

Juvenile Justice (Care and Protection of Children) Act, 2015: A Binal Reality of Child Rights



Law

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Dr (Mrs) Rupa Gurtoo

Counselor at Prestige Institute Of Management And Research, Indore

Prof. Ritupriya Gurtoo

Assistant Professor at Department of Law, Prestige Institute Of Management And Research, Indore.

ABSTRACT

The amended provisions of Juvenile Justice Act, 2015 which expanded the purview of the Act has been considered as a near perfect solution, by our legislators, to the crimes committed by the Juvenile Delinquents. On one hand the civil society has welcome this change, but on other hand there are certain voices of concern that emotions have drown the voices of child rights in India. With the already existing provisions of the Act not been implemented, the new amendments will only create a situation where these juvenile delinquents after being incarcerated will thoroughly groomed and trained as career criminals. There is a need to balance the rights and interests of the juvenile, the victim and the society. Children languishing in prisons are not the solution to the problem of offences committed by the delinquents. The approach by legislature, through this amended Act, is completely repugnant to the heart of the criminal justice in India, whose foundation stands on the theory of reformatory approach. Even though unwritten in our laws, it is one of the basic rights that every child has to be given an opportunity to reform and prove himself, irrespective of his dark past.

Much hullabaloo has been created regarding the hyped amendments in The Juvenile Justice (Care and Protection of Children) Act, 2015 that 'on paper' glorifies that the heinous crimes, committed by juvenile, will be dealt with iron hands. In the public eyes, it is a welcome change for the people who fought tooth and nail for the amendments to pour in, although several activists comprehend that the amendments is nothing but a washboard in the eyes of public.

My personal opinion, after working as a counselor in Observation Home, is that in the garb of child reforms, what is being offered is the remorseless attitude of our civil society who believes that retribution is the only answer to an offence committed by Juvenile. It is a grave mistake by the legislators to replicate a failed Western model of retributive justice without thinking of its repercussion. Justice cannot objectively be served as to the extent of harm caused to criminal but how much loss caused to "victim" can be reversed or compensated. Incarcerating juvenile delinquent is not always the best solution to the problem of child offence.

One of the clauses of the Act states that the Juvenile Justice Board (JJB) will decide whether a child above 16 years should be treated as an adult or not in case of the commission of a heinous crime. It mandates the board to assess child mental and physical capabilities to commit the offence and also to consider the circumstances as a mitigating factor. Time and again myriad researches have shown that accurate assessment of adolescent mental capacity is not possible. Intensity of crime differs from case to case and so is the mental capacity of the person.

The word 'heinous offences' used in the Act have literally opened a Pandora box. With heinous offences not being defined, such a vague definition implies that Juvenile found guilty of offences that carry a minimum sentence will receive the minimum mandatory sentence prescribed under the law. This undermines, in entirety, the principles recognised under the United Nations Convention on the Rights of the Child as it leaves judiciary with no option but to institutionalize the accused person and thereby violating the fundamental principle of prohibition on cruel, inhuman and degrading treatment.

The 'Best Interest' principle theory clearly mandates that state should refrain from constituting any such provisions

that trump or override any of the other fundamental rights guaranteed to a person. State need to reassess the fact that children committing heinous adult crime prima facie does not make them Adult. The edifice of the present amended Juvenile Act is based on the misconception that juvenile are competent to stand trial as adults. Studies have shown that adolescents lack psycho-social maturity making them more prone to peer influence, are less likely to focus on future outcomes and evaluate risks and benefits differently. Subjecting children to the adult criminal justice system would thus violate the constitutional guarantee of equality.

The raison de etre for young offenders not being incarcerated for the commission of offences mentioned in Juvenile Act is because of grave risk to the evil consequences as a result of their close association with the hardened and habitual criminals in Jails. Juvenile Act needs to be liberally construed so that its operation may be effective and beneficial to the young offenders who are prone more easily to be led astray by the influence of bad company.

It is argued that India being a signatory to convention of child right is making a mockery of itself by bringing into operation such regressive laws.

