



THE STUDY ON JUVENILE CRIMINOLOGY AND HUMAN RIGHTS

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Abstract

This paper focuses on reducing Juvenile criminology and making them understand their responsibility towards the society. Basically juvenile is a person who has not attained the age of 18 years or who not comes under the category of an adult. The problem arises when we see that access of liberty given by the law to the juveniles, lead to an increase in offences day by day, they are not punished and victims are not getting justice. The frightful incident of “*Delhi Gang Rape Case*” has forced the law makers to take step regarding the above issue. So in the present scenario, the question arises whether to reduce the age of juveniles? Whether the punishment given to the juveniles is a reformatory or retributive form of punishment? More issues arise regarding the violation of the Constitution of India by the Juvenile Justice Board.

Criminology means to know their psyche, to understand the mental capacity or maturity. To know whether they realize their consequences caused due to crime committed by them violating the basic interests of the people and how committing these crimes will affect those interests.

Human Rights are the rights which everyone is entitled to from his birth. Human rights are basic standards without which people cannot

survive and develop on dignity. They are inherited to every human irrespective of their sex, race, caste, religion and birth.

This paper also focuses on the scientific study of crime, including its causes, responses by law enforcement and methods of prevention. We will also study Social behavior of Juveniles and the rights of Juveniles against the crime committed by them.

Keywords: Juvenile, age, penalty, sociological jurisprudence, rights, violation, criminology.

Introduction

Children are the rock of any nation; they are the future of our nation. They are the leaders of the nation, who care and protect human dignity. As they grew up by seeing the environment and their parents, they develop their own imaginary world.

From there itself the problem arises. They grow on the learning's of their elders, what elders used to teach them they will perform only that. They develop discrimination, comparison and deceitfulness among others if proper guidance was not given to them during their adolescence age. As general observation is that criminality peaks in adolescence and diminishes with age. All the above defines how criminology develops into a child's brain.

Juvenile Justice Act, 2015 replaced Juvenile delinquency law, Juvenile Justice Act, 2000 and allow for a juvenile in conflict with law in the age group of 6-18 years involved in heinous offences to be tried as an adult in light of Nirbhaya case¹.

¹ 16th December, 2012.



This above case proves the criminology of today's youth. A juvenile of 17 years and 6 months involved in a rape case and According to JJA, 2000. A juvenile is entitled to Maximum Imprisonment of 3years. The JJA, 2015, will consider any minor between the ages of 16 – 18 years as an adult only in case of commission of a heinous crime by him. But JJA, 2015 doesn't reduce the age to 16 years of criminality in case of juveniles.

Thesis

Provisions Children in Conflict with law under the Juvenile Justice Act, 2015

1. The Juvenile Justice Act, 2015 classifies the term 'child' into two categories:
 - a) Child in conflict with law ² – means a child who has committed an offence or found to have committed an offence but he or she is under the age of 18 years.
 - b) Child in need of care and protection³ – who is found without any home or settled place. Basically a child found begging or a street child is known as the above.
2. Juvenile Justice Act, 2015 enacted rules to ensure justice to the children and their rehabilitation and reintegration to the society. The model rules of 2016 repealed the existing rules of 2007, some of these procedures include:
 - The Child should not be handcuffed.
 - The Child should not be sent to jail.
 - Parents or guardians must be informed about legal aid etc.
 - The Child must be provided with medical assistance.
3. Juvenile Justice Board will take a decision whether a juvenile between the age group of 16 to 18 years would try as an adult. If the

board decides against, then he will be sent for rehabilitation.

4. The Juvenile Justice Act, 2015 will consider any minor between the ages of 16 to 18 years as an adult only if he commits any heinous offence.
5. In a case juvenile committed a serious crime and gets apprehended 21 years of age in that case then he will be tried as an adult and the imprisonment of three to seven years can be given.
6. The children's court shall ensure that the child who has found to be in conflict with law is sent to a place of safety till he attains the age of 21 years and thereafter, the person shall be transferred to jail.
7. No Life imprisonment or death sentence shall be given to a juvenile.

