

“JUVENILE JUSTICE SYSTEM –FOR JUVENILE OFFENDERS BELOW THE AGE OF SIXTEEN ‘16’ – IN INDIAN PERSPECTIVE”

Praveen Vasam

Research Scholar, Law College Dehradun, Uttarakhand University, Dehradun (Uttarakhand) 248001

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Abstract: *It is the responsibility and duty of the court to determine the age of a person who is being involved or committed a crime, whether he is juvenile or not. The court has held that “ very young children should not be sent to prison “. A juvenile under JJ Act, 1986 means “a boy who has not completed the age of sixteen years and a girl who has not completed age of eighteen years”. In the Juvenile Justice (Care & Protection) Act 2000, the difference of age of male and female child has been removed and a uniform age pattern was provided i.e 18 year of age for both. Further, Juvenile Justice (Care & Protection) Act 2015, defined “child” and “juvenile” under sections 2(12) and (35) of the Act respectively, define as “a person who has not completed the age of eighteen years”. And as per section 2(13) of the Act 2015 “child in conflict with law” means “a juvenile who is alleged or found to have committed an offence and has not completed eighteen years of age as on the date of commission of offence”. So it is the responsibility of the court that before sentencing a person, it is important to determine the age of such person with the help of relevant documents and then decide whether he/she is a juvenile or not. Enquiry should be held to verify the related documents pertaining to age of a juvenile after he/she produced before the court/board and during the pendency of his case. However, now the Juvenile Justice (Care & Protection of Children) Act, 2015 has now finally solved the controversy by referring the child to “a person who has not completed the age of eighteen years as on date of commission of offence”. However, this issue of relevant time at which the child should be below the age of eighteen years has been raised in many judgments but has always been a debatable issue that is likely to continue in future too.*

INTRODUCTION

There needs to be involvement of family as well as NGOs in rehabilitation of juvenile offenders to decriminalize the justice process.

Juvenile delinquency is defined as “the habitual committing of criminal acts or offences by a young person, especially one below the age at which ordinary criminal prosecution is possible.”

These acts are committed mostly by teenagers, cumulative in today’s civilization, which is a very concerning matter and cannot be snubbed. The more concerning matter is that generations of youth are believed to be the future of the world. Their behavior shows how tomorrow’s future will be.

STATISTICS

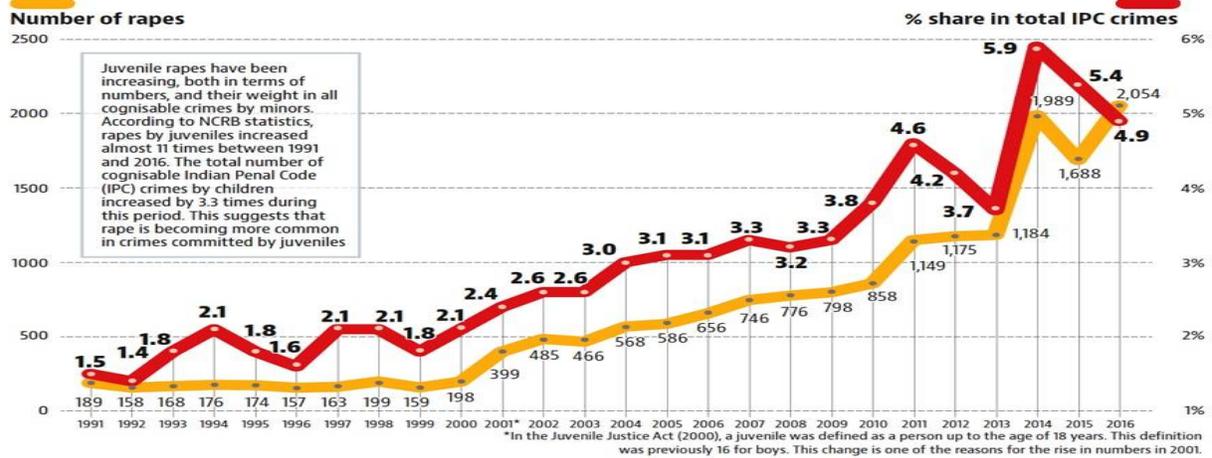
CRIMES BY JUVNILES-

MURDERS 2.5%RAPES 5.4%

REPEAT OFFENDERS

	2011	2012	2013	2014
ADULTS	6.9%	6.9%	7.2%	7.8%
JUVENILES	11.5%	11%	9.5%	5.4%

Losing their way at a young age



16-18: The tough ages, according to statistics

The share of sex related crimes in all cognisable IPC crimes committed by juveniles is the highest among 16 to 18-year-olds

% of crime	Below 12	12-16 years	16-18 years	Total
Cognisable IPC Crimes	1.5	24.7	73.8	41,826
Assault on woman with intent to outrage her modesty	0.6	20.2	79.2	1,627
Insult to the modesty of women	1.1	29.8	69.1	94
Rape	1.4	22.6	76.0	2,054
Attempt to rape	2.7	24.7	72.6	73
Unnatural offences	3.7	42.2	54.1	218
Total sexual crimes	1.2	22.9	75.9	4,066

SOURCE: NATIONAL CRIME RECORDS BUREAU

CRIMES BY JUVENILES

In contemporary scientific thought pervaded with predominant cultural standpoints, childhood and adolescence are perceived as being indisputably different from adulthood, particularly in terms of their biological, psychological, and social aspects. From the outset of human civilization, ever-changing social circumstances have always had a significant impact on the process of a child's psychological development, which largely depended on specific social settings and the underlying cultural attitude to children and youth.

