



AGE OF CRIMINAL RESPONSIBILITY UNDER JUVENILE JUSTICE

ACT

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INTRODUCTION

The minimum age of criminal responsibility is the age below which a person is immune from any criminal liability. It is the age in which a person is considered vulnerable and immature therefore cannot be made responsible for his actions. This is the period of childhood and adolescence and the crime committed during this stage is dealt with by most nations under special laws known as Juvenile Justice Laws. Juvenile delinquency is increasing and it is also one of the major issue faced by the world. India is also struggling with the issue of juvenile delinquency. Therefore the question that arises is whether the juvenile laws in the country are too soft and require improvement and amendment. What should be the suitable criteria to ascertain the reasonable punishment for a child? How should this special law ensure deterrence as well as restoration? To find an answer to the above mentioned questions we should understand the origin and jurisprudence behind such laws.

HISTORICAL DEVELOPMENT

While addressing the issue concerning juvenile offenders' reference should be drawn to ancient Hindu and Mohammedan laws. In Hindu law the simple ethical code stated that parents should not administer any kind of punishment to a child under the age of 5 years. They should be nurtured with care, affection and love. After the age of 5, punishment can be given in the form of admonition and later as the child moves towards adulthood, punishment must be replaced by advice. Thereafter once the age of 16 is crossed, the child should be treated as a friend by his/her parents. The idea laid down hundreds of years ago still bears a resemblance to the present Indian legal system concerning child offenders and juvenile delinquents.

Primary provisions relating to the child offenders and juvenile delinquents were first seen in Indian Penal Code, 1860, and the Juvenile Justice Act of 1986, in which the age of juvenile for boys was fixed at 16 and for girls at 18.

2.1 Human Right Issue:

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After the First World War, League of Nations issued the Geneva Declaration on the Rights of the Child (1924). Following the gross abuse and violation of human rights during the Second World War, which resulted in death of millions of people, including children, the United Nations (UN) was formed in 1945. Thereafter in 1948, United Nation adopted and declared the Universal Declaration of Human Rights (UDHR), which asserted that all human beings are born free and equal in dignity and rights, and equal before law,² it also focused on special care and assistance for the mother and child.³

2.2 UN Declaration on the Rights of the Child:

The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, adopted by the United Nations in 1959, for the best interests of the child. This was followed by the Beijing Rules, 1985, the Riyadh Guidelines, 1990 and Havana Rules, 1990. These sets of international Rules intended that policies should be evolved and applied to prevent juvenile delinquency, to establish a special Justice System for juveniles in conflict with law, to safeguard their rights and to secure social reintegration of young people. Another important principle reiterated by these international rules was that a juvenile should be dealt for an offence in a manner which is different from an adult and efforts should be made by member countries to establish within their national jurisdiction, a set of laws especially applicable to juvenile offenders.⁴ It was stated that the age of criminal responsibility in legal systems for juveniles should not be fixed too low, keeping in mind the emotional, mental and intellectual maturity of children.⁵

2.3 International Obligation:

After the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child, which came into force on 2nd September, 1990. India is not only a signatory to the said Convention, but has also ratified the same in 1992.⁶ The said Convention was also the reason for the enactment of the Juvenile Justice (Care and Protection for Children) Act, 2000 by the Indian Parliament.

2.4 Developments in India:

² Articles 1 and 7 of Universal Declaration of Human Rights, 1948.

³ Article 25 of Universal Declaration of Human Rights, 1948.

⁴ The Convention on the Rights of the Child and the Beijing Rules, 1985.

⁵ Salil Bali vs. Union of India & Anr., Writ Petition (C) No.10 of 2013, Date of judgement July 17, 2013.

⁶ UN Convention on the Rights of the Child ratified by the Government of India on 11th December 1992.



India developed its own jurisprudence relating to children and recognition of their rights. With the adoption of the Indian Constitution on 26th November 1949, constitutional safeguards were provided for weaker sections of the society, including children. The Constitution guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking, forced labour of children and prohibition of employment of children below the age of 14 years in factories, mines or hazardous occupations. The Constitution also enables the State Governments to make special provisions for children.

JUVENILES IN INDIA

The Legal basis for fixing the Age of juveniles under the Juvenile Justice (Care and Protection for Children) Act, 2000, was according to the provisions of the Constitution, various Declarations and the Conventions adopted by the country. The basis of fixing the age as 18 year was also according to Article 1 of the United Nations Convention on the Rights of the Child (UNCRC), however the same was variable where the national laws recognize the age of majority earlier.

3.1 Age of Juvenile enhanced by the Parliament:

In the Juvenile Justice Act, 1986, boys above the age of 16 years were considered to be adults, whereas girls were treated as adults only on attaining the age of 18 years. In Juvenile Justice (Care and Protection for Children) Act, 2000, a conscious decision was taken by Parliament to raise the age of male juveniles to 18 years.

