



JUVENILE DELINQUENCY: AN ENTAILING DILEMMA

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ABSTRACT

The growth of any civilization depends upon the children who are the yardsticks to measure its success. Children are the most vulnerable group in the society, and they are in need of greatest social care. The changes in the society have influenced the children to commit crime and through these changes the juveniles are heading towards the path of crime. Certain factors are responsible for the juveniles to commit delinquent acts such as the negative influence from peer groups and other socio-economic factors.

Juvenile Delinquency is a deliberate issue as a delinquent child can become a persistent criminal in future. The Constitutional validity of laws [“Juvenile Justice (Care and Protection of Children) Act, 2015 replaced the Juvenile Justice (Care and Protection of Children) Act, 2000] relating to juvenile delinquency was challenged in the Supreme Court as it was against Article 14 .The involvement of juveniles in heinous crimes lead to the replacement of the old statute and categorized the children between the age of 16-18 years as an adult.

This research paper deals with constitutional validity of laws relating to juvenile delinquency, Factors favoring juvenile delinquency and preventive measures.

KEYWORDS – Juvenile Delinquency, Constitutional Validity, Preventive Measures.

Chapter I

INTRODUCTION

“If you want real peace in the world, start with the children.”

– Mahatma Gandhi

The growth of any civilization depends upon its children because they're the longer term. On the opposite hand, there are juvenile delinquents since the start of human civilization and in every time-phase it had been decided to treat the cause not the symptoms, that is to help the juvenile delinquents through restorative process rather than penalizing them, that's why we have incorporated juvenile welfare laws in India. Child or delinquency is an alarmingly increasing problem causing a source of concern altogether over the planet. Children are the topic of prime focus of development planning, research, and welfare in India but unfortunately it's not been so.

Long ago, somewhere, sometime within the history the voice of great Lincoln echoed:

“A child may be a one that goes to hold on what you've got started. He is getting to sit where you're sitting, and once you are gone, attend to those belongings you think are important. You may adopt all the policies you please, but how they're administered depends on him. He is getting to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”.

State's responsibility of Welfare of the youngsters, with the passage of your time has shifted to the social organizations and certain philanthropic bodies. To make the people conscious of the right of Juvenile , United Nations Organization declared 1979 as “International Year of the Child” issuing a general appeal to all or any the nations to review their programmes for the well being of the children and to mobilize support for programmes according to the countries conditions, needs and priorities.

If we can control juvenile delinquency today we shall be controlling and checking the future criminals in making. An open admitted fact is that tendency among young people to commit crime and indulging themselves in anti social activities is increasing. The future development and stability of a society depend upon the standard of its children. Children are the most vulnerable group in any population and in need of the greatest social care this paper will convey the relevance of JJ Act and recommendations for its proper implementation.

Chapter-II

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

The Government even after facing strong opposition and condemnation from various sections of the society passed the Juvenile Justice (Care and Protection of Children) Act, 2015 which can now allow children within the 16-18 age brackets to be tried as adults if they commit heinous offences.

Section 2(33)¹ - “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more; The bill which was pending in Parliament, where the government despite lacking a majority, managed to get it passed. The **Delhi gang rape case of 2012** in which a juvenile accused received a lighter punishment because of his age because of which amendments were prepared in the said act.

Apart from the hue and cry from society against the Act, several members in Lok Sabha also opposed the controversial amendment that provides for treating juveniles between 16 - 18 years of age on par with adults for crimes such as rape. It is necessary to understand that Rehabilitation and not retribution should be the policy and therefore it is necessary to examine the provisions of the Act carefully to assess its possible impact on society.

Analysis of notable amendments introduced under JJ act 2015

- **Determination of Age of Child or Juvenile**- Earlier, there was no provision in procedure for determination of age of a juvenile was given in rule-12 of J.J. Rules, 2007. The same rule with minor changes is adopted by the new J.J. Act, 2015. Section 94 of J.J, Act, 2015 says that where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it, that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry as the case may be, without waiting for further confirmation of the age²

In case, the Committee or the Board has reasonable grounds for doubt regarding juvenility, the Committee or the Board, shall undertake the process of age determination, by seeking evidence by obtaining-

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) a corporation or a municipal authority or a panchayat issues the birth certificate;
- (iii) And only in the absence of those documents, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.³

- **Offences under JJ Act, 2015 are-**

1. **Petty offences**⁴- “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.
2. **Serious offences**⁵ “serious offences” includes the offences for which the punishment under the India Penal Code or any other law for the time being in force is imprisonment between three to seven years.

¹ THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015 SECTION 2(33).

² Ibid, SECTION 94(1).

³ THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015 Section 94(2).

