



JUVENILE DELINQUENCY LEGISLATION IN INDIA

*By Samridhi Poddar & Sarthak Mishra
From Government Law College, Mumbai
& Symbiosis Law School, Pune*

“I think it's important for us as a society to remember that the youth within juvenile justice systems are, most of the time, youths who simply haven't had the right mentors and supporters around them - because of circumstances beyond their control.”

Introduction

Juvenile delinquency refers to criminal acts performed by juveniles (that is, individuals below the age qua which ordinarily, criminal prosecution is not possible). **Exact definition of 'juvenile delinquency' is a debatable issue**, more so when any unacceptable behaviour vis-à-vis juveniles can be brought under the broad-head of 'delinquency'. Things to an extent complicate more-so, when we find that, **each Member State of the United Nations is at a legal liberty to define the term 'juvenile'** in a manner which is compatible with the legal system and the social welfare objective of that Member State. According to the New Mexico definition, a delinquent juvenile is one who, by habitually refusing to obey the reasonable and lawful commands of the parents or the guardians (or other persons of lawful authority), is deemed to be habitually uncontrolled,

habitually disobedient or habitually wayward. The Supreme Court of India in the case of **Raghubir v. State of Haryana**¹ took occasion to define the term 'delinquent child' as follows: “*a child, who has been found to have committed an offence*”. **P. Ramanatha Aiyar's Concise Law Dictionary**, defines the term 'delinquent child' as follows- “*a legal infant who has either violated criminal laws or is engaged in disobedient or indecent conduct, and is in need of treatment, rehabilitation, or supervision*”.²

Juvenile justice is based on two philosophical concepts: *parens patriae* and **individualised treatment**. The doctrine of *parens patriae* allows the court to conduct the proceedings principally to determine what should be done in the best interests of the child; trials are not to be conducted for determination of criminal guilt and rendering of punitive sentences. **Doctrine of individualised treatment views the disposition of decision primarily for rehabilitation of delinquent juveniles**. It seeks to prescribe a treatment qua juvenile delinquents that, fits the needs, personality, psychological development and social circumstances of juveniles in conflict with law.

The Question of the Hour

Most debated question of the hour is, whether or not, juvenile delinquents should be tried as 'adults'. The U.N.

¹Raghubir v. State of Haryana, AIR 1981 SC 203.

² P. RamanathaAiyar's Concise Law Dictionary, Lexis Nexis, Fifth Edition (2014), p.341, 712



Convention on the Rights of the Child³ requires, all signatory countries to treat, every individual below the age of 18 years as a 'child'. The provision qua the trying of a juvenile as an adult is in contravention of the Convention. The U.N. Rules for the Protection of Juveniles Deprived of their Liberty, 1990, by virtue of Rule 11 states that, individuals below the age of 18 years are to be regarded as 'juveniles'.

The Juvenile Justice Bill, 2014, has taken a captivating position, that is, adolescents in the age classification of 16-18 years, conferring genuine or egregious offenses are to be attempted as grown-ups with no capital punishment or life detainment set against them. Under the 2000 Act, the position is unique; a reprobate adolescent matured 16 years or above, blamed for an offensive wrongdoing is to be set by the Juvenile Justice Board in an establishment called 'place of security' for a time of 3 years. In the event that we pass by the rationale of the present Act (the 2000 Act), the adolescent denounced (matured 17 years) in the Nirbhaya case, in spite of the fact that was most ruthless, forceful, creature like and twisted in the commission of assault and murder of the 23-years of age; he (the blamed), according to the arrangements of the 2000 Act, ought to be kept in the 'place of security' for a time of 3 years and afterward ought to be discharged with a legitimate assumption that the charged has been changed. Assuming, nonetheless, the adolescent blamed was for 18 years old, at

³ The U.N. Convention on the Rights of the Child is an international statement qua the civil, political, economic, social and cultural rights of children. The U.N. General Assembly adopted the Convention and opened it for signature on 20th November 1989.

that point it was open for the State to have attempted him as a grown-up, imposing against him capital punishment. **This, with greatest respect is illogical and more-so in the nature of a legal absurdity. The approach of the Proposed Bill (the 2014 Bill) is sound, for it states that the Juvenile Justice Board, for an accused in the age category of 16-18 years, will decide on a case-by-case basis, whether the accused should be treated as a child or as an adult.** The Board, aided by a team of experts will decide this based on the assessment of mental state of the accused. **The true test of juvenility is not the age but the level of mental maturity of the offender.**

Juvenile Justice (Care and Protection of Children)

Amendment to the Juvenile Justice Act, 2000, passed in the Lok Sabha, allowing juveniles in the age category of 16 to 18 years, accused of heinous crimes, to be tried as adults has brought to fore a debate, whether or not such an amendment is justified.⁴ To say that, the amendment to, the 2000 Act is a political over-reaction qua the December 16, 2012, Delhi Rape Case (Nirbhaya Tragedy) is **wholly incorrect**. We must understand that women today are facing brutal attacks not just from 'adults' but also from mushrooming 'children'. In the United States, when a juvenile commits a serious offence or a violent crime, **the jurisdiction of juvenile court is waived and the case is transferred to the adult court**. Such a practise is not without merit, especially in India where **there has been**

⁴ Danish Raza, Kids Behind Bars, The Hindustan Times, 31 May 2015, p. 15.



