

JUVENILE JUSTICE SYSTEM IN INDIA

Ms. Tripti Aggarwal

Assistant Professor (Law), FIMT College, GGSIPU

E-mail Id:- triptiagggarwal87@gmail.com

Mr. Mudit Jain

Ph.D. Scholar (Law), Manav Rachna University

E-mail Id: - muditjain08@gmail.com

Ms. Vishnupriya Pandey

Ph.D. Scholar (Law), Manav Rachna University

E-mail Id:- vishnupriya.pandey3010@gmail.com

Abstract :

This is a common trend of crime from the last few years in India, that the crimes done by children under the age of 15-16 have increased significantly. The general tendency or the psychology behind the commitment of the crime or the causes of crime are early-life experiences, dominant masculinity, upbringing, economic havocs, lack of education, etc. It is a matter of ignominy that the children under the age of 6-10 are nowadays used as instruments for carrying out unlawful or illegal activities. Since the minds of the kids possess an innocent and manipulative character, they can be lured at a meagre cost. Prior to the Juvenile Justice Act of 2015, 2000 and 1986, there existed the Children Act of 1960 that aimed to give effects to the international responses towards the issue of Juvenile Justice by which they provided a uniform policy that protected the interests and rights of a Juvenile and that looked at care, treatment, rehabilitation and development of a child per se. But with the recent developments in the international community and subsequent emergence of the involvement of Juveniles in crime, the Indian lawmakers are compelled to come forward with new, progressive, and stricter laws for the concerned Juvenile system in the country. In this paper scholar tried to analysis the Juvenile Justice act of 1986, Juvenile Justice act of 2000 and the Juvenile Justice act of 2015 through the eyes of constitution of India and judiciary system of India.

Keywords : Crime, children, juvenile, constitution, judiciary.

1. Introduction

Once former Chief Justice of India, Justice V.K. Krishna Iyer stated that we need penal code because the child is the father of a man and if we're neglecting the underdevelopment in children, then we would be guilty of many faults and errors related to abandoning our children.

**Autora de correspondencia / Corresponding author.*

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated.

The frightful incident of Nirbhaya Delhi Gang Rape Case¹, on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as Juvenile Justice (Care and Protection), 2015.

The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

2. Justice Verma Committee Report on Juvenile Justice Laws in India

According to Justice Verma Committee report on “Amendments to Criminal Law” has noted that : the Juvenile Justice Act has failed miserably to protect the children in the country². We cannot hold the child responsible for a crime before providing to him/her the basic rights given to them by the Indian Constitution. the report looked extensively on the children homes and found them lacking in basic infrastructural requirements, where they are forced to grow and becomes the prey of sexual offences. The juvenile homes are unable to provide the basic constitutional rights which are mentioned for the children under the Indian Constitution. The nutritional, emotional, mental requirements are so low that they often not be able to cope up and contribute to the society.

3. Causes of Juvenile Delinquency

Researches and Studies shows that they are various causes of juvenile delinquency in India. Every person has different behavioral patterns so as in case with children also. The behavior patterns develop in early childhood and at early stage it is very difficult to identify any kind of behavior. But as soon as, child grows up comes out to real world, behavior patterns changes from time to time and many circumstances or situation may arose the delinquent behavior in them. Following are some of the causes of Juvenile Delinquency:-

Adolescence Instability

The biological, psychological and sociological are one of the important factors in the behavior pattern

¹ 1998 SCC, Del 879 : (1999) 77 DLT 181

² Bindu Shajan Perappadan, ‘Juvenile Justice Act has failed miserably, The Hindu, (June 13,2016, 10:10), <https://www.thehindu.com/news/national/juvenile-justice-act-has-failed-miserably/article4337040.ece>

of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play and etc. And at this age, they want freedom and they wanted to be independent but sometimes they are given any chances and oppourtunities by their parents, teachers and elders this leads to development of anti – social behavior in them. Thus, this anti – social behavior, biological changes, psychological causes are some of the reasons which are responsible for juvenile delinquency.

