

Introduction

A Latin maxim that suits best for the Juvenile Justice system in India is 'Nil Novi Spectrum' which implies that nothing is new on this earth. There has existed a presumption in the whole world since the ancient period that the Juveniles should be dealt leniently because there exists a system of thought that says– Young folks generally have a habit to respond in a serious and prolonged frustration which is accompanied with aggressive approaches.

In the last few years, it is also observed that the crimes done by children under the age of 15-16 have increased significantly. The general tendency or the psychology behind the commitment of the crime or the causes of crime are early-life experiences, dominant masculinity, upbringing, economic havocs, lack of education, etc. It is a matter of ignominy that the children under the age of 6-10 are nowadays used as instruments for carrying out unlawful or illegal activities. Since the minds of the kids possess an innocent and manipulative character, they can be lured at a meagre cost.

Prior to the Juvenile Justice Act of 2015, 2000 and 1986, there existed the Children Act of 1960 that aimed to give effects to the international responses towards the issue of Juvenile Justice by which they provided a uniform policy that protected the interests and rights of a Juvenile and that looked at care, treatment, rehabilitation and development of a child per se.

But with the recent developments in the international community and subsequent emergence of the involvement of Juveniles in crime, the Indian lawmakers are compelled to come forward with new, progressive, and stricter laws for the concerned Juvenile system in the country. As a result, the Juvenile Justice act of 1986 then Juvenile Justice act of 2000 and recently the Juvenile Justice act of 2015 was passed by the Parliament.

Once former Chief Justice of India, Justice V.K. Krishna Iyer stated that we need penal code because the child is the father of a man and if we're neglecting the underdevelopment in children, then we would be guilty of many faults and errors related to abandoning our children.

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic

reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated.

The frightful incident of “*Nirbhaya Delhi Gang Rape Case*”, on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “ Juvenile Justice (Care and Protection), 2015.

The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

Definition of Child and Juvenile under the Juvenile Justice Act, 2015 and other various laws

Generally, a “child” means a person who has not attained the age of 18 years and is not mature to understand that what is right and wrong. In modern era, the penal laws of most countries have adopted the principle of ‘*doli incapex*’ which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act.

According to sub-section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a “child” means a person who has not completed eighteen years of age. The Act classifies the term “child” into two categories: –

- “child in conflict with law” , and
- “child in need of care and protection”

The child who has committed an offence and he or she is under the age of 18 years on the date of commission of the offence is basically called as “ child in conflict with law”. The second

sub – category is “ child in need of care and protection” means a child as defined under Section 14 of the Act.

- **Children Act, 1960:** Section 2(e) of the Act states “ child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.
- **United Nations Convention:** The UN Convention on the Rights of Child, 1989 defines that “child” means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier.
- Difference between Juvenile and Child

A person under the age of full legal obligation and responsibility is a minor or a person who is below the legal age of eighteen years is minor. A child being accused of a crime is not tried as an adult and is sent to the Child Care Centre whereas juvenile is a person between the age group of sixteen and eighteen years. A young person who is been accused of crime is a juvenile offender and is tried as adult in court proceedings.

In general sense both the term has same meaning but however difference lies in context of implications in the eyes of law. Minor implies young and teen persons whereas juvenile either indicates immature person or young offenders.

International Concerns for Juvenile

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribe a set of standard to be adhered to by all the States parties in securing the best interest of the child. The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse. The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child.

Following are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children:

1. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
2. UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
3. UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)
4. Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

Juvenile Justice System in U.K.

For the first time in 1908 Juvenile Courts were established in England under the Children Act, 1908. The primary duty of these courts was to provide proper care and protection to child and young offenders and take all the necessary steps to remove all undesirable surroundings around the offenders and to ensure reformation of the offenders by providing education and training.

1. *The Children and Young Offenders Act, 1933* confers the civil powers on the Juvenile Courts in certain important cases to look into matter. The Act also provides that any child and young person who have committed the crime should be tried in Juvenile Courts only. The Act also provides the establishment of Remand Homes.
2. UK Legislation also came with the new Act that also deals with Rights of Juvenile Offenders. The Act came to know as *The Criminal Justice Act, 1948*, the act provides certain class of security to young offenders by sending them to remand homes.

