



CRITICAL ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 - IN THE LIGHT OF REDUCED AGE OF CRIMINAL RESPONSIBILITY OF JUVENILE IN INDIA

ABSTRACT

The brutal assault, gang rape and murder of a female in Delhi in December, 2012, by six men, in which one of the accused was seventeen years old juvenile, raised a debate on the age limit of juvenile in India. Under The Juvenile Justice (Care and Protection of Children), Act, 2000, the maximum sentence that could be awarded to juvenile was three years of of detention in a remand home, irrespective of the gravity of the offence. 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. Justice J.S Verma Committee which was constituted to amend the criminal laws and to examine the deficiencies of existing criminal law regime governing sexual assault against women rejected the demand for lowering the age of juvenile to sixteen. He opined there should be stricter implementation of the 2000 Act and need to need to reform and restructure the existing juvenile justice and welfare system. However the government disregarded these recommendations and to tackle the alarming situation Parliament passed The Juvenile Justice (Care and Protection of Children) Act 2015. The basic objective of this Act is to set deterrence standards for juvenile offenders and to protect the rights of the victim. 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. The main object of this paper is to identify the Reasons as to why a juvenile could commit heinous crimes and to discuss whether reducing the age can result in retributive justice rather than reformative and restorative justice.

Keywords- Child, Juvenile Delinquency, Age of Criminal Liability, Reformation theory, Sociological school, Heinous Offences

JUVENILE AND JUVENILE DELINQUENCY

Children are very important segment of society. They are considered as greatest gift that has been awarded upon society. They are considered as pillars of society on which foundation of tomorrow's laid. They are useful human resources that are lead to progress and development of a country. A child is born innocent and if nurtured with care and attention, then he grows in positive way and their physical, mental, moral and spiritual development makes them capable of realizing his fullest potential. On the contrary, harmful surroundings, negligence of basic needs and other abuse may turn a child to a delinquent.

Juvenile or child means any person who does not able to understand the consequences of his act or who has not yet reached at the age of adult in terms of childish behavior or immaturity. In the Legal sense, juvenile or child is a person who has not attained particular age which can be prescribed by law of the country on which he can be held liable for his criminal acts like an adult person. In Indian context, a juvenile or child is a person who has not attained age of 18 years. However, in IPC, a child cannot be charged for any crime that is below the seven years of age.

Delinquency is such behaviour of a juvenile which is socially not permitted in any society. It is unwelcomed action, omission or moral behaviour of a juvenile. Generally there are certain social obligations which are anticipated from child by the people, when the child fails to meet such obligations then he is considered to be delinquent. The juvenile delinquent is behavioral disorder which is generally defined as "a child trying or pretending to act like a grown up or adult". The action of the child can be seen as a childish foolish behaviour but it can cause serious worry and concern. A criminal activity committed by adult which is in violation of law is considered as a crime and is punishable in law but if the same activity is committed by a child below a particular age, it is not considered a crime and is referred as juvenile delinquency no matter that a child with full understanding has committed a very serious, grave, grim and a heinous crime¹.

JUVENILE IN CONFLICT WITH LAW²

Juvenile in Conflict of Law means any person who is, under the age of 18 years, alleged to have committed an offence or being suspected of committing an offence. According to **Sec 2 (13) of Juvenile Justice (Care and Protection of Children) Act,2015**³ "Child in Conflict with Law" means "A Child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence." These children cannot be treated as an adult as our Juvenile Justice System is based on the ideology that child is immature in nature and he is not able to understand the consequences of his act.

¹ Shivani Goswami and Neelu Behra, "Juvenile Justice System in US and India: Modern Scenario and Much Needed Modification" available at jlcjnet.com/journals/jlcj/Vol_2_No_2_December_2014/14.pdf (last visited on 3 May, 2020).

² Geeta Chopra, *Child Rights in India: Challenges and Social Action* 85(Springer, New Delhi, 2015).

³ Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016).

REASON FOR EXCLUDING JUVENILE FROM CRIMINALITY

SOCIOLOGICAL SCHOOL

The sociological theory of crime asserts that who do not conform to established norms and traditions prescribed by law. These persons do not adjust themselves within framework for normal standards of society and are more or less indifferent to societal norms. For instance, it is well known that rules of morality or law do not permit anyone to take away property of others without the latter's consent yet there are persons who do indulge in such activities. The reason of this deviation: - these persons have seen their parents or other members of family stealing or they are encouraged by seniors to take away things belonging to others.⁴

1. **Social learning theory-** Social learning theory is an important crime theory that can be used for prevention purposes. The sociological roots came from Sutherland's developments of differential association theory. The theory asserts that crime is learnt by association with other people. This learning, in the context of crimes, involves both the techniques for committing the crimes and attitudes and rationality or justification for their committal.

