



RIGHTS AND PROTECTION OF JUVENILE OFFENDERS

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ABSTRACT

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". 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. The law makers while drafting the Juvenile Act, 2015 has considered all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

KEYWORDS : Juvenile, protection, rights, Justice.

Legal provisions that especially and specifically deal with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency.

The Juvenile Justice System in India is made on the basis of three main assumptions:

- i. Young offenders should not be tried in courts; rather they should be corrected in all the best possible ways
- ii. They should not be punished by the courts, but they should get a chance to reform
- iii. Trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

Juvenile Justice Act, 2015

The Juvenile Justice Act of 2015 replaced the Juvenile Justice Act of 2000 because there a need for a more robust and effective justice system that focused on deterrent as well as reformatory approaches. The approach towards Juveniles should be different from that of adults, there were contentions made in the Parliament that the Juveniles should be given more space for transformation or reformation or improvement and that is only possible when there's a special justice system. Thus, the new act i.e. the Juvenile Justice (care and protection of children) Act, 2015 focused on a Juvenile friendly approach of adjudication and disposition of matters.

Some of the salient features are as follows

Section 2 (12) of the Juvenile Justice (care and protection of children) Act, 2015 gives the definition of the Child, meaning thereby that a child is a person who hasn't completed the age of 18 i.e. he/she is below 18. The Act has given a classification regarding the term 'Child' namely "Child in need of care and protection" and Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015 that talks about "Child in conflict with law".

There was a clear distinction made regarding the facets of offences, meaning thereby that categories were made terming the offences as heinous, serious and petty. There have been specifications made regarding the Juveniles who are between the age of 16-18, if any kind of crime is committed by them then after due perusal of their mental capacity, they can be tried as an adult.

Introduction of Juvenile courts, meaning thereby that special courts were to be established that will be trying the Juvenile offences only, like that of the NDPS courts, courts dealing with POCSO, etc.

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic

needs through proper care & protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions.

The most important subjects of the Act are as follows:

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* 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* 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*, 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* 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* 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.

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 law. The Board shall consist of Principal Magistrate and two social workers, among whom one should be a woman. 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 final.

Special Procedure of Juvenile Justice Board: The Act has provided the procedure against the juvenile offender. Following are the main special procedure –

- The proceedings cannot be initiated on a complaint registered by the police or citizen
- The hearing must be informal and should be strictly confidential.
- The offenders should be kept under Observation Home after detention.
- The trial of juvenile in conflict with law shall be conducted by Lady Magistrate.
- A child in conflict with law may be produced before an individual member of the Board, when Board is not sitting.

Modern Life Style- The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.

Fundamental law of India

The Constitution of India is considering as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided Directive Principles of State Policies (DPSP) which acts as general guidelines in framing government policies. Constitution has provided some basic rights and provisions especially for the welfare of children.

Those are:

Article 21A: Free and compulsory elementary education for all the children under the age of 6 to 14 years is Right to free and compulsory elementary education.

Article 24: Right to be protected from any hazardous employment under the age of fourteen.

Article 39(e): Right to be protected from being abused in any form by an adult.

Article 39: Right to be protected from human trafficking and forced bonded labour system.

Article 47: Right to be provided with good nutrition and proper standard of living.

Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has considered all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

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 Section 2(13) 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 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 harsh offence just because of Age determination or Age factor. Rape is Rape, one can't walk away 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 reformative 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 is definitely will create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

Development of the Juvenile Justice System (JJS) has come a long way, from the seeds of a rights based approach being found in the International Covenant on Civil and Political Rights (ICCPR) of 1966 to its final culmination in the Convention on the Rights of a Child (CRC).

The ICCPR lays down specific provisions in the context of juvenile justice, these being Article 10(2), which provides for the separation of juvenile offenders from adults for their speedy adjudication. Further still, Article 14 (4) categorically provided that the trial procedures for juveniles should take into account the age of juveniles and the desirability for their rehabilitation. These provisos could be considered as the platform or the stepping-stone for the development of certain necessary rights with regards to juvenile offenders. But despite their importance and usefulness the provisions as laid out were narrow and limited, and failed to provide wide spread protection to juvenile offenders. With the passage of time and with States developing separate juvenile justice systems, the need to have a complete framework at the international level became apparent.

Beijing Rules

In 1980 the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders called for the preparation of minimum rules regarding the administration of juvenile justice. Following which in 1985 the General Assembly adopted the United Nations Standard Minimum rules for the Administration of Juvenile justice also known as the Beijing Rules. The Beijing rules provided States with a constructive and definitive framework within which they could create and model their own juvenile justice systems. Even though the Beijing rules were not a set of treaty rules they still found a binding force after their eventual incorporation in the CRC. Despite its ground-breaking approach, the biggest deficiency in the Beijing Rules was its ambiguity with regards to who is or can be considered as a juvenile under Rule 2(2) (a). The gaping hole in the definition allowed national legal systems to define juveniles. In essence the Beijing rules said no more than that if a person is treated as a juvenile he or she is a juvenile. Even though the Beijing rules were widely adopted in the legal system of many states, the definition of juvenile severely limited and hampered the application of the rules.

Convention on the Rights of the Child 1989

The United Nations Convention on the Rights of the Child 1989 which came into force on September 3rd 1990 can be considered as the highest point in the quest for ensuring right to juveniles without at any point undermining the welfare principles of the JJS. The Convention not only recognized the rights which were to be processed according to the principles of justice, but also the rights to participation, name, nationality, identity, survival, development, adoption and the right against exploitation.

They should be protected against all kinds of abuse and exploitation from all directions and allow to grow and blossom with full safety, security and in close conformity with the provisions of the Convention on the Rights of the Child.

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