⁴ Ibid, Section 2(45).

⁵ Ibid, Section 2(54).

3. **Heinous offences**⁶ the minimum punishment for any offence under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more such offences are known as “heinous offences”

➤ **Reports to be Confidential**- All the reports related to the child and considered by the Children or Court Board shall be treated as confidential⁷. Children Court or Board shall direct the destruction of relevant records after the expiry of period of appeal⁸." However, Children Court shall retain the records in matters of heinous crimes committed by children who were tried as an adult.

➤ **Appeal** - The Board passes any order the aggrieved party can file an appeal against such order which shall lie to the Children's Court. But it is subject to an exception that where an order is passed by Board after making the preliminary assessment into a heinous offence under section 15 of the Act, an appeal shall lie before Court of Sessions.⁹

Second appeal shall not lie from any order of the Court of Session, passed in appeal under this section¹⁰, If the Board has ordered the acquittal of the child, no appeal shall lie from any such order of acquittal in respect of a child alleged to have committed a petty offence, serious offence and heinous offence committed by a child below 16 years, on the other hand an appeal shall lie against the acquittal order of Board in case of heinous offence committed by a child who is between 16-18 years¹¹.

➤ **Non-payment of fine**- There is no prohibition clause in the new Act of 2015 which says that the Child will not be punished for the non-payment of fine. Whereas under the old Act of 2000 it was specifically mentioned that the child cannot be punished for such non-payment of fine or security¹², but Hence, for recovery of fine or in default of giving security, the provisions of code of criminal procedure will be applicable. However, where a child is not earning or have no means to pay the fine or security, any proceeding against the child will not serve the purpose.

➤ **Children Court**- Children Court means a court established under the Commissions for Protection of Child Right Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts are not in existence, the Court of Sessions having jurisdiction to try offences under the Act¹³. Children Court hears the matter of children between 16-18 years who have committed heinous offences, but it has no original jurisdiction. It can exercise the jurisdiction only on transfer of the case by Board. Children Court is also empowered to hear the appeal against the orders of Board¹⁴.

⁶ Ibid, Section 2(33).

⁷ Ibid Section 99.

⁸ Ibid Section 24(2).

⁹ Ibid Section 101.

¹⁰ Ibid, Section 101(4).

¹¹ Ibid, Section 101(3) (a).

¹² THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000, Section 16(1).

¹³ THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015, Section 2(20).

¹⁴ Ibid, Section 101.

Chapter III

SHORT COMINGS OF J.J. ACT

Treatment of child as an adult- A Vague Criteria- In the new Act, the children between the age of 16-18 years committed heinous offence, has been categorized as a child: 1) who cannot be treated as an adult and 2) who should be treated as an adult, The criteria while deciding the adulthood of a child is a preliminary assessment with regard to his physical and mental capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence¹⁵. "Even after the preliminary assessment and referral order of Board, the Children court is again bound to determine the adulthood of the referred child. The Board or the Children Court may for this purpose take the assistance of experienced psychologists or psycho-social workers or other experts¹⁶." Therefore, availability, of experienced psychologist or psycho-social workers is a very important before the practicability of this provision.

No clear provision with regard to the orders to be passed by Board after enquiry in heinous crimes committed by children between 16-18 years- Against the child who has committed a petty offence, or a serious offence, or a heinous offence being under the age of 16 years, the Board is empowered to pass any of those orders such as admonition, probation, community service, advice, fine, etc. as prescribed in section 18. But there is no provision in the Act as to what orders the Board shall pass after enquiry in heinous offence which has been done by a child between 16-18 years.

Lack of clarity on Appellate Powers-According to section 101(1) except an order of preliminary assessment under section 15, all order passed by Board may be challenged before the Children Court, But the proviso to this subsection says that in case of any delay in filing appeal, delay can be condone only by a session court. It is a general principle of criminal law that an appellate court is empowered not only to hear the appeal but also empowered to condone the delay. But in the new Act of 2015, this power has been divided between the Session Court and Children Court. According to this provision, it seems that if there is a delay in filing the appeal, appellant has to approach Session Court, If Session Court condones the delay then again appellant has to approach Children Court for filing the appeal. It would have been better to confer both the powers on Children Court only. The object behind this provision is not clear.

Chapter IV

JUDICIAL RESPONSES

In case of *Kulai Ibrahim v. State of Coimbatore*¹⁷ it was observed by the Court that accused has right to boost the question of juvenility at any point of your time during trial or maybe after the disposal of the case under the Section 9 of Juvenile Justice Act , 2015.

¹⁵ THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015, Section 15(1).

¹⁶ Ibid, Section 15(1).

