

Juvenile Justice System: Protection or Persecution?

Sayantika Sengupta¹&Ankita Kar²

Abstract

Children, in nexus to activities inconsistent to the norms of the legal world belong to one of the most vulnerable sections, especially in a country like in India. Rule of law and access to justice are the basic requirements for a country's development and is as imperative for the reduction of social differences as the provision of basic services such as proper health and education systems. However, it has been recognized that children, when dependent on the same justice mechanism as adults may find themselves further victimized by the system itself. It is this recognition that has led to the development of a separate child justice system or juvenile justice system in many parts of the world including India. The research paper primarily focuses on Juvenile Justice (Care and Protection of Children) Act, 2015 projecting both its highlights and its challenges and its reflection on this modern day society.

The researchers, in this paper, have mainly dealt with three prominent questions first- how are the Juvenile delinquencies, who are considered to be 'in conflict with the law' dealt by the Indian Government, second - are these juvenile delinquencies, who really need 'care and protection' provided so by the Government and the welfare communities? and third- Should there be stricter laws for the Juvenile delinquencies, accused for committing heinous crimes such as rape and murder?

In order to reach a definite answer to the above mentioned questions, the researchers have primarily given a brief introduction to the Act which includes its history and emergence in nexus to the purpose for which such an Act came into existence. Next the impact of the Act on the Indian society is taken into consideration and a socio- legal analysis of the logical problems of the Act has been addressed. This paper also includes a comparative analysis of the Indian and the international scenario focusing on the facilities provided to the juvenile delinquencies. A few landmark judgements have been inculcated to heighten the essence of the research paper.

The researchers have been finally provided conclusion to the paper in nexus to the fact as to whether the present correctional services provided to these delinquencies are good enough to bring about a change in their mindset and have provided suitable recommendations accordingly.

¹Symbiosis Law School, Hyderabad.

²Symbiosis Law School, Hyderabad.

Introduction

The word “Juvenile” originates in a Latin word “Juvenis” that means young. A “Juvenile” or Child means a person who has not completed eighteen years of age. A juvenile is anyone who has not yet reached the age of adult in terms of maturity and capacity to comprehend their own actions. In the eyes of law, a juvenile can be defined as a child who has not attained a certain age where he could be held liable for his criminal actions like any adult would under the law of the country. However there lies a difference between a minor and a juvenile. A minor refers to a person who is not yet an adult in the eyes of law. Juvenile, on the other hand, indicates legality and is perceived as a negative term. In context to this paper, juvenile is opposite to minor as minor indicates a child of innocence where as a juvenile tends to imply a young criminal.

Children develop the nation's precious human resources. The future accomplishment of the nation depends on upon how its children perform and execute. The great poet Milton said, "Youth Shows the man as morning presentations the day". So it is the devotion of the general masses to deal with every pre-adult with a point of view to ensuring full advance of its personality. Children are the future controllers and light bearers of the Society: they are the units of our understanding, social legacy, conviction structures, and rationalities. Children are genuinely future parts as sensational instructors, specialists, judges, rulers, powers, coordinators, engineers, politicians on whom the entire society set up (rests). Disastrously a broad number of children are obstructed from securing their childhood and right to bearing and thereby they are subjected to exploitation, misuse, and abuse.

Children, in nexus to activities inconsistent to the norms of the legal world belong to one of the most vulnerable sections, especially in a country like in India. Rule of law and access to justice are the basic requirements for the development of a country and is as imperative for the reduction of social differences as the provision of basic services such as proper health and education systems. However, it has been recognized that children, when dependent on the same justice mechanism as adults may find themselves further victimized by the system itself. It is this recognition that has led to the development of a separate child justice system or juvenile justice system in many parts of the world including India.

