

Easement of Juvenile Succour: A Possibility?

DhruvDev Gupta¹&SiddharthSrivastav²

Abstract

In today's world justice has become an elusive concept for some and means or tools to achieve it are fading away. There may be many legal institutions and socio-political parties or organizations working in the interest of justice but it still does not answer the question. Access to Justice has been given a meaning which is different in every individual's mind. Justice to Juvenile offenders in India, there is a justice system that treats them differently because our society believes that the juveniles are less capable than adults, both in terms of responsibility and capacity and do not have the mental age to commit the act. The issue of juvenile delinquency is not a new one and has occurred in the past, whether in small villages or big cities. In India, there is an increase in crimes committed by juveniles in the past few years, and data collected by the NCRB (National Crimes Records Bureau) Report of 2014 – 2016, the data shows that crimes have increased at an alarming rate. In most cases of Juvenile Delinquency, observing the gruesomeness and magnitude of today's cases there are a number of factors which play an important role in the commission of the crime like poverty, living conditions, abuses (physical, verbal and sexual), neglect by parents or guardians and etc. The issue is to treat the young individuals as a group dissimilar to adults because the criminal justice system has clearly made the distinction that for juveniles it is rehabilitation and for the adults it is retribution. It has also become evident that the mental, social and physical disabilities of the offenders have not been assessed or addressed and the hence their conduct should be determined on the basis of the immature age and restricted capacities. This paper tries to explain the highlight and the development of the Juvenile Justice laws in India and abroad and how there is a worldwide agreement to lower down the rate of juveniles coming in conflict of law. This paper also proposes solutions for the problem in the current scenario and how the Rehabilitation Centres, NGOs and Government Agencies and work together for and amicable solution. It is easier to shape a child that to fix a man because today's children are our Future and the citizens of the world. And therefore it is important to timely restrict criminal traits in a child so that they do not become offenders in a crime.

¹Student of BA LLB 3rd year, Symbiosis Law School, Hyderabad.

²Student of BA LLB 3rd year, Symbiosis Law School, Hyderabad.

Introduction

The definition of justice is very abstract and different in every individuals mind. It is very saddening to see that in today's world the mentality of the people has changed to a large extent towards a crime. The laws in India which are made by the organs of the government are for the basic development of the country and made for the proper social, economic, political and legal development of the citizens of this country. Nowadays, the age group of the crimes is lowering because there is a lack morality in the adolescents and they are not in the position to judge what is right and wrong. According to the leading child psychiatrists, they say that the part of the brain which develops the slowest is the part of the brain which governs high order thinking skills, the ability to plan, make long term decisions, control impulses and regulate behaviour. Adolescents who commit crimes or break the law is just in order to take risks. There is causality due to which there are new justice systems being made for juveniles because the mechanism made for adults is exploiting them. The basic fact it is the attitude of the people which has to change.

There has been an increasing number of crimes throughout the world and there is no hard and fast rule that crimes cannot be committed by juveniles. It is observed in cases that crimes of heinous nature are being committed by these juveniles, either be India or rest of the world. The main issue due to which the crimes are committed by these juveniles is that the Surroundings/ environment of the children, Peer Pressure, Parents expectations and abusive violence. In a country like India the problem of juvenile delinquency is not a new one. In the past few years this problem has increased and the total number of the crimes committed by juveniles to the total crimes committed has increased. The considering the gravity of the situation analysis indicates there may be many factors which play an important role in delinquency and neglect like socio-economical and psychological. Most of the factors which cause delinquency are most in a large number in the Indian conditions or context and solving these issues could be a solution and at the same time be fruitful to the society. 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 incident of *Nirbhaya Delhi Gang Rape Case*,³ on December 16, 2012 shook the whole nation and many arguments started among Lawyers and Media that, is this the kind of justice which the India's Daughter deserves. The main reason and issue of the debate was the involvement of juvenile accused, who was just six months short to attain the age of 18 years. The involvement of the juvenile 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. In India, there are various other laws that govern the juvenile justice like Apprentices Act, 1850; Madras Children Act, 1920; Children's Act, 1960; Juvenile Justice Act, 1986 and Juvenile Justice Act, 2000. There may be international legislations like UN Standard Minimum Rules, 1985 and the UN Convention on the Rights of the Child to provide international governance to children coming in conflict of law. This paper tries to explain the highlight and the development of the Juvenile Justice laws in India and abroad and how there is a worldwide agreement to lower down the rate of juveniles coming in conflict of law.

