



JUVENILE JUSTICE SYSTEM IN INDIA AND CRITICAL ANALYSIS ON THE JUVENILE JUSTICE (PROTECTION AND CARE OF CHILDREN) ACT, 2000 WITH JUVENILE JUSTICE (PROTECTION AND CARE OF CHILDREN) ACT, 2014 (AMENDMENT) *

INTRODUCTION

"Humanity has the stars in its future, and that future is too important to be lost under the burden of juvenile delinquency."

Isaac Asimov

Definition of Juvenile

Juvenile is a child who unlike an adult person, having not attained prescribed age, cannot be held liable for his criminal act. The age criteria for being a juvenile vary from country to country, state to state. Juvenile is used when reference is made to a young criminal offenders and minor relates to legal capacity or majority.

As per the Juvenile Justice (protection and care of children) Act, 2000 *"A juvenile is a person who has not completed eighteen year of age"*¹

Juvenile delinquency

Juvenile delinquency refers to antisocial and criminal behavior committed by persons under the age of 18. Juvenile delinquency is also simply called delinquency, and the two terms are used interchangeably in popular discourse. Once persons reach adulthood, antisocial and criminal behavior is known as crime. In this way, juvenile delinquency is the child and adolescent version of crime.

Juvenile delinquency encompasses two general types of behaviors: -

- *Status offenses*
- *Delinquent offenses*

*Mr. Shoaib Alvi, 2nd Year, B.A LLB. (Hons.) Hidayatullah National Law University, Raipur

¹ Sec 2(k), Juvenile Justice (Care and Protection) Act, 2000

Status offenses are behaviors that are considered inappropriate or unhealthy for children and adolescents, and the behaviors are proscribed because of the age of the offender. Such behaviors, if committed by adults, are not illegal.

Delinquent offenses are violations of legal statutes that also apply to adults in the criminal justice system. Delinquent offenses include acts of violence against persons, such as murder, rape, armed robbery, aggravated and simple assault, harassment, stalking, menacing, child abuse, and similar offenses. Delinquent offenses also include acts that are considered property crimes, such as burglary, theft or larceny, motor vehicle theft, arson, damage to property, criminal mischief, vandalism, and others. A variety of miscellaneous crimes sometimes known as public order offenses are also delinquent offenses. These include driving while intoxicated, cruelty to animals, possession and use of a controlled substance, forgery, fraud, disorderly conduct, weapons violations, prostitution and commercialized vice, vagrancy and loitering, traffic violations, and others.

Juvenile Justice

Juvenile justice is the area of criminal law applicable to persons not old enough to be held responsible for criminal acts; in most cases Juvenile Justice Law is applicable to those under 18 years old. Juvenile law is mainly governed by the juvenile justice codes of states. The main goal of the juvenile justice system is rehabilitation rather than punishment. Juvenile justice is administered through a juvenile courts or Juvenile boards. Juvenile Justice supervises and cares for young offenders in the community and in Juvenile Justice Centres. It provides youth justice conferences for young offenders referred by police or the courts.

The Juvenile justice system is a foundation in society that is granted certain powers and responsibilities. It faces several different tasks, among the most important is maintaining order and preserving constitutional rights. When a juvenile is arrested and charged with committing a crime there are many different factors that will come in to play during the course of his arrest, trial, conviction, sentencing, and rehabilitation process. Today's Juvenile Justice System still maintains rehabilitation as its primary goal and distinguishes itself from the criminal justice system in important ways.

State statutes creating Juvenile courts and providing methods for dealing with Juvenile delinquency have generally been upheld by courts as an acceptable extension of state to ensure the safety and welfare of children. The doctrine of *parens patriae* authorizes the state to legislate for the protection, care, custody, and maintenance of children within its jurisdiction. The underlying rationales of the juvenile court system are that youth are developmentally different from adults and that their behavior is malleable. Rehabilitation and treatment, in addition to community protection, are considered to be primary and viable goals. Limitations are placed on public access to juvenile records because of the belief that juvenile offenders can be successfully rehabilitated, and to avoid their unnecessary stigmatization. The Juvenile Justice system follows a psychological casework approach, taking into account a detailed assessment of the youth's history in order to meet his or her specific needs. The juvenile offender faces a hearing, rather than a trial, which incorporates his social history as well as legal factors. A juvenile offender is judged "*delinquent*" rather than "guilty." Because of the individualized nature of the juvenile justice system, sentencing varies and may cover a wide range of community-based and residential options. The disposition is based on the individual's offense history and the severity of the offense, and includes a significant rehabilitation component. The disposition can be for an unspecified period of time; the court can send a youth to a certain facility or program until it is determined he is rehabilitated, or until he reaches the age

of majority. The disposition may also include a restitution component and can be directed at people other than the offender, for example his parents.²

