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Juvenile Delinquency in India and the Law- in The Light of Reduced Age of Criminal Responsibility

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Abstract

Children are considered the greatest national assets. But the crimes by children are a harsh reality of the present times. In India, it is a disturbing trend of the recent times that the young offenders i.e. juveniles are found to be involved more in the heinous crimes. Children are expected to have good virtues in them. However, due to various reasons, some children do not obey the settled social and legal norms. Such children get involved in criminal behavior which is known as 'Juvenile Delinquency'. This paper gives an overview as to who is juvenile, the crimes committed by juveniles, reasons behind juvenile delinquency and the laws in India dealing with it in the light of reduced age of criminal responsibility.

Keywords: Juvenile Delinquency, Juvenile in conflict with law, Juvenile Crimes in India, Doctrine of Parens Patriae

Introduction

Juvenile delinquency is not a new thing. The problem of juvenile delinquency has been in existence since time immemorial, but since past few decades this problem has become a great cause of concern. The frightful incidence of Nirbhya Rape Case raised many debates in this regard because one of the accused persons was a juvenile; he was only 6 months short from being adult and hence thereby he got escaped from severe punishment. As a result of the protests by people, the government was compelled to enact Juvenile Justice (Care and Protection) Act, 2015, so that the juveniles in conflict with the law in the age group of 16-18 years, involved in heinous crimes can be tried as adults. However, this was not the only reason for the government to enact this legislation. The other reasons were, First-implementation and procedural delays being faced by the then existing law i.e. Juvenile Justice (Care and Protection) Act, 2000; Secondly- the increase in juvenile crimes especially between the age group 16-18 years, as per the National Crime Record Bureau's Reports. Moreover, in this fast changing world where development of science and technology keeps us on the run with the rapid occurring changes which affect our lifestyles, we cannot remain confined in the framework of old laws which were made as per the needs of society of those times.

Who is Juvenile?

Juvenile means anyone who has not reached the age of adult. In legal sense, a juvenile can be defined as a child who has not attained a certain age at which he can be held liable for criminal acts like an adult person under the law of the country. Juvenile means a child below the age of eighteen years [1]. In technical sense, Juvenile means a minor but it has a negative connotation to it. Therefore in legal context, this term refers to a minor who has been accused of a crime.

In Salil Bali v. Union of India [2], the Supreme Court observed: "The basis of fixing the age till when a person could be treated as a child at eighteen years in Juvenile Justice (Care and Protection) Act, 2000, was Article 1 of the 'Convention of the Rights of Child, 1989'. In this regard, one of the other considerations which weighed with the legislation in fixing age is on account of the scientific data that indicates that

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the brain continues to develop and the growth of the child continues till he reaches at least the age of eighteen years and it is at that point of time that he can be held responsible for his actions.”

Juvenile Crime in India

Petty offences in general and heinous crimes in particular are being committed regularly in India by children. The juveniles between the ages of 16 to 18 have been found to be more involved in heinous crimes. According to National Crime Record Bureau (NCRB)'s report of 2013, children of the age group 16-18 years were found to be responsible for 66% of crimes committed by all children in 2013 which reflect an increase of 10 % from 2003 records [3]. The data of Juvenile Crimes [4] of the past few years is as follows:

The share of Indian Penal Code (IPC) crimes registered against juveniles to total IPC crimes registered in the country during 2005 was at 1.0% which marginally increased to 1.1% in 2006 and remained static in 2007. This share increased marginally to 1.2% in 2008, thereafter decreased to 1.1% in 2009. This share further decreased to 1.0% in 2010 and thereafter marginally increased to 1.1% in 2011. Further, the share increased marginally to 1.2% in 2012 and remained static at 1.2% in 2013 and 2014. Furthermore, the share has marginally decreased to 1.1% in 2015. (The Reports of NCRB for the years 2016 and 2017 are yet to come.)