Disintegration of Family System

Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.

Economic condition and Poverty

Poverty and poor economic condition is also considered has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfill the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by cook and when their desires are met they start themselves indulging in stealing money from homes or any other parents. And this develop habitual tendency of stealing which results into theft at large scale.

Migration

Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.

Sex Indulgence

The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. In this age they may become more vagrants or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc.³

Modern Life Style

The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.⁴

4. Juvenile Justice and Constitution of India

³ Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.

⁴ Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 665, Central Law Publications, 17th edition , 2017.

The Constitution of India is considered as the fundamental law of India. The Constitution provides rights and duties of citizens. It also provides provision for the working of the government machinery. The Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided Directive Principles of State Policies (DPSP) which acts as general guidelines in framing government policies. The Constitution has provided some basic rights and provisions especially for the welfare of children. Like:

- Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A)
- Right to be protected from any hazardous employment under the age of fourteen age. (Article 24)
- Right to be protected from being abused in any form by an adult. (Article 39(e)).
- Right to be protected from human trafficking and forced bonded labour system. (Article 39)
- Right to be provided with good nutrition and proper standard of living. (Article 47)
- Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has considered all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

Definition of Child and Juvenile under the Juvenile Justice Act, 2015 and other various laws :

Generally, a child means a person who has not attained the age of 18 years and is not mature to understand that what is right and wrong. In modern era, the penal laws of most countries have adopted the principle of 'doli incapax'⁵, which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act.

According to sub-section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a "child" means a person who has not completed eighteen years of age. The Act classifies the term "child" into two categories: –

"child in conflict with law"⁶, and

"child in need of care and protection"⁷.

⁵ Section 82 of IPC states that a child below the age of seven years is *doli incapax*

⁶ Section 13 of The Juvenile Justice (Care and Protection of Children) Act, 2015

⁷ Section 14 of The Juvenile Justice (Care and Protection of Children) Act, 2015

The child who has committed an offence and he or she is under the age of 18 years on the date of commission of the offence is basically called as child in conflict with law. The second sub – category is child in need of care and protection means a child as defined under Section 14 of the Act.

Children Act, 1960: Section 2(e) of the Act states “child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.⁸

United Nations Convention: The UN Convention on the Rights of Child, 1989 defines that child means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier.⁹

5. Difference between Juvenile and Child

A person under the age of full legal obligation and responsibility is a minor or a person who is below the legal age of eighteen years is minor. A child being accused of a crime is not tried as an adult and is sent to the Child Care Centre whereas juvenile is a person between the age group of sixteen and eighteen years. A young person who is been accused of crime is a juvenile offender and is tried as adult in court proceedings.

In general sense both the term has same meaning but however difference lies in context of implications in the eyes of law. Minor implies young and teen persons whereas juvenile either indicates immature person or young offenders.

6. International Concerns for Juvenile

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribe a set of standard to be adhered to by all the States parties in securing the best interest of the child.¹⁰ The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse.¹¹ The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child.

Following are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children:

- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)
- Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

7. Evolution of Juvenile Justice System in India

⁸ Bare Act, The Children Act, 1960 , Universal Publication, 12th Edition

⁹ Article 1 of the UN Convention on the Rights of Child, 1989.

¹⁰ Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 662 ,Central Law Publications, 17th edition,2017.

¹¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed country like U.S.A. This movement has been started around the 18th century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as The Juvenile Justice (Care and Protection of Children) Act, 2000.

Juvenile Justice Act, 2000

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011. The amendment was made to address the gap and loopholes in the implementation.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of Delhi Gang Rape Case has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by The Juvenile Justice(Care and Protection) Act, 2015.

