



Juvenile Justice system in India

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Abstract

“A nation’s Children are its supremely important asset and nation’s future lies in their proper development. An investment in Children is indeed an investment in the future. A healthy and educated Child of today is the active and intelligent Citizen of tomorrow”.

Dr.Nagaraj.M.Muggur

Children are valuable fortunes without bounds and they are the most important resources of a country and society. It is the obligation of State to care for them with a view to guarantee finish advancement of their identities. Since Society expects them to grow as responsible Citizens of the future, they need special care, protection, affection and facilities because of their tender age, physique and underdevelopment mental faculties. The dynamics of Juvenile offenders is completely different from that of other offenders. Therefore, these Children require special attention, treatment, care and in their interactions with the Juvenile Justice System. One of the main aspect of the juvenile justice system is to provide proper treatment of the children as by various institutions. The child is the national asset of the nation. Their need and care are our responsibility. Therefore, it is imperative for us to uplift children. Children are forever innocent and they are unaware of good and bad. They are not physically and mentally fit than adults, so the children are to be treated physically and mentally in a whole instance for their better upliftment. The Child's right has to be recognized and he shall be treated with due decency and dignity. The theory of the Juvenile court is to rehabilitate Juvenile offenders and not punish them. On an analysis made, it was found that there is less amount of literature available for Children in conflict with law whereas the literature available for Children in need of care and protection is comparatively high.

The legislations relating to Children recognize that Juveniles in conflict with law also require care and protection, in reality, the treatment made to Juvenile offenders is shockingly bad. In India there exists a Juvenile Justice Delivery System for Children in conflict with law. The reason behind the fact why Children get themselves involved in crimes, the circumstances which forced them to do a criminal act, the age in which most of the offence occurs a study with regard to the living condition of the Juveniles in that particular area, their economic, social

and educational status, family background, habits and their relationship between parents, mental and physical condition and the causes for the delinquency level was studied, so in this paper we will discuss the whole scope and parameter of the juvenile justice system according to the rising challenges in this century.

The Concept of Juvenile Justice System

Concept of juvenile justice system was emerged from a thought that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the structure of the traditional processes of criminal law. The Juvenile Justice System is designed to respond to the needs of young persons who have been convicted for a crime and their rehabilitation with reforms. Main objective of the Juvenile Justice System is “to provide and preventive treatment services for children and young persons and then secondarily rehabilitation, and improved socialization”. During the Seventh United Nation Congress on prevention of Crime and the Treatment of Offenders, three approaches to juvenile justice were identified, namely, firstly the due process model, secondly the welfare or parents partial model and third is the participatory model. The Juvenile Justice System is one of measure taken by the government to achieve the dream of the Constitution of India concerning to the welfare and care of children. The Constitution recognizes the special status to children through Articles 15(3), 21-A, 24, 39(e) and (f), and 45. The treatment of offenders is recognized by three models of juvenile justice system on the basis of existing approaches to deal with juvenile delinquents;

- (a) The due procedural model
- (b) The social welfare model and
- (c) The participatory process model

The approach of first model is based on “the notion of legality, role of the law and due process, the experienced/professional lawyers taking the main decisions”. The approach of second model is based on “concept of economic and social justice through State planning with administrators and professional. The first two models are important for the proper development and protection of the juveniles. The approach of third and last model resolves the problem because juvenile justice can be more significantly take place at the international level, with more participation of general public in resolving of inconsistency at the narrow level with a minimum interference of the centralized power structure of the modern nation.

Justice Krishna Iyar.

“Child is the father of man” and “for fathering of a pulsating man, the child need to be nurtured well. A child must have education, knowledge of world and groomed in an atmosphere where on future age, he would become a man with mission”.

“the importance of a child has been highlighted observing that including the children being lights to the society as a whole. The nation will sooner get deprived of the potential human

resources for social development, economic empowerment, law and order and social stability if the children of that nation are deprived of their childhood socially, mentally and financially.¹

What is Juvenile Delinquency

Delinquency is deviation in the behaviour of a child or the abnormal behaviour of a child. Delinquent usually refers to a person who shows illegal behaviour and has deviated from course of normal social life. Whenever a juvenile below an age defined under various standards exhibits such an illegal and antisocial behaviour which may be harmful to the society, may be called as a Juvenile delinquent. Juvenile delinquents are those who commit any offence and are under 18 years of age including both boys and girls. A Juvenile delinquent is a young person who is rebellious and non obedient.

Act of delinquency may include:

1. Absconding from residence without the parents permission.
2. Habitual misbehaviour beyond control.
3. Use of bad languages
4. Wandering uselessly and Gambling
5. Indulging in Sexual offences
6. Shop-lifting/ Pick pocketing
7. Theft/stealing etc.