Initially young offenders were treated in criminal law in the same way as adult offenders. It is unfair for a child who is not mature enough, to be punished with the punishment as that of an adult. He needs to be rehabilitated and as far as possible restored to his family with the minimal punishment possible. Due to this, the Juvenile Justice Act was passed. An age limit

of 18 years was prescribed in this act below which the offenders will be tried as Juveniles. They will be prosecuted as well as punished by Juvenile Courts. The Juvenile Court System in India is functioning by the Juvenile Justice Boards where cases that involve individuals less than eighteen years of age are inquired.³

Research Methodology

The methodology adopted is largely analytical and descriptive. Focus has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research. This paper critically analyses the Juvenile Justice Act, 2015. The sources of this paper are cases on this subject. The method used in making the paper and the information which has been gathered are from various sources such as The Bare Act, legal sites which deal with case laws and also newspaper articles.

Chapterization

This paper has been divided into 6 chapters. The first chapter covers the Introduction along with the definitions. The second chapter of the paper deals with the historical evolution of the act. The next chapter reflects the impact of the act on the Indian Society. The following chapter provides with the socio-legal analysis of the act. The next chapter discusses the judicial perspectives. The final chapter provides with conclusion and suitable recommendations.

Research Problems

1. How are the Juvenile delinquencies, who are considered to be 'in conflict with the law' dealt by the Indian Government?
2. Are these juvenile delinquencies, who really need 'care and protection' provided so by the Government and the welfare communities?
3. Should there be stricter laws for the Juvenile delinquencies, accused for committing heinous crimes such as rape and murder?

Mode of Citation

Uniform mode of citation is used throughout the project.

Historical Evolution of the Act

In 1986, the Supreme Court, in *SheelaBarse v. Union of India*⁴ ordered that the juvenile justice system suitable for juvenile offenders should be enforced on all states and such

³MousumiDey, *Juvenile Justice in India*, 1(6) IJIMS64, 64-70 (2014).

⁴(1989)3SCC596.

enforcement has to report back to the court. In the same year, parliament passed the juvenile justice act for the whole country except for the state of Jammu & Kashmir.

The Parliament, in the 37th year of Republic of Indian State, enacted the first ever uniform legislation for the entire country for neglected and delinquent juveniles under the title Juvenile Justice Act, 1986 (hereinafter JJA 1986). This legislation was significant in the history of legislation for children in India, as all previous legislative attempts to address the issue of children in conflict with law culminated in a uniform law giving birth to juvenile jurisprudence in India. Prior to enactment of this Act, the laws on the subject were hardly designed to address the issue in a comprehensive manner; sporadically present in different forms and every state in India had addressed those subjects according to their state legislations. Juvenile Justice Act 1986 had thrown enormous challenges as it was not high on the agenda of governance. The Act retained the primary features in the scheme of 1960 act and extended the protection for boys below 16 years and girls below 18 years, like 1960 act and provided for the establishment of advisory boards, the creation of children's funds and the appointment of each institution. Both the implementation of law as well as its implication upon the life of a juvenile became a matter of debate and judicial activity in the years following the passing of the Act of 1986.

Between 1986 and 2000, a series of interesting developments took place globally. In 1989, on the 30th anniversary of declaration of the rights of the children, the UN general assembly adopted the UN convention on the rights of child (UNCRC). India ratified convention in 1992. Two years earlier, the UN rules for protection of juvenile's deprived of their liberty, was adopted setting out rules emphasizing the protection of juvenile's and prevention and deprivation of their liberty and establishing that achieving juvenile justice now question of political priority.

Such deliberations culminated with the replacement of 1986 Act with Juvenile Justice (Care and Protection of Children) Act 2000.

The new statute brought several amendments to improve upon its predecessor to make the system more meaningful by identifying the crucial difference between a juvenile in conflict with law and a child in need of care and protection. This Act, unlike the Act, 1986 moved away from six discriminatory definition of juvenile and defined a child (whether a boy or girl) as a person who has not attained 18 years of age. This was done keeping mind the UNCRC as well as the global understanding of fixing 18 as cut-off age for criminal culpability. It also moved away from archaic and problematic terminologies such as delinquent juvenile and neglected juvenile and substitute them with juvenile in conflict with

the law and CNCP respectively. The setting up of juvenile justice boards as children's courts was meant to take the agenda of restorative justice and reformation a little further. The New Act sounds that the death canal for 150 years of progressive law making and juvenile justice and society and society as a whole.

