



VARIOUS ASPECTS OF JUVENILE CRIME IN MODERN WORLD

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*“No person is born criminal; society and his
choices make him one” - Unknown*

Abstract

There is often a perception in minds of people that crime of lesser gravity can be excusable. Which at times stand true but this cannot be regarded as a rock-solid principle to be followed.

One thing which is evident is that a Crime which may be trivial or heinous is still a crime against government and society at major. It was not until 19th century that law system finally realized that a line must be drawn between the crimes by adult and crime by the juvenile, before that both child and adult were weighed on the same scale. Generally, people have different notions regarding juvenile crime, some consider it as violation of human rights while other consider it as requirement of equity and justice. However, thinking practically juvenile justice system is the need of today's evolving world. In modern world juvenile crime is a well-recognized concept. Rules relating to juvenile crime is different in every jurisdiction but one thing which is evident everywhere is that a child of not enough maturity shouldn't be punished for the crime committed by him. So, while punishing a juvenile might look inhumane at first instance but not punishing him may also lead to further increase in the gravity of offences

committed by any such juvenile. Therefore, we must look with very close scrutiny while dealing with juvenile crime as all the justification of punishment or acquittal depends on the stage of maturity possessed by the juvenile, which can be inferred from the actions of the minor just prior to the commission of an offence and after its commission. According to the well-established principles of Natural Justice everyone is entitled to fair trial and right to be heard. Therefore, convicting a juvenile without giving due consideration to the level of maturity attained by him would be violation of principles of natural justice and same would be case of acquitting a minor on the mere context of being in a delicate age. Without any doubt such process can be lengthy and exhaustive but it is evident to ensure fair trial to juvenile as he can neither be acquitted solely based on the context of being in an innocent age nor he can be punished without taking into consideration the maturity level of the juvenile. In this Article we will analyze the perspective of various nations towards Juvenile justice and will further look into the foundation of juvenile justice system and procedures regarding it.

Keywords- Juvenile, Justice, Crime, Trial, Maturity, Jurisdiction.

Introduction to Crime at General

Crime has not been specifically defined in any statutory laws existing in modern world. Eminent jurist William Blackstone, in his book Commentaries on the Laws of England has defined crime as “an act committed or omitted in violation of Public Law forbidding



or Commanding”¹. According to modern interpretations, Crime nothing but violation of law resulting in wrong against the society. It the fact that crime is a wrong against whole society which makes it more evident to punish the offender. In criminal law punishing the offender has its one of the key objectives as setting an example for society that certain acts or omissions would result in deterrent consequences. Let’s take a look at elements of crime.

Essential elements of Crime are:

- **Human Being-** It is very natural that a crime can only be committed by a Human Being, known as offender, upon own will or by instigation from some other person. Section-2(c) of Criminal Victim Protection Act, (2075) 2018², an offender is a person convicted by court of a crime.
- **Mens Rea-** As per universally accepted notion, there can be no crime without Mens Rea. Mens Rea in simple words means malefice intentions or guilty mind. Generally, it is hard to prove Mens rea in criminal cases, so it has to be inferred from the acts of offender. Connection between mens rea and crime is beautifully established by the maxim “*actus non facit reum nisi mens sit rea*” which means both guilty intention and act in furtherance of such intention together constitutes a crime.
- **Actus Reus-** Actus reus was first ever defined by Professor Kenny in his book “Kenny’s Criminal Law”. Where he defined it as the material result of the conduct of accused³. Actus reus is that necessary overt

act which leads towards successful commission of an offence.

- **Injury-** It is the final element of crime. Any person who does an overt act must cause an injury to a person or the society at large to constitute a crime. Hence, the scope of injury is not limited to personal loss but has a wider meaning. According to Section-44 of Indian Penal Code, 1860⁴ the injury is an illegal harm cause to a person’s body, mind reputation or property.

A crime is committed in various stages and not all of these stages are per se punishable.