Juvenile can do such criminal acts alone or through a gang. There are few other factors which may lead them to be a delinquent. Some of the factors are listed below:

School bunking and dissatisfaction - Some juvenile/students not dissatisfied with their school life. Lack of sports facilities in school, discrimination of the teachers towards them, irresponsible behaviour of parents toward them, unmanageable teachers students ratio are such examples. These disappointed students usually not come to school and become regular absentees from the classes and start wandering idly and become pick pockets, smokers and drug addicts, gamblers, eve teasers etc. Cinema and pornographic literature - Cinema, T.V and obscene literature generally provokes sexual and other impulses in teenagers. Hence they commit crimes while satisfying their desire and adventure. Inner desire, pressure and temptation. Juvenile get tempted and try to imitate the same on hearing the incidence of the illicit sex experiences or any other criminal experiences from others. In accordance with psycho-analytical view, the delinquent "is a person who is governed by the pleasure principle. They wants to get immediate pleasure and satisfaction for his needs in short term. Thereby they become victim to his own impulses. Environmental factor also leads to delinquency". We have to accept that juvenile delinquency is a grave problem and it can't be sorted out by efforts and means of legislation and government alone. As much as India is concerned, Children Acts themselves have many shortcomings and neither have they been effectively enforced in many

¹ In Bandhua Mukti Morcha's case

of the states due to which the government alone is not competently able to curb the problem of juvenile delinquency. Therefore the government as well as private agencies must work all together with all sincerity and seriousness to find out the reasons and the effective solution for the problem of juvenile delinquency which is increasing year by year in our society. And also the general behaviour of public towards these Juvenile delinquents should also be changed and people must treat them as normal children of any society.

History of Juvenile Justice Act

During British Raj, in 1897 Reformatory schools Act was introduced in India, the Madras Children Act, Bengal Children Act, and Bombay Children Acts were introduced in the years 1920, 1922, 1924 respectively. In the year 1960, a model legislation Children Act was passed for use in Union Territories. Criminal Justice administration as per the Constitution of India is the subject of the State; the State governments have passed special laws for trial and punishment of the offenses committed by children which also included the special institutions for treatment of such underage criminals.

The primary legal frame of juvenile justice law in India was Juvenile Justice Act 1986, which provides protection, treatment and rehabilitation of children and delinquent juveniles and for the adjudication of certain matters related to the disposition of delinquent juveniles and also it repealed all other Children Acts and provided for a uniform legal framework for the juvenile justice system throughout the country. Again in 2000, The Juvenile Justice Act was re-enacted with some modifications. It came into effect in April 2001 and many major amendments were made to it in the year 2006 and 2010.

And in the wake of Delhi Gang Rape in 2012, an new Act was passed Juvenile Justice Act, 2015 which was an complete and consolidated act, considering the provisions of the Constitution, Convention on child rights 1992, the UN Standard Minimum Rules for the Administration of JJ, 1985., the UN Rules for the Protection of Juvenile Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993), and other related international instruments.

JUVENILE JUSTICE SYSTEM CHALLENGES AHEAD

The brutal Delhi gang rape case has bought forth a new aspect of criminality that India's justice system needs to address urgently. One of the accused, as per police record and, according to reports, the most aggressive of the lot who brutalised the young girl, is a minor of 17years. Reports have shown that it was the minor who first lured the unsuspecting victims into the bus and that he was the most aggressive in the repeated rape of the victim.

In India the sentencing and trial of juvenile offenders is mandated and governed by the Juvenile Justice Act 2000. Section 1(4) mandates that all cases involving detention, prosecution, penalty and sentence of imprisonment involving juveniles shall be governed by the Juvenile Justice Act. Section 2(1) defines a juvenile as any child who has not yet completed eighteen years of age. Section 15(1)(g) of the JJ Act further mandates that a juvenile convicted of any offence can be sentenced to be sent to a special home for a period of three years, maximum and thereafter be released on probation.

What this boils down to is the fact that in case the accused happens to be a juvenile the maximum time that he shall serve is three years or 1095 days in a special rehabilitation home.

In India it is easy to notice that rather than have a flexible procedure for sentencing we have opted for a rigid and sweeping one. This is a system in which the maximum amount of sentence served by a delinquent who say partakes in armed robbery in order to feed himself is the same as the one given out to a serial rapist or murderer; just so long both are under eighteen years of age.