Earlier, the word Juvenile was used for a person below the age of 18. This was changed to 16 after the Delhi gang rape. It was found that one of the accused in Delhi gang rape was a few months away from 18 and so he was being tried as a Juvenile. The verdict for him was announced by a Juvenile Court sentencing him to 3 years in a reform home. The whole of India including the victims' mother criticized the judgment. On 12 August 2014, a new bill was introduced by Maneka Gandhi in the Parliament in which the age for Juveniles was lowered down to 16. On 31 December 2015, the President gave assent to the bill.

Impact of the Act in Indian Scenario

The juveniles aged between 16-18 are allowed to be accused of heinous crimes like rape, murder, arson etc under the new Juvenile Justice Act i.e. tried as adult offenders. According to this law, matters are to be presented to the Juvenile Justice Board on a case-by-case basis, which will then decide --- based on an assessment of the mental state of the child –whether consequences were measured or not. Based on this, they will be tried under either IPC or the Juvenile Justice Act. It is heartening to see that policymakers are listening to public opinion, but they also need to hear the voices from the marginalized communities. The issue of lowering the age of a juvenile is far more complex than is apparent.

Societies that inflict violence on children also experience violence by children. The fact that children are in reality not fully mature is supported by studies in neuroscience. Psychologically, researchers have clearly found that older adolescents (14-17) are actually more prone to reckless behaviour. In fact, the act of engaging in such high-risk crimes only points towards a lack of maturity, rather than an excess of it. Instead of creating an enabling environment for our children to grow, as a society we are failing them and punishing them.

Ironically, this Act primarily affects the most marginalized and poor sections of our society. More than 50% of the children in conflict with law come from illiterate families and extremely poor homes. This law has the potential for misuse by framing false cases against most vulnerable children, especially where they are involved in elopement/consensual sex. Children living in conflict areas would be the worst affected.

As ShashiTharoor pointed out in a debate in the Lok Sabha in May 2015, *“reoffending increases by 80% according to studies done in US. In a stark irony, even though we have not*

put adequate resources in our Juvenile Justice system reoffending has come down. According to data from the NCRB, the number of juveniles apprehended for reoffending came down from 9.5% in 2013 to 5.4% in 2014. We cannot send children to adult prisons which are nothing but "crime kipaathshala."

The Juvenile Justice Act, 2015, in the opinion of the researchers, is a major step backward in the progressive forward looking philosophy of juvenile justice especially by providing the use of prisons in certain cases. The contradictions and the complexities of the Act double up in the poor and ambiguous implementing guidelines. The number of Schemes, Acts, and Model Rules that have been created to get this Act implemented questions the efficiency of the Act; it highlights the gaps in empowering the children and questions the possibilities. The multiple bodies responsible for implementation with no clarity on the expected outcomes and no view towards the goals make lose confidence in the Act. Though in concept it fights for the rights of child but fails to enact on it. The Act falters to keep up with the Cyclic Redundancy Check.

Social Legal Analysis of the Act

The key purpose to legislate the Juvenile Justice Act, 2015 was the increased number of crimes (mainly rapes), by juveniles of 16 to 18 age groups. However, numerous questions were raised on the new Juvenile Justice Act, 2015, as being more retributive than reformatory. Retributive because it contains provisions for teenager who commits heinous crime (give punishment seven years or more as per section 2(33)) shall be tried like an adult but in children's court. The Children' court shall make sure that the child who is found guilty of heinous crime shall be sent to a place of safety till the age of twenty-one years and afterward, the person shall be shift to jail as provided in Section 19 (3). It means once a juvenile is found guilty; he shall not get the benefit of being child and may be sent to jail if he commits a heinous crime.

Definition of Heinous Offence

"Heinous offences" as defined in Section 2 (33) of the JJ Act includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more; in this case heinous offence have been described as offence that carry more than seven years of imprisonment, apart from at least 46 offences for which juvenile between 16 and 18 years could potentially be tried as adults. Further the new system will imply that persons found guilty of offences' that carry a minimum sentence will receive the minimum mandatory sentence prescribed under the Law. According to Clause 15 of the Act requires the board to assess whether child alleged to have

committed a heinous crime has the physical and mental capability to commit the offence, and also the circumstances in which he allegedly committed the offence. Lastly the individualized assessment of adolescent mental capacity is not possible and the suggestion that it can be done would mean exceeding the limits of science. The assessment proposed is fraught with errors and arbitrariness and will allow inherent biases to determine which child is transferred to an adult court which leads to violation of article 14 and 21 of the Indian Constitution.