The need of the hour is to focus on the infrastructure reform and psychological development of delinquents, rather than bringing out new laws which will only worsen the situation. These same sentiments have been echoed by Justice J.S. Verma Committee who blatantly refused to recommend any changes in juvenile justice law. The basic reason for enactment of juvenile law was on the lines of the various child conventions which India has adhere at international platform. This Teflon coated approach by legislature is completely repugnant to the heart of the Juvenile Justice Act, whose foundation stands on the theory of reformation and rehabilitative approach. The turn away from adversarial justice has been recognized by the Supreme Court as well, in the Act in particular and the criminal justice system in general. Probation service, a vital parameter for reformation of the juvenile, as they are to draw the charts for reformation of delinquents after their period in reform continues to be abysmal, primarily due to non-availability of adequate number of probation officers and also because of lack of understanding on their role in juvenile justice system

As such the provisions of already existing juvenile act was

not implemented. Further, these amendments of trying juvenile as adult will give a scope of biasness to the authority in power to determine which child is to be transferred to an adult court. The amended Act also violates the presumption of innocence, a central tenet of the criminal justice system. As such the juvenile justice board constituted in different states are facing shortage of professionally qualified persons, now with their role to decide who among the juvenile offenders will be dealt with by the adult criminal justice system will only add woes to already existing problems.

Recriminalisation of juvenile by denying them an opportunity to rehabilitation without considering their economic and social background will only lead to travesty of the judicial system. Steps must be taken first to control ineffective governance, better standard to determine age and corrupt administration in order to solve this menace.

It is not an issue of an individual, but about millions of youth who are growing up in non conducive environment where crime is that dark reality with which they have grown. Before the amendment to the Juvenile Act, juvenile delinquents in rehabilitation centres can at least hope to be reformed and rehabilitated rather than be turned into incorrigible criminals.

Almost all the Juvenile which I have encountered have shown remorse in one form or another. In one of the incident, *Sameer*²¹, 17 year old boy and *Neha*^{*}, 5 year old girl, were neighbours in a colony. Sameer considered Neha to be her sister. One day on pretext of giving her banana he took her to a nearby field, raped her and brutally killed her. During his three years stint at Observation Home, it was often observed that he always used to draw picture of girl with a ponytail and used to scribble it with red colour afterward. His interaction with counselor would depict his remorse of doing such ghastly act with a girl whom he called his sister. His eyes showed that he repented and wanted just one chance to prove that he can change the better. But will the society and law allow it, was the moot question to be answered

In another incident *Ankit*^{*}, 16 year old boy, accidentally hit his drunkard father in order to protect his mother from beating. His interaction with counselor would always hinge on the fact he had no intention to kill his father. He just wanted to save his mother from his merciless beating when such unfortunate accident occurred. He also narrated his ordeal on how to he went to several Ngos where no help was received. Had we civil society had paid a little attention; a boy would not have been languishing in jail.

In a dysfunctional family of *Mohit*^{*} and *Abhishek*^{*}, young boys of 9 and 12 respectively, were in Observation Home because they had drugs in their possession. What probation officer and law failed to notice that their own mother was involved in all kind of nefarious activities and it was their own mother who had induced these kids to enter in the world of drugs.

The adage of eye for an eye will make the whole world blind has never been the foundation of our criminal justice system. However, the amendments in the Juvenile Justice Act, 2015 negate these presumptions. Expanding the purview of the Juvenile Justice Act is the solution to a safer society or a mere act of social elimination is the question that would be answered in the times to come. Even after rehabilitation, these juvenile' delinquents have very little chances to get employed in our society, and hence they are

again pushed into the vicious criminal trap. There is very little or no work done in field of reforming the prisoners and keeping their unoccupied mind busy. But at the same time we need to do away with black and white idea of juvenile and adult, and should widen the "time period" for which juvenile will be kept in reform centre in exceptional cases, if doubt exist that he hasn't been reformed. Reformation homes, often seen as breeding ground for nefarious activities are not leading to reformation of delinquents. This is because the homes are understaffed and underfunded. It is a preposterous claim of the government to state that the reformation homes are not leading to reformation and therefore adolescents should be sent to adult prisons is one of the serious forms of abdication of duty. Investing in strengthening the existing juvenile justice system where juvenile delinquents still have a chance to reform themselves is the only solution to curb the menace of child offences. Responsibilities lie not only with the government but with every responsible civil society member to help prevent further crime and actually bring about some measure of healing and justice for all concerned. Apart from the classical crime handling approach by police, government organs should also come forward with certain initiatives to control the rising trend of crimes by juvenile through education and spreading awareness. Restorative justice is one of the that could tie juvenile, the victim and society in a meaningful .

Gruesome offence committed by a juvenile indeed stir a wave of emotion that cries out for the deadliest punishment to be given to such offender. However if every emotional idea subverts the fact and resonates retributive theory then this nation is jeopardizing with the future of the children. Irrespective of sculpted public opinion the very nature of the Juvenile Act needs to be reform basis and deterrent.