



The Loopholes in the Current Juvenile Justice System of India- Juvenile Justice(Care and Protection of Children) Act 2015

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Abstract

Juvenile justice system in India has garnered considerable scrutiny ever since the well known Nirbhaya case. The Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on the 15th of January 2016 and repealed the Juvenile Justice (Care and Protection of Children) Act 2000. The government justified the new Act as a measure which would have a deterrent effect on potential juvenile delinquents. The aim of this research paper is to critically analyse the newly amended Juvenile Justice Act based on previous articles, journals prepared by distinguished scholars. The question arises here is whether the introduction of the new approach in law was indeed necessary. The current paper has been written in the light of the amendments made in the Juvenile Justice Act and would shed some light on whether the system is retributive or reformatory in nature. This paper as well believes on the preventive measures that should be carefully looked into since there is an increasing trend in the crimes committed by juveniles in India.

Keywords: Delinquency, juvenile justice, loopholes, measures, rehabilitative

Introduction

"Our children are the rock on which our future will be built, our greatest asset as a nation. They will be the leaders of our country, the creators of our national wealth who care for and protect our people". - Nelson Mandela

Children are the heart of the country. They are the country's most valuable assets and are the harbingers of change for a nation. Thus, children should be given the opportunity to grow in a conducive environment with love and

care, allowing them to reach for their goals and become better individuals. This is because they are the leaders of tomorrow. On the contrary, harmful and negative surroundings, inequality in the treatment of children may result in developing juvenile delinquents.

Historically, the word 'juvenile' originates from 'juvenis' which is a Latin word that means young. Juvenile justice is the legal system that aspires to protect all children irrespective of their race and religion, bringing within its scope the children who have been in conflict with law and needs protection. However, the term "juvenile justice" is used together and often interchangeably with 'delinquency' – which means the act of children who commit a crime in the eyes of the law.

Besides, juvenile Justice System is the most progressive and vital legislation for children. The newest amendment in this regard was the Juvenile Justice (Care and Protection of Children) Act 2015. On the 7th of May 2015, The Juvenile Justice Act was passed by Lok Sabha and subsequently by Rajya Sabha on 22nd December, 2015 and received Presidential assent on 31st December, 2015. It was implemented with the hope of rehabilitating offenders with their overall development focusing on their mental development. Hence, this paper aims to criticize the current Juvenile Justice Act 2015, to check the validity if the implementation is truly aimed at reformation or mere punishment of juvenile offenders.

The question is what determines the cause of the offence committed by a juvenile, is it the lack of maturity based on his age or there are other social problems related to it? On what basis was the new Act enacted? Did the government get swayed by emotions of the public after the ferocious "Nirbhaya rape case" and is it really imperative to amend such a key legislation? The paper looks into these questions.



In India, before passing of the Children Act, 1960 there was no consistency regarding the age limit of juvenile offenders, almost each state had its own distinction or meaning of a child/juvenile. Bombay Children Act 1948 defined "Child" – "means a boy who has not completed the age of 16 years or girl who has not completed the age of 18 years" [1]. The U.P. Children Act defined "Child" – "as a person under the age of 16 years". Under the A.P. Children Act 1920 "Child" means "a person under 14 years and when used to reference to send to certified school applies to that child during while period of detention notwithstanding that the child attains the age of 14 years before expiration of that period"[2]. The Saurashtra and West Bengal defines "a Child as a person who has not attained the age of 18 years". Haryana Children Act has also maintained this difference in defining "child as a boy who has not attained the age of 16 years and a girl who has not attained age of 18 years"[3]. Juvenile Justice Act, 1986 defines "a juvenile or child, who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age". Government of India while discharging its international obligations revoked the JJA Act, 1986 by 2000 Act and the distinction regarding the age between male and female juvenile was removed from the legislation. There was definitely impartiality in terms of age for both the boy and the girl. According to the 2000 Act age of juvenile for both male and female involved in conflict with law has been fixed at 18 years. A juvenile in conflict with law under the JJ (C & P) Act, 2000 is "a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of said offence". Looking into the current legislation which is the Juvenile Justice (Care and Protection) Act 2015, the provision section.2 (35) defines, "juvenile means a child below the age of eighteen years".