Stages of Crime are:

- **Intention-** It is the that negative driving force to commit a crime. Intention is often confused with motive but, they both are different. Put together in simple words, Intention is the initiation of crime while motive is the end result of the act. Intention in itself doesn’t suffice the condition to constitute a crime.
- **Preparation-** Preparation involves arranging necessary means to execute the intention. This stage is generally not punishable per se but there exists some exception to it. E.g. Waging war against the Government.
- **Attempt-** Once the preparation is complete then comes the stage of Attempt which is step towards the commission of offence. It is to be noted that attempt is that very act which can be directly associated with the offence i.e. act should be *causa causans*. One important characteristic of attempt it that it shall fall short to be designated as a complete offence. This stage can be categorically punished.

¹ DEFINATION OF CRIME, lawnotes.in, https://www.lawnotes.in/Definition_of_Crime, August 25th, 2020.

² Criminal Victim Protection Act 22 of 2075, §-2(c), (2018)

³ KENNY’S CRIMINAL LAW, M.S. RAMA RAO 7 (Msr lawbooks eds., 2019)

⁴ Indian Penal Code Act 45 of 1860, §-44, (2020)



- **Completion-** Final stage of committing a crime is successful accomplishment of Motive. At this stage there is no way a person can escape from criminal liability.

One thing which can be observed here is that guilty mind and an overt act are the core ingredient of a Crime i.e. Mens Rea & Actus Reus. It was a universally accepted principle that a child of tender age or a minor is not capable of developing mens rea which is the main reason of making the criminal act by a child an exception to criminal liability. But recent developments in crime all over the world has proven that this principle cannot be a straight jacketed formula for deciding upon the liability of a child rather it is the maturity level of a minor which needs to be assessed before deciding on a crime by a child. Let's look into the crime by a child of tender age.

Juvenile Crime and Developments

Living in a forever evolving world has its own benefits and flaws. For instance, as we are going ahead with the 21st century a remarkable developments are coming up each year in the field of technology, medicine and engineering but as it is said there is always two sides of a coin the other side of this beautiful evolving world is that with that today crime is breaking all the records of past

years. In recent times Juvenile Crime as spiked at an alarming rate. In the USA juvenile crime has risen by 35 per cent between the years 2014 and 2018⁵. While in India total percentage of juvenile apprehended under Indian Penal Code, 1860 and other special laws stood at stagnant figure of 73.8 per cent of total cases registered in 2016⁶. Similarly, according to the Tarak Dhital, executive director of Central Child Welfare Board, Lalitpur, Juvenile cases registered increased from 138 delinquency case with 156 defendants being Juvenile in the year 2016 to 295 delinquency case with 347 minor defendants in the year 2017⁷.

In order to understand Juvenile crime let's see who a Juvenile is. Juvenile is a person who is under eighteen years as on the date of commission of proceedings⁸ i.e. is a minor. Age of minor differs in every nation for instance in Nepal a person is considered minor means a person who has not attained age of 16 years⁹ while in India this age is 18 years¹⁰. Now, a thing which laws misses out is, what interlinkage is there between maturity level and definition of juvenile. In simple words this connection can be understood as, Juvenile is the person who commits the crime and once he is brought on trial, they arise the issue of his maturity level,

⁵ JUVENILE HOMICIDES ROSE AMID OVERALL CRIME DECLINED, thecrimereport.org, <https://thecrimereport.org/2020/06/22/juvenile-homicides-rose-amid-overall-crime-decline/>, Accessed on August 28, 2020.

⁶ JUVENILE APPREHENDED IN 2016 (CONCLUDED), ncrb.gov.in, https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%205A.4.pdf, Accessed on August 28, 2020.

⁷ JUVENILE DELINQUENCY AT RISE IN NEPAL SAYS STUDY, thehimalayantimes.com,

<https://thehimalayantimes.com/kathmandu/juvenile-delinquency-rise-nepal-says-study/>, Accessed on August 28, 2020.