¹⁷ *Kulai Ibrahim v. State of Coimbatore*, AIR 2014 SC 2726.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh*¹⁸ the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

In case of *Satbir Singh & others v. State of Haryana*¹⁹ Supreme Court again reiterated that for the aim of determination whether accused is juvenile or not, the date of birth which is recorded within the school records shall be taken into consideration by Juvenile Justice Board.

In case of *Krishna Bhagwan v. State of Bihar*²⁰ the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for the considering the age of juvenile should be on which the offence has been committed.

In case of *Arnit Das v. State of Bihar*²¹, the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.

In *Sampurna Behura v UOI*²², A writ petition filed which drew the attention to failure of state govt. to implement the provision of JJ act and truly horrific conditions of protection of children. Sc gave numerous directions to central and state govt. to improve the condition of JJ in our country.

Chapter V

CONSTITUTIONAL VALIDITY OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 replaced the Juvenile Justice (Care and Protection of Children) Act, 2000 and came into force on 15th January 2016. After the enforcement, it tempted to gain a lot of attention and was highly criticized as it was alleged to be violative of the constitution of India. The Major Amendment made in the Juvenile Justice (Care and Protection of Children) Act, 2015 was that children aged 16 to 18 years will be tried as adults in case where they commit heinous crime led to the criticism of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is alleged to be violative of Article 14²³ and Article 15(3)²⁴ of the Constitution of India which allows for special laws for marginalized sections of society that includes children. The Unequal treatment of different sets of people can be only permitted only when there is a “clear and unambiguous” public purpose and after the amendment, the public purpose achieved is unclear after differentiating two types of individuals that commit the same type of offence. The Amendment specifies that if a child aged 16 to 18 years commits a heinous offence, then, he shall be produced before a juvenile justice board which will decide the mental and physical capacity of the child to commit the offence and his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence for deciding that whether the juvenile offender has to be sent for rehabilitation or to be tried as an adult for fixing his culpability. The preliminary assessment can create a scope of extensive arbitrariness by the juvenile justice board and that arbitrary preliminary assessment can lead to transfer of the offence committed by a juvenile into the adult criminal justice

¹⁸ *Deoki Nandan Dayma v. State of Uttar Pradesh*, 1997 10 SCC 525.

¹⁹ *Satbir Singh & others v. State of Haryana*, AIR 2005 SC 3549.

²⁰ *Krishna Bhagwan v. State of Bihar*, AIR 1989 Pat 217.

²¹ *Arnit Das v. State of Bihar*, AIR 2000 SC 748.

²² *Sampurna Behura v. UOI*, WRIT PETITION (CIVIL) NO. 473 OF 2005.

²³ Article 14, Constitution of India.

²⁴ Article 15(3), Constitution of India.

system²⁵. It is well known that arbitrariness is antithetic to the right to equality, hence it violates article 14 of the constitution of India.

Chapter VI

PREVENTIVE MEASURES FOR JUVENILE DELINQUENCY

a) Clinical Programme

In this programme Social workers help the Juveniles delinquents to understanding their personality problems. The clinic provides aids through Psychiatrists Clinical Psychologists and Psychiatric Social worker.

The functions of clinics are:

- To inspect cases selected for study and treatment.
- To participate in discovery of pre delinquent.
- To refer cases to other agencies for treatment or treat itself
- To reveal the community unmet needs of children.²⁶

b) Educational Programme

Education is a key to change the minds and behaviour of Juveniles. The impact of education institutions are very significant in the country where almost every child going to school. The preventive programme can be introduced and implemented in an effective manner through the Educational Institutions. Teachers should not discriminate among the students and guide them to the right path. Moral education is a significant factor for the students which decide their life as they understand the difference between right and wrong ideas and make correct decisions and choices.²⁷

c) Mental Hygiene

This method is additionally helpful in prevention and treatment of delinquency. To prevent the mental conflict and to bring about a proper mental adjustment in childhood and value of mental therapy in curing a mental disturbance cannot be over-emphasized. The mission of life must be determined, and energies must be directed towards the fulfillment of the high mission. Juvenile Delinquency can also be prevented by development of high sentiment and values in them. In October 1944, on occasion of inauguration of the Indian Council for Mental Hygiene Dr. K.R. Masani, the then Director of Indian Institute 72 of Psychiatry and Mental Hygiene, said that the application of mental Hygiene was wide and varied and in Education, Law, Medicine, Public health, Industry, mental hygiene played an important role in preventing the delinquency and crime.

d) Recreational programmes

The recreational programmes are very helpful to curb delinquency. These programs enable youths to interact with other adults and children in the community and develop friendly relations. Such positive friendships may support children in later years. Youth programs are designed to suit the personalities and skills of various children and should include hiking, dancing, music drama, sports, karate, bowling, art, and other activities. It is believed that the energies of youth are often alright channelized into pursuits like sport games

²⁵ Available at: < <https://thewire.in/law/very-basis-of-juvenile-justice-amendment-is-unconstitutional> > Accessed on: 20 January 2020.

