

AGE BEING A CRITERIA FOR JUDGING A JUVENILE IN SERIOUS CRIMINAL CASES

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Abstract

In Delhi on 16 December 2012, a brutal assault and rape incidence was held. In which one of the accused was suspected to be juvenile. This very famous incident raised that there should be amendments in the present juvenile justice system. As the present system was not proficient to provide justice to the victim rather it is the relief for the juvenile offender. This paper deals with the various aspects of juvenile justice system before and after amendment as well as various phases of juvenile justice amendment act its positive outcomes as well as various loopholes.

Keywords: Juvenile, Juvenile Justice, Juvenile crimes, Atrocities against women, women and law, offences against women

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INTRODUCTION

The world's greatest resource of every nation is the human beings of that nation. Other resources would be of no use if there will be no human resource. The present generation of today's world i.e children is a prolific asset for the future development of the nation. However, unfortunately, these children due to certain reasons are not being raised properly, which is giving birth to the juvenile delinquency.

Merciless attack and assault occurred on 16th December 2012 in Delhi in which one of the accused was asserted to be juvenile raised a new verbal confrontation on lessening the age of a juvenile in India. Albeit Amendments in the Juvenile Justice (Care and Protection of Children) Act after a civil argument in Parliament and inconsistency to Universal commitments raised the age of juvenile from 16 for a male to 18 years.

WHO IS A JUVENILE?

According to Collins English dictionary, juvenile means 'A juvenile is a child or young person who is not yet olden to be regarded as an adult.'

United Nations Convention on the Rights of the Child (UNCRC) define a 'Child' as every human being below the age of 18 years.

Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines "juvenile" or "Child" as a person who has not completed the eighteenth year of age.

HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM

The primary enactment on JUVENILE JUSTICE in India came in 1850 with the Apprentice Act 1850, which required that kids between the ages of 10-18 prosecuted in courts to be given professional preparing as a major aspect of their restoration procedure. The Reformatory Schools Act transplanted this demonstration, 1897 along these lines gave that youngsters up to the age of 15 might be sent to a reformatory cell, and later the Juvenile Justice Act 1986 gave a uniform component of Juvenile Justice. This demonstration was supplanted by Juvenile Justice (Care and Protection) Act, 2000.¹

To be conventional towards the United Nations Standard Minimum Rules for the supervision of Juvenile Justice (Beijing Rules 1985) to put up with the International Obligation which India approved by ratifying in 1985 Parliament invoked its power under Article 253 of the constitution of India in making the juvenile justice system in India.

The law directive care, protection, treatment, development and rehabilitation of neglected

¹S T LAKSHMI RAMESH, M L, Juvenile justice and juvenile justice board in Chennai a case study accessible at <http://shodhganga.inflibnet.ac>.

[in/bitstream/10603/76686/9/09_chapter%202.pdf](http://bitstream/10603/76686/9/09_chapter%202.pdf).

and delinquent juveniles and for adjudication and disposition of juvenile delinquency matters throughout the country for the first time.² The act formulated separated procedures for the juvenile delinquents and neglected juveniles, by establishing separate juvenile courts and juvenile welfare boards. Juvenile courts handled the offenses committed by girls under the age of eighteen years and sixteen years for the boys accused of committing a crime.³

Under the 1986 law, juvenile delinquents are persons below specified ages who committed certain acts that would be treated as crimes if committed by adults. Those juveniles would be processed through special courts following due process rules applied to adult offenders with the exception that these proceedings are private and confidential and as far as possible be non-judicial in nature. The delinquents who are convicted could be fined or placed under supervision for a maximum of three years but they cannot be executed or imprisoned or jailed.

The Juvenile Justice (care and protection of children) Act 2000 was passed in December 2000 and came in force on April 1, 2001, and was amended in 2006 aiming to protect, care, rehabilitate and educate the juvenile and to provide them with vocational training opportunities. As the Preamble clearly states that the “*object of the law relating to juveniles in*

conflict with law is providing 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 institutions established under this law”.