⁸ TITLE 18 CRIMES AND CRIMINAL PROCEDURE, § 5031, govinfo.gov, <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context>, Accessed on August 28, 2020.

⁹ Nepal Citizenship Act 25 of 2063, §-2(a), 2006

¹⁰ The Majority Act 9 of 1875, §-3(1), 1875



which is assessed by the court with close scrutiny. In recent years, lot of times Juvenile word has been associated with various heinous crimes. In the year 2015 a district court in Delhi, India was rattled when an instance of shooting occurred in a courtroom which lead to death of a Head constable and serious injury to the accused where the shooters were identified as juvenile¹¹. In the same year another incident happened in US state of Tennessee, where a 11 year old boy shot dead his neighbor for not letting him see their puppy, which shook the conscience of everyone and another incident happened within two days of this where a boy shot dead his brother using the gun kept on the picnic table¹².

In above mentioned cases, one thing which remained common was that common people were more or less in the favour of minors for not having enough understanding about the consequences of their act and on the contrary enforcement authorities were in the favour of resorting to strict punishment for any minor, keeping the limitation of human rights and child safety in mind, in order to curb the juvenile violence as involvement of juveniles in instances of violence is on an exponential rise throughout the world.

Juvenile Delinquency and it's Contributing factors

Juvenile Delinquency is the instance when an offence is committed by a child who has not

celebrated his 18th birthday on the day of commission of such an offence¹³. Simply put together, it is the phenomenon of crime being committed by a minor. Explaining juvenile delinquency in legal term is simple but understanding it on a broader aspect can be very challenging. In order to get deeper insight into the concept of juvenile delinquency which can be topic of a separate research study itself. For now, let's stick to the definition given above. Delinquency is not just crime or an offence, but it is consisting of various behaviors. Some of the delinquent behaviors are:

- **Breaking the Rules-** Children are supposed to be naughty therefore breaking rules is quite expected from them. But there is very thin line between innocent act of breaking rule and deliberate act of the same. If a child is not cautioned and guided at right time, he may become a serious offender in future. Basic motive behind breaking the rule for every child is to attain his freedom. Therefore, in order to make children follow the rules one must ensure that rules are neither very rigid nor should it curb the valid desires of childhood.
- **Addiction-** Addiction of any kind is not good for physical and mental health. Now a day's children have access to various information providers e.g. Internet, where they can come across any kind of substance which is addictive. Here it is duty of parents to keep a close watch on the behavioural changes in

¹¹ JUVENILE CONTRACT KILLERS OPEN FIRE IN DELHI COURTROOM, [theindianexpress.com](https://theindianexpress.com/article/cities/delhi/police-constable-killed-three-others-injured-after-firing-in-delhi-court/), <https://indianexpress.com/article/cities/delhi/police-constable-killed-three-others-injured-after-firing-in-delhi-court/>, Accessed on August 28, 2020.

¹² US BOY 11 HELD FOR SHOOTING DEAD 8-YEAR-OLD NEIGHBOUR, [bbc.com](https://www.bbc.com/news/world-us-canada-34450841),

<https://www.bbc.com/news/world-us-canada-34450841>, Accessed on August 28, 2020.

¹³TITLE 18 CRIMES AND CRIMINAL PROCEDURE, § 5031, [govinfo.gov](https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context), <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context>, Accessed on August 28, 2020.



their child so that addiction of any kind could be detected and treated at early stages itself.

- **Theft and Pickpocketing-** Most of the street children are engaged in these activities and reason for it vary from poverty to the compulsion by adults. Theft is done by everyone at some point in their childhood be it theft of favourite food from mom's custody or theft of favourite comics book from the brother's cupboard. But once the child begins to enjoy it then such acts can become a matter of grave concern. So, if such behaviour is coerced at right time, then it doesn't become a serious problem.
- **Fighting-** Most of the juvenile crimes are act of anger and anguish among minors. The simple reason for it is the substantial hormonal changes. As a child is not familiar with the concept Ego, anger and revenge they tend to form their own perceptions and does an act which in their conscience is right way to deal with it. Therefore it is evident for parents and guardians to sit with child and help them in managing their emotions.