Claim of juvenility

Juvenility means the quality or condition of being juvenile, especially of being immature. The concept of Juvenility which was based on the age of the child being below 16 was raised retrospectively to below 18 by the amendment act, 2006. The benefit is available to a person undergoing sentence if he was below 18 years of age on the date of occurrence. The above can also be claimed even if a matter is finally decided.

In case Kulai Ibrahim⁴ it was observed by the court that accused has the right to raise the question of juvenility at any point of time during the trial or even after the disposal of the case under Sec. 9 of Juvenile Justice Act, 2015.

² Juvenile Justice Act, 2015, Sec. 2 cl. 13.

³ Juvenile Justice Act, 2015, Sec. 2 cl.14.

⁴ Kulai Ibrahim v. State of Coimbatore, Special Leave Petition (Crl.) No. 9412 of 2013.



In case of Satbir Singh⁵ supreme court again reiterated that for the purpose of determining 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.

From the above Supreme Court cases, juvenility in question is proved. In present times juvenility can also be proved through aadhaar card and also from the birth certificate.

Age Factor

Whether The Age Of Juvenile Should Be Reduced From 18 Years Or Not

In today's era as of increasing technology, environmental changes, mentality and maturity of children are getting developed or increasing at an early stage. And to prove any crime done by a juvenile, court focus on the maturity level of the child. If a child is matured or capable or being committing such an offence, then he should be given punishment or Reformatory form of punishment – a rehabilitative form of punishment which makes criminal a good citizen as much as possible.

Issues Regarding Reducing The Age Of Criminal Responsibility Of The Juveniles Between The Age Of 16-18 years Committing Heinous Crimes As Adults Will Not Be Fruitful And Productive Are Discussed Below:

India is a member of the United Nation Convention on the Rights of Children (UNCRC). But hereby, India by breaking the laws of the UNCRC, by amending the JJA, 2015 which says apprehension, detention, penalty or imprisonment and

institutionalization of the child is the only way to reform the children in conflict with law.⁶ The UNCRC has clearly stated that all the children are deprived of their liberty and adults. The Convention on rights of children has clearly established that a child placed in a facility of children, does not mean that after he/she turns eighteen they will be moved to a facility of adults. Juvenile Justice Act, 2015 has not taken into consideration Article 37(c) of UNCRC and this act describes the clear and distinct definition of adult and children and this act also clearly mention that the latter to be transferred to adult jail once the child turns 21 years of age.⁷

By the above facts and laws we can say that, India is incorrect by not following the laws of UNCRC and also by saying that children between the age group of 16-18 years will be treated as adults, if they commit any heinous offence.

Violation of Fundamental Rights of Children by JJA, 2015

A petition filed by activist Tahseen Poonawalla⁸ challenging the constitutional validity of Juvenile Justice Act, 2015 is arbitrary and in violation of the fundamental right of right to equality under Article 14 of the Constitution of India, 1949.

Although the age of criminality to 16 years doesn't reduce by the Juvenile Board it is clearly said by the Board that any juvenile between the age group of 16-18 years commits heinous offence shall be tried and sentenced as adults.

Added to this Juvenile Justice Act, 2015 also goes against Article 15(3) and 20(1) of the

⁵ Satbir Singh v. State of Haryana, Appeal (Crl.) 7 of 2005.

⁶ Juvenile Justice Act, 2015 Sec. 1 cl. 4 para (i).

⁷ Juvenile Justice Act, 2015 Sec. 20 cl. 3.

⁸ Tahseen S. Poonawalla v. Union of India, 2108 6 SC 72.



Indian Constitution. Before describing further in Nirbhaya case and many other cases it is said by the Supreme Court that fundamental rights of a person can be denied, if he has committed such offences (especially rape) which are beyond or of such nature that person committing such offence should be held guilty, without taking into consideration their fundamental rights.