Maturity Level of the Juveniles

Another important issue which needs special attention is parallel culpability of the Children (between the ages of 16 to 21 years) with that of adult. It has been discovered by many neuropsychologist that “adolescent brains are far less than previously believed.” According to Ruben C. Gur, the biological age of majority is close to 22 years and the pertinent parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable, develops after attaining the age of maturity. In this respect to punish a juvenile, like an adult would result in excess punishment. According to MaharukhAdenwalla, “The Juvenile Justice (Care and Protection)Act 2015 has reversed the well founded principle of juvenile justice by allowing Juvenile Justice Boards to waive the right of children above the age of 16 years who have committed a heinous offence into the criminal justice system. This means the treatment of a juvenile will depend of the type of offence committed rather than his situation”.⁵

Constitutionality of the Juvenile Justice Act

The new Juvenile Justice Act, 2015 was also criticized by many protestors as being unconstitutional. It violates Article 14, 15(3) and 20 of Indian Constitution. Constitution of India enumerated every person is equal before law but if we read this article with 15(3) then it is very much clear to us that Government can make special provision for the benefit of children. In *Pratap Singh v. State of Jharkhand*,⁶ it was observed by Court that in Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, while defining a juvenile criminality or criminal responsibility, the moral and the psychological components must be given prime importance. However, in the present law, this psychological component has been given least importance.

Another issue, which is pointed out by many activists, that the 2015 Act violates the spirit of Article 20(1), where a person cannot be subjected to greater punishment than what would

⁵MaharukhAdenwalla, *A dislocation of the juvenile justice system*, THE WIRE (May 23, 2018, 5:00 PM), <http://thewire.in/2015/05/23/a-dislocation-of-the-juvenile-justice-system-2282/>.

⁶3 SCC 551 (2005).

have been applicable to him under the law of land. Under new Act, if a juvenile who has completed the age of twenty-one but has not completed the full period of his sentence may be sent to the jail if it is considered so proper. This Act undermines the very spirit of Article 20(1).

Judicial Perspective

In *Satto v. State of U.P.*,⁷ V.R Krishna Iyer J. speaking for the bench observed: “Correction informed by compassion, not incarceration leading to degeneration, is the primary aim of this field of criminal justice. Juvenile justice has constitutional roots in Article 15 (3), 39 (e) and the pervasive humanism which bespeaks the supernatural concern of the state for its child citizens including juvenile delinquents. The penal pharmacopoeia of India, in tune with the reformatory strategy currently prevalent in civilized criminology, has to approach the child offender not as a target of harsh punishment but of humane nourishment. This is the central problem of sentencing policy when juveniles are found guilty of delinquency. A scientific approach may insist on a search for fuller material sufficient to individuate the therapy to suit the criminal malady.”

In *Dr. Subramanian Swamy v. Raju*,⁸ Supreme Court Stated that the object behind treating the persons under 18 years of age as juveniles is to ensure their rehabilitation in society and to enable the young offenders to become useful members of the society in later years. the bench comprising of P. Sathasivam, CJ and RanjanGogoi and Shiva Kirti Singh, JJ dismissed the petition which sought interference with the age of juvenility under the Juvenile Justice Act, 2000 (JJ Act). Explaining the scheme for trial and punishment under the JJ Act, the Court said that The JJ Act does not do away or obliterate the enforcement of the law insofar as juvenile offenders are concerned and that the same penal law i.e. Indian Penal Code apply to all juveniles. The Court further explained that the only difference is that a different scheme for trial and punishment is introduced by the JJ Act in place of the regular provisions under the Code of Criminal Procedure for trial of offenders and the punishments under the Indian Penal Code. Hence, the Court was of the opinion that the respondent, the juvenile accused in the Nirbhaya Gang-rape case does not have to face a regular trial.