- **IPC Crimes[5]** (Incidence: 31,396)

The number of cases registered under various sections of Indian Penal Code (IPC) crimes against juveniles (in conflict with law) in 2015 have decreased by 6.3% during 2015 over 2014 as 33,526 cases under IPC crimes were registered against juveniles during 2014 which decreased to 31,396 such cases in 2015. The highest share of cases registered against juveniles were reported under the crime head 'theft' (19.2%), 'criminal trespass/burglary' (8.3%), 'rape' (5.4%) and kidnapping & abduction' (5.2%) and 'causing injuries under rash driving/road rage' (4.9%). These five crime heads have together accounted for 43.0% of total IPC cases (31,396 cases) of juveniles in conflict with law.

- **SLL Crimes[6]** (Incidence: 2,037)

Cases of juveniles in conflict with law registered under various Special & Local Laws (SLL) crimes have decreased by 59.6% in 2015 as compared to 2014 as 5,039 cases of juveniles in conflict with law under SLL registered in 2014 which decreased to 2,037 cases in 2015. The highest share of cases registered against juveniles was reported for the crime under 'Protection of Children from Sexual Offences Act' which accounted for 22.6% of total SLL cases (2,037 cases) registered against juveniles.

Reasons behind Juvenile Delinquency

No child is born criminal. It is the socio-cultural surroundings of child which shape his behavior. There is no single reason for the development of delinquent behavior in child. The reasons are many, such as, impulsive behavior, bad company, love of adventure, early sex experience, poor parenting of child, home discord, neglect of child, anti-social parents, mental health disorders and the like. In India, poverty is one of the biggest reasons which force a child to get involved in criminal acts. Also the Social Networking Sites (SNSs) such as Facebook are having more negative than positive imprints on the minds of

youngsters. Drug addiction is also one of the reasons behind juvenile delinquency. Juveniles are using more powerful drugs today than was the case as recently as 10 years ago [7]. A child who is devoid of education is more prone to get involved in criminal activities. Hence several factors are associated with juvenile delinquency.

Laws dealing with Juveniles

Position before Independence

The first legislation dealing with children in conflict with law or children committing crime was Apprentice Act, 1850. It provided that children under the age of 15 years found to have committed petty offences will be bounded as apprentices. The Indian Penal Code, 1860 exempts children from all criminal liabilities who are under the age of seven years [8]. It also exempts children between the ages of seven to twelve years from criminal responsibilities provided they have not attained the sufficient maturity of understanding to judge the nature and consequences of their conduct [9]. It may be noted that these provisions of the Code are still in force. The Reformatory School Act was another landmark step in this direction which was enacted in 1867 and later modified in 1897. It empowered local governments to establish reformatory schools for treating the juvenile delinquents.

Position after Independence

- **The Juvenile Justice Act, 1986-** This was an Act which brought uniform system throughout the country to provide for rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles. This Act defined the term 'juvenile' as a "boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years"[10]
- **The Juvenile Justice (Care and Protection) Act, 2000-** 'The Convention on Rights of Child' was adopted by United Nations on 20th November, 1989 and ratified by India on 11th December, 1992. Thereafter, India substituted Juvenile Justice Act, 1986 by 'The Juvenile Justice (Care and Protection) Act, 2000' to bring law relating to juveniles in tune with the above said convention ratified by it. This Act, first of all, made the age of juvenile uniform. This Act defined juvenile as any person below the age of 18 years who is alleged to have committed any offence. Whereas under the old law, juvenile delinquent was meant by a girl below the age of 18 years and a boy under the age of 16 years. Thus, the Parliament through the Act of 2000 raised the age bar to 18 for both girl and boy. This Act made many other changes such as, substitution of the terms like 'juvenile delinquent' by 'juvenile in conflict with law', 'Juvenile Court' by 'Juvenile Justice Board', 'neglected child' by 'child in the need of care and protection', 'Juvenile Welfare Board' by 'Child Welfare Board' etc. The Act introduced more child friendly environment of Juvenile Justice Board (JJB) than the earlier one. The Act said that its environment should not look like a court. The 'juvenile in conflict with law' cannot be kept in police lock-up or jail in any condition. This Act introduced Special Juvenile Police Unit to deal with such juveniles, to proceed before the JJB and to keep him in observation home only.