Juvenile Justice System in U.S.A.

The working of Juvenile Courts in U.S.A. is relatively less complex and easier as compared to the other nations. The courts of U.S.A. follows the informal way in the process of trial of offender. At the first stage, the police officer in the charge of the case has the full discretion power either to keep the juvenile offender in the child custody or to immediately release him or to admonish the offender or to do the both. In the second stage police officer have to contact the Juvenile Courts to make them aware about the case and to take the matters into their hands.

Juvenile Offenders after the trial in court is being sent to Certified Schools or to the Children Homes if the order is passed by the court. According to the Juvenile Justice System in U.S.A. a juvenile is tried as an adult only in those cases where the age of the juvenile is close to adulthood as per the statutory provisions or any juvenile offenders who is found to be involved in repeated offences and is proved danger to the society.

History of Juvenile Justice System in India

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., U.S.A. This movement has been started around the 18th century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as “*The Juvenile Justice (Care and Protection of Children) Act, 2000*.”

The Juvenile Justice, 1986 which repealed the earlier *Children Act, 1960*, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of Jammu and Kashmir. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:

1. The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile.
2. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Juvenile Justice Act, 2000

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011 .The amendment was made to address the gap and loopholes in the implementation.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “*Delhi Gang Rape Case*” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by *The Juvenile Justice(Care and Protection) Act, 2015*.

Present Juvenile Justice System in India

Like the other countries, India had also made legal provisions that especially and specifically deals with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency. The Juvenile Justice System in India is made on the basis of three main assumptions:-

1. young offenders should not be tried in courts, rather they should be corrected in all the best possible ways,
2. they should not be punished by the courts, but they should get a chance to reform
3. trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

Juvenile Justice Act, 2015

The Juvenile Justice act of 2015 replaced the Juvenile Justice act of 2000 because there existed a need for a more robust and effective justice system that focused on deterrent as well as reformative approaches. The approach towards Juveniles should be different from that of adults, there were contentions made in the Parliament that the Juveniles should be given more space for transformation or reformation or improvement and that is only possible when there's a special justice system. Thus, the new act i.e. the Juvenile Justice (care and protection of

children) Act, 2015 focused on a Juvenile friendly approach of adjudication and disposition of matters.

Some of the salient features are as follows:

- Section 2 (12) of the Juvenile Justice (care and protection of children) Act, 2015 gives the definition of the Child, meaning thereby that a child is a person who hasn't completed the age of 18 i.e. he/she is below 18. The Act has given a classification regarding the term 'Child' namely "Child in need of care and protection" and Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015 that talks about "Child in conflict with law".
- There was a clear distinction made regarding the facets of offences, meaning thereby that categories were made terming the offences as heinous, serious and petty. There have been specifications made regarding the Juveniles who are between the age of 16-18, if any kind of crime is committed by them then after due perusal of their mental capacity, they can be tried as an adult.
- Introduction of Juvenile courts, meaning thereby that special courts were to be established that will be trying the Juvenile offences only, like that of the NDPS courts, courts dealing with POCSO, etc.
- With the coming of the 2015 Act, the scope of the definition of 'Child in need of care & protection' was enhanced to another level by considering the following points from the many mentioned in Section 2 (14) of the Juvenile Justice (care and protection of children) Act, 2015:
 1.
 0. Those whose guardians or parents are/ were unfit or uninterested in taking care of the child.
 1. Those who are/ were found performing works that are in contravention to the labor laws.
 2. Ones who have the imminent threat of marriage before attaining the specified lawful age.

3. The meaning of adoption has also been specified in the Act through which the rights an adopted child stands recognized.

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care & protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions. The most important subjects of the Act are as follows:-

Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. The Board had to consider **Rule 12 of the Juvenile Justice Rules, 2007** in order to determine the claim of juvenility. In case of *Kulai Ibrahim v. State of Coimbatore* it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh* 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.

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

In case of *Krishna Bhagwan v. State of Bihar* 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.

But later in case of *Arnit Das v. State of Bihar*, 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.

Juvenile Justice Board

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.