Core Reasons behind delinquent behaviour

There are a variety of reason which leads to delinquent behaviour by a juvenile. Most prevalent reasons for Juvenile Delinquency are:

- **Poverty-** Poverty alone is not responsible for delinquent behaviour but once its is coupled with the lack of education then it becomes the most common reason for juvenile delinquency.
- **Bad Company-** People with whom a person spends time affects his growth substantially. Same is the case with children. In a study

conducted by UNESCO, it was observed that most of the children knew that their friends were not good, but they anyway supported them as children had no other friends or family interested to be their friend.

- **Ignorance-** Most eminent factor leading to delinquent behaviour is ignorance. Ignorance leaves a serious impact on a child. A child is not capable of understanding the nature of activities carried by him. Therefore, parents must spend some good time with their children.

Now since we have adequate information about Juvenile and Juvenile Crime, let's look into various International Standards of Juvenile Justice.

International Standards of Juvenile Justice System

The key guiding standards for Juvenile Justice internationally are:

- **UN Convention on The Rights of Child (1989)-** UNCRC like the constitution of any country establishes the rights and freedoms of a child. It enumerates various rights of child such as Right to Privacy (Article-16), Right to Education (Article-28), Right to Review in Treatment in Care (Article-25), Right to Social Security (Article-26), Right to Adequate Living Standard (Article-27), Right to leisure, play and culture (Article-31)¹⁴. It also states many duties of Government towards child protections like, Protection from Drug Abuse (Article-33), Protection from Sexual Exploitation (Article-34), Protection from Child Labour (Article-32), Protection from Inhumane treatment and

¹⁴ WHAT IS UNCRC? unidef.org.uk, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>, Accessed August 30, 2020.



Detention (Article-37), Right to Juvenile justice i.e. every child accused of crime must be treated with dignity and must be provided a fair trial (Article-40)¹⁵.

- **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 1985¹⁶**- When it comes to international juvenile justice administration, Beijing rules are the pivotal in proper administration of justice. These rules can be summarised in following six rules:

- **Rule 1:** State shall ensure the well-being of juvenile and family of juvenile.
- **Rule 2:** State shall endeavour to provide a meaning full life to the juvenile during the period when child is most likely to get distracted.
- **Rule 3:** Family, volunteer and government must ensure full mobilization of all the available resources to help the juvenile.
- **Rule 4:** Juvenile Justice system shall be considered as an integral part of the development of a nation. Social justice shall be ensued in juvenile justice standards.
- **Rule 5:** These rules shall adhere to the economic, social and cultural aspects prevailing in the state.
- **Rule 6:** State shall develop a system of Juvenile Justice Services and make sure that only competent persons are part of such system.

- **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

¹⁵ SUMMARY OF UNCRC, unidef.org.uk, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>, Accessed August 30, 2020.

¹⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Resolution 40/33 of 29 November, ohchr.org, <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>, Accessed on August 30, 2020.

(1990)¹⁷: These rules further improvised the implication and scope of the Beijing Rules of 1985. There are ten rules given by this UN resolution, which are:

- **Rule 1:** Juvenile Justice System shall ensure that such system shall look after the rights and safety of Juvenile. Moreover it states that Imprisonment shall be the last resort.
- **Rule 2:** No Juvenile shall be deprived of his liberty until unless such deprivation is required and ordered by the Judicial authority. Further, such disposition shall be for minimum period possible.
- **Rule 3:** Intent of the rules is to ensure that minimum standards regarding deprivation of liberty is followed and such standards are in consonance with human rights.
- **Rule 4:** State shall ensure that such rules and standards are applied, without any sort of discrimination, equally on every minor.
- **Rule 5:** These rules shall strive to provide a point of reference for the professional in order to facilitate them when guiding juveniles.
- **Rule 6:** These rules shall be made available to Juvenile in his preferred language free of cost.
- **Rule 7:** If required state shall amend their legislation in order to incorporate the rules and shall also provide remedy for in case any breach happen.
- **Rule 8:** Authorities shall raise awareness among the juvenile justice person that they shall constantly work towards enabling juvenile to return in the mainstream society with proper dignity.