Why do people engage in crime according to social learning theory? They learn to engage in crime, primarily through their association with others. They are reinforced for crime, they learn beliefs that are favorable to crime, and they are exposed to criminal models. As a consequence, they come to view crime as something that is desirable or at least justifiable in certain situations.

According to social learning theory, juveniles learn to engage in crime in the same way they learn to engage in conforming behavior: through association with or exposure to others. Primary or intimate groups like the family and peer group have an especially large impact on what we learn. In fact, association with delinquent friends is the best predictor of delinquency other than prior delinquency. However, one does not have to be in direct contact with others to learn from them; for example, one may learn to engage in violence from observation of others in the media⁵

1. **Social disorganization theory-** Society is not static. With the change in society the values also change. The urbanization and industrialization have accelerated the dynamic nature of society. The person of different races, culture, religion and communities come in context with one another resulting in breakdown of traditional pattern of living and values. The family attitude has changed into individualistic attitude. It is social disorganization which creates deviant behavior⁶. For example honor killing

⁴ N.V. Paranjape, *Criminology and Penology with Victimology*82 (Central Law Publications, Allahabad, 16th ed. 2016).

⁵ Crime Causation: Sociological Theories - Social Learning Theory, *available at*: <http://law.jrank.org/pages/815/Crime-Causation-Sociological-Theories-Social-learning-theory.html> (last visited on 11 April,2020).

⁶ N.V. Paranjape, *Criminology and Penology with Victimology*82 (Central Law Publications, Allahabad, 16th ed. 2016).

REFORMATION THEORY OF PUNISHMENT

The focus of juvenile legislature is the juvenile's reformation and rehabilitation so that he also may have a chance to opportunities enjoyed by several other children. Juvenile legislation attempts to cure the illness of juvenile. According to this theory, the object of punishment should be the reform of the criminal, through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime, he does not cease to be a human being. He may have committed a crime under circumstances which might never occur again. Therefore an effort should be made to reform him during the period of his incarceration. The object of punishment should be to bring about the moral reform of the offender. He must be educated and taught some art or industry during the period of his imprisonment so that he may be able to start his life again after his release from jail. While awarding punishment the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors. The object of doing so is to acquaint the judge with the exact nature of the circumstances so that he may give a punishment which suits the circumstances. The reformatory theory is also known as **rehabilitative sentencing**. The purpose of punishment is to "reform the offender as a person, so that he may become a normal law-abiding member of the community once again."⁷

AGE OF CRIMINAL RESPONSIBILITY

There is a law in all countries which prescribes the minimum age of a person. Any person who is below the prescribed age is exempted from any prosecution and punishment. There are two essential elements for crime mens rea and actus reus and this is basic reason for the exemption of such person that there is no mens rea. It means not to criminalize the act of those who did not know what is right and what is wrong at time of commission of offence. Person below of such minimum age do not have any knowledge regarding the consequences of their act nor do they have such intention.

Article 40 (3) (a) of CRC requires that state parties should establish minimum age. Children who are below such minimum age shall be exempted from prosecution and not criminally liable.⁸

In India there is no uniformity regarding age of child. Different legislation has different age of child. As sec. 82 of I.P.C⁹ fix the age of criminal responsibility at 7 years. A child does not have so much maturity at such age that he understands the consequences of his act. He does such things which he seen or learns from society without knowing and understanding the consequences and right or wrong. Hence, a child who is below 7 years of age cannot be prosecuted and punished. He is free from all types of criminal liability under Indian Law. He will not be treated as a

⁷ Reformatory Theory of Punishment, available at: <https://www.lawtopus.com/academike/reformatory-theory-of-punishment/> (last visited on 11 April, 2020).

⁸ Article 40(3) Convention on the Right of Child, 1989.

⁹ Indian Penal Code, 1860 (Act No. 45 of 1860) Sec 82.

juvenile in conflict with law under Juvenile Justice System. He could be produced before the Child Welfare Committee for his care, protection and rehabilitation, if such child falls within the definition of child in need of care and protection.

