

Offences Contra to Juveniles: A Socio-Legal Study

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Abstract—Children are considered to be gifts from God. Offence against children is measured very critically in today worlds. But today scenario of crime rate designates that there is an imperative need to amend present law, which can be more apposite to shield children from the ill-treatment. There are certain laws to protect children, constitutional rights, and offences like penalty in criminal justice system. But it is the duty of the State to construct safer environment for all children. However, due to various reasons in large percentage children's semblance offences. Like Children's have been enslaved, exploited, killed and sexual offences which not only concerns them physically but also mentally. Even sometimes children are abandoned severely beaten and physically abused. The main reason behind it is poverty which led to killing of children.

Keywords: Offences, victim, protection, children law.

1. INTRODUCTION-

Juvenile is derived from a Latin word "iuvenilis". Juvenile means children who have not yet reached the age of adults in the sense that they are still childish or immature. Under the law a juvenile can be defined as a child who has not attained a certain age at which he can be held liable for his criminal acts like an adult person under the law of the country.

The Children Act, 1960 was the first central legislation post-independence that aimed at conceptualizing a system, separate from the criminal justice system under the Code of Criminal Procedure, 1973, for the treatment of juvenile delinquents. It defined a "child" to be a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.ⁱ As per the Juvenile Justice (Care and Protection) Act, 2000, a juvenile shall not be treated as an adult even if he/she is involved in any criminal acts for the purpose of trial and punishment in the court of law.

However, during this period, each state was allowed to frame its own laws on the subject as the 1960 Act extended only to the Union Territories.ⁱⁱ This resulted in similar cases of juvenile delinquency being dealt with differently by courts of each state, thereby leading to discrepancy in judicial practice.ⁱⁱⁱ

This discrepancy prompted the Supreme Court to observe that a parliamentary legislation on the subject of juvenile justice was desirable.^{iv} It would not only bring about

uniformity in provisions relating to children but also ensure better and more effective implementation of the same.^v

2. ISSUE AROUND JUVINILE -

2.1 Underlying Principle:

There is no specific dividing line between the philosophies and approaches fundamental a general justice system and that to be applied to juveniles. The divergence lies more particularly in emphasis, in between the gravity of punishment given and to protect the offender's social reintegration. Thus, the CCPR contains no indications or obligations regarding sentencing for adults, whereas the CRC sets out a number of restrictions (e.g. prohibiting the death penalty and life imprisonment without possibility of release).and requires that "detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time" (Art. 37.b). In its Article 40.4, the CRC also sets out a variety of dispositions to be considered and which would effectively enable a custodial sentence to be avoided.

These provisions stem from the approach that the treatment of a child in conflict with the law should take account of, among other things, "the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (Art. 40.1). The "reintegration" aim is nonetheless not entirely absent from the regime applicable to adults. The CCPR thus states that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" (Art. 10.3).

2.2 Age of Criminal:

There is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to a juvenile. This discrepancy prompted the Supreme Court to observe that a parliamentary legislation on the subject of juvenile justice was desirable.^{vi} It would not only bring about uniformity in provisions relating to children but also ensure better and more effective implementation of the same.^{vii} This led to the enactment of the Juvenile Justice Act, 1986, the first comprehensive legislation, which had countrywide

application, except the state of Jammu and Kashmir. Notably, the provision relating to the age limit of juveniles was carried forward from the 1960 Act and was kept unchanged.

In 1992 India signed the United Nations Convention on the Rights of the Child, 1989 ('CRC'). The CRC defined a child as "every human being below the age of eighteen"^{viii}. Being a signatory, India sought to fulfill its international obligation by enacting the Juvenile Justice (Care and Protection of Children) Act, 2000 ('2000 Act'). Importantly, this led to the age of juvenile irrespective of gender, being fixed at eighteen years.^{ix}