The term Juvenile Justice is, therefore, used to refer in social as well as juridical justice. India seeks to provide social and juridical justice to neglected and delinquent children through the use of code, constable's courts and residential institutions for both categories of children, those committing an offence and others living in circumstances likely to lead them into a life of crime. The legislations incorporating the juvenile justice system have been making provisions for the care, protection, treatment, development of delinquent juveniles.

Normative Structure of Juvenile Justice system in India

International approach towards Juvenile Justice

This law brought in compliance of the 1989 *United Nations Convention on the Rights of the Child (UNCRC)*. The convention prescribes a set of standards to be adhered to by all states-parties in securing the best interest of the child on the principles of non-discrimination and non-exploitation. The United Nations Convention on the Rights of the Child is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation. It sets a standard in legal and social services and also emphasizes on social rehabilitation of the child victims without the judicial proceedings to the extent possible. The government of India signed and ratified the UNCRC in 1992.³

In November 1985, the general assembly adopted the "*United Nations Standard Minimum Rules for the Administration of Juvenile Justice*" (also called *The Beijing rules*), which aims to further well being of juveniles and their families.⁴ This rule clearly states that a person is most susceptible to deviant behavior when he is a juvenile. Hence the juveniles require extra attention so that they don't take the path of crime and delinquency. Other resolutions dealing with juvenile justice are: *UN rules for Prevention of Juvenile Delinquency (The Riyadh guidelines)*, *Guidelines for Action on Children in the Criminal Justice System*, and *Guidelines on justice in matters involving Child Victims and Witness of crime*.

Position in India

The first legislation on juvenile justice in India came in 1850 with the *Apprentice Act 1850* which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the *Reformatory Schools Act, 1897* subsequently provided that children up to age of 15 may be sent to reformatory cell, and later the *Juvenile Justice Act 1986* provided a uniform mechanism of Juvenile Justice.

This act was replaced by Juvenile Justice (Care and Protection) Act, 2000. As per this act a "*juvenile is a person who has not completed eighteen year of age*".⁵ The age of minor is determined from the day on which he/she committed crime not from the day on which he/she is presented before the court.⁶

² Juvenile Justice System available at

<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/juvvsadult.html> last seen at 22th June 2015.

³ "Convention on the Rights of the Child". Office of the High Commissioner for Human Rights.

⁴ The Standard Minimum Rules for the Administration of Juvenile Justice; 1985 (BEIJING RULES)

⁵ Sec 2(k), Juvenile Justice (Care and Protection) Act, 2000

⁶ Pratap singh v/s State of Jharkhand and others, AIR 2005 SC 2731

Children in India, because of their sheer numbers, ought to have been the subject of prime focus of development planning, research, and welfare in India but it has not been so. Despite the constitution's vision of healthy and happy child- protected against abuse and exploitation, and a *National Policy for Children*- the majority of children in India continue to live without a childhood.

The Indian Constitution through several provisions grant important right to the children of the country. It also lays down duties for the state to ensure that their needs are met and rights are safeguarded. The juvenile justice system, as a conceived by legislations, aims at providing care, protection, treatment, development and rehabilitation of delinquent and neglected juveniles.

The concept of juvenile was derived from a belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional process of criminal law. The Juvenile Justice system therefore, is not designed to respond the needs of young offenders only. One principle role of the Juvenile Justice system has been to provide specialized and preventive treatment services for the children and the young personas means of '*secondary prevention*', *rehabilitation and improved socialization*.

It may be remembered that the juvenile justice system is one of the several measures taken by the state to attain the vision of the Constitution of India regarding to the protection and welfare of children. While Article 15(3) of Constitution of India provides for special provisions to be made by the state for the children.⁷ Article 39(e) states that the state shall direct its policy towards ensuring that the tender age of children is not abused.⁸ India's National Policy for Children, adopted in 1974, also declares that children are a supremely important national asset.

Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. After 'Delhi- gang rape' case the issue with respect to the penances prescribed under this act is much debated. While a maximum period of imprisonment is laid down, there has been no attempt to grade the offences as per their nature or gravity.

The objective of this act is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

Provisions relating to the Juveniles in conflict with law

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.⁹ Juvenile Justice (Care and Protection of Children) Act, 2000 provides several rights on the juveniles in conflict with law in order to protect them.

This act prohibits the publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under this act. No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars

⁷ Article 15(3), Constitution of India

⁸ Article 39(e), Constitution of India

⁹ Section 2(I) Juvenile Justice (Care and Protection of Children) Act,2000

calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published.¹⁰

This is in consonance with the right to fair trial and just trial of the child. According to Juvenile Justice (Care and Protection of Children) Act, 2000 the report of the probation officer or social worker considered by the competent authority shall be treated as confidential¹¹ and must not be disclosed to anyone except parents or legal guardian of the child. His identity, privacy and innocence are too respected at all cost. This section also important as it prevents the tag of criminal to be joined with the child.

Further this act prevents the juvenile to be tried for any offence with a person who is not juvenile. Thus separate trials take place in case where a juvenile is accused along with adults. This is also done in order to give special attention to the juveniles.

Juvenile Justice (Care and Protection of Children) Act, 2000 addresses Juveniles in Conflict with Law (JCLs). This act calls for the establishment of *Juvenile Justice Boards (JJBs)* where the State Government sees fit. Juvenile Justice Boards must contain a Metropolitan or Judicial magistrate and two social workers where one of the workers must be a woman. The magistrate is required to have a background in child psychology or child welfare.¹² Juveniles in Conflict with Law cases can only be heard in the Juvenile Justice Boards and not by another court.

The powers of the Juvenile Justice Boards can be exercised in a High court or Court of Session when an appeal has been made as part of the act; the state is required to set up a number of institutions where the needs and protection of juveniles may be fulfilled. For the reception and rehabilitation of Juveniles in Conflict with Law the state must set up Observation Homes and Special Homes in ever district or group of districts.

The state may directly set up these homes or contract a voluntary organization to do so. Observation homes are for institutions for juveniles while their proceedings are underway. After the proceedings of a particular case are complete, the Juvenile Justice Boards may decide that the rehabilitation of the child is not complete and hence place them in a Special home for no longer than three years.

Chapter III of Juvenile Justice (Care and Protection of Children) Act, 2000 addresses *Children in Need of Care and Protection (CNCP)*. In place of a Juvenile Justice Boards, CNCP cases are heard by the *Child Welfare Committee (CWC)*. The committee is meant to have a chairperson and four other members of whom at least one should be a woman and at least one expert in children's issues. The purpose of the Child Welfare Committee is to provide for the care, treatment, protection, rehabilitation and development of the child and in doing so uphold the rights of the child. The child may be brought in front of the Child Welfare Committee by a police officer, public servant, social worker, NGO, the child or anyone public citizen. The committee may commit a child to the Children's home or a Shelter home if the child has no immediately available family or support system.

While such policies under the act have a good intention, in reality they lack efficient implementation. Years after its introduction, many states have failed to incorporate the policies in their legislative apparatus.

¹⁰ Section 21 Juvenile Justice (Care and Protection of Children) Act,2000

¹¹ Section 51 Juvenile Justice (Care and Protection of Children) Act,2000

¹² Section 4 Juvenile Justice (Care and Protection of Children) Act,2000

The infrastructure of the observation homes is often sub-standard and lacks proper hygienic atmosphere. They often provide clothes and food of poor quality another problem with observation homes are that they are under-staffed and lack trained and experienced counselors and psychiatrist, this in turn obstruct the proper rehabilitation of a child based on his education, behavior and crime committed. It cannot be argued that in the absence of proper infrastructure and hygienic facilities and trained staff and other basic facilities the juveniles cannot be reformed psychologically.

Age of Criminal Responsibility

The domestic laws of all country have laid down a minimum age below which a person is exempt from prosecution and punishment. The rationale for such exempt from prosecution is the absence of *mens rea*, i.e. not to criminalize the acts of those who at the time of commission of the crime did not know the right from the wrong. Persons below that age do not realize nor intend the consequences of their acts.

