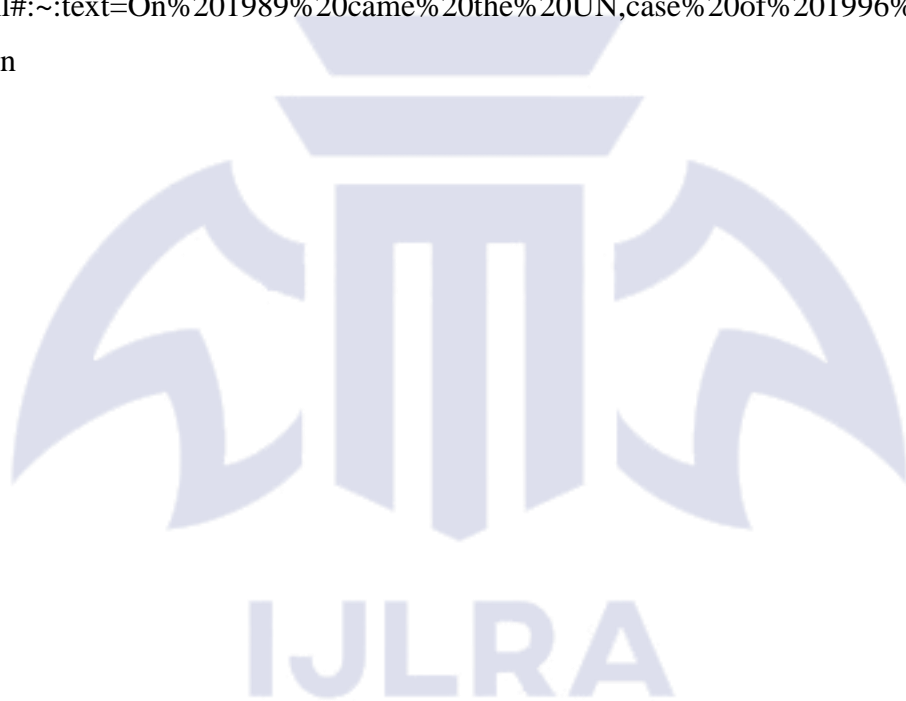
Juvenile Delinquency

Juvenile delinquency is defined as any action or inaction of moral behaviour that is not accepted by society. A child who engages in such behaviour is deemed delinquent. The Latin root of the word "delinquency" means "to depart from or abandon." It refers to kids who engage in risky and unlawful behaviour because they are neglected by society or their parents. Any criminal activity committed by a child is classified as juvenile delinquency. The general definition of juvenile delinquency, a behavioural disorder, is when a child attempts to act like an adult by pretending to grow up. The term "delinquent" can be interpreted in a variety of ways, but Clyde B. Yedder provided the clearest definition when he stated that juvenile delinquency pertains to anti-social behaviour committed by minors. Juveniles who engage in delinquent behaviours include running away from home, using foul language, committing multiple offences, working

illegally, stealing, becoming addicted to drugs, and engaging in other antisocial behaviour. Juvenile justice emerged as a result of this juvenile delinquency, and it has lately grown in significance within the field of criminology. The primary goal of juvenile delinquency is to protect children's rights, provide them with care

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<https://www.legalserviceindia.com/legal/article-3089-juvenile-justice.html#:~:text=On%201989%20came%20the%20UN,case%20of%201996%20Kent%20V.> Last seen



and protection, treat neglected and delinquent children, and give them the opportunity to grow up to be productive members of society.³

In many countries there is a minimum age of a child above which he/she is considered to be liable for performing any crime:

In England and Wales for several offences children above the age of 10 years are held criminally liable. In Australia a child above the age of 14 years are held responsible for any crime, activity. In U.S. The minimum age for child to be held criminally responsible is 12 years in New York and Texas the age is 17 year, etc.⁴

Juvenile Justice System in India

Before 1960, there was no uniformity in India regarding the age limit for juvenile delinquency. Each state had its own Children Act, with varying age limits. For example, the Bombay Children Act 1948 defined a child as a boy who had not reached the age of sixteen, while the U.P. Children Act defined a person under the age of sixteen. In 1939, India signed the UN Declaration on the Rights of the Child, and in 1960, the country passed the Children Act 1960, which applied to all of India, including Union Territory except Jammu and Kashmir. Under this Act, any individual who had not reached the age of fourteen was considered a child. But then due to the Standard Minimum Rules for the Administration of Juvenile Justice adopted by U. N countries in November 1985, India had to repeal the Children Act 1960 and bring a new act Juvenile Justice Act 1986.⁵