Further Article 15(3) of the Indian Constitution states that nothing shall prevent the state from making special provision regarding women and children. United nation set some rules stating the prime importance while dealing with children in conflict with law. And not only the offence but also the circumstances lead to committing the offence should be taken into consideration. But the present JJA, 2015 only give importance to the type of crime committed and not the psychological aspect behind which the crime was committed.

Article 20(1) of the Indian Constitution states that a person cannot be subjected to a penalty greater than what would have been applicable to him. According to JJA, 2015 if a juvenile who has completed the age of 21 and still has a period of sentence to serve, then the juvenile must be sent to jail for the completion of his remaining period of a sentence based on the reports of the juvenile submitted to the board.

So government by implementing the JJA, 2015 took a good step towards the juvenile crime as an increase in the number of crimes (crimes against women especially rape), by the juveniles in the age group of 16 to 18 years.

Form of Punishment

Whether Reformatory Form of Punishment as a Method of Prevention of Crime by JJA, 2015 or;

The purpose behind making amendments and introducing JJA, 2015 is not only to lessen the crime committed by juveniles of the age group 16 to 18 years but also to make understand the juveniles the crimes committed by them and their duty towards the society. Several questions were raised and many debates were made during the implementation of JJA, 2015 regarding the reformatory form of punishment. As in the act, it is clearly defined by children's court that we will send the child if found guilty of heinous crime to juvenile home at an initial stage and can further order a child to be shifted to adult jail when he turns 21 years old if he still has got time to serve and also on the basis of his report which describes his behavior in juvenile home or whichever the place of safety the juvenile is kept. The provision present in the JJA, 2015 shows that it had completely ignored the preamble of JJA, 2015 which states "the principles of restoration, rehabilitation, social-reintegration, care, protection and development of children, by adopting child friendly techniques or approach in the adjudication and in the best interest of the child".

Whether Retributive Form of Punishment as a Method of Prevention of Crime by JJA, 2015

It was considered as retributive by many experts because it looks over the principles of restoration, rehabilitation and re-integration of juveniles. It also looks on points or basic requirements of juveniles like protection, development, treatment, adjudication and disposal of matters in the best interest of the children and contained a provision for



punishing the children between the age group of 16 to 18 years as adults if they have committed heinous crimes (punishment of seven years) by children's court.

Both the above methods are correct from their point of view. So we can say that there is both types of punishment is given under the JJA, 2105 i.e. reformative and retributive form of punishment based on the circumstances of the case.

Juvenile Justice – Is it a Criminal Justice or Social Justice

The base of Juvenile Justice in most of the countries of the world the concept of Juvenile Justice is considered to be that of criminal justice, but at the same time, the ministry or the department which is responsible for making laws and implementing them is the one from the Department of Social Justice.

Scientific Reason behind Juvenile Criminology

The behavioral changes occur in a juvenile during his adolescence period, during that period hormonal changes occur in juveniles, such as physical and sexual changes of maturity. These physical changes are accompanied by mental changes. Hereby, children in conflict with law have a crucial impact on their mindset if they are not treated equally.⁹

Sometimes it is very difficult to explain whether the juvenile understands the consequences of his action or whether the juvenile has that much mental and physical capacity to commit such a heinous crime. Psychology and neuroscience fail to understand the ongoing development that

goes on during adolescence phase of the child.

Social factors such as poverty and low education are also one of the reasons behind a juvenile commits offence. The one who lives in dysfunctional family settings or disadvantages family has more chances of getting involved in delinquent behavior.¹⁰

In young adolescents, the reasoning capacity of the child is not such comprehensive that he is able to understand the basic interests of the people and how committing these crimes will affect those interests. Developing such understanding will require the development of cognitive skills and moral reasoning towards the best interest of the people.

One of the most important factors during the age of adolescence is that, what we teach to the child during that age he will perform that for his whole life, he will work accordingly to his teachings by his elders. According to psychology and neuroscience, it becomes very difficult for a child to leave those habits what he got during the age of his adolescence.

All the above are the factors which directly or indirectly affecting the juveniles/children/adolescents and government or the juvenile board took some strict steps towards juvenile by implementing JJA, 2015 is not illegal or violates the law.