The brutal gang rape and murder of a female physiotherapy intern in Delhi in December, 2012, by six men, one of whom was a seventeen-year-old juvenile, retriggered the debate on the age limit of juveniles. Under the existing law, the maximum punishment that could be awarded to juveniles was three years of detention in a remand home, irrespective of the gravity of the offence.^x This led to tremendous public outcry demanding a change in the juvenile justice laws, lowering the age limit of juveniles, and stricter punishment for juveniles committing grave offences like rape and murder.^{xi} The Committee on Amendments to Criminal Laws, headed by Justice J.S. Verma, was constituted to examine the deficiencies in the existing criminal law regime governing sexual assault against women.^{xii} The Committee categorically rejected the demand for lowering the age of juveniles to sixteen.^{xiii} Instead, it opined that there was a pressing need to reform and restructure the existing juvenile justice and welfare system and called for stricter implementation of the 2000 Act.^{xiv} It found no merit in reducing the age of juveniles for certain offences and relied, among others, on the fact that recidivism had fallen from 8.2 percent in 2010 to 6.9 percent in 2011.^{xv}

However, the government disregarded these recommendations and heeded to popular demand by introducing the Juvenile Justice (Care and Protection of Children) Act, 2015 ('2015 Act'), with the twin objectives of setting deterrence standards for juvenile offenders and protecting the rights of the victims.^{xvi} The 2015 Act differentiates between petty, serious, and heinous offences, and proposes to treat juvenile offenders who commit "heinous offences" between the ages of sixteen and eighteen as adults by putting them to trial under the criminal justice system.^{xvii}

2.3 Legal issues Sex Offender Registry

Certain juveniles are vital to register with the Sex Offender Registry. The Sex Offender Registry entail that those defined by the statute as sex offenders register with a Sex Offender Registry Board (SORB). They classified under three level systems. Depending on the classification level, members of the community would have more or less access to information about the sex offender.

2.4 Civil Commitment and Community Parole Supervision for Life for Sex Offenders

The Sexually Dangerous Persons Act, enacted in 1990, was revived and significantly amended was done in 1999. As revised in 1999, the law provides that sexually dangerous persons may be civilly committed to Bridgewater after having finished their sentence of confinement; the previous version of the act had the civil commitment and the incarceration run simultaneously. The other important amend was a change in the definition of "sexually dangerous person" that focuses on the inability to control sexual impulses as opposed to whether or not the person has a mental deficiency.

2.5 The Ethical Issues & Psychological assessment:

2.5.1 *Do not treat juvenile offenders as criminals:* Ever since the Juvenile Justice Bill, 2014 has been introduced, the proposed transform has been opposed by organizations and people effective with children.^{xviii} Figures present ting that crimes involving juveniles constitute 1.2% of the total number of crimes in India. Supreme Court judgments^{xix} upholding the treatment of persons as juveniles until the age of 18 years, on the basis of sound principles recognized in the Indian Constitution^{xx}, have been cited to oppose the change in the law on juvenile justice, as have international covenants and scientific justifications regarding the physical and psychological development of the child.

Under the Bill, psychologists are expected to predict which of the children of 16–18 years of age, charged with (and not yet found guilty of) a crime are dangerous, have committed a crime as an adult, and will be delinquent in the future. How will such an assessment be made? What is the degree of reliability and validity of the assessments or tests, if any, that the child is made to undergo, and the interpretation thereof? What are the factors that the juvenile board will consider? Is it just the cognitive ability of the adolescent to determine whether he/she committed a crime as an adult? What about the psychosocial variables? The Bill contains no provision that would protect the child's rights when an assessment is being made to determine his/her "calibre" as an adult or a juvenile. Further, does every district of the country have enough qualified psychologists who would be capable of making such an assessment? The Parliamentary Standing Committee has already pointed out that "there is a severe shortage of competent psychologists, psychosocial workers and other experts and this will adversely affect the quality of the inquiry and timely disposal of cases."

3. RELATED DATAS-

Coleman's Study (1981) indicates that the rate of delinquency increased by 100 per cent within seven years i.e., between 1968-1975. Though, mainly boys are involved in delinquency, now a days it is found that girls are also actively engaged in this antisocial work.

During these 20 years delinquency has further increased. One may not believe, but it is true that almost half of the serious crimes in U.S.A. are committed by juveniles.