The biggest reason for our current system is the supposed rehabilitation of the offenders. A glimpse of this may be found in the rechristening of the word offender to 'Juvenile in conflict with the law'. While the swanky name change is an earnest and somewhat romantic gesture at our societies' endeavour in recognising and unleashing the 'good' within each child, there is an inherent problem with the term of the sentence. There is no logical or scientific reason which shows that total and complete rehabilitation can be achieved by a delinquent/ offender/ child in conflict with the law within a maximum period of three years.

In the case of the Delhi rapist, even if one were to say that the boy needs to be rehabilitated and that perhaps the reason for his barbaric and animalistic act was a deep-rooted psychological problem, there is no assurance that the issue can be dealt with in three years. Of course, the absolute lack of implementation of the provisions of the JJ Act after a juvenile completes his sentence is another concern. India's massive population makes it impossible to track and ensure that a juvenile once released continues with his therapy or even reports regularly to his parole officer. With this basic and undeniable truth it is a matter of simple calculation that in all probability the Delhi rapist shall be on the streets within the next three years that's 1095 days with nothing more than a stint in a special home in the name of absolute and complete Rehabilitation.

IMPACT ON INDIAN SOCIETY WITH REFERENCE TO DELHI GANG RAPE (NIRBHAYA) CASE

The horrific gang rape of a 23-year-old woman that resulted in her death has raked up the issue of safety of women in India like never before. For the first time undreds marched seeking justice and greater safety for women, and the harshest possible punishment for those guilty. The subject also sparked debates over how the law should deal with juvenile offenders and how India can be made safer for women.

Legal changes

The definition of rape was expanded to include penetration by objects or any body part. "Sexual abuse in all its forms including sexual harassment, stalking and voyeurism was made illegal," India's additional solicitor general, Indira Jaising.

Moreover, fast-track courts were established to speed up trials in sexual assault cases which earlier took years to conclude. Some ten months after the crime, such a court found four of the adult suspects guilty on all counts and sentenced the men to death by hanging.

The ruling was handed down only a few days after another suspect was also found guilty. But unlike the four adults, the teenager defendant was sentenced to

only three years in a correctional facility - the maximum penalty allowed for a juvenile offender under Indian law.

The fact that the teenager was tried in a juvenile court sparked protests and heated discussions across the country on a possible reduction of the legal age of a juvenile. Only five of the six alleged attackers faced legal proceedings because the reported ringleader and regular driver of the bus died in jail in an apparent suicide.

In the spotlight Experts point out that the widespread media coverage of the case has also led to an increased awareness of the issue of violence against women in Indian society. "Women have been forthcoming in reporting crimes against them. They have been empowered by law and the response of civil society," said Jaising.

This view is shared by K.T.S. Tulsi, a senior lawyer practicing in the Supreme Court of India. According to the lawyer, the social stigma associated with rape is getting reduced. "Girls are becoming more assertive and they are open to complaining. They don't feel that the society is going to stigmatize them".

This development is supported by the latest government figures. According to local media reports, 1,330 cases of rape were reported to police in New Delhi this year until October, against 706 cases for the whole of 2012.

Despite the increased attention on women's issues, activists say crimes against women are on the rise. In the latest high profile case, police arrested the editor-in-chief of India's leading investigative magazine, Tehelka, late November after a female colleague accused him of sexually assaulting her. The investigation into TarunTejpal - who denies the accusations -has dominated headlines in India for days, followed by similar accusations by an intern against a retired Supreme Court judge.

BALANCING THE JUVENILE ACT

On August 31, 2013, the Juvenile Justice Board (JJB) ordered that the boy who raped Nirbhaya, brutalised her with an iron rod, pulled out her intestines and then cleaned up the bus and made tea would go virtually free by sentencing him to only 28 months in a remand home as eight months of the total 36 months' sentence had already been served. This order is subject to review by the JJB based on the behaviour of the juvenile and the police are required to expunge this crime from his record in order to ensure complete rehabilitation. Despite the unprecedented street protests following the Nirbhaya rape, there has been little substantive debate on the adequacy of the Juvenile Justice Act to deal with such heinous crimes. Underlying principle

The JJ Act was passed in 2000 with the purpose of incorporating into domestic law India's obligations under international law as a signatory of the U.N. Convention on the Rights of the Child of 1989, the U.N. Standard Minimum Rules for Administration of Juvenile Justice (1985) (known as the "Beijing Rules") and the U.N. Rules for the Protection of Juveniles



Deprived of their Liberty (1990). Underlying these international texts is the legal philosophy that juveniles lack the physical and mental maturity to take responsibility for their crimes, and because their character is not fully developed, they still have the possibility of being rehabilitated. This basic principle underlies the juvenile justice systems in many countries, including the United States and the U.K.