¹⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty Resolution 45/113 of 14 December, ohchr.org, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>, Accessed on August 31, 2020.



- **Rule 9:** These rules shall not preclude the application of relevant instruments and resources of UN and Human Rights wherever necessary.
- **Rule 10:** Rules 6-7 shall prevail if any conflict occur between the rules 2-5 and 6-7.

- **United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990)¹⁸:** These principles are more focused on prevention of Juvenile Delinquency rather than tackling the issue. There are six principles adopted in this resolution, which are:

1. Juvenile delinquency has substantial effect on crime prevention in society.
2. Society has pivotal role in controlling juvenile delinquency as it can majorly bring down such cases by ensuring harmonizing development of minors.
3. For understanding the rules relating to juvenile and application of same young persons shall be given preference as they can form a better connection with juvenile.
4. For successful implementation of present guidelines focus of preventive programs is required on early childhood stage.
5. Children shall not be penalised for trivial acts which doesn't cause any severe harm.
6. Community based programmes for prevention of Juvenile Delinquency shall be established. States must try to refrain from using formal authorities as much as possible.

¹⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Resolution 45/112 of 14 December, ohchr.org, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>, Accessed on September 1, 2020.

From above resolution is it clear that UN and Human Rights Commission have provided appropriate guidance regarding the Standards of Juvenile Justice. Now it is time for the state to work in harmony with its internal functionaries to ensure proper implementation of these international standards. However, many times states have been observed to contradict these principles. For instance in a study conducted by Child Workers in Nepal Concerned Centre (CWIN) it was observed that a street children was detained by the police for playing at night¹⁹. This shows that even authorities need to understand the rights of children and the very need for enforcement of such rights.

Conclusion

In modern world every nation follows the reformatory theory of punishment i.e. no one should be punished without giving a fair chance of reformation and repentance. Which especially is a necessity, considering the tender age of minor, in cases of juvenile delinquency. A child is like a rough clay which can be formed in which every manner one want. Therefore, opportunity of reformation is very evident when considering the punishment for juvenile. It is very well accepted universally that harsh punishment must be last resort and shall be given only in exceptional cases. But this concept of reformation is within the doubt considering the recent developments in juvenile crime. However, we might find such harsh punishment for juvenile a violation of human

¹⁹ A Study on Trend of Juvenile Delinquency in the Kathmandu Valley, oijj.org, http://www.oijj.org/sites/default/files/documental_1169_en.pdf, Accessed on September 4, 2020.



rights but if we consider the view of police or enforcement authorities, which directly deal with such incidents, a question is raised regarding the effectiveness of reformatory punishment. This same issue was faced by Indian Judiciary in the year 2012 when a horrific incident of gang rape occurred in Delhi, India. Every person who come across this incident was in an everlasting shock after knowing about this barbaric crime. Among the accused a person was juvenile, considering how inhumane this incident was a request throughout the nation was raised to try him and punish him as an adult as maximum punishment according to the Indian laws which could be given to him was three years. Considering his active involvement as horrific acts this punishment was not suffice in the eyes of humanity. But it was very rightly stated by Judiciary that such barbaric incident are very rare so decreasing the age of majority or bringing any substantial change in juvenile justice act will not be appropriate as still there are many cases where juvenile was potential to reform. Considering the current development the day is not far when a remarkable amendment will be required regarding the scope of punishment for juvenile and standards of Juvenile Justice throughout the world. But for now all we can do is spend time with minors and support NGO's and other organisation which help street children and other minors to reform by donations and readily participating in the events organised by same. So, at the last I would like to request everyone as being a responsible member of society to contribute something towards the development of juvenile around them.

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