As per National Crime Record Bureau in the year 2011 – 64 per cent of the crimes has been committed by juveniles between the age of 16 and 18. Many heinous crimes are committed between the age of 16 and 18. This age is highly volatile and highly unstable. Particularly during this period they don't know what to do, they don't know how to react. But rapid mental development occurs during that stage. If they keep on indulging in these types of activities their life is at stake.

In the case of *Ram Singh and others v. State of Delhi* also known as Nirbhaya or the Delhi Gang Rape case, 2012 created huge havoc regarding punishments given to the juvenile convict should be same as given to other convicts. Yes, the juveniles should also be treated in the same way because they have committed the same crime and also if they are below statutory age of majority they need to be punished for the crime they have committed, because if they get away with it will become a habit which will carry on till the later part of their life, definitely they should get same treatment. The sooner a child is held accountable for their actions, the sooner they will come to know there are consequences for their consequences for their actions. Giving

punishment is a positive thing so they should receive this understanding and rectify them in their upbringing itself.

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 *Kulailbrahim v. State of Coimbatore*¹ 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*² 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*³, 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*⁴ 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*⁵, 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.

MAIN POINTS OF THE JUVENILE JUSTICE ACT:

THE 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 law⁶.

The Board shall consist of Principal Magistrate and two social workers, among whom one should be a woman⁷. 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 final⁸.

When a child alleged to be in conflict with law is apprehended by the police, he/she will be placed under the charge of the special juvenile police or the designated child welfare police officer, who shall produce the child before the Juvenile Justice Board.

An inquiry may satisfy a Board that a child, irrespective of age, has committed a petty offence, or a serious offence, or a child below the age of 16 has committed a heinous offence. In such a case, it may:

- Allow the child to go home after advice or admonition.
- Direct the child to participate in group counseling and similar activities.
- Order the child to perform community service.
- Order the child, or parents of the child, to pay a fine.

¹ AIR 2014 SC 2726

² 1997 i0 SCC 525

³ AIR 2005 SC 3549

⁴ AIR 1989

⁵ AIR 2000 SC 748

⁶ Section 4 of Juvenile Justice(Care and Protection) Act, 2015.

⁷ Section 4(2) of Juvenile Justice(Care and Protection) Act, 2015.

⁸ Section 5 of Juvenile Justice(Care and Protection) Act, 2015

- Release the child on probation of good conduct.
- Direct the child to a special home for a period not exceeding three years.

In case of a heinous offence by a child above the age of 16, the Board may say that there is a need for trial of the child as an adult. No child in conflict with the law shall receive a death or life imprisonment sentence without the possibility of release.

We see juvenile offenders trapped helplessly in the criminal justice system of India. This rise in juvenile delinquency is very alarming, and we hope to provide free legal aid to underprivileged families and children.

OBSERVATION HOMES FOR JUVENILE OFFENDERS

The recent escape of 33 juvenile offenders from an observation home in Chennai has raised questions on the efficacy of the juvenile justice system in the country. The National Human Rights Commission has issued notice to the government in this regard, and hopefully the step will ignite a change not only in the conditions of observation homes across the country, but also in our approach towards children accused of being in conflict with law.

PROPER OBSERVATION HOMES AND FACILITIES FOR JUVENILE OFFENDERS

Since observation homes are like transit points, they offer no educational or vocational activities for these juvenile offenders, as one presumes that the kids will stay there for a short while. But the reality is otherwise. Even if it was different, not having any activity, even for a few days, with energetic children is a sure recipe for disaster.

Juvenile offenders have the same set of constitutional guarantees as an adult, such as a fair trial. But very often, adult offenders are able to secure bail faster than a juvenile offender. Merely because the juvenile is not punished, it can in no way take away his/her constitutional guarantees of liberty. The only difference is that, unlike adult offenders, the state must protect, and ultimately rehabilitate, juvenile offenders. But protection cannot become custody.

Also, the statute stresses on privacy as a right for the juvenile offender. But in the garb of privacy, there is very little effort for scrutiny and transparency in the process. The statute focuses on necessary infrastructure with a significant involvement of informal systems, specifically the family, voluntary organizations, and the community, to provide a system separate from the criminal justice system.

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 a 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 heinous offence just because of Age determination or Age factor. Rape is Rape; one can't walk way 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 create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

CONCLUSION

Nowadays, we all know that heinous crimes are being committed by juveniles and now we are in a situation debating about the juvenile's age and punishment which is not given to them according to the crimes committed by them. Age determination is the most important factor to find out whether the accused falls under the purview of the Juvenile Justice Act. Accurate recording of the age is also important to form child welfare committees and institutes.

One of the most criticized steps in the new JJ Act 2015 is introduction of “Judicial Waiver System” which allows treatment of juveniles, in certain conditions, in the adult criminal justice system and to punish them as adults. This is for the first time in India's history that such a provision has been prescribed. Given to the severe criticism, Bill was referred to a Standing Committee of Parliament which also rejected such provisions. Since recommendations of Parliament's Standing Committee are not binding, Government has moved ahead and introduced the Bill in Lok Sabha, where it stands passed. The Act is also criticized for prescribing an opaque Age Determination System and its poor draft.

The various loopholes in The Juvenile Justice (Care & Protection of Children) Act 2015 are that - It will have adverse effect impact in the protection and rehabilitation of juvenile in conflict with law, at the same time the juvenile in the age group of 16 to 18 will be traumatic situation if they are brought before the criminal court for having committed serious crimes. It will leads to retributive justice, not juvenile justice. Since JJB is presided over by Chief Judicial Magistrate of the district, one could assume that the chance of transfer of adolescents to adult court would apparently be more. Harsh punishment cannot be deterrent and this in turn could make the juveniles hard core criminals. Is it the government acceptance as to its failure to ensure rights to the children in this country? Amendment of Juvenile Justice Act is retrogressive and would undermine the basic objectives of the act.

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

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