Present Juvenile Justice System in India

Like the other countries, India had also made legal provisions that especially and specifically deals with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency. The Juvenile Justice System in India is made on the basis of three main assumptions:

- young offenders should not be tried in courts, rather they should be corrected in all the best possible ways,
- they should not be punished by the courts, but they should get a chance to reform
- trial for child in conflict with law¹² should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes¹³ and Special Homes.¹⁴

Juvenile Justice Act, 2015

The Juvenile Justice act of 2015 replaced the Juvenile Justice act of 2000 because there existed a need for a more robust and effective justice system that focused on deterrent as well as reformative approaches. The approach towards Juveniles should be different from that of adults, there were contentions made in the

¹² Section 2 (13) of the Juvenile Justice (Care and Protection) Act , 2015

¹³ Section 47 of the Juvenile Justice (Care and Protection) Act , 2015

¹⁴ Section 48 of the Juvenile Justice (Care and Protection) Act , 2015

Parliament that the Juveniles should be given more space for transformation or reformation or improvement and that is only possible when there's a special justice system. Thus, the new act i.e. the Juvenile Justice (care and protection of children) Act, 2015 focused on a Juvenile friendly approach of adjudication and disposition of matters.

Some of the salient features are as follows:

Section 2 (12) of the Juvenile Justice (care and protection of children) Act, 2015 gives the definition of the Child, meaning thereby that a child is a person who hasn't completed the age of 18 i.e. he/she is below 18. The Act has given a classification regarding the term 'Child' namely Child in need of care and protection and Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015 that talks about Child in conflict with law.

8. Judiciary towards Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the claim of juvenility. The claim of Juvenility is to be decided by Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. The Board had to consider Rule 12 of the Juvenile Justice Rules, 2007 in order to determine the claim of juvenility. In case of *Kulai Ibrahim v. State of Coimbatore*¹⁵ it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh*¹⁶ the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

Again in the case of *Satbir Singh & others v. State of Haryana*,¹⁷ Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of *Krishna Bhagwan v. State of Bihar*¹⁸ the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for the considering the age of juvenile should be on which the offence has been committed.

But later in case of *Arnit Das v. State of Bihar*¹⁹, the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before

¹⁵ AIR 2014 SC 2726

¹⁶ 1997 (1) SCC 525

¹⁷ AIR 2005 SC 3549

¹⁸ AIR 1989

¹⁹ AIR 2000 SC 748

the competent authority.

In *Jayendra v. State of UP*²⁰, where the order of the High Court sending a child to imprisonment for committing an offence was challenged before the Supreme Court. The Supreme Court called for the report by the medical in charge of the jail to determine the age of the child and it was found that the age of the child at the time of committing an offence was 16 years and 4 months and the sentence for imprisonment was quashed and the convict was released immediately.

In *Munna v. State of UP*²¹, the apex court released certain directions regarding children in prisons. The supreme Court held that even if a child is found to be guilty of an offence, he should not be mistreated. They should not lock-up their fundamental rights when they enter in jail.

In *Bhoop Ram v. State of UP*²², the Supreme Court followed the decision of *Jayendra v. State of UP* and it was also held that the time of the commission of an offence is sufficient to determine the age of a person.

In *Raj Singh v. State of Haryana*²³, the juvenile who was less than 16 years of age at the time of the commencement of the offence was convicted under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and was awarded with the punishment of imprisonment. But the Supreme Court held that under section 2(e) of the Juvenile Justice(Care & Protection) Act, 1986 defines that a juvenile who has been found to guilty of an offence was a juvenile, hence the entire trial was quashed.

Juvenile Justice Board

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.²⁴The Board shall consists of Principal Magistrate and two social workers, among whom one should be a women.²⁵The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.²⁶

9. Juvenile according to Criminal Justice

Juvenile Justice is a legal framework which defines justice for juvenile under the Indian Legal System. The system is giving a special treatment and protection to juvenile delinquency. Juvenile Delinquency means a crime committed by youth who is under the age of 18 years. At present, everyone knows that there is an increasing rate of juvenile crimes and this increasing rate is creating a debatable issue of age determination. Age determination is considered as one of the most important factor to determine the maturity level of the accused. The increasing crime rate is raising a question that whether the juvenile can be tried as an adult or

²⁰ AIR 1982 SC 685

²¹ AIR 1982 SC 806

²² AIR 1987 SC 1329.

²³ (2000) 6 SCC 759.