The Age between 13 to 15 years has fixed by most of European countries as the age of criminal responsibility. France, Poland, Germany, Italy and Finland have fixed it at 13, 13, 14, 14, and 15 years, respectively. The age of Seven years is a very low for criminal responsibility, and it requires to be raised.¹⁰

The Law has recognized that a person between the age of 7 and 18 year is less culpable than adult. Hence there are different levels of criminal responsibility according to their maturity and age. According to Section 83¹¹ of IPC, there is no offence if it is committed by a child who is between the ages of seven to twelve years. But there is a condition that child has not attained sufficient maturity for understanding nature and consequences of his conduct on that occasion. To take the benefit of this provision the accused child will have to prove that he is below the age of 12 years and he has not attained sufficient maturity of not understanding the consequences of his act and he did not able to know it is wrong or right or it is against the law. Children between the ages of 12-18 years who have committed an offence are responsible for their acts but they are not treated as an adult. These children are considered as delinquent and they will be dealt under juvenile justice system of India. The main focus of juvenile legislation are reforming and rehabilitating them.

Article 37 of Convention on Rights of Child¹² states the mode of treatment of juvenile offenders. Child shall not be subjected to any inhuman or degrading treatment. Capital punishment and imprisonment for life shall not be given to any child who is below the age of 18 years. Child shall not be treated as adult and separated from adult. Every child has a right of legal assistance. All countries that have ratified CRC are obliged to enact such legislation which is in conformity with Article 37 to safeguard the interests of juvenile offender.

According to Juvenile Justice (Care and Protection of Children) Act, 2000¹³ a person who is below the age of 18 years is considered as a child. It is for both boys and girls.

Ajmal Kasab who was the accused in 26-11-2008 Mumbai terror attack claimed to be a Juvenile and demands benefit of law relating Juvenile Justice in India should be given. There is no matter that he was involved in terror attack. Similarly, the main accused in 16-12.2012 Delhi gang rape case was also a Juvenile and he gets the benefit of juvenile. After this, various section of society demands to change the law and consider this juvenile as an adult¹⁴. After

¹⁰ Child Protection and Juvenile Justice System for Juvenile in Conflict with Law, *available at*: <https://www.childlineindia.org.in/pdf/CP-JJ-JCL.pdf> (last visited on 11 April, 2020).

¹¹ Indian Penal Code, 1860 (Act No. 45 of 1860) Sec 83.

¹² Article 37 Convention on the Rights of Child, 1989.

¹³ Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000).

¹⁴ Shruti Chaturvedi and Sorabh Dahiya, "Juvenile Delinquency: Estimating Fearless Symbol and Fertilization" *available at*: ijldai.thelawbrigade.com/wp-content/uploads/2017/01/ShrutiSorab.pdf (last visited on 15 April, 2020).

a long debate, The Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted. The Bill of this Act was passed by Lok Sabha on 7th May, 2015 and it was passed by Rajya Sabha on 22nd December, 2015. This Act received Presidential assent on 31st December, 2015 and it came into force on 15 January, 2015.

Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 fulfils the demands of society. It explains how to tackle the child offenders who committing heinous offences in the age group of 16-18 years¹⁵. **Heinous offences**¹⁶- "Heinous Offences" includes the offence for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.

Under the New Act of 2015, special provisions have been made to tackle child offenders committing Heinous Offences in the age group of 16-18 years. The Juvenile Justice board is given the option to try the case of heinous offences by such children's court after conducting preliminary assessment Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence. If Board is satisfied on preliminary assessment that the matters should be disposed of by the Board, it shall follow the procedure of trial in summon cases. Where after conducting such inquiry the board passes an order that there is a need for trial of the said child as an adult, then it will transfer the cases to Children's Court.¹⁷ The Act 2015 again maintain the old policy of Act, 2000, that proceeding under Chapter 8 of the Code of Criminal Procedure for offences against maintaining peace and good behavior shall not apply against Children¹⁸.

CATEGORIES OF CHILDREN FOR THE PURPOSE OF INQUIRY

In the repealed Act of 2000, no category was made among the children for the purpose of inquiry. In the Act of 2015, children are divided in two categories. The first category relates to the child below the age of 16 year on the date of commission of the offence. Second category relates to the child who has completed the age of 16 years or above the age of 16 years and who has committed a heinous offences. Irrespective of the offence committed by a child below the age of 16 years, the inquiry authority is always a Board. A Child of 16 or above, who has committed a heinous crime shall be inquired by the Board or by Children Court on reference of Board.