Common delinquent acts in females are sexual offences, small thefts, drug usage, running away from home etc. Among the males delinquents are more engaged in stealing, drug usage, robbery, aggravated assaults, sexual abuses etc. Particularly, now a days, the incidence of delinquency is increasing alarmingly in large metropolitan cities and this has become a matter of great concern for the public and country.

While evidences from some studies show that children from lower class families and those residing in slum areas are more engaged in delinquency, other studies do not support this view. In an important study, Heary and Gold (1973) found significant relationship between social status and delinquent behaviour.

In another significant study, it was noticed that the rate of delinquency in case of socially disadvantaged youths appears about equal for whites and non-whites.

Like any other country, as reports of the Ministry of Home Affairs, Govt, of India, shows, there is a steady rise in the percentage of delinquency in India. While it was 16,160 in 1961, it was, 40,666 in 1974. Thus, in 13 years the increase in the incidence of delinquency, as reports show, has the highest percentage of Juvenile crimes (24.8%).

Second place goes to M.P. (20.5%) and third place to Gujarat (10.9%). Kerala has an incidence rate of only 0.2%.

* The number of juvenile crimes went up from 35,465 in 2012 to 42,566 in 2014 under the IPC, but it still formed only 1.2 per cent of the overall crime rate over the last three years.

* 2014 saw 33,981 murders of which only 841 (2.5%) were committed by juveniles. Similarly, of the 36,735 rapes in the year, only 1,989 (5.4%) were committed by juveniles.

* Of the 37,90,812 adults arrested for various crimes in 2014, 2,95,740 were found to be repeat offenders. In case of juveniles, a total of 48,230 boys and girls in the age group of 0-18 years were arrested that year. Of these 2,609 were found to be repeat offenders.

NCRB figures also show that over the last ten years, the juvenile crime rate fluctuated marginally from 1% in 2004-05 to 1.2% in 2008 and down to 1% in 2010.

Experts said the slight increase in rate in the last three years has mostly been due to the natural increase in population, a fact that gets glossed over when the absolute numbers are looked at in isolation.

“All this baying for blood is not based on any analysis or studies. Abandoning juvenile offenders will not help rehabilitate them or decrease violence against women in the long run. In the United States, it was found that there were higher numbers of repeat offenders in cases of judicial waiver where juveniles are tried as adults in criminal courts and sent to jail rather than being sent to juvenile homes,” said Vrinda Grover, lawyer and human rights activist.

The socio-economic profile of juveniles apprehended under both IPC and Special and Local Laws in 2014 shows that 90 per cent of them have not even completed their matriculation.

Ninety per cent of the juveniles also come from families that earn an annual income of less than Rs 1 lakh, more than half of these hail from households that earn just Rs 25,000 annually, records show. The majority of cases registered in 2014 against juvenile offenders were under the crime head ‘theft’ (20%).

Child rights lawyer Anant Asthana said that the oft-cited increase in crime rate among juveniles is simply the result of “loosely playing around with data without putting it in perspective”.

“The recent increased reporting of such cases is largely due to the fact that under the Protection of Children from Sexual Offences Act (POCSO Act) 2012, every case of sexual offence against children has to be mandatorily registered by the police. Also, under the Criminal Law (Amendment) Act, 2013, the age of consent for sex has been increased from 16 years to 18 years leading to many cases of consensual sex among those in this age group being registered as rape,” said Asthana.

4. CONCLUSION & SUGGESTION

The proposed policy under the 2015 Act, as it stands today, is contrary to established principles of juvenile law. However, as suggested by many, the solution is not to go back to the 2000 Act, and merely focus on its implementation. As the current debate surrounding the release of the juvenile in the Nirbhaya rape case reveals, the 2000 Act also falls short of effectively guaranteeing rehabilitation of juvenile offenders as they may be detained for a maximum period of three years only. Therefore, merely re-enacting the model under the 2000 Act may be ineffective not only in rehabilitation of juveniles but also in addressing concerns of public safety. Further, the 2000 Act also does not cater to the interests of the victims of such crimes, and thus is purely offender centric. A rehabilitative model, incorporating indeterminate sentencing and restorative principles would provide an ideal balance between the welfare of the juvenile offender and concerns of public safety. Through adoption of a restorative approach, it would also meet the goals of deterrence which the 2015 Act seeks to embody. Therefore, while retaining the emphasis on rehabilitation, principles of restorative justice ought to be annexed as the mandatory second limb, for the formulation of a comprehensive juvenile justice policy in India.