Article 40(3) (a) of CRC requires State parties to promote “the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe penal law”.

In India The Indian Penal Code has set the age of criminal responsibility at 12 years. An offence committed by a child under the age of 7 years is not punishable.¹³ Also, an offence committed by a child above the age of 7 years but below the age of 12 years will not be punishable if it seems that he does not possess sufficient maturity to judge the consequence of his actions.¹⁴

In the U.S.A the age to determine juvenility arises from state to state while in most of the state it is 18 years, in few it is 16 or 17 years. In U.K a child between ages of 10 to 18 becomes criminally responsible for his actions and he can be tried by the youth court or an adult court as the nature and seriousness of the crime committed.

In Canada, the Youth Criminal Justice Act governs the application of criminal and correctional law of those who are 12 years old or older, but younger than 18 at the time of committing the crime. Although the adult court can award sentences to the juvenile under some certain circumstances.

After the ‘Delhi Gang rape’ case a debate cropped out whether the age of juveniles should be lowered down to 16 years from present 18 years. This was because while the other 5 convicted were sentenced to death penalty, the 17 year old convict was awarded sentence of 3 years. The maximum punishment that can be imposed by the juvenile laws.¹⁵

In fact, he was only month’s shorts of attaining majority. Millions were infuriated and demanded stricter punishment for the juvenile for the heinous crime committed by the juvenile.

Statistics do certainly reveal an increasing trend in the rate of crime by juvenile in the country. A study of crime rate in the past decade shows that the even though the percentage of juvenile crime compared to total crime has increased by a mere 0.7% over a span of 10 years, the percentage of juveniles committing the offence of rape has increased by an alarming 53%.¹⁶ The police in the country have booked as many as 1,316 juveniles on rape charges the whole of last year. Another 685 minor boys were booked on charges of molestation. One of the 1,316 juvenile sexual offenders was a 13-year-old boy in Coimbatore who abused his five-year-old neighbor after luring

¹³ Section 82, IPC, 1860

¹⁴ Section 83, IPC, 1860

¹⁵ Section 15(1) (f) Juvenile Justice (Care and Protection of Children) Act, 2000

¹⁶ Crime in India: Statistics, (National Crime Records Bureau) (2011) (January 15, 2014) <<http://ncrb.nic.in/CD-CII2011/Statistics2011.pdf>> last seen on (23/05/2015).

her to a secluded place. When the girl's mother rushed to her help on hearing her wails, the boy escaped after hitting the woman.

A considerable section of society thinks that the age should not be a factor in deciding punishments for heinous crimes committed by the juveniles. Such a realization led to the moving of a petition in the case of *Salil Bali v/s Union of India and others* to the Supreme court of India contending that the age of criminal responsibility must be lowered down. It was urged that it is necessary for the provisions of Section 2(k), Section 2(I) and Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000 to reconsider in the light of the spurt in criminal offences being committed by persons within in the age group between 16-18 years.¹⁷

Juvenile Justice (Care and Protection of Children) Act, 2014

Juvenile Justice (Care and Protection of Children) Act, 2014 aims to replace existing the Indian juvenile delinquency law i.e. Juvenile Justice (Care and Protection of Children) Act, 2000, so that juvenile criminals in the age group of 16–18 can be tried as adults for serious crimes. It was passed on 7 May 2015 by the Lok Sabha unanimously and it is now pending in the Rajya Sabha. Juvenile Justice (Care and Protection of Children) Act, 2014 will allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 should be tried as an adult or not. The bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in the previous act. The bill also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined.

Objective of Juvenile Justice (Care and Protection of Children) Act, 2014 are: -

- To ensure that every child enjoys his Rights.
- To stay on protection and care of children without facing harassment or abuse.
- To ensure swiftly and productively reintegrated into the society in case he was found to be in conflict with law.
- To streamlining the central adoption agency.

Amendment related to child in conflict with law

- The Bill permits juveniles between the ages of 16-18 years to be tried as adults for heinous offences
- Any 16-18 year old, who commits a lesser, i.e., serious offence, may be tried as an adult only if he is apprehended after the age of 21 years
- Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) will be constituted in each district.
- The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The CWC will determine institutional care for children in need of care and protection.
- Eligibility of adoptive parents and the procedure for adoption have been included in the Bill.
- Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed.