CRITICISM AND LOOPHOLES IN THE JUVENILE JUSTICE (CARE&PROTECTION) ACT , 2015

1. Discretionary powers of Juvenile Justice Board- In Juvenile Justice (Care and Protection) Act,2015, there is no clearly define under what circumstances a case will be transferred to the court and juvenile is treated as an adult. Due to this ambiguity in the act and rules, the juvenile justice board uses its discretionary power in passing orders. There are two cases in one of which Juvenile Justice Board order to transfer the case to adult

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).

¹⁶ Juvenile Justice (Care and Protection of Children) Act,2015(Act No. 2 of 2016),Section 3 (33).

¹⁷ Juvenile Justice (Care and Protection of Children) Act,2015(Act No. 2 of 2016), Section 15.

¹⁸ Juvenile Justice (Care and Protection of Children) Act,2015(Act No. 2 of 2016), Section 22.

court and there are other cases in which Juvenile Justice Board decides not to refer the case to adult court. In second case, Juvenile Justice Board decides not to seek assistance from expert for preliminary assessment. In both cases, the accused threatened to kill the victim if they reported the crime. They are first time offenders and 17 years old. Despite, several similarities in the cases, there is a natural question why two different judges on Juvenile Justice Board pass such different decisions? If a minor is tried in adult court, he cannot be tried in Juvenile Justice Board again. Moreover, the punishment for sodomy in adult court is life imprisonment whereas in Juvenile Justice Board it cannot exceed imprisonment of 3 years.

Is the Juvenile Justice Board due to ambiguity in amended Juvenile Justice Act using its discretionary power inconsistently? The Juvenile has to bear the consequences of decision by Juvenile Justice Board for rest of his life. It is discretionary power of Juvenile Justice Board under section 15 to conduct preliminary inquiry to determine whether a Juvenile offender is to be sent for rehabilitation or be tried as an adult.¹⁹

2. There is violation of doctrine of fresh start. By sending the juveniles to juvenile home for reformation provides them a second chance for fresh start. Juvenile home cure their illness and give them new life so that they enjoy all such opportunities which are enjoyed by normal child. But 2015 Act, by treating them as an adult violates their right to equal opportunity and take their rights of fresh start.
3. The 2015 Act support the Principle of Fresh Start by securing their right of privacy. By erasing the records of juvenile offenders, it secured their right of privacy. But there is a provision which allows the deviation in special circumstances. The nature of these special circumstances has not been specified and leaving an open ended aspect. By this, there is violation of his right of privacy and it is feared that this open ended provision could lead to “racial profiling” of offenders on the basis of race, caste, religion, background etc.
4. There is an exemption for the Juvenile offenders under 2015 Act that they will not disqualify under any law for commission of an offence. But children above the age of 16 years who have committed the heinous offences are not exempted and there is no protection for such children under this clause.
5. The basic object of any Act is welfare of society and the main purpose of Juvenile Justice System is the welfare of children. But the 2015 Act is against the idea of welfare of children. By treating the children above 16 years of age as an adult in heinous crimes makes them hard core criminal. It completely destroys the rehabilitative foundation of Juvenile Justice System. Legislature does not consider the various emerging reasons of juvenile delinquency. These juvenile in conflict with law needs help to cure their illness. The age 16-18 is an extremely sensitive and critical age and they need more protection. By adopting retributive approach, we destroy our rehabilitative foundation of prior Juvenile Justice System. There is no need to treated them as an adult or subject them to different judicial system. By doing this we violate Article 14 (3) and 15(3) of Constitution and all international conventions on Protection of Children which are signed by India.

¹⁹ The New Juvenile Justice Act has Opened A Can of Worms, *available at*: <https://www.thequint.com/news/india/new-juvenile-justice-act-leads-to-fresh-problems> (last visited on 1 May, 2020).

CONCLUSION AND SUGGESTION

Juvenile Justice (Care and Protection) Act, 2015 is a good step taken by government. If we consider the NCRB report and today's situation there is fully need of this. Many juveniles commit the crime at the age of 17 because they know they are juvenile and adult persons also take the benefit of this by hiring the juvenile but now law is not misused by them. Our juvenile justice system is based on the ideology that children have not maturity to understand the consequences of his act but due to advancement of technology children are enough mature at the age of 16 to understand the consequences of his act. There are many cases in which after releasing from reformatory home juvenile again commit the crime and that is more heinous than their previous act and they are juvenile at such time also and they again take the benefit of his juvenility. To stop such misuse, this Act is very good and forward step. But according to me there should be a provision for repeating offender and it shall be apply on all children immaterial of their age. Following are the reasons:-

1. Ordering a convict of heinous crimes to spend just 3 years in a correctional home is not going to deter others from committing a crime against women. That is the basic reason for increasing the number of Juveniles in crime.
2. The prime purpose of law is to provide justice to the victim and punished the accused for its wrongdoing. But by awarding only 3 years imprisonments even for most heinous grievous crimes violate the prime purpose and it's like providing the shield to a criminal.
3. The records do not at all times presents the actual age of Juvenile. Crime is basically related to the maturity not the age.
4. There is need to change the law with the change of society.
5. At the age of 16, everyone is able to judge what is wrong and what is right.