This paper also proposes solutions for the problem in the current scenario and how the Rehabilitation Centres, NGOs and Government Agencies work together for an amicable solution. It is easier to shape a child than to fix a man because today's children are our Future and also the future citizens of the world. And therefore, it is important to timely restrict criminal traits in a child so that they do not become offenders in a crime.

Research Methodology

This paper focuses and does critical study of this paper tries to explain the highlight and the development of the Juvenile Justice laws in India and abroad and how there is a worldwide agreement to lower down the rate of juveniles coming in conflict of law. The sources of this article are cases on this subject. The method used in making the paper and the information which has been gathered are from various scattered sources such as The Bare Act, legal sites which deals with case laws and also newspaper articles.

Chapterisation

This paper has been divided into 3 chapters. The first chapter covers the Introduction and the Definitions. The second chapter of the paper covers, its legal validity. The last chapter will give suggestions and conclusions of the research project.

Research Problems

1. What are the causes and problems in juvenile delinquency?

³*Nirbhaya Delhi Gang Rape Case*, 2014(2)ACR1615(SC), 2014iv AD (S.C.) 193, AIR2014SC1649, 2014(3)AJR469, 2014 (86) ALLCC 637.

2. What are the problems in the laws relating to juvenile?
3. What are the potential solutions to these problems?

Mode of Citation

Uniform mode of citation is used throughout the paper.

Meaning of Child and Juvenile

Meaning of Child

The Definition of a child in a layman term means a human being who has not attained the age of 18 years or the legal age of the particular country and is not mature enough to differentiate between right and wrong. The penal laws of various countries follow the legal maxim “*Doli Incapax*” which means that the person is incapable of forming intent for the commission of the crime. This term is used for the presumption of innocence of a child in criminal law but a child between the age group of seven and twelve years old can be convicted, if he or she had the proper knowledge of the crime and to understand the consequences of the act. Juvenile Justice Act, 2015 categorizes the definition of child into two parts in Section 2(12) of the Act; (A) Child in Conflict of Law and (B) Child in need of care and protection. The child who committed the offense and is under 18 years is child with conflict of law and the Child who requires a rehabilitation home is the child who needs care and protection in a juvenile home. 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.

Definition of Juvenile

Juvenile in layman’s term is a person who is between the age of sixteen and eighteen years and who has not attained the age of majority. The difference between Juvenile and Child is that a person under the age of full lawful commitment and obligation is a minor or a person who is beneath the lawful age of eighteen years is minor. A youngster who is been blamed for wrongdoing is a juvenile and is attempted as grown-up in court procedures. All in all sense both the term has same significance yet anyway distinction lies in setting of suggestions according to law.

Juvenile Laws in India

History of Juvenile Justice System in India

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., 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 first case due to which the need for the juvenile justice was necessary in India was *SheelaBarse v. Union of India*.⁴The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. The Juvenile Justice Act, 1986 which repealed the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985. Thus, Indian Legislation came up with a new act which was called as The Juvenile Justice (Care and Protection of Children) Act, 2000. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of *Jammu and Kashmir*. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:-

1. The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile.
2. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Juvenile Justice and Constitution of India

The Constitution of India is considered as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. 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. Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

1. Right to free and compulsory elementary education for all the children under the age of 6 to 14 years of age as per Article 21A of the Constitution of India, 1950.

⁴1986 SCALE (2)230.

2. Right to be protected from any hazardous employment under the age of fourteen age Article 24 of the Constitution of India, 1950..
3. Right to be protected from being abused in any form by an adult Article 39(e) of the Constitution of India, 1950.
4. Right to be protected from human trafficking and forced bonded labour system Article 39 of the Constitution of India, 1950.
5. Right to be provided with good nutrition and proper standard of living Article 47 of the Constitution of India, 1950.
6. 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.

Juvenile Justice Act, 2000

The Act was enacted in the year 2000 with aim and intent to provide protection for children. The mentioned was amended thrice in the years 2006, 2011 and 2015 .The amendment was made to address the gap and loopholes in the implementation.

Further, with 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:-

1. Young offenders should not be tried in courts, rather they should be corrected in all the best possible ways,
2. They should not be punished by the courts, but they should get a chance to reform
3. Trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes

Juvenile Justice Act, 2015

The aim of the act is to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their

basic needs through proper care & protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions. The major changes in the bill is that the crimes if committed by the age group of 16 – 18 years, the punishment will be decided on the gravity of the crimes and the offender will be given the appropriate punishment. The bill also provided for the setup of Juvenile Justice Boards and CWC (Child Welfare Committees). There should be a District Magistrate and two child counsellors.