‘sprint’ rise in juvenile crimes of heinous nature. Few of the incidents are listed below-

a. Odisha- Graham Staines Murder Case:

In April, 1999, first accused arrested for the murder of Australian missionary Graham Staines in Odisha was the 13 years old Chenchu Hansda. It is said that he was seen near the charred van of Staines which formed the basis of his arrest. Chenchu Hansda was sent to a reformation home for three-years by the Juvenile Justice Board.⁵

b. Delhi- Nirbhaya Tragedy: In December, 2012, a physiotherapy student was brutally gang-raped in a moving bus in which she was travelling with a male friend. One of the co-accused was under-age.

c. Mumbai- Shakti Mills Gang Rape: In July/August, 2013, out of seven persons arrested in two separate gang-rape cases in Shakti Mills Compound (Mumbai), two were minors.

The 2014 Bill provides for the following:

a. Treatment qua Juveniles: Juveniles aged between 16 years to 18 years committing serious or heinous offences could be tried as adults. Juveniles in no case can be inflicted with life imprisonment or death penalty.

b. Offences and Penalties: The offense of assaulting, abandoning, abusing, or willfully ignoring a tyke will draw in discipline of up to 3 years of detainment as well as fine of rupees one lakh. Punishment for the offense of utilizing a tyke to beg is detainment of up to 5 years and fine of rupees one lakh. A man who provides for a kid an inebriating or

opiate substance will be obligated for detainment of up to 7 years and fine reaching out to rupees one lakh. The punishment for offering or purchasing a child for any reason will be detainment of up to 5 years and fine of rupees one lakh.

c. Juvenile Justice Board: As per the provisions of the 2000 Act, the Juvenile Justice Board conducts an inquiry and thereafter directs the placement of the delinquent juvenile in any fit institution for a period not exceeding 3 years. The 2014 Bill provides that, a preliminary inquiry should be conducted in certain cases by the Juvenile Justice Board, to determine whether the delinquent juvenile should be placed in a juvenile protection home, or be sent to the Children’s Court for trial, or be tried as an adult.

d. Child Welfare Committees (CWCs): The 2014 Bill provides for the constitution of CWCs in each district to deal with children in need of care and protection. CWCs shall comprise of a chairperson and four other members (at least one of the four members should be a woman), who shall be experts on matters relating to child welfare. As per the 2014 Bill, a child who is found to be in need of care and protection has to be brought before CWC within 24 hours; post this, a social investigation-report is required to be prepared within 15 days. The CWC, after assessing the report, shall make recommendations, whether or not the child is to be sent to a children’s home or another facility for long term or temporary care. Post the analysis of the report, CWC shall decide upon the declaration, whether or not the child is free for adoption or foster care.

e. Appeals: As per the provisions of the 2000 Act, an appeal can be preferred to the

⁵ Ranjana Kumari (Director, Centre for Social Research), Brutal Juveniles, The Hindustan Times, 31 May 2015, p. 15.



Sessions Court within a period of 30 days of the rendering of the order by the Juvenile Justice Board; further appeal can be preferred to the High Court. As per the 2014 Bill, an appeal can be preferred to the Children's Court within a period of 30 days of the rendering of the order by the Juvenile Justice Board; further appeal can be preferred to the High Court. For placement of the delinquent juvenile in a 'foster care', an appeal can be preferred to the District Magistrate.

f. Clause 7 of the 2014 Bill: Clause 7 of the 2014 Bill, states that, any individual in the age category of 16-18 years, if commits a serious offence (ordinarily, calling for 3-7 years of imprisonment) or heinous crime (ordinarily, calling for a minimum of 7 years of imprisonment), then he is to be tried as an adult, if he is arrested on completion of 21 years of age; irrespective of the fact that, on the date of commission of the offence, he was a minor (or a juvenile). Thus, Clause 7 of the 2014 Bill allows for a person who was a juvenile on the date of offence to be dealt with under the criminal justice system (as against the juvenile justice system) if arrested on completion of 21 years of age.

Conclusion and Suggestions

The very fact that a huge majority of children in India are in a condition of suffering evidences the inability of the laws to provide protection to them despite the fact that they were primarily enacted to meet this end. The Convention on Rights of the Child celebrated its silver jubilee last year but there is no reason for the children to rejoice, at least in India. This paper has clearly highlighted the shortcomings in the Indian juvenile justice mechanism which have contributed to their failure in providing protection to the children.

At this juncture, a few suggestions to remedy the current state of juvenile justice in India have been made hereinafter. The Juvenile Justice Board is of immense importance in the entire juvenile justice system and hence, **a special training programme in child welfare and child psychology must be prepared for the officers of the JJB including the Principal Magistrate.**

Further, **the ambience of the JJB should be child friendly.** It should not bear the look of a normal court room. The child must be made comfortable and not be treated in like manner as an accused is in a court room. It will be even better if the Board can conduct its affairs in the observation homes itself.

Also, **the Principal Magistrate should not be entrusted with any other work of the criminal court except that of the Juvenile Justice Board** as the Board is required to complete the enquiry within 4 months.

Due to the variations in state rules from state to state, there is an ambiguity regarding proper implementation of provisions of the Act. Therefore, **common rules should be followed throughout India in all Juvenile Justice Boards.**

It is common knowledge that the homes meant for children in conflict with law as well as those in need of care and affection are in a shabby state of affairs. It is important that there should be **separate homes for both these categories of children not only in law but also on ground.** Further, the homes for children should be under CCTV coverage to facilitate inspection and supervision by the Board and surprise visits be made at these homes. It is also desirable that senior citizens be involved in these homes as community



resource persons to look after the well-being of the children.

Nevertheless, the Indian legislature's effort at enacting this law for child protection has to be appreciated despite the inadequacies. It is commendable that the Indian legislature has tried to fulfil its obligations under the Convention. As far as the law is concerned, apart from correcting the loopholes in the law, its implementation has to be stressed upon. **Until and unless, black and white written on the paper is transformed into colour in the real world, the achievement of the Conventions goals will remain a distant dream for the Indian state.**