The Board shall consists of Principal Magistrate and two social workers, among whom one should be a women. The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.

Special Procedure of Juvenile Justice Board: The Act has provided the procedure against the juvenile offender. Following are the main special procedure –

1. The proceedings cannot be initiated on a complaint registered by the police or citizen
2. The hearing must be informal and should be strictly confidential.
3. The offenders should be kept under Observation Home after detention.
4. The trial of juvenile in conflict with law shall be conducted by lady Magistrate.
5. A child in conflict with law may be produced before an individual member of the Board , when Board is not sitting

Causes of Juvenile Delinquency

Researches and Studies shows that they are various causes of juvenile delinquency in India. Every person has different behavioral patterns so as in case with children also. The behavior patterns develop in early childhood and at early stage it is very difficult to identify any kind of behavior. But as soon as, child grows up comes out to real world, behavior patterns changes from time to time and many circumstances or situation may arose the delinquent behavior in them. Following are some of the causes of Juvenile Delinquency:-

1. **Adolescence Instability-** The biological, psychological and sociological are one of the important factors in the behavior pattern of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play and etc. And at this age, they want freedom and they wanted to be independent but sometimes they are given any chances and oppournities by their parents, teachers and elders this leads to development of anti – social behavior in them. Thus, this anti – social behavior, biological changes, psychological causes are some of the reasons which are responsible for juvenile delinquency.
2. **Disintegration of Family System-** Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.
3. **Economic condition and Poverty-** Poverty and poor economic condition is also considered has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfill the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by cook and when their desires are met they start themselves indulging in stealing money from homes or any other parents. And this develop habitual tendency of stealing which results into theft at large scale.
4. **Migration-** Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.
5. **Sex Indulgence-** The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. In this age they may become more vagrants or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc.
6. **Modern Life Style-** The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.

Juvenile Justice and Constitution of India

The Constitution of India is considered as the fundamental law of India. The Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. The Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided *Directive Principles of State Policies (DPSP)* which acts as general guidelines in framing government policies. The Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

1. Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A)
2. Right to be protected from any hazardous employment under the age of fourteen age. (Article 24)
3. Right to be protected from being abused in any form by an adult. (Article 39(e)).
4. Right to be protected from human trafficking and forced bonded labour system. (Article 39)
5. Right to be provided with good nutrition and proper standard of living. (Article 47)
6. Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has considered all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

Criminal Justice (Reformative or Punitive) and Juvenile

Juvenile Justice is a legal framework which defines justice for juvenile under the Indian Legal System. The system is giving a special treatment and protection to juvenile delinquency. Juvenile Delinquency means a crime committed by youth who is under the age of 18 years. At present, everyone knows that there is an increasing rate of juvenile crimes and this increasing

rate is creating a debatable issue of age determination. Age determination is considered as one of the most important factor to determine the maturity level of the accused. The increasing crime rate is raising a question that whether the juvenile can be tried as an adult or not? The act itself answer to the question that no juvenile offender who comes under the definition of “child with conflict with law” as defined under sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent to Child Care Centre or any Rehabilitation Centre (till the offender attain the age of 21 years and then he or she may shifted to the jail or prison).

Thus, the present Juvenile Law in India, considers Age Determination as paramount importance to find out whether the offender falls under the purview of Juvenile Justice Act.

According to the Act, the maximum tenure of punishment which can be given to the juvenile offenders is three years and this punishment is valid for heinous crime also. In case of an adult offender, the maximum punishment which can be given is 7 years or life imprisonment or death penalty. But, the Act, in case of juvenile offenders believe on Reformation of juvenile as much as possible. The reformation type of punishment under the Act includes: – Sending juvenile to Rehabilitation Centers, Juvenile Schools or making them involve in various program headed by government or NGO’s.

In the present scenario, there is no need to give such a minor kind of punishment for a heinous and harsh offence just because of Age determination or Age factor. Rape is Rape, one can’t walk away taking a plea of age factor or mental incapacity or mental unfitness.

Thus, the existing law in the name of Age determination or Age Consent, is not creating a deterrent effect on the anti – social behavior of youth. Juvenile offenders are in believe that committing heinous crime is no issue as they will get away very little or no punishment in name of reformation.