AMENDMENT OF EXISTING LAW A BROAD PERSPECTIVE

Views In Favour

1. Ordering a convict of heinous crimes such as rape and murder to spend just three years in a correctional home is not going to deter others from committing crimes against women

The basic purpose of law in any country is the smooth functioning of country without any chaos and disturbance, etc. But, the juvenile act in our country seems to be defeated by this very basic and prime purpose of law. Giving a punishment of imprisonment for just 3 years and that too in a special home atmosphere for the heinous and grievous acts, such as of rape and murder, no where seems to meet the ends of the justice or the purpose for which this law was enacted. JJ Act needs amendment as it does not talk about the physical or mental maturity of a juvenile. The 2 main components of any crime in law is "Actus Rea" and "Mens Rea" and when both the components are proved in the court of law, then only an individual is convicted. Now, in the case of a juvenile, the actus rea part of his offence is protected under the juvenile law and the mens rea part is never taken into consideration, as there are no parameters to judge the same.

Having no parameters about the physical or mental maturity of a juvenile, it has like given a license to "all matured, cruel type of persons under the age of 18 years to live with full impunity and commit any crime of any level and walk scot free only on the basis of their age being less than 18 years and being covered under the Juvenile Justice (Care & Protection of Children) Act." The mental maturity of the juvenile is to be judged on the fact if he was fully aware and conscious during the execution of the crime. If not then an adult of the age of 30 who has committed a crime unintentionally should be tried at the juvenile court for the reason that he was not mentally alert. The researcher would vow that age is no reason to exempt somebody who has brutally raped and been the reason for the death of a future Indian when he was completely aware and conscious of what he was doing. A hard step now can be a warning to the many young minds who grow up today and design their perspectives for tomorrow considering the handling of law in their hands just for fun.

Anti social elements may use children as means of conducting serious crimes

Following the JJ Act blindly in black and white, without providing it any scope for flexibility to meet the ends of justice or the intention behind the enactment of that act is ultimately heading towards in altogether a very different, which anyone of us would have never thought of and this strict abidance of the law is ultimately proving a "BOON" for the actual doers or master minds of the crime. They are hiring the poor and needy minors in allurance for small amounts of money to execute their acts, because they know very well that JJ Act would be acting as a safeguard for them and ultimately what at max. they can be punished with is a mere



imprisonment for a period of 3 years, no matter how heinous the crime is. Instead of having a sense of fear to the JJ Act as a piece of law, they are using it as a "gateway pass" for their crimes.

JJ Act was unconstitutional and that it violates the right to life by shielding criminals

The prime purpose of any law in a country is to provide justice to the victim and punish the accused for its wrongdoing. But our JJ Act seems to be defeating this purpose, as it is in a way providing shield to the criminals, as what max. they can be awarded is a tiny punishment of imprisonment for a period of 3 years, even for the most heinous and grievous crimes, such as of murder and rape, on the basis of hollow reasoning that he just few months and at times days lesser than completing his 18. But, what about the physical, mental and reputation harm that has been caused to the victim, due to his heinous act. The heinous crimes such as rape, murder etc are crimes which totally destroys the moral of the victim's family and if it's a rape then it's a lifelong stigma for the girl and her family member. Especially in the rape cases, most of the time victims are shunned from the society and are left unmarried just because that she was not physically strong enough in order to fight for her freedom from the clutches of the person or persons. Many offenders of these crimes walk free after serving a minimal period of sentence after being proven juvenile as per the so called records. Since, in the situation as in which the JJ Act as of now stands, seems to be defeating the very purpose of law in any country, its constitutionality can be challenged on the same. The records do not at all times presents the actual age of the juvenile

Laws should be dynamic in nature and should change with the changing society It is a famous saying that whatever will not change with the changing time, will ultimately result in failure and so stands for the law as well. Society is not static, it is dynamic. Its needs change with time to survive. It is correct to reform and rehabilitate a child in conflict with law, however we should not send a signal in society that a person below 18 years of age can commit any kind of heinous acts and still get away with a minor penalty . So, need is to take into account mental maturity age of person and not just chronological age while deciding the case. Facilities at reformation centre should be improved so that real rehabilitation happens rather than just lip service. Today, with breakdown of joint family system, rise of nuclear family, increasing influence of social media children are exposed to a number of threats -psychological, physical, sexual. In our country inspite of political equality, inequalities like socio-economical, regional, are wide spread. Need of the hour is to build character of our future generation. Society should evolve a procedure (Mentoring, etc) to supervise and guide children during adolescent age so that they learn to respect fellow citizens, RTE act should be strengthen to include children up to 18 years of age into education system, since education has a transformative effect on a person, training to deal with different crisis in life and most important patriarchal attitude of society towards females should change. JJ Act should be declared unconstitutional on the ground that it is providing a blanket immunity to the juvenile offenders and devoiding court of its discretion under sec. 83 of the IPC on the term "sufficient maturity" Many of the protestors following the nirbhaya rape case are of the view that the JJ Act should as a whole be declared unconstitutional since it standing against a very sole pillar of our judicial system i.e. court's discretion. It seems to devoid our courts of the discretion provided to it

under sec. 83 of the IPC, as the JJ Act is acting as blanket immune for the juvenile offenders and the courts are left with no discretion in their hands.