History Of Juvenile System In India

There have been some significant changes in the Juvenile Justice System of India in the past few years. After India's Independence, the Children Act, 1960 was enacted. This Act was adopted in the Union Territories, but not in all of the states and hence different states or parts of the country practiced different law. The Supreme Court in *Sheela Barse V. Union of India* observed 'we would suggest that instead of each State having its own Children's Act, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country'[4]. To protect and care the children that have been neglected, and reform the juvenile delinquents Juvenile Justice Act 1986 was passed. Due to certain drawbacks in the legislation and to strengthen the juvenile justice system, this act was soon replaced by Juvenile Justice (Care and Protection of Children) act, 2000. The reason for the replacement is that it did not provide the apt approach to delinquent juveniles and neglected juveniles. "The aim of J.J.A. 2000 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 cater for their ultimate rehabilitation through various institutions established under this enactment"[5].

Besides, The Juvenile Justice Act, 2000 is the significant framework for juvenile justice in India. This legislation states that juvenile offenders may be kept in

1. Observation home
2. Children Home
3. Special Home- after 3 years being detained irrespective of the type of



offence, he or she will be remanded in this home.

Those children who need attention and care while proceedings are going on, need to be kept in a "Children Home".

The objective of sending the child to this home is believing that the child might change due to his lack of maturity and capability of making the right decisions. In other words, it is to rehabilitate the child into the society and bring normalcy and a better growth into his life.

The Nirbhaya gang rape case in Delhi not only shook the whole nation but people all around the world questioned the Indian Justice system. This is mainly because from the five accused, one of them was a minor aged 17 years. The crime woke the people from their slumber to the glaring reality of the juvenile justice legislation in India. This is because, the 17 year old who was a minor got away with just 3 years imprisonment for crime of such a brutal nature. Therefore, a bill was introduced in the Parliament in 2014 by Maneka Gandhi, to allow 16 year olds to be tried as adults. After getting approval from the Cabinet, the bill was introduced in both the houses. According to the 2015 Act for a crime committed by a child, who is of sixteen years, the Juvenile Justice Board shall conduct a preliminary assessment with regard to his mental and physical capacity, his or her maturity level to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence.

Materials and Methods

This doctrinal legal research has selected the area of legal liability pertinent to juvenile delinquency in India especially on the amendments made in the law. India is the focus because it is a country that is highly populated and has made headlines in the newspapers worldwide mainly for juvenile crimes.

This research utilizes the comparative analysis approach by reviewing and comparing articles

written by various scholars. The reviewer read about 30 articles on juvenile delinquency in India and other related materials in order to get a better understanding on the topic.

An Overview Of Juvenile Justice (Care And Protection Of Children) Act 2015

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides the legal mechanism for the protection and care of children especially the juveniles. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of its implementation, there were several issues that arose such as delays in adoption, inadequate facilities, increasing incidents of abuse of children in institutions, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children and so on. These issues highlight the need to repeal the existing law. Hence, Parliament has now enacted Juvenile Justice (Care and Protection of Children) Act, 2015, its aim is to amend the law relating to children in need of care and protection and fill in the necessary gaps.

As discussed in the previous legislations, there was no single provision on the procedure for determination of age of a juvenile. Section 94 of the Act states that where it is obvious to the committee or the board based on the appearance of the person brought before it, then the said person is a child, the Committee or board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry as the case may be, without waiting for further confirmation of the age[6].

Over a period of time, there have been a number of changes that have been made in the amendment of the legislation. The most obvious change that has caused a buzz in the public is the minor accused of age more than sixteen should present before the Juvenile Justice Board and then the board will decide whether the juvenile should be tried as an



adult or to be sent to the rehabilitation center. This method is judged based on the mental and physical capacity of the child.

Besides, this Act treats a minor of age sixteen-eighteen years as an adult if he has committed any heinous crime in a conflict of the law. Minor who have committed a serious offence may be tried as an adult only if he is apprehended after the age of twenty-one years.