The definition of a child or juvenile under this act was defined as a girl who does not turn eighteen and a boy who does not turn sixteen. The United Nations then adopted a convention on the rights of children on November 20, 1989, which defined a child as any individual under the age of eighteen. Due to this, the Juvenile Justice (Care and Protection Act) 2000 in India forced the revocation of the Juvenile Justice Act of 1986. In this case, the age of juvenile status has been set at 18 for both males and females. This states that a juvenile may receive a maximum sentence of three years, but during that time, he will not be housed in a regular jail but rather in a reform home where he can be rehabilitated to become a contributing member of society. However, with the rise of juvenile delinquency in India, things have changed. Western culture had an impact on children, and from 2003 to 2013, the percentage of juvenile offenders rose from 1% to 1.2%. Of those accused of crimes, 70% were between the ages of 16 and 18. The most significant case of 2012 was THE NIRBHAYA CASE, in which an

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accused person who was six months underage at the time of the case was involved.

These all incidents forced the Legislature to replace the Juvenile Justice (Care and Protection) Act of 2000 with new Juvenile Justice Act of 2015 and said due to increase of heinous crimes

³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5288089/#:~:text=Juvenile%20delinquency%20is%20a%20ter>

m, according to the local jurisdiction. Last seen 20/04/2024

⁴ <https://www.lawteacher.net/free-law-essays/criminal-law/the-age-of-criminal-responsibility.php> Last seen 20/04/2024

⁵ <https://www.legalserviceindia.com/legal/article-6794-juvenile-justice-system-in-india.html>
Last seen



by Juvenile and to safeguard the right of the victim from the crimes like rape and murder it is hard to believe that the juvenile was not aware about the consequences.

According to this Act, a person is considered a child if they have not reached the age of 18. However, this law adopted the principle of *doli in capex*, which means that a minimum age is required for a child to be capable of committing crime. In India, a child is considered incapable of committing a crime if they are younger than seven. Between the ages of seven and twelve, there is an assumption of innocence in favour of the child, but if it is proven through evidence that the child committed the crime, they can be prosecuted. Additionally, under this new bill, children between the ages of 16 and 18 who are liable for any heinous crime can be tried as adults.⁶

Aims and objective of the Act:

This act define Child into two categories. child in conflict with law - section -13. child in need of care and protection - section - 14The children who falls under the category of " Children in Conflict with Law "for them thecompetent authority is the Juvenile Justice Board,and the children who comes under the categoryof " Child in need of Care and Protection " forthem the competent authority is Child Welfare consideration with due regard to the age and maturity of the child.

Principle of best interest: All decisions regarding child are to be based on the primary consideration that they are in the best interest of the child and are to help the child to develop his full potential.

Principle of family responsibility: The primary responsibility of care, nature and protection of the child is hat of the biological family or adoptive or foster parents, as the case may be.

Principle of safety: All measures are to be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contract with the care and protection system, and thereafter.

Positive measures: All resources are to be mobilized including those of family and community, for promoting the wellbeing facilitating development of identity and providingan inclusive and enabling environment, 10 reduce vulnerabilities o children and the need for intervention under this Act.

⁶ G S Bajpai's Juvenile Justice impact and implementation in India

Principle of non-stigmatizing semantics: Adversarial or accusatory words are not to be used in processes pertaining to a child.

Principle of non-waiver of rights: No waiver of rights of the child is permissible or valid whether sought by the child or person acting on behalf of the child, or Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.



Principle of equality and non-discrimination: There shall no discrimination against a child on any grounds including sex, cast, ethnicity, place of birth, disability, offence committed and equality of access, opportunity and treatment are to be provided to every child.

Principle of right to privacy and confidentially: The child has a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

Principle of Institutionalization as a measure of last resort: A child is to be placed in institutional care as a step of last resort after reasonable inquiry.

Principle of repatriation and restoration : Every child in the juvenile justice system has the right to be re-united with his family at the earliest and to be restored to the same socio- economic and cultural status that he was in, before coming under the purview of the Act, unless such restoration and repatriation is not in his best interest.

Principle of fresh start: All past records of any child under the juvenile justice system should be erased expect in special circumstances.

