

THE REMAKE: JUVENILITY IN INDIA

Written by *Charitha Praveen*

3rd Year BBA LLB Student, Symbiosis Law School, Pune

INTRODUCTION

This note would basically highlight upon the differences between the Juvenile Justice Act, 2000 and Juvenile Justice Act, 2015. This law was brought into force after the Delhi Gang Rape Case happened in 2013. The new act focuses more upon the rehabilitation and reintegration of children in conflict with law and children under care and protection. It provides a separate section for children who have committed heinous crimes. The children from 16-18 years of age can be tried in a sessions court and sent to jail if they commit any kind of Heinous Crime. Further this note will focus upon the Minimum age of criminal Responsibility with respect to the Indian Penal Code, 1870.

A Juvenile is a child who is below the age of 18 years. IPC has clearly made classification as to who should be held liable and who should be not. The Indian Penal Code, 1870 has several sections for the crimes committed but Section 82 and 83 majorly focuses upon the crimes by Infants and crimes committed by children between the age of 7- 12 years. It is very clearly mentioned that section 82 specifies that nothing is an offence if it is committed by a child below 7 years because of the basic reason of that the children do not have the mental capacity to understand the consequences of the act. Section 83 explains the children between the age of 7- 12 years also do not have the mental capacity and the maturity to understand the consequences of their acts. There are instances where there the children while playing with each other have hurt each other grievously but none of them could be held liable because their state of mind was not mature enough to understand the grievousness.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

There are two dimensions to identify the minimum age of Criminal Responsibility: First being the capacity of the person involving himself in the criminal conduct and second ability to justify his criminal conduct. Every country differs from rules to rules of each activity of children and defined a reasonable age for each activity whether be it voting, marriage, consumption of alcohol etc. These age limits are set by the domestic laws in the country. The age is very significant role as a person or minor cannot be tried and convicted unless proved that there was 'mens rea' or was a *doli incapax*. Under CRC, Article 40 (3) (a) requires state parties to promote the establishment of minimum age below which children will be presumed to be not in conflict with law. In India, the age is 7 years and thus no child below 7 years can be considered to be in conflict with law.

If there is any law or legislation to deal with children in conflict with law it would not be the ordinary courts but the Juvenile Justice System which would look into the matter but it is taken care that the child is never given death sentence or life imprisonment.

The Juvenile Justice System India, have rehabilitation centers or shelter homes and such other places where the children under the age of 18 can be sent if they commit any crime, they need care and protection and this would be provided to them in these centers where they would be kept away from their parents (if any) and from the whole society and would be treated in a better manner to make them understand the social, moral values of life in a child- friendly approach which is in the best interest of children and for their ultimate rehabilitation and also to teach them make space for love, care, and social well-being which they have been deprived of throughout their life.

The Juvenile Justice Act provides an approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection and treatment and rehabilitation of children in the context of Juvenile justice System. Nevertheless, this Juvenile Justice Act also provides for Juvenile Justice Board which is a special court formed for the juveniles who commit crime and this board will look into the matters and pronounce decisions by not punishing but sending these juveniles to shelter homes etc.

CRC and United Nations Minimum Standards for Administration of Justice to Children (Beijing Rules) are two legislations which confirm in the Juvenile Justice Act, 2000. Both these legislations lay down principles which are in the best interest of the children and all the decisions are guided by complete consideration. The act also provides no information about the juvenile would be released till the investigation is over in television, or newspapers nor the name of the school would be released.

Children who would commit any 'heinous' crime such as rape, murder etc. would fall under the category of Children in conflict with law. Further children above the age of 12 years are in the mental capacity to understand the consequences of their acts. But they cannot be tried in a regular court but they are administered by the Juvenile Justice Board who direct them further with care and protection. The time between 12 – 18 years is such an age where the children need to be molded into responsible well- being and parents play a very important role in it, but some children deviate from their path.

Recently Juvenile delinquency has increased from a certain extent and it's been concern recently. From the NCRB reports it's been found out that from 2003 to 2014 there has been increase in crimes committed by children from 1% to 1.2% which is not a positive output. And mostly children between 16-18 years were responsible for almost 70% of the crimes till 2013 from 2003 reflecting an increase of 10% in the crimes. Now, after these incidents happened the Juvenile Justice System became a little more alert and started focusing on the mental element of the crime committed rather than the age.

The age did not matter anymore because the mental maturity was given a lot more importance and only if the consequence of the act was understood by the juvenile while he was committing the crime, he would be taken care by the Juvenile Justice board by sending him rehab centers. The act also focuses on the juvenile help being provided to the children in the rehabilitation centers by giving psychological help.