Following are the important changes that have been made in the legislation:

- a) If a minor who commits a serious crime who is apprehended after the age of twenty-one years then the punishment is he or she will be tried as an adult and imprisoned for three to seven years.
- b) If a minor of the age of seventeen years commits a heinous crime and is apprehended below the age of twenty-one year then the prescribed punishment is based on evaluation of mental and physical capacity, etc., may be tried as a child (max. three years) or adult (more than seven years)
- c) If the minor commits heinous offence or serious offence and is apprehended after the age of twenty-one year, then the case will be tried as an adult and imprisonment of 7 years and above is prescribed.

Discussions & Results

Based on the article (Dr Smita Agarwal & Nishant Kumar , 2016) it was mentioned that the National Crime Records Statistics 2016 showed there was a rise in juvenile crimes and not all were committed intentionally. It was held that "if these children are provided with healthy atmosphere, they can grow to become responsible citizens"[7].It is true that a healthy atmosphere would be able to create such a difference. The current Act with the purpose of reformation and rehabilitation of juvenile justice has been argued by scholars not being able to provide a good and healthy environment for the juvenile delinquents. This has been discussed below.

Based on the Table 1 below, it shows that the highest number of juveniles comes from families that are together i.e living with parents. The question here is, the Government continues to amend legislations as a deterrent effect, in making sure that the offenders would not commit a crime again but is the grassroot of the main problem being tackled yet ? Here it shows, family relationship plays an important role.

Table 1 : Family Background of Juveniles

Year	Living With Parents	Living With Guardians	Homeless
2010	24,549	4,082	1,672
2011	27,577	4,386	1,924
2012	31,639	5,793	2,390
2013	35,244	5,800	2,462
2014	38,693	7,905	1,632
2015	35,448	4,315	1,622

Source: (National Crime Records Bureau)[8]

There have been a number of articles that truly supports the paper that a good relationship with family succumbs the growth of juvenile delinquents. The quality time spent with the family members, the control or the authority the parents have over the child's behavior, the emotionally linked relationship the child develops with his/her family and the healthy home environment all combine to make the family most important for the child 's development [9]According to (Kaufman & Reiner, 1964)[10]"Early childhood experiences within the family determine in great part how the youngsters will be moulded and will eventually adapt to the external environment." During childhood the family is an entity that constitutes the basic ecology in which the child's behavior is manifested either by positive or negative reinforcement.[11]

The Juvenile Justice (Care and Protection of Children) Act 2015 is based on the flawed assumption that sending children to the adult courts will solve the problem the nation is



facing which is an increase in the juvenile crimes. Unfortunately, this assumption has been derived primarily because of the systemic failure of the implementation of the Juvenile Justice Act 2000 in spirit. Hence, as most scholars have argued that the current system and infrastructure is not being able to do justice to the enforcement of the new legislation, and many gaps are yet to be filled.

The new Juvenile Justice Act intends to adopt a "two-stage process" to ensure justice to children who fall within the ambit of this legislation. The Juvenile Justice Boards have been given the responsibility to determine the mental capacity and maturity of these offenders whether they should be tried as adults. This process is highly significant as an innocent child will have to face the brunt of injustice if the Board makes a mistake.

This paper further questions, in their current state, are the Juvenile Justice Boards equipped to take up responsibility and reach a fair and transparent decision which would impact the long-term future of the children involved? This process itself is tedious and has raised eyebrows amongst many people in general.

Research done by (Bonnie & Scott, 2013)[12] shows that assessing the maturity level of adolescent is impossible and if it is done it is "exceeding the limits of science". The assessment thus proposed the decision made by the Board could lead to marginal errors and arbitrariness and would eventually lead to injustice if the child is mistakenly tried as an adult.

Furthermore, there is a shortage of counselors and child psychiatrists in India. The credibility of the Board members is highly questionable. With the growing backlog of cases, the Justice Boards could come under heavy public pressure.

According to Naesha, most child right and women right activists argue that the act is a regressive step. It merely illustrates public anger over Damini's or widely recognised as

Nirbhaya's case, and such a step had led to retributive justice and not juvenile justice.[13]

Besides, in a rehabilitative or restorative approach, to juvenile crime the state machinery therefore attempts to reform the offender, this is an initiative to protect the State from future harm. The juvenile delinquent is a mere passive recipient of the State efforts and the victims of the crime are absent from the picture[14].