Biological changes in the human body demand the change As the societal atmosphere is changing, the level of maturity, whether be it either mental or biological is also changing. A lot changes have taken place in our society, since the last amendment in the JJ Act on the age issue in 2000. The level of maturity that a juvenile of 16 used to have at that point of time is entirely different from what he is having today. According to Dr.Prannoy Roy, a lot biological changes have taken place in human's body as compared to 2000. The age of the puberty of an individual, be it a male or a female has shifted earlier. So, when the time of maturity, based on which basically the age of a juvenile was decided has changed, the age of a juvenile should also stand amended. Right and wrong can be judged at the age of 16.

VIEWS AGAINST

The aim of the Juvenile Justice Board is not to punish but reform offenders The basic aim behind the enactment of the JJ Act as well as forming up of the JJ Boards was to reform the offenders and not to punish them. The basic aim and approach with which the JJBs are suppose to work is to somehow reform the child and not to punish him like the other courts. If only this is to be done by the JJBs, then there was no need to set up boards like JJBs, the same was already being done in a very nice manner by our judicial courts of law. The basic ideology for enacting an act with a such a type of differential approach was to save children from devastating ill-effects of criminalization, penalization and stigmatization, in short, the "welfare" of the children and not to punish them. There was no concrete data to prove that stiff punishment resulted in the lowering of the crime rate anywhere in the world .If at all, we lower down the age also, there has been concrete data or evidence neither of India nor of any foreign country, where stiff or harsher punishment for any crime has ultimately resulted in the lowering down of that crime rate anywhere in the world.

- Increase in the age of the juvenile from 16 to 18 doesn't mean that we have opened the gateway to include more criminals under JJ Act, and the statistics clearly supports that* The basic purpose of increasing the age was to protect more juveniles from the punishment of their unintended and under innocence crimes

It is argued by some, mainly the Superintendents and staff of Observation Homes and Special Homes, that due to the increase in the age of boy juveniles under the 2000 Act, a much larger number of juveniles in conflict with law are entering the juvenile justice system, therefore, the existing infrastructure is insufficient to cope with this added burden. Some officials have publicly demanded that the age of the boy juvenile be reduced to 16 years. This demand is irrational and defeatist and can never be entertained. It is essential to understand that reducing the age to 16 is not an option. Furthermore, statistics belie this contention. Statistics denote an initial growth in the juvenile crime rate in 2001, but the same soon thereafter stabilized. The following figures have been reproduced from Crime in India published annually by National Crime Records Bureau, Ministry of Home Affairs, Government of India.

CONCLUSION



The heinous nature of the crime. The cover-up afterwards. The denial. They were all, to me, earmarks of someone who was acting as an adult.”- Gary Gambardella The above quote summarizes the methodology adopted to hoodwink the Indian criminal system by hardcore criminals. The law of the juvenile justice act like a system of opportunity which can be taken easily to any instance and can be mould in any way. Section 16 of the JJ Act lays down provisions for orders that may be passed regarding a juvenile, wherein the maximum penalty a juvenile has to pay is to remain in the observation home for three years or till he attains the age of twenty-one. although the Supreme Court found that the accused had in fact committed the offence but had to quash the sentence as the accused was already twenty-eight.²years of age and could not be sent to an observation home. A highly controversial case and has been criticized to the core but the court seems have to have taken a contrary view from the earlier case because it is known to have taken same set of persons which evolve juvenile justice action till they turn 50 years of age. The problem with this decision was that it set the same yardstick for everyone – whether a serial criminal or a petty offender So, an amendment in the existing act is definitely necessary in order to thwart any attack on the nation. Apart from terrorists taking advantage of the lacuna in the system, serious crimes like rapes and murders also go unpunished with the offender wearing the garb of juvenility. The legislators of the country have their task cut up as they need to work out a middle path that takes the country’s and society interest into account but does not go to extremes like in the case of Arnit Das.³

² Bhoop Ram. V. State of UP ,

³ Arnit Das v. State of Bihar