WHAT LEAD TO THE CHANGE IN THE ACT

In December 2012, the infamous Delhi Gang Rape Case which lead to a lot of chaos in the society. The accused were given death sentence but one of the accused was a found to be 17

years, so he was a juvenile and was decided to be treated separately by the juvenile justice board. As he could not be punished as the others who were adults. So there were a lot of questions which were raised regarding the competence of the act in the society which needed to be answered by the government and government had to take some step which would reduce the disturbance in the society. It was decided that the matter would be reviewed and the content and scope of the laws would be redefined.

Later Maneka Gandhi, the Minister of Women and Child Development said that the act is comprehensive Act which not only includes the issues about adoption, shelter homes and foster homes. Justice Verma Committee was released which also mainly focused on Juveniles. After the Gang rape case happened, the countrywide debate was to decrease the juvenile age. However, it was said that such laws are made for a reason and it wouldn't be changed so easily without everyone's consideration and it was reported that the age might be reduced to 16 yrs from 18 years but that did not happen so. Changing the juvenile age would not make any difference in the society because the children due to vast exposure in today's world are in direct contact to internet and other ways which influence them to take such steps. They need proper care and direction in which they need to look for a path which will help them change their attitude. The age does not matter after a point of time because they, there is nothing so which would give a confirmation as to as soon as the child turns 18, he will all of a sudden become sensible and entirely mature. This doesn't happen in a span on just one day. It is a process which has the involvement of the parents also who have a great role to play in their ward's life to know what is getting around his mind.

CONSTITUTIONAL PROVISIONS CHALLENGED

These constitutional Provisions were challenged in the Bill which was presented by name Juvenile Justice (Care and Protection of Children) Bill, 2014. This bill consisted many other recommendations to be made in the new Juvenile act. The Articles which were questioned were Articles 14, 21, 20(1).

The major change which was needed to be made was the children between the age of 16 – 18 years of age were supposed to be punished if they commit any serious or heinous crime they

will be given imprisonment of 3 - 7 years or 7 years respectively. Now that would lead to violation of certain important constitutional rights.

Article 14- It states that every person shall be treated equally before law. Unequal treatment is not appreciated in law because all humans are considered equal and the bill on the basis of date of apprehension for the same offence for two juveniles are being punished differently.

Article 21- which states no person can be deprived of their right to life and personal liberty, except according to procedure established by law. And therefore, the differentiation made on the basis of the date of apprehension is biased and incorrect. In 2005, Supreme Court declared that the date of commission of the crime should be considered rather than the date of apprehension. Now this contradicted one of the clauses of the bill which explained that the penalty given is decided by the date of apprehension.

Article 20 (1) - which states that a person cannot be subjected to a penalty greater than what would have been applicable to him, under law in force at the time of commission of offence. Under the bill if a juvenile between the age of 16- 18 commits a crime and is apprehended at a later date, he may be given a higher degree of punishment which would be applicable to him at the time of commission of the offence. This provision does not directly attack the Art 20 (1) as the bill does not apply retrospectively.

The constitutionality of the Juvenile Justice Act, 2000 was also challenged in the *Salil Bali v Union of India and Another*¹. Some sections of the act in specific i.e. Sections 2(k), 2(l) were challenged, which was then held that it is valid.

Later another very similar case came up which was *Subramaniam Swamy v. Raju*². In this case similar to the sections as in the above case was challenged. But in this case, the petitioner had pleaded that these sections need not be replaced but should be read down till a certain extent and that extent should be decided by the court. Now this was something new which was brought into light. The court then highlighted the meaning of 'reading down' and how this word should be interpreted. Finally, the court held the same decision and declared that the Juvenile Act is constitutionally valid.

¹ (2013) 7 SCC 705

² (2014) 8 SCC 390

THE JUVENILE JUSTICE BILL, 2014

This bill was introduced in the Lok Sabha by Ms. Maneka Gandhi. The Bill highlighted a few main issues which are as follows:

1. The Bill is a replacement to the Juvenile Justice Act, 2000 in respect to the children in conflict with law and children in care and protection.
2. Mainly, this act would try the children like adults between 16-18 years if they commit heinous crimes.
3. Juvenile justice boards and Child Welfare Committees to be set up in every district. The Boards were already present but they were not active.
4. Adoption and clauses relating to it was added.
5. Penalties for cruelty against a child, offering narcotic substance to a child and abduction or selling child as per rules.