Looking at the provisions of the legislation closely, this paper believes that trying 16 to 18 years of juveniles as adults, sending them to adult prisons for at least 7 years or more does not even leave a possibility of reforming these offenders. These offenders who are of tender age need care and protection, this is a gap in the current Act. Although it has been argued by various scholars that the motive of this Act is to provide greater protection, this paper does not see it in that way. A more depth discussion on this area can be seen in the next chapter.

This paper would submit that in a highly populated India, justice and vengeance are often combined. The new Act, that enables juveniles between 16-18, to be punished as adults is conceptually flawed. The objective that can be seen is to punish those who have committed heinous crimes, instead of focusing on the reintegration of the society and reforming the offenders to better individuals. This paper proposes that the idea of an Act is not to establish a system that is harsh, but rather a more effective system that would lead to a decrease in the number of victims.

It is also important to note that very few children who enter juvenile homes change. Sending delinquents aged between 16 and 18 years to adult prisons for seven years or more will likely ensure that there is little chance of their reformation. Spending such a prolonged period in jail with other criminals will make it hard for young delinquents to come out of the cycle of committing crimes and being punished. They tend to commit the crime again. This is the age where young adults or



adolescence get easily influenced. Being in jail with other inmates is indeed not a healthy environment.

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. It is also enumerated in the United Nations Standard Minimum Rules for the Administration of Juvenile, 1985 that the prime importance should be given to the juvenile Justice and while considering a juvenile in conflict with law. That means one must give importance to “circumstances of both the offenders and the offence” but in the current Act only the type of crime is given importance. In *Pratap Singh v. State of Jharkhand*, 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[15]. However, in the present law, this psychological component has been given least importance.

Conclusion

In a nutshell, it is clear that every child needs care and protection. A proper justice system that would be able to cater their needs for a better future is utmost important in any nation. Whatever amendments are to be made in the Act should be in the interest of the juvenile justice. There are many drawbacks of the current Act, instead of focusing on changing or making amendments in the Act, a better education system should be designed for children because in India they spend most of the time in school than being at home.

The most urgent and prominent area of reform therefore, is not of the law, but of the way it is being implemented. If the law is implemented

in letter and spirit, and services are designed and delivered by dedicated professionals from various disciplines, juveniles alleged to or found to have committed serious crime can indeed be reformed, rehabilitated and re-socialized. Currently, the system is bogged down by the inadequate amount of facilities and staffs that lack the qualifications and training that render the legislative goal of re-integration of juveniles a distant dream. There is often misunderstanding and no initiative to taken to treat children the way they are and not as adults.

The Government needs to realize that the objectives of ensuring public safety and prevention of juvenile crime cannot be achieved by adopting an overly penal approach, repeal of laws, amendments of legislations. Instead, greater investment is required in designing child friendly and impactful rehabilitation programs that will be effective. The Ministry of Women and Child Development must, in collaboration with the Commissions for Protection of Child Rights work together in implementing such programs in the nation.

Several researchers have promoted a positive youth development model to address the needs of youth who might be at risk of entering the juvenile justice system.

One positive youth development model addresses the six life domains of work, education, relationships, community, health, and creativity. The two key assets needed by all youth are (1) learning/doing and (2) attaching/belonging. When the necessary supports and services are provided to assist youth in the six life domains, it is expected that positive outcomes will result[16].

Hence, this paper further submits on the desire of the reviewer to partake a depth research on how the juvenile delinquency cases can be decreased in India. The reviewer believes that India should not be known for the wrong reasons, such as a “Delhi – Rape contingent”, “India not being a safe country” etc.



There are a number of loopholes in the current juvenile justice system in India. The focus should not be mainly on repealing the law but initiatives should be taken to provide better education facilities in schools with the emphasis on Moral subjects, parents should cultivate good values in their children since young and youth programs should be actively organized especially in rural areas where the income earnings are low.

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