²⁶ Available at: < <http://ignited.in/a/57753> > Accessed on: 21 January 2020.

²⁷ Ibid.

and other healthy activities, which might counteract delinquent among the participants. The establishments of recreational agencies like drama, sports, concerts, puppet, playgrounds community centers, and shows are very necessary for preventing the delinquency and developing social group work and youth groups. In rural areas, recreational agencies should provide outdoors meeting halls, playgrounds for sports and cultural activities. Youth organizations and groups/agencies should take and assume the responsibility for organizing these programmes so that Juvenile may be kept away from delinquency.

e) Removal of inferiority complex

Inferiority complex, fear, apprehension may sometimes lead the child to commit crime under wrong and misplaced belief/impression of proving himself. Children deserve encouragement to become confident and good spirited person. Discouragement pulls them behind in their life. They should be properly to face various good and bad phases of life and their failures should not be criticized. Praise cheer, sympathy and love should be showered to banish complex.

f) Government Initiative

Effective social programs should be initiated by the govt. in order that the society becomes conscious of deviant behaviour and in cases where they face such unruly conduct from children, steps can be taken to keep them on right track. These programs will attempt to stop criminal development of the probable delinquent child within the future.

g) By Eradicating Poverty

Poverty is the root cause of all criminal activities. Implementation of Governmental policies will eradicate poverty at the grass root level. Poverty forces children to take up negative means which later take up a criminal mould.

h) Family Environment

Family factors which can have an impact on offending includes the extent of the way parents discipline a toddler , criminal parents or siblings, parental supervision, parental conflict or separation and the quality of the parent-child relationship. Many studies have found a robust correlation between a scarcity of supervision and offending, and it appears to be the foremost important family influence on offending.

Chapter- VII

CONCLUSION

For over a century, states have firmly believed on the notion that the juvenile justice system was a weapon to protect the public by providing a system that responds to the criminal acts of juvenile that are maturing into adulthood. States recognize that children who commit crimes are different from adults: as a category, they're less blameworthy, and that they have a greater capacity for transformation. To respond to those differences, states have established a separate judiciary for juveniles, and that they have created a separate, youth-based service delivery system that's different than that provided to adults. It has seen that the countries with economies in transition have witnessed a dramatic rise in delinquency rates. Most children and young people in conflict with the law have committed minor crimes barring some exceptions. Reducing the age of Juvenile

in conflict with Law can never be the answer to the matter of delinquency. Considering Nirbhaya Case as a whole and sole reason and also the moral foundation and justification to reduce the age of Juvenile from 18 to 16 and thereby causing the Juvenile Justice (care and protection) Act of 2000 to undergo the drastic and dramatic changes is nothing but a pathetic exhibition of social prejudices by the central government. The demand to lower the age of age of Juvenile to 16 was misinformed, emotive and motivated. It is nothing but a ploy to feature to already overwhelming powers of the state that it exercises over its citizens. The centre of interest in court is usually a juvenile and his welfare, and not the act or its consequences which could have resulted in his or her being brought before the court. Juvenile justice system must maintained rehabilitation as its primary goal and will clearly distinguish itself from the criminal justice system. Hence, rather than reducing the age, an effort should are made to get rid of the very root explanation for the matter i.e. mould our juveniles in such a way and provide them with such a socio-psychological-emotional atmosphere and support that they don't commit crime at the very first step itself. We should not forget that the essence of the Juvenile Justice System should be "restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the conventional society." it's important to know that Juveniles need reforms, not prison. The new Amendment in Juvenile Justice Act will throw open the gate for frivolous FIRs. The Juvenile Justice Act of 2000 was comprehensive and if would have been implemented honestly could have curbed incidents like Delhi gang rape by providing timely help and necessary support to juveniles who might turn into hardened criminals.

The Juvenile Justice (Care and Protection) Act, 2000 was a progressive piece of legislation with its heart within the right place. The need of an hour is to fix the systemic problems and strengthen the existing juvenile justice system such that it can fulfill its objectives to reform and rehabilitate the young people who need it the most. History, from time to time has witnessed that the only measure of stipulating stringent laws would only promote hatred and injustice. Law can never be the solution. Law can only supplement the solution. Therefore, the time has come to adopt a flexible, novel approach to tackle the problem of Juvenile Delinquency, an approach- full of love, compassion, understanding, and values and last but not the least the justice.

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