The law underlines a welfare approach by inclusion of non-criminal justice language (arrest is replaced by apprehension, act does not speak about Jail, court, police, trial), Age of juvenile in conflict with law made same for both boys and girls as eighteen years after the country ratified United Nation convention on child rights which mandates the age of criminality as eighteen years, more emphasis on rehabilitation, re-socialization and reintegration of juvenile in conflict with law rather than punishment, placing minimal intervention of the correctional authorities and police as the special provision for special juvenile police to handle the cases in inquiry and replacing juvenile courts by Juvenile Justice Boards so as to make more child friendly in adjudication. The Law specifically mandates for the Rehabilitation and social re-integration, after care services process, special provisions for adoption and sponsorship for mainstreaming them into society.

The new law also emphasized on the involvement of voluntary organizations and

² The Juvenile Justice Act, 1986.

³ Ibid

urged for their participation in the process of juvenile justice through running the Observation homes, special homes, compiling social investigation reports.⁴ There is no such provision of death sentence in the law and juvenile cannot be sent to prison if unable to pay the fine and establishing separate homes for different age groups in order to separate younger offenders from mature juveniles so that the system could meet the requirements of the Beijing Rules on Administration of Justice.

After the tragic Delhi Gang Rape of December 16, 2012 where a juvenile was involved with other adult offenders in raping and torturing due to which the victim died, the issue raised a debate on reduction of age of Juvenile in conflict with law as debated that juvenile offenders are increasing. Later a committee headed by Justice Verma was established for amending the laws in criminal law to protect the rights of women but the committee refused to reduce the age of juvenile and said that the time is not ripe for reduction and one case cannot be the reason for changing the law.

Subramaniamswamy later filed a petition on reducing the age of criminality, which again Apex court quashed with specific reasons, which this paper will discuss in next chapter,

but the base was prepared after the rage and anger in the public sphere which led to coming of the Bill on The Juvenile Justice (care and protection of children) bill 2014. Although the bill is well equipped with protection mechanisms for the child in conflict with law (earlier juvenile in conflict with law) but the law has distinguished the offences for which the a child can be sentenced like Adult offenders.

Juvenile Justice Act in rest of the world

In the United States, the age of juvenile varies from state to state. The lowest among them is 14 at which a youth is liable to get adult sentences for serious crimes

In the United Kingdom, the act named Youth justice and Criminal Evidence Act, 1999, lays down that a child between ages 10 and 18 are capable of committing a crime and will be tried in a separate court for youth.

SITUATION IN INDIA: IS THIS AMENDMENT REALLY NEEDED?

We need to first ask ourself a basic question what does justice seek to serve does state exercise its punitive power in order to be lively? To extract an eye on the eye or do we hope to use the justice mechanism as a corrective to rehabilitate the young.⁵

⁴ ibid

⁵ Raghuram Godavarthi, Juvenile Justice Bill: How The Bill Was Passed In Haste Without Proper Discussions? accessible at [https:// thelogicalindian.com/story-feed/opinion/watchread-juvenile-justice-bill-how-the-bill-was-passed-in-haste-without-proper-discussions/](https://theologicalindian.com/story-feed/opinion/watchread-juvenile-justice-bill-how-the-bill-was-passed-in-haste-without-proper-discussions/)

We are all horrified by the terrible attack on Nirbhaya. The justice was not provided to the Delhi rape case victim according to the old juvenile justice act. The crime rate is high between the age of 16-18 years in sexual crimes and there is a need to amend the old Juvenile Justice Act.

After the incidence of DELHI RAPE CASE in 20 months, Juvenile Justice Amendment bill was initiated. But our politicians have put this bill on hold for next 16 months in the parliament. But after so many red lights this bill was finally passed on 7th may 2015 in just a day. That's where there is a need to bring the amendment in Juvenile Justice Act.

It is being an argument that not all children know the consequences of committing serious crimes. As children are the future foundation of the country there is a need to develop them instead of such difficult punishments. Mostly these children come from lower status and do not possess the knowledge about the laws of the country.

This should be taken into account that this amendment is for an only serious crime which is acceptable. In the last few days, we have seen that the terrorist organization is using juveniles for committing crimes and many organized and heinous crimes were done using juveniles. Therefore, to eradicate

this situation and to lessen these situation amendment has been done in the Juvenile Justice Act.