Principle of diversion: Measures for dealing with children in conflict through their interests resorting to judicial proceedings is to be promoted unless it is in the basis of the child or the society as a whole.

Principle of natural justice: Basic procedural standards of fairness shall be adhered including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the Act.⁷

Application of Social engineering under Juvenile Justice Act:

Legislators and judges should respect societal interests and act accordingly when drafting, interpreting, and implementing laws. The sociological school of jurisprudence, which focuses primarily on the role of law, is where the social engineering theory originated. They never again approached law in an abstract or mechanical way. The idea that law is a tool for change is highlighted by the social engineering theory. Law serves the purpose of balancing society's competing and conflicting interests. Three categories of societal interest were identified by the theory. Individual interest comes first, followed by public interest and societal interest. similar to an engineer who conducts research and uses the results to create a particular invention that advances society. The role of legislators, judges, and solicitors is to apply their creativity

⁷ G S Bajpai's Juvenile Justice impact and implementation in India

to the best interests of society. The Nirbhaya rape case is a prime example of how the social engineer theory can be applied. One of the six accused in the aforementioned case is a minor and is only six months short of completing the 18 years required. He was one of those who committed horrible acts with far too much brutality. As a result, it is evident from the scenario that there is a conflict between social and individual interests. Since the law only stipulates a three-year sentence for someone who is just six months shy of turning eighteen, this person will be tried as a juvenile. As a result, there is a lot of agitation regarding the requirement that an individual who is between the ages of 16 and 18 and possesses appropriate maturity try their case in an adult criminal justice system. As a result, it's



important to strike a balance between societal and individual conflicts. Due to the legislature's need to strike a balance between these interests, the juvenile justice amendment act of 2015 was passed through a specific process.

When a minor, aged 16 to 18, is arrested for a serious or heinous offence, the juvenile justice board must conduct a preliminary evaluation of the minor's mental and physical abilities as well as their comprehension maturity. The child in conflict with law will be transferred to the children's court to face an adult trial upon satisfaction of the same. In order to confirm whether the child in conflict with law should be tried as an adult or a juvenile, the children court will also conduct a second check for such preliminary inquiries. This check will review the preliminary assessment report once more. This case law is significant because it forced the legislature to amend the Juvenile Justice Act of 2000 by incorporating social engineering theory.⁸

**Mukesh & Anr vs State For NCT Of Delhi & Ors on 5 May, 2017 (2017) 6SCC 1
(Nirbhaya Case)**

A twenty-three year old woman, a para medical student, who had gone with her companion to watch a film at PVR Select City Walk Mall, Saket on a night got into a means of transport at Munirka transport stand to be dropped at a specific spot; One of accused persuaded them to get on vacant transport with coloured /tinted windows. Where they were attacked by six guys, one of whom was a minor, age 17. The companion, when he attempted to secure Nirbhaya (Nirbhaya is the pseudonym used for the rape victim) was pummelled and beaten by the culprits. Nirbhaya was explicitly damaged and sexually violated, her body was mutilated, and private parts were ruptured to give vent to their degenerate sexual appetite. Her intestinal tracts were pulled out, and private parts were ruined and mutilated and she became a prey to the lust of gang of six and brutal assault. The companion of the young lady was able to survive regardless of being tossed outside the transport alongside the young lady and the endeavour of the charged appellants to run over them got vain as Nirbhaya and her companion, by their slight movement could escape from being squashed under the transport, and the appellant left them believing that they were not anymore alive. Lying exposed, as the garments were expelled from their bodies. they yelled for help and a favourable luck would have it, the late evening patrolling vehicle, a motorcycle, showed up and the said man, Raj Kumar, gave the shirt to her companion and reached the control room from which a Bolero watch van came and they brought a bed sheet and torn it in to sections and gave a piece to each so that they could cover themselves and

feel civil. The PCR van took the victims to the Safdarjung Hospital where treatment initiated. Late, Nirbhaya died of various organ failure, internal bleeding, and cardiac arrest at a hospital in Singapore where she had been taken to with the expectation that her life could be saved. There was a great deal of social shock because of the gruesome occurrence. There was a great deal of candlelight march, solidarity movements, and protests. The shock was not confined of India, the entire world had formed an opinion about India.

⁸ <https://indialawyers.wordpress.com/judicial-activism-judges-as-social-engineers/> Last seen 20/04/2024



ISSUES RAISED -

Whether a juvenile committing the offence should get punishment equivalent to the adult?