¹⁷ AIR 2013 SC 3743

- A Children's Court is a Sessions Court notified under the Commissions for Protection of Child Rights Act, 2005.
- Under the Juvenile Justice (Care and Protection of Children) Act, 2014, a juvenile in conflict with law can be required to spend a maximum of three years in a special home or fit facility. However, juveniles in the age group of 16-18 years may be tried as adults in certain cases.¹⁸

The Bill states that 16-18 year old juvenile offenders may be tried as adults in certain cases. There are differing views on whether juveniles should be tried as adults. Recently, the Supreme Court while hearing a case related to juvenile crime observed that the 2000 Act needs to be reviewed due to increasing heinous offences by juveniles. The law needs to deter juveniles from committing heinous crimes and safeguard the rights of victims. For crimes like rape and murder it is hard to conceive that the juvenile is not aware of the consequences.¹⁹

Conclusion

Juvenile delinquency is a tremendous burden on society and keeping in mind the present situation, it can be said that the number of crimes being committed by the juveniles is increasing and is to be checked. The crimes are sometimes of heinous nature like murder, rape, robbery. Age must not be a sole criterion to award a lenient punishment to the offender.

New laws are being made every new day amendments are made to existing laws after the Delhi gang rape in 2012 Government made some amendments and inserted Section 376A and Section 376E of the Indian Penal Code which provides imposition of death penalty on those who are convicted of rape. In contrast to this, Juvenile Justice (Care and Protection of Children) Act, 2000 only imposes only a maximum sentence of 3 years without the reference to the nature committed. It is not justified to let the convicted persons to get off with such leniency.

We cannot afford the misuse of present legislations at the hands of offenders. It is not only unsafe for the victims but also create unsafe surrounding. It is important to differentiate minor delinquents from the habitual or hard core delinquents. Many serious steps has to be taken by the government to grade the nature of offences should be redeemed under this Act for the benefit of the society. It seems rather unreasonable to impose the same punishment to the juveniles in the conflict with law, irrespective of the nature and seriousness of the crime committed by them. A petty theft cannot be compared with the offence of murdering someone. Heinous crimes of rare nature are a class of their own and hence should not be considered akin to petty crimes.

As tempted as I am to say that offenders committing offences of such gravity, irrespective of whether they are juvenile or adult should be harshly punished, it seems this is not the ideal solution to the problem. One shocking incident should not result in adaption of measures which might later emerge counter-productive. For instance, in the James Bulger case of 1993 in UK where two 11-year old charged with murdering a toddler had been tried in an adult court and sentenced to minimum of 8 years of imprisonment which was later increased to 10 years. Indian Legislators should not make a similar mistake due to public pressure and need to make a well

¹⁸ Children in Conflict with Law, Juvenile Justice (Care and Protection of Children) Act, 2014, (22/5/2015) available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf> last seen on (23/05/2015).

¹⁹ Gaurav Kumar vs. State of Haryana, Petition for Special Leave to Appeal, 2366-2368/ 2015.

thought out decision. However, the past incidents and increasing reports of youth crime do indicate the need for a change. The youth crime rate in India may not be as large as in other countries however; the same is also not going down.

India declared its National Policy for Children in 1974; this policy is for the children in general. There is no separate policy related to children in especially difficult circumstances or to the Juvenile Justice System. Historical developments have shown that the growth of the juvenile justice in India has not been a continuous pattern backed up by the scientific analysis of the developmental pattern. It has been a result of periodic concern generated by situations or national or international events.

Taking all of the above factors and elements into consideration, the issue at hand remains that India is indeed facing an increase in youth crime which covers not just minor offences but also grave and heinous offences. India should allow more serious punishment or longer periods of duration for children committing serious offences in the bracket of 16-18 years especially. They need not be tried as adults, but under Juvenile act itself special provisions can be made. Once they have attained the age of 18 and sentence is still pending, they can be transferred to adult custody. Stricter punishments will definitely sacrifice on certain child rights such as education and affect their future, but one cannot deny that change is the need of the hour and India cannot afford to see more incidents like Nirbhaya.