Human Rights of Juvenile

Under the Constitution of India

- Right to free and compulsory education to all the children aged between 6 – 14 years of age – Article 21A.

⁹ *People: International Journal Of Social Sciences* , 3(3), 1365-1383.

¹⁰ *People: International Journal Of Social Sciences* , 3(3), 1365-1383.



- Right to be protected from any hazardous employment under the age of 14 years – Article 24.
 - Right to be provided with the proper standard of living and Good nutrition – Article 47.
 - Right to be protected from human trafficking and forced Labour – Article 39.
- Under Indian Penal Code (IPC) and Criminal Procedure Code (CrPC)
- Nothing is an offence which is done by a child under 7 years of age – Section 82 of IPC.
 - Nothing is an offence which is done by a child above 7 years of age and under 12 who has not attained the sufficient maturity of understanding the nature and consequences of his act – Section 83 of IPC.
 - If a male minor who hasn't yet attained the age of 16 and in case of a female minor who hasn't attained the age of 18 if removed from their lawful guardians without their consent then that will amount to the offence of kidnap – Section 361 of IPC.
 - The Jurisdiction in case of Juveniles lays down that – any offence which is punishable with death or imprisonment for life, which is committed by a person below the age of 16 years, may be tried by a court which is especially empowered under the children act or juvenile justice board or any other law for the time being in force – Section 27 of Cr.P.C.
 - Section 437 of the Cr.P.C. lies down that a child in conflict with law can apply for an Anticipatory Bail. Justice Narayan Pishardi of Kerala High Court held that a child in conflict of law has all the rights to apply for anticipatory bail and there is no bar on this by

Juvenile Justice Act. The Anticipatory Bail of a child in conflict with law is maintainable in the High Court or the Court of Sessions.¹¹

National Crime Record Bureau Reports Showing Increase in Crimes by Juveniles

'Educated' juveniles committed crime more than the 'Illiterate' ones in 2017 as per the National Crime Record Bureau. This also includes the number of educated juvenile offenders, who have studied up to matriculation and higher secondary levels, commit more crimes according to the report.¹²

Over 40,000 juveniles were caught across the country in 2017 for their alleged offences committed by them which include 1614 rape cases and 1456 other sexual assaults and all these crimes are committed by the juveniles between the age group of 16 to 18 years. In 2016 total 4244 was the number of juveniles who committed serious/heinous offences and in the year 2017 it increased to 6260 that is merely 32 per cent and this report was released in October, 2019.¹³

On the other hand, the number of illiterate juveniles caught for criminal activities was reduced by 20 per cent as per the report. According to society, and news reporters most of the crimes are committed by the illiterate, but according to the report of the National Crime Report Bureau data, from 5412 illiterate juvenile delinquents in 2016, the number came down to 4324 in 2017, according to the data.

¹¹ Namrata Kondankovi, Juvenile justice system, blog.ipleaders.in.

¹² theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/.

¹³ newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.html.



Conclusion

It is clearly written in the JJA, 2015 that if any juvenile between the age group of 16 to 18 years has been found committing or committed any heinous offence (especially rape) then those juveniles will be tried as an adult, and that is a good step taken by the government of India. But they should keep in mind the universal rule, ‘Let a hundred guilty be acquitted, but one innocent should not be convicted.’

Experts, jurists or board say that punishing juveniles as an adult will not be beneficial for the society. But government by implementing this law wants to create fear in mind is of children, to prevent them from committing the heinous crime. It does not mean from the above that this does not abide by the main aim of juvenile justice; it will abide reformation and re-integration technique. The act also says that before giving punishment to the juvenile between the age group of 16 to 18 years, we will understand the adolescent mind, their maturity level and accordingly we will treat them.

The government should try to improve and eliminate the factors that have led the children to commit such an offence and provide the children who are already in the system, and provide with public awareness, and the interest of the public. So, people have a better understanding of the system and the rules thereby preventing their children from committing any kind of offences.