Comments on the Case.

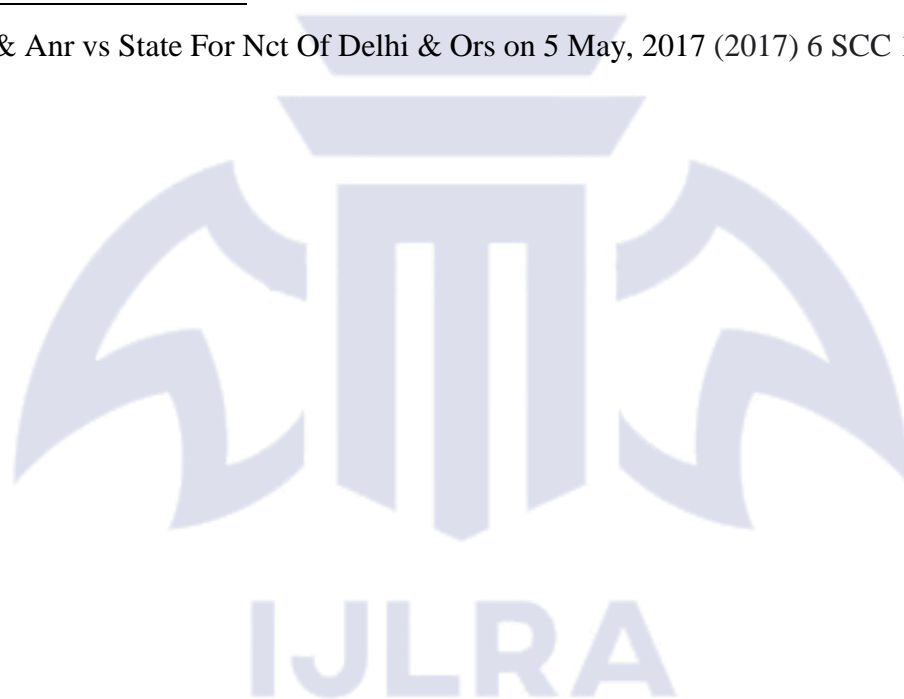
The "Nirbhaya" rape case in Delhi became a critical turning point for the feminist movement and Indian women's activists, garnering significant national and international attention. Since this incident, India's government has managed to advance laws and policies pertaining to violence against women. Her case sparked the historic "Nirbhaya Movement," which brought attention to the pervasiveness of sexual violence against women in India. The Indian government was forced to act by a fight, demonstrations, and public pressure from across the country and the world. They established the Verma Committee, an elite group headed by Justice Verma, the former Chief Justice of India. Their main recommendations were to redefine "rape" to include non-penetrative sex, create new offences for acts like acid attacks and sexual harassment, and increase the severity of sentences for those offences. The Criminal Law Amendment Act of 2013, also known as the anti-rape act, brought these recommendations fully into the Indian Penal Code. The National Crime Records Bureau released a statement stating that although the number of rape cases had decreased, more had been reported, and the National Commission for Women had completed the task of redesigning the IPC's provisions pertaining to sexual assault. These clauses reclassified molestation, rape, and consent. Following the 2013 Amendment Act, Section 166 A was added to address the offence of disobedience of the law by a public servant. The punishment for this offence is strict detention for a term of six months to two years, along with a fine. incorporation of Sections 326A and B, which expand on the acid attack problem. It is now considered a specific offence under the Act and is punishable by a fine, a term of 10 years in prison that can be extended to life, or both. the addition of Section 354A, which addresses sexual harassment and its penalties. addition of section 354 B, which addresses the crime of forcing a woman to remove her clothes addition of Section 354 C, which addresses the crime of voyeurism, which is the observation of a woman performing a private act, such as a sexual act, or baring her sexual organs. the addition of Section 354 D, which addresses stalking as a crime. The consent age was raised from sixteen to eighteen years old.⁹

Conclusion:

The natural law theory and theory of social engineering influenced the Juvenile Justice Act to

great extent. It helps the Juvenile Justice and child welfare committee to consider the social investigation report while giving effect to the provisions of the act. The approach of these natural law theory and social background and stakeholder is towards the best interest of child. Bioengineering theory is useful in true sense in giving justification to the law.

⁹ Mukesh & Anr vs State For Nct Of Delhi & Ors on 5 May, 2017 (2017) 6 SCC 1



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