In case of *DeokiNandanDayma v. State of Uttar Pradesh*⁹the 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.

⁷1979 AIR 1519.

⁸2014(2)ACR1615(SC), 2014iv AD (S.C.) 193, AIR2014SC1649, 2014(3)AJR469, 2014 (86) ALLCC 637.

⁹1997(10) SCC 525.

Similarly, in the case of *Satbir Singh & ors. v. State of Haryana*,¹⁰ 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 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 another case, it was said by the Supreme Court that “As regards the final relevancy of the Act, we tend to be clearly of the view that the relevant date for the relevancy of the Act is that the date on that the offence takes place. Juveniles Act was enacted to shield young kids from the implications of their criminal acts on the footing that their mind at that age couldn't be aforementioned to be mature for imputing men's space as within the case of associate adult. This being the intention of the Act, a transparent finding has got to be recorded that the relevant date for relevancy of the Act is that the date on that the offence takes place...We are clearly of the view that the relevant date for relevancy of the Act up to now as age of the defendant, United Nations agency claims to be a toddler, worries, is that the date of the prevalence and not the date of the trial.”¹²

Conclusion and suitable Recommendations

Before concluding, it is necessary to discuss some theories which may help in understanding the reason behind the delinquent behavior of juveniles. Among them two popular theories are Psychodynamic theory and Social Learning theory. Psychodynamic Theory was formally proposed by Sigmund Freud which states that a child is born with Id (animal instinct) and ego is the realization of real life and helps to control. Superego is developed through interaction with parents. But when a child doesn't get such guidance then ego and superego cannot control the animal instinct and the juvenile become delinquent. Another theory is Social learning theory, which states that a child is good when born but surrounding environment influence his or her nature because child always learns from imitating elders. However, in both the cases, the role of parents, society and environment are pivotal. Many Neuroscientists confirmed that the prefrontal lobe in the human brain, which is conscientious for planning, reasoning, judgment, and impulse control, does not develop before twenty five.¹³ Also, the reason of delinquency can be the environment where such juvenile lives. It is well evident

¹⁰Appeal (Crl.) 7 of 2005.

¹¹AIR2001SC 3575.

¹²Umesh Chandra v. State Of Rajasthan, 1982 AIR 1057, 1982 SCR (3) 583.

¹³Kanimozhi Karunanidhi, *A Bill for Juvenile Injustice*, THE HINDU (July 27, 2018, 5:30 PM) <http://www.thehindu.com/opinion/op-ed/juvenile-justice-bill-a-bill-for-juvenile-injustice/article7143729.ece>.

from the National Crime Bureau Statistics. It states more or less 80 per cent of juveniles delinquent, who committed crime are mostly from poor families with annual income of less than Rs. 50,000 and among them, more than 50 per cent did not even complete their primary school. The reasons behind a Juvenile to become criminal can be many. This may be beyond the control of the immature youngster. In all these cases, giving punishment to the juvenile, who is in conflict with law not always a solution

Control of delinquency needs effective implementation of Juvenile Justice Act, with full public awareness and proper orientation and training to professionals and law enforcement agencies that is the duty cast upon the state under the act itself. In addition to this the approach of the agencies like police involved in the system should be of reformatory character rather than retributive and this objective to reform the delinquents, and also the preventive aspect should be of much dominance over the retributive aspect given by incarcerating them. State should emphasize more on perdurable long-term schemes for Juveniles so that they feel motivated and are encouraged to join the society and regain their poise, which is generally lost because of the insensitive attitude of the society cast upon them. All the stakeholders should give coordination and networking, as the main objective of juvenile justice could be effectuated through concentrated and coordinate functioning.

State along with the Union Territories administrations must motivate and pledge support to voluntary organization to start or modernize rendering of juvenile services including community services. Governments schemes related to health, nutrition for all, literacy, eradication of child labour, etc should be in collaboration with the voluntary organizations and communities which will help to a great extent to root out issue of delinquency. Thus, considering all these things in mind, authors think that it is necessary for the Government to rethink and peruse child-friendly amendments in the new Juvenile Justice Act, 2015 so that injustice in Juvenile Justice Act can be curbed.