- **The Juvenile Justice (Care and Protection) (Amendment) Act, 2006-** The Juvenile Justice Act, 2000 underwent major changes in 2006. This Amendment Act of 2006 modified the principle Act in order to offer a wider scope of rehabilitation for the child not only through Institutional but also non-institutional approach [11]. In the year 2005, a five judges' Bench of Hon'ble Supreme Court in the case of Pratap Singh [12] overruled its own decision held in the case of Armit Das [13] and held that the reckoning date for determination of the age of juvenile is date of offence and not the date when he is produced before court or competent authorities. The impact of this ruling was that this Amendment Act of 2006 made the definition of 'juvenile in conflict with law' more explicit by stating that the relevant date for a person to be considered juvenile would be the date on which the alleged offence was committed. This Act laid down the maximum time period of 24 hours within which a juvenile should be produced before the Juvenile Justice Board, which is empowered to deal exclusively with all proceedings relating to juveniles in conflict with law. This Act excluded any police officer from enquiry process and stated that only Child Welfare Committee would conduct an enquiry in the prescribed manner. This Act added a provision stating that a juvenile can be confined in a Special Home for maximum period of 3 years or until he ceases to be a juvenile.
- **The Juvenile Justice (Care and Protection) Act, 2015-** The Juvenile Justice Act, 2015 was enacted to replace the existing Indian Juvenile Delinquency law, so that the juveniles in conflict with the law in the age group of 16-18 years, involved in heinous crimes can be tried as adults. Since past few years, there has been steep rise in serious crimes involving youth of 16-18 years of age but their ages served as a 'gateway pass' from criminal prosecution. The need of changes regarding age for criminal responsibility in the existing laws was strongly felt when after the sensational '2012 Delhi Gang Rape' (commonly known as Nirbhya Rape Case), one of the accused was found only few months below from being 18 and tried by juvenile court. This accused boy was sentenced to only 3 years and sent to a reformatory home. This is very awkward but true that all the other co-accused were awarded death sentence but the person who committed the most brutal part was awarded only a 3 years of remand as per JJ Act, 2000. The victim's mother criticized and said that by not punishing the juvenile adequately, the court was encouraging the teenagers to commit similar crimes. On 12 August, 2014, a bill was introduced by Maneka Gandhi, the Minister of Women and Child Development, to allow 16-years olds to be tried as adult. After long debates over this bill, finally 'The Juvenile Justice (Care and Protection) Act, 2015' came into force on 15th January, 2016. Some of its salient features are as follows:
 - a. This Act permits juvenile who has completed or is above the age of 16, to be tried as adult for 'heinous offences' [14].
 - b. A child of 16-18 years age, who commits a serious offence [15] (not heinous offence), may be tried as an adult if he is apprehended after the age of 21

years.

- c. No child can be awarded death penalty or life imprisonment.
- d. This Act provides for mandatory constitution of Juvenile Justice Board (JJBs) for each district by State government for exercising the powers and discharging its functions relating to 'children in conflict with law' [16] under this Act [17] and similarly, the constitution of Child Welfare Committees (CWCs) in each district for exercising the powers and to discharge the duties conferred on such Committees in relation to 'child in need of care and protection' under this Act [18].
- e. Under this new legislation, a preliminary enquiry is conducted by the Boards within a specified time period to determine whether a juvenile offender is to be sent for rehabilitation centre or to a children's court to be tried as an adult. The enquiry is to be assisted by experienced psychologists, psycho-social workers and other experts [19].

Right Upbringing of Children in Conducive Atmosphere - a State/Societal Responsibility: The Doctrine of Pares Patriae[20]

The concept of Pares Patriae is deep rooted in our constitutional framework and it refers to the role of State as sovereign and guardian of persons under legal disability including children and insane. It is the principle that the State must care for those who cannot take care of themselves, such as minors who lack proper care and protection from their parents. The care and protection aspect in Juvenile Justice Act are largely based on the doctrine of Pares Patriae. Therefore, children are not merely the responsibility of their parents. It is also the State's responsibility to protect the rights of the children and provide them with the opportunities and facilities to grow and develop to their potential and it is the societal responsibility that they don't get mixed with rogue elements in the society and deviate to the path of crimes.