‘Get tough’ approach

Several other countries such as the U.S. and the U.K., which are both signatories to the U.N. Convention, have also faced an increase in violent crimes by juveniles but, unlike India, they have taken action to amend their laws. Most States in the U.S. have enacted a juvenile code of which the main objective is rehabilitation and not punishment. Juveniles appear in juvenile court and not in adult court. Juvenile courts do not have the power to impose punishment and can impose only rehabilitative measures or assistance by government programmes. However, since the increase in violent crimes committed by juveniles in the 1990s, U.S. States have adopted a “get tough” approach in response.

In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court. A certification hearing takes place and an adult court prosecutor is required to convince the adult court that the case should be transferred. The juvenile is entitled to an attorney at the hearing and to present any evidence which mitigates against the transfer. For example, in Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. California’s Proposition 21 which was passed in 2000 allows prosecutors to automatically try juveniles who commit felonies as adults. Under Michigan’s Juvenile Waiver Law passed in 1997, juveniles can automatically be tried as adults.

Youth Court

Similarly, in the U.K., persons under 18 are tried by a “Youth Court” which is a special type of magistrate’s court for those aged 10-18 years. The Youth Court can issue community sentences, behavioural programmes, reparation orders, youth detention and rehabilitation programmes which last three years. However, for serious crimes like murder or rape, the case starts in Youth Court but is transferred to a Crown Court which is the same as a Sessions Court. The Crown Court can sentence the child for offences of murder committed when the offender was a youth as well as for “grave crimes” including sexual assault and sentence the child to “indefinite detention for public protection.”

The Crown Court can also give “extended sentence” to a minor. If a youth is jointly charged with an adult, the charge is heard and tried by a regular court. If the youth is found guilty, the Crown Court can impose a sentence which does not exceed the maximum sentence applicable to an offender who is 21 years or older. Therefore, in both the U.S. and the U.K., juveniles who commit violent crimes such as rape are prosecuted in the same manner as adults.

Even the U.N. Convention and the Beijing Rules do not prohibit subjecting children/juveniles to the regular criminal justice system under certain circumstances. Article 40 of the U.N. Convention provides that a child who has been accused of having violated the penal law shall have the following guarantees: to be presumed innocent until proven guilty

according to law, to be informed promptly of the charges against him and to have legal or other appropriate assistance in the preparation of his defence, to have the matter determined without delay by a competent and impartial authority or judicial body, not to be compelled to confess guilty, and to examine witnesses. Moreover, the state can establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Therefore, in accordance with the U.N. Convention, the JJ Act could have established an age limit, such as 14 or 16, below which a person could not be deemed to have the capacity to commit an offence. In short, the U.N. Convention does not prohibit prosecuting a child under 18 who has committed an offence under the regular penal laws.

REFERENCE

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 - ii *Id.*, S.1(2).
 - iii *Sheela Barse v. Union of India*, AIR 1986 SC 1773 (per Bhagwati J.:
- “[...] we would suggest that instead of each State having its own Children’s Act in other States, 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.”).
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 - v *Sheela Barse v. Union of India*, AIR 1986 SC 1773.
 - vi 4th sai hi milta hai
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 - viii United Nations Convention on the Rights of Child, Art. 1, U.N. Doc. A/RES/44/25 (September 2, 1990).
 - ix The Juvenile Justice (Care and Protection of Children) Act, 2000, S.2(k).
 - x *Id.*, S.15.
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- ^{xiv} *Id.*, ¶44-47, 49.
- ^{xv} *Id.*, ¶48.
- ^{xvi} Indian Express, 16 to 18: LS Passes Bill Redefining A Juvenile's Age In Serious Crimes, May 8, 2015, available at <http://indianexpress.com/article/india/india-others/juvenile-justice-bill-passed-in-lok-sabha/> (Last visited on January 2, 2016).
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