²⁴Section 4 of Juvenile Justice(Care and Protection) Act , 2015.

²⁵Section 4(2) of Juvenile Justice(Care and Protection) Act , 2015.

²⁶Section 5 of Juvenile Justice(Care and Protection) Act , 2015

not? The act itself answer to the question that no juvenile offender who comes under the definition of “ child with conflict with law” as defined under sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent to Child Care Centre or any Rehabilitation Centre (till the offender attain the age of 21 years and then he or she may shifted to the jail or prison).

Thus, the present Juvenile Law in India, considers Age Determination as paramount importance to find out whether the offender falls under the purview of Juvenile Justice Act.

The present juvenile system in India is created on believe that juvenile offenders can be reformed and rehabilitated, sending them to bars or prisons will going to reaffirm their status and identity as “criminals”. Now the question arises is that there is no guarantee that juvenile offenders will get reformed and will not show their anti – social behavior again.

Penal provisions related judgements

Section 82 and 83 of the Indian Penal Code, 1860 talks specifically about the exemption from prosecution of the Juveniles.

The Supreme Court in the case of *Kakoo V. State of Himachal Pradesh*²⁷ reduced the punishment of a 13-year-old boy who had raped a 2-year-old girl. The court took into consideration sec. 83 and 84 of the IPC that Juveniles can’t be treated as that of the adults. Thus, it is a very well-settled law that while dealing with the Juveniles the court should consider reformative and humanitarian approaches.

But in the case of *Heeralal V. State of Bihar*²⁸, a child threatened an adult that he’ll chop him into pieces and subsequently the child stabbed a person till his death. He was sentenced by the trial court with a reasoning that the child was mature enough to understand the ramifications of his act. The Supreme Court also dismissed the petition.

10. Role of Police

The Police in the Juvenile Justice System are known to be the gatekeepers, meaning that they are the ones who have the power to make initial decisions regarding how the case would be handled. The gatekeepers enjoy a huge amount of discretion, as a result, only a few cases come up from the plethora of acts committed and this is again a great matter of ignominy.

If a piece of information is received by the Police officer, then it is a provision that they should be kept in special homes and not lockups or jail, the matter is to be dealt with by a child welfare officer, who’ll be reporting things to the Juvenile Justice board. In some of the cases, it is also observed that the Police officer may on prima facie facts & circumstances grant bail to the Juvenile.

The main reason for the appointment of a child welfare officer is because many of the research works

²⁷ Kakoo v. State of Himachal Pradesh, AIR 1976 SC 1991

²⁸ 1977 AIR 2236, 1978 SCR (1) 301

have shown that the interaction between the Police and the young people are often characterized by high levels of fear, domination, mistrust, dissatisfaction, etc. Police on the other hand sometimes behave in a hectoring and stubborn way, which then results in the establishment of negative perceptions. The aggressive, rude, abusive and uncooperative behaviour by both sides is an imbroglio per se.

10. Conclusion

The increasing rates of juvenile crime in India is a very concerning issue and needs to be focused upon. Although government has laid various legislation and rules to stop the incidents of juvenile crimes but the present laws on juveniles is not creating a deterrent effect on the juveniles and thus the results are not fruitful and legislative intent is not accomplishing. The response to adolescent wrongdoing must be simple and sensible, legitimate and intelligent of a comprehension of their brain science. For making any new revision to the current enactment, it requires profound comprehension or information on the law, reasoning and effect of the current law. It very well may be simple through concentrated, participatory and consultative procedures which build agreement on key arrangement questions. Correcting the JJ Act, therefore to the across the nation outrage against one adolescent put a perilous pattern and may likewise affect all adolescents who are by and by entitled for the adolescent centered consideration and security and rehabilitative change which imagine in the law that is at present in power. It will likewise damage the lawful commitments emerging from the Constitution, the proposals of the Justice J. S. Verma Committee, and the general gauges cherished in the UN Convention on the Rights of the Child. The country needs is to change and restore the adolescents and carry them into the general public with respect.

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