Despite the provisions of the act, it yet failed to answer the question and raised a lot of arguments. The Arguments are as follows –

1. Compliance with UN CRC – One of the most debated arguments about the amendment is that it has to comply with the rules of the UN CRC (United Nations Convention on Rights of Child). The reason for which is that India is a signatory to that agreement. The act does not majorly comply with the rules but acc. Art 40 which speaks about Juvenile Justice and provides the rules and regulations.
2. Age of the Juvenile – Another major argument is that most of the offenders come from poor families and backgrounds who do not have proper proof of the age. In *Raisul v. State of UP*⁵ the courts said that the courts cannot assume the age of the offender.
3. United Nations Standard of Minimum Rules for the administration for the Administration of Juvenile, 1985, say that the prime importance should be given to Juvenile Justice Act while considering the Juvenile in conflict. It means that one must give importance to both the offenders and the offence, but the current act only give importance to the type and gravity of the crime committed. In *Pratap Singh v. State of Jharkhand*⁶ and it was observed by the Court that while defining juvenile criminality it is the duty of the judge to look into the psychological components and moral components and it should be given prime importance.

Causes of Juvenile Delinquency

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

⁵AIR 1977 SC 1822.

⁶2005, CRL 210 of 2005.

1. Adolescence and Puberty– The biological, psychological and sociological are one of the important factors in today's surrounding and environment. At this stage, Adolescents become more conscious about their appearances, Clothing, Food and etc. And at this very age, they want freedom and they want to be independent in their life but sometimes they are given any chances and opportunities by their parents, teachers and elders this leads to development of anti-social behaviour in them. Thus, this anti – social behaviour is one of the reason which is responsible for juvenile delinquency.

2. Family Problems – Secondly, this is also one of the main reasons because of which crimes happen due to the lack of communications between parents and their children. The abuses they face at home or face domestic violence or they see their parents getting divorced.

3. Economic condition and Poverty - Poverty and poor economic condition is also consider has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfil 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.

4. Peer Pressure -Peer Pressure of friends induce boys and girls to do activities and bring 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.

5. Sexual Assault or Physical Assault- The children those who have experienced sexual assaults or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behaviour and mind.

6. 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.

Cases Relating to Juvenile Justice

In case of *Kulai Ibrahim v. State of Coimbatore*⁷ 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.

⁷Criminal Appeal no. 1308 of 2014 Supreme Court Case.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh*⁸ 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*,⁹ 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*¹⁰ 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*¹¹, 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 the competent authority.

In the case of *Sanjay Suri and Anr. v. Delhi Administration, Delhi and Anr.*¹² The Supreme Court dealt with the imprisonment of offenders in the Tihar Jail and provide separate Prison for the offenders. The inquiry also observed that juvenile offenders were sexually assaulted by adult prisoners.

Conclusion

From the above debate we can conclude that crimes of heinous nature also go unpunished with the offender wearing the shield of immunity of juvenility. Juvenile succour cannot only be prevented through the proper implementation and amendments of Juvenile Justice Act. In order to reform the juvenile in conflict with law, the mind of the current generation of the children should be understood. The adverse conditions of juvenile homes and juvenile justice authorities need to be addressed immediately. The national government to provide education, health care, sanitation and housing to every child. Government funded children's homes are often unable to accommodate neglected children. Children are sometimes even kept in jail. Thus, there is a problem in the implementation of laws pertaining to children and the maintenance of children's homes due to both a lack of awareness of child rights. Juveniles involved in crimes are not criminals, in fact, they are victims of their own backgrounds or environments. Juvenile delinquency can be stopped at a premature stage. Parents and teachers

⁸Criminal appeal no. 1887 of 1996 Uttar Pradesh High Court.

⁹1997 (4) SCC 192.

¹⁰ 1989 PAR LIR 507 (2) (fb).

¹¹2000 5 SCC 488.

¹²1988 SCR (2) 234.

play a significant role in nurturing the mind of a child. Instead of branding the adolescents as criminals or delinquents and steps need to be taken to give them a scope of addressing the problem and redressal from it. The problem of child crime like many other social evils is linked up with problems of our society. The ideal is gradually gaining wider acceptance that juvenile delinquents need the sympathy and understanding of our community or society and not the way of retribution by law.

Suggestions

1. Proper Juvenile Law implementation by bringing amendments into the law that there should be proper counselling of the child before the trial period.
2. Assessing the maturity level of Child or adolescent or Juvenile and seeing the gravity of the crime and giving the proper decision on the crime committed.
3. Proper care which should be given to the accused in the juvenile home and proper counselling by a trained counsellor specializing in the specific field.