Under the amendment, a juvenile cannot be given the life or death sentence under the sections of the IPC. But there is no clarity under other legislation like terror laws and the NDPS ACT. The government decisions come after data shows an increase in crimes by juveniles. A jump of 13% between 2012 - 13.

The National Crime Records Bureau data also shows that 67% of juvenile rapists fall under the age of 16-18 years.⁶

UNICEF concerned about an amendment to India's Juvenile Justice Act⁷

The United Nation has criticized this move of the government and they say UNCRC (CONVENTION ON THE RIGHTS OF THE CHILD) states the children who are accused of offenses should be tried separately from adults in a matter consistent with the child sense of dignity and what is being proposed constitutes a real step back.

UNICEF is worried about the ongoing Union Cabinet endorsement of the Juvenile Justice Act revision to enable the Juvenile Justice Board to choose whether an adolescent over the age of 16 years associated

⁶ National Crime Bureau Report 2012-13

⁷ https://www.unicef.org/media/media_74742.html

with an intolerable wrongdoing is to be attempted in a consistent court.

The Convention on the Rights of the Child, and global norms on juvenile justice, for example, the Riyadh Guidelines and Beijing Rules, recommend building up unique standards of methodology for kids.

"Around the world, confirm demonstrates that the procedure of legal waiver or exchange of juvenile cases to grown-up courts has not brought about the diminishment of wrongdoing or recidivism. Rather, interests in a working arrangement of treatment and restoration of kids have appeared to prompt better outcomes in lessening recidivism," says Louis-Georges Arsenault, UNICEF India Country Representative.

Mr. Arsenault affirmed UNICEF will keep supporting the Government of India in reinforcing its juvenile justice framework. This incorporates upholding for reformatory measures for all kids up to age 18 regardless of the idea of their offense and guaranteeing clear controls on most extreme sentences for kids with ensured intermittent audits of sentences and amendment of requests.

"We anticipate proceeding to work with the Government of India and different accomplices to fortify kid assurance frameworks to help families including keeping youngsters from clashing with the law," says Mr. Arsenault.

With the order of the Juvenile Justice (Care and Protection of Children) Act in 2000, a portion of India's juvenile justice enactments was gotten a line with the Convention on the Rights of the Child (CRC) and worldwide gauges. The Act centers around some key standards of a juvenile justice: hardship of freedom as a final resort, helpful and reformatory equity, preoccupation and option condemning, and isolate assurance structures and qualified workforce.

Loopholes in current Juvenile Justice Act

Although the new juvenile justice amendment act 2015 brings lots of changes in the juvenile justice system but still failed in few things such as "Age can't be a criteria for judging a juvenile as an adult because there are instances when person is physically an adult but does not possess a mental maturity of that an adult.

Also Indian judicial system lack in speedy justice as seen in the very famous Delhi rape case. As it is very well said justice delayed is justice denied.

Conclusion and suggestions

The whole objective of existing juvenile law in India is to preserve the scope of rehabilitation and prevent recidivism. But the new juvenile justice care and protection bill 2015 aimed at reduction of minimum age from 18 to 16 years for certain crimes.

It was submitted that any change in the law, as it now stands, resulting in the reduction of age to define a juvenile, will not only prove to be regressive but would also adversely affect India's image as a champion of human rights.

It is being argued that it will be a greater crime to put them in prison with adult criminals. The study says that young adults are more susceptible and unstable in the emotionally charged situation. Also in various other studies and surveys, it was found that the rehabilitative juvenile justice system has always found to lead lowering the arrest case. It would rather be more helpful for the society to have a robust rehabilitative juvenile law, which converts the child offenders into responsible and reformed adults so that they can never attempt such

crimes which they have done and educate others in their locality.

However, according to me, age cannot be a criterion for judging a juvenile as an adult. Nevertheless, it should be the intention or mental capacity to understand the nature of the crime. It would be too unjust to the country if the offenders of such heinous crimes are pardoned just because they did not fulfill the age criteria. If we want to provide true justice to the victims and its relatives of such incidents, we will start with this little step to surface the way for wonders to happen. Justice delayed is Justice denied. To understand this very simple statement, it took all of India, one barbaric rape case to question the Juvenile Justice system. After all, *let's remember, criminals do not fear life, they fear death. And death is an ultimate deterrent.*