3.2 Basis for Fixing the Age:

There can be 2 basis of fixing the age as eighteen for the juveniles-

a) Legal Basis: Ratification of the UNCRC and fixing the age according to Article 1 of the United Nations Convention of the Rights of the Child. b) Scientific Basis: Along with physical growth, mental growth is also important, in assessing the maturity of a person below the age of eighteen. Scientific data indicates that the development of the brain and growth of a child continues at least till the age of 18 years and only after that they can be held fully responsible for their actions.

IS THERE NEED FOR CHANGE?



One of the most infamous incident for advocating a change in the current juvenile justice system in India was the 2012 Delhi gang-rape case or the Nirbhaya case. It raised questions on the juvenile justice system in the country. A 23-old medical student was brutally beaten and gang-raped in a moving bus in the southern part of Delhi. A total of 6 offenders were involved in the crime, one of which was a 17-year old juvenile. The incident sparked several protests in the country, demanding stricter punishment for juveniles. The case also raised debate about the age of criminal responsibility and whether such age needs to be lowered or an exception should be provided for heinous crimes like rape and murder.

After the Nirbhaya rape case the Justice Verma committee was formed. The Committee recommended against lowering of the age of criminality under the Juvenile Justice (Care and Protection of Children) Act, 2000. The committee was of the opinion that any such attempt of reducing the age of juveniles, or excluding certain children from the purview of the Act, will violate the guarantees made under the Constitution and international instruments.

There is significant increase in the rate of crime by juveniles in the country. However it would be detrimental to treat all juveniles in conflict with law as criminals, because of the fact that many juvenile sex offenders, are particularly the street children and children from the poor families, they are themselves the first victims, who would have been repeatedly abused by others and turned into offenders over the period of time.

4.1 Comparative Outlook

There have been lot of debates and discussions for lowering the age of juveniles, as in accordance with the juvenile justice system in the USA and the UK. However, the change in USA and UK was due to a massive rise in the incidence of juvenile crimes. Now, the juveniles involved in heinous crimes are heard in adult courts instead of juvenile courts. Similarly in the UK, a persons under 18 is tried by a Youth Court, but for heinous crimes like murder or rape, the case can be transferred to a Crown Court.

The scenario in India is different as compared to the US and UK as the juvenile delinquency rate has ranged between 1.6 per cent and 2.1 per cent of the total crimes (which is half of the total crime rate in the US), and of these only 5 per cent are heinous crime like murder and rape (as against a substantial percentage of violent crimes in the US).

However in India what is needed to be taken into consideration is proper implementation of the juvenile justice system to achieve its objective. As according to a media report, the total



number of remand homes in India is 815 with a capacity of 35,000 but the total number of juvenile accused under the JJ Act is 1.7 million.⁷ This shows the lacunae in proper infrastructure, which is the basic necessity to be provided by the system, and we expect reformation and rehabilitation from such system. How can such an inadequate system in the juvenile justice administration provide for reformation and rehabilitation of the juvenile offenders?

One aspect of the JJ Act, certainly requires amendment which is related to the maximum period for sentencing, which is three years as per the present Act. This period is very short and is neither justifiable nor adequate for any kind of reform programme, which is the main objective of the Act. Therefore, enhancement of the period of custodial sentence and increasing it to a certain limit would help in reformation and will work as a deterrence among the juveniles in conflict with law.

However, the Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed, it replaced the Indian Juvenile Justice (Care and Protection of Children) Act, 2000, and allows for juveniles in conflict with Law in the age group of 16–18, involved in heinous offences, to be tried as adults.

WHETHER REDUCING THE AGE CAN TURN OUT TO BE COUNTER-PRODUCTIVE?

The outrage caused by the Nirbhaya case resulted in people demanding strict punishment for juvenile offenders and reducing the age from 18 years to 16 years. The SC touched upon this matter examining the question whether juvenile maturity should be used as a yardstick before referring the trial to the Juvenile Justice Board in case of serious and heinous offences.⁸ In response, The Women and Child Development Ministry proposed an amendment to charge juveniles between ages of 16-18 years of age involved in heinous crimes under the Indian Penal Code. However, the amendment faced strong opposition from agencies like UNICEF and others, citing the reason that it stands against the UN Convention on Child Rights which

⁷ Aparna Vishwanathan, “Balancing the Juvenile Act” THE HINDU, September 09, 2013.
<http://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>

⁸ Dhananjay Mohapatra, “Should ‘Juvenile Maturity’ be yardstick in trials, asks SC”, TIMES OF INDIA, Dec 3, 2013<<https://timesofindia.indiatimes.com/india/Should-juveniles-maturity-be-yardstick-in-trials-SC-asks/articleshow/26757714.cms>>



has been ratified by India⁹ further such an amendment will also result in retributive justice rather than restorative and reformative justice.