Some suggestions can be made to deal with the issue of Juvenile Delinquency in India. Though Indian government has been making lots of efforts to deal with the problem, and has taken progressive and bold steps in this direction, more effective measures are required with respect to implementation. For instance, the members of the Juvenile Justice Board should be trained in child psychology and should be sensitized in child related matters; more often they are incompetent in this area.

There are provisions for Special Police unit for dealing with Juveniles at every police station. In reality, these special units are not functional. So, when there are cases of juvenile delinquency or when neglected children are taken to police, the police department is not able to handle the cases in expected manner. The police personnel are not very sensitive to the issues that come up.

It is suggested that strong steps are taken to make effective implementation of the laws pertaining to Juvenile Delinquency, so that we are able to deal with the problem in a holistic manner.

There should be some prescribed rules for Juvenile Justice Board to ascertain who will be treated as an adult. Without such rules, they use their powers arbitrary. In similar cases in which same situation the decision of Juvenile Justice Board is different which puts the question mark on JJB.

Repeat Offenders should be treated as an adult immaterial of their age.

It is also important to monitor the functioning of Observation Homes and Shelter Homes. These special places meant for reformation of the juveniles/ children often become breeding grounds for more offences. Rather than effectively handling the problem and counseling the inmates, these places create atmosphere for resocialization of the juveniles into criminal/ delinquent world. Instances of inmates of Observation Homes indulging in serious offences are quite many. For reformatory and rehabilitative measures, it's important that the situation is handled very tactfully.

Community participation and sensitization in matters related to juvenile delinquency is very important. In the administration of Juvenile Justice, preventive measures are very important. For this, if people in society are sensitized about issues of neglected children and children living in difficult situation, they can play important role in rehabilitation. Some informal bodies like registered Residential Associations in different areas can be involved to report matters of juveniles who indulge in deviant behaviour, or whose behaviour cannot be controlled effectively by the parents.

BIBLIOGRAPHY

A. International Conventions and Declarations

1. Convention on the Rights of the Child, 1989.

B. Statutes

1. Indian Penal Code 1860 (Act No 45 of 1860).
2. Juvenile Justice Act,2000 (Act no. 56 of 2000)
3. Juvenile Justice (Care and Protection of Children) Act,2015
4. The Constitution of India,1950

SECONDARY SOURCES

A. Books

1. Geeta Chopra, "*Child Rights in India: Challenges and Social Action*" (Springer, New Delhi,2015).
2. John A. Winterdyk (ed.), "*Juvenile Justice: International Perspectives, Models and Trends*"(CRC Press, Boca Raton, FL. 2015)
3. N.V.Paranjape, *Criminology and Penology with Victimology*82 (Central Law Publications, Allahabad, 16th ed.2016)

4. Nuzhat Parveen Khan, “*Child Rights and The Law*” (Universal Law Publishing, Gurgaon, 2ndedn., 2016).

B. Articles

1. ShivaniGoswami and NeeluBehra, “Juvenile Justice System in USA and India: Modern Scenario and Much Needed Modification”2 *JLACJ* 251-263 (2014).
2. ShrutiChaturvedi&SorabhDahiya, “Juvenile Delinquency: Estimating Fearless Symbol and Fertilization” *available at* ijldai.thelawbrigade.com/wp-content/uploads/2017/01/ShrutiSorab.pdf (last visited on 10 march, 2018).

C. Webliography

1. http://www.unhchr.ch/html/menu3/b/h_comp47.
2. <https://www.journals.elsevier.com/the-social-science-journal>.
3. <https://www.lawctopus.com/>.
4. jlsr.thelawbrigade.com.
5. ncrb.gov.in/
6. supremecourtofindia.nic.in/.
7. www.childlineindia.org.in/.
8. www.manupatrafast.com/.
9. www.un.org/en/.