Adopting of reformatory theory of punishment by law, is giving an undue advantage to juvenile to perpetuate their ability to commit crime without facing any harsh consequences. Reformation is good but not always. If law is talking about reforming the juvenile offenders so that they can have a better life in future then law should also talks about the rights of the victim. Justice must be given to the victim. The theory of reformation is helping juvenile to reform but it is not helping the victim at all.

The present juvenile system in India is created on believe that juvenile offenders can be reformed and rehabilitated, sending them to bars or prisons will going to reaffirm their status and identity as “criminals”. Now the question arises is that there is no guarantee that juvenile offenders will get reformed and will not show their anti – social behavior again.

The act is totaling focusing on the reformation rather than penalization. Penalization will definitely will create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

What is the doctrine of ‘Doli Incapax’

One amongst the important principles of Criminal Jurisprudence is the doctrine of ‘Doli Incapax’, which enunciates the criminal liability of the Juvenile. When this doctrine is applied and interpreted with regards to the Indian Laws, the result it gives is that no Juvenile under or of the age of 7 years should be prosecuted for the commission of the crime.

The doctrine of ‘Doli Incapax’ means the incapability of committing a crime. It finds its basis on article 40 (3) (a) of the United Nations Convention on Rights of Child, that states that every country must mention the minimum age for the children who should be exempted from any kind of criminal liability because of their inability to decipher the nature and consequences of the act.

For Juveniles falling under the age of 8 to 14 years, the prosecution has the liability to prove the offence of the concerned child.

The main aims of this doctrine can be elucidated in the following points:

- A child should be protected from the gravity of punishment inflicted upon him to his act. A reformatory approach should be adopted to make the child overcome his paranoia.
- A child that belongs to the age group of below 7 years, doesn’t possess the mental capacity to analyze the consequences of his acts, he/ she may lack the knowledge as well as the intention to commit a crime and mere ‘actus reus’ cannot be a ground for prosecution unless accompanied with ‘mens rea’.

Penal provisions and related judgements:

- Section 82 and 83 of the Indian Penal Code, 1860 talks specifically about the exemption from prosecution of the Juveniles.
- The Supreme Court in the case of *Kakoo V. State of Himachal Pradesh* reduced the punishment of a 13-year-old boy who had raped a 2-year-old girl. The court took into consideration sec. 83 and 84 of the IPC that Juveniles can't be treated as that of the adults. Thus, it is a very well-settled law that while dealing with the Juveniles the court should consider reformative and humanitarian approaches.
- But in the case of *Heeralal V. State of Bihar*, a child threatened an adult that he'll chop him into pieces and subsequently the child stabbed a person till his death. He was sentenced by the trial court with a reasoning that the child was mature enough to understand the ramifications of his act. The Supreme Court also dismissed the petition.

What role does the Police play

The Police in the Juvenile Justice System are known to be the gatekeepers, meaning that they are the ones who have the power to make initial decisions regarding how the case would be handled. The gatekeepers enjoy a huge amount of discretion, as a result, only a few cases come up from the plethora of acts committed and this is again a great matter of ignominy.

If a piece of information is received by the Police officer, then it is a provision that they should be kept in special homes and not lockups or jail, the matter is to be dealt with by a child welfare officer, who'll be reporting things to the Juvenile Justice board. In some of the cases, it is also observed that the Police officer may on prima facie facts & circumstances grant bail to the Juvenile.

The main reason for the appointment of a child welfare officer is because many of the research works have shown that the interaction between the Police and the young people are often characterized by high levels of fear, domination, mistrust, dissatisfaction, etc. Police on the other hand sometimes behave in a hectoring and stubborn way, which then results in the establishment of negative perceptions.

The aggressive, rude, abusive and uncooperative behaviour by both sides is an imbroglio per se.

Conclusion

The increasing rates of juvenile crime in India is a very concerning issue and needs to be focused upon. Although the government has laid various legislations and rules to stop the incidents of juvenile crimes, but the present laws on juveniles are not creating a deterrent effect on the juveniles and thus the results are not fruitful and legislative intent is not being accomplished.