The courts especially constitutional courts i.e. Supreme Court and High Courts, being important instrumentalities of the State owe a lot for the protection of the otherwise deprived children. In *Sheela Barse v. Secy., Children's Aid Society* [21], the Supreme Court speaking through Justice Bhagwati, observed: "..... Like a young plant a child takes roots in the environment where it is placed. Howsoever good the breed be, if the sapling is placed on a wrong setting or on an unwarranted place, there would be no desired growth. Same is the situation with the human child."

In *Supreme Court Legal Aid Committee v. Union of India* [22], Supreme Court observed: "There can be no two opinions that these children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene- physical and mental. Children require the protective umbrella of the society for better growth and development as they are not in a position to claim their entitlement to attention, growing up, food, education and the like. It is responsibility of the society and is one of the paramount obligations of those who are in charge of the governance of the country today to attend to the children to make them appropriate citizens of tomorrow."

Conclusion

This can be concluded that the new law dealing with juvenile delinquency i.e. Juvenile Justice (Care and Protection) Act, 2015 is as per the need of the present times because maturity level of children has not remained the same as it was 15-20 years ago. Now child gets maturity early in present social-cultural environment due to influence of internet and social media. But the other side of the coin can also not be ignored. Meaning thereby, whether by punishing 16,17 year olds, we are following punitive system or reformatory system?; whether by punishing a child e.g. for 7 or 10 years or more term of imprisonment in regular adult jail with hardened criminals, the child would not come out as a toughened criminal? ; A lot of questions arise in our minds. Thus, merely enacting a stricter law regarding young offenders and implementing it is not always the solution to curb this problem. It is not only the responsibility of the child that he/she has committed such heinous crime but is also the responsibility of the society that why society is not able to provide a proper and healthy childhood to the child and such type of discrimination and deprivation, both social and economic, are there that the child is forced to commit crimes; also why the State fails to provide care and protection to its children as per its role assigned to it by the doctrine of *Parens Patriae*.

Reference

1. Section 2(35) of The Juvenile Justice (Care and Protection) Act, 2015
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3. As per NCRB's Report 'Crimes in India – 2014'
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5. Ibid
6. Ibid
7. lex-warrior.in/2017/09/juvenile-delinquency-india-critical-analysis/
8. Section 82 of the Indian Penal Code
9. Section 83 of the Indian Penal Code
10. Section 2(a) of The Juvenile Justice Act, 1986
11. Dr. Krishna Pal Malik: *Victimology, Penology & Correctional Administration in India*, Allahabad Law Agency, (2011), p.146.
12. *Pratap Singh v. State of Jharkhand*, AIR 2005 SC 2731
13. *Arnit Das v. State of Bihar*, AIR 2000 SC 2264
14. As per Section 2(33) of The Juvenile Justice (Care and Protection) Act, 2015, heinous offences include the offences for which the minimum punishment under the Indian Penal Code or any other law for time being in force is imprisonment for seven years or more.
15. Section 2(54) of The Juvenile Justice (Care and Protection) Act, 2015 defines it as Serious offences include the offences for which punishment under the Indian Penal Code or any other law for time being in force , is imprisonment between three to seven years.
16. Section 2(13) of The Juvenile Justice (Care and Protection) Act, 2015 defines it as 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 offence.
17. Section 4 of The Juvenile Justice (Care and Protection) Act, 2015
18. Section 27 of The Juvenile Justice (Care and Protection) Act, 2015
19. Section 15 read with Section 18 of The Juvenile Justice (Care and Protection) Act, 2015
20. www.livelaw.in/juvenile-justice-act-2015-emotional-aftermath-dreaded-nirbhya-incident-step-backward/
21. AIR 1987 SC 656
22. AIR 1989 SC 1278.