The main aim of the Juvenile Justice Act is to save young offenders from getting sucked into the criminal justice system and to give them a chance for reformation. However, such amendment would not only defeat this aim but will also not allow the offender to recover from the punishment. Following the footsteps of US and UK may not work for India as the crime reality and trends varies considerably in other countries.

The number of children being charged in US and UK is much greater as compared to India. Juvenile delinquency has been known to arise due to several factors including family influence, social environment, peer pressure, increasing divorce rates and broken families are some of the reasons for delinquency as it leaves the juveniles with an emotional vacuum. Child welfare activists in India argue that that the Juvenile Justice Act is essentially a welfare law and has been created for the care and protection of the children, if harsher punishment is allowed for juveniles, this Act would fail in its objectives. Further, turns out to be criminal due to the lack of required amenities and basic education for the child which the nation is obligated to provide. Thus, putting them behind bars and treating them like adults will not serve any purpose.

CONCLUSION

India is indeed facing an increase in youth crime which covers not just minor but also heinous offences. The Nirbhaya case caused a shock wave in the entire nation raising questions on the justice system of the country. We must understand that any offenders committing offences of such gravity, irrespective of whether they are juvenile or adult should be harshly punished, is not the ideal solution to the problem. Similarly, one shocking incident should not result in changes which might later emerge as counter-productive.

Further, in case of juveniles it is easier to reform them when they show anti-social behaviour. Thus, to take proper reformation programmes for juveniles the maximum limitation period for sentencing should be increased, which is three years as per the present Act. This period is very short and is neither justifiable nor adequate for any kind of reform programme, which is one of the main objective of the Act. Therefore, the enhancement of the period of custodial

⁹ Himanshi Dhawani, *Child rights panel against treating juveniles as adults*, TIMES OF INDIA, December 3, 2013<<https://timesofindia.indiatimes.com/india/move-to-treat-16-plus-in-heinous-crimes-like-adults-faces-hurdle/articleshow/26758393.cms>>



sentence and increasing it to its maximum limit would lead to a proper reformation programme and will also work as a deterrence to an extent among the juveniles in conflict with law. While rehabilitation is certainly an important legal and societal objective, this surely has to be balanced with creating a legal deterrent to protect women and girls from the increasing incidence of rapes by juveniles.

According to the new amendment in the JJ Act of 2015, juvenile delinquent in the age group 16-18 can be tried as adults in cases of heinous crimes like rape and murder.¹⁰ In such cases, the Juvenile Justice Boards comprising of a metropolitan magistrate or a judicial magistrate and two social workers will have the discretion to decide whether the juvenile delinquent should be tried as an adults by the court or as juvenile by the Juvenile Justice Board. This power given to the juvenile justice board seems to be arbitrary as already poorly equipped with infrastructure, shortage of counsellors and child psychiatrists, and a growing backlog of cases, there are chances that Juvenile Justice Boards can be influenced by public pressure, media trials and protests in determining whether the 17-year-old is committed the crime with child-like or adult-like understanding.

Sending juvenile delinquents to adult prisons will ensure that there is little chance of their reformation. Further spending prolonged period in jail with other hardened criminals will make it hard for young delinquents to come out of this cycle of crime and punishment. Thus by making a shift from reformative to retributive justice towards juvenile offenders we are create a society even unsafe. Hence, what is needed is proper implementation of the reform measure for the juveniles rather than subjecting them to adult judicial system.

The most of the juveniles accused under the juvenile justice act are the poor and unprivileged children. Even for a fact the juvenile convicted in the Nirbhaya case is himself a victim of life and circumstance. He was a street child with no known history of crime, working under an exploitative employer who wouldn't even release his salary presents the high chance that the juvenile was the victim of the adult world. Thus treating him like any adult offender will not do any good rather will make him a hardened criminal.

Further, the other questions that should be raised after such an amendment are if a 17-year-old committing rape or murder should be tried as an adult, then why are we unwilling to see 17-year-olds as adults in other contexts? If the age of juvenile delinquency can be brought down from 18 years to 16 years, then why can't they vote when they turn 16? What about the

¹⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015.



incidences where a 15 year old rapes a seven-year-old girl. Does that mean 15 year old should also be tried as an adult? Will it provide the suitable solution to the problems? What we must understand here is that one horrific case/incident should not make us change the definition of a juvenile or law which will turn out to be counterproductive in the future. We will always find a cut-off, and will often be unhappy with it and in that way law will definitely not serve its purpose.