ANALYSIS

- The UN Convention on the Rights of the child requires all children to be treated equally if below 18 years. Any child being tried as an adult will contravene the conventions.
- The current act does not act as a deterrent for juveniles committing heinous / serious crimes. Another view given is that the reformatory approach will lead to offences not getting repeated.
- It is even believed that the punishments offered to the gravity of offence committed is not proportionate
- The provision of trying a juvenile on the basis of the apprehension is violative of article 14 and 21. It also questions Article 20 (1) higher penalty for the same offence.
- It was believed that the bill was made on wrong data regarding the juvenile crimes and violated certain provisions.

India is a signatory to the UNCRC which was ratified by India in 1992 after which India had to follow the rules mentioned in the conventions itself with regard to children, their protection, adoption, care etc. According to the 2011 census report, of the total population 25% consists of the children between the age of seven to eighteen years of age. Over the years courts have

looked at various cases regarding juveniles committing crimes under the act, and therefore it has been recommended that the act needs to be reviewed again with respect to the punishments, serious crimes etc.

For Children in conflict with law, the Juvenile Justice Boards will be set up in each district. This Board will consist of the metropolitan or the judicial Magistrate and two social workers including a woman. The JJB has decided that juveniles will get maximum of 3 years of Institutional Care.

With respect to the heinous crimes committed, if a juvenile is apprehended before 21 years, a preliminary enquiry would be conducted. This will decide his mental or physical capacity to commit an offence and its results further. The JJB can take action as to what it feels correct recommending staying at observation homes for a long-term period or to try him in Children's Court or interventions like counseling or community service. A Children's Court

For children in need of Care and Protection, Children Welfare Committees will be constituted in every district. It will compose of the Chairperson and four other members who shall be experts on matters relating to children. And at least one must be a female member.

A child is brought to the CWC within 24 hours and then the CWC looks into the matter as to how is the condition of the child and a report would be made by the Investigation agency within 15 days and after the reports been assessed, the CWC will send the child wherever necessary it might be a children home or foster home etc.

Other provisions explain the Registration of Institutions under the act is necessary and it is valid for 5 years and needs to be renewed timely. Inspection committees are present who will inspect the institutions and will certify them and if it is not satisfactory then they will cancel the registration.

JJ Act divides the children covered by it into delinquent and unattended which is quite and subtle. The children aren't aware of the consequences of their acts requiring care and protection of their acts. The act divides the children in such a category on the basis of the commission of

crime rather than the characteristics per se. This is done because sometimes the children are not easy to handle.³

There were a number of changes which were proposed through the bill. The Act was finalized in 2015 and following were the final changes made. So, these points will help to understand the differences between the previous and the present act.

- The bill was passed by both the houses, it just needed the president's assent which was soon given and finally this bill was made an act.
- The Act in Section 15 mentions about the children between the age of 16 – 18 years of age would be given rigorous punishments if they commit any heinous or serious crime.
- It mandates the setting up of Juvenile Justice Board and the Child Welfare Committee (CWC).
- After the bill becomes the law, the juveniles above the age of 16, would be taken to the Board for rehabilitation.
- The CWC will look into the institutional care of the respective districts.
- Basically, the bill aims at the total care and protection of the children by providing them the basic needs for their development, social integration by having a child friendly approach.
- The present law assumes that it would dispose of all the cases relating to the juvenile crimes bearing in mind the best interests of the children and their rehabilitation.
- India being a signatory to the United Nations Conventions on Child Rights has violated its rules as the UNCRC states that all children below the age of 18 years should be treated equally, but the present act differentiates the children from age group of 16 – 18 years from the rest.
- The previous act could try a child for maximum 3 years of imprisonment but the new act includes the punishments up to 7 years of imprisonment.

³ Manu N Kulkarni, "Justice for delinquents", *Economic and Political Weekly*, Vol. 29, No. 26 (Jun. 25, 1994), p. 1575, <http://www.jstor.org/stable/4401387> Accessed: 23-05-2017 07:50 UTC

CONCLUSION

Finally, after long years of wait, there has been some good change which has dual result. Though many are not happy with this change because some think that if a juvenile of age between 16 -18 years is punished so harshly he would lose self – confidence and obviously it is his crucial time of his life and if he is imprisoned at such an early age, it would ruin his future and that's why they think that these kind of children need help and they should be kept at rehab centers and away from their parents so that they learn how to live away from the modern developments and being surrounded by wrong people.

On the other hand, such an act was required because otherwise there would be no control over the crimes being committed by such children and it would continue and they would all go unpunished which is no justice from any angle. It was good initiative taken by Mrs. Maneka Gandhi to bring into such an important aspect of law. The good thing was it was brought into force very quickly and that happened because justice was to be served to the girl who had suffered in the Delhi Gang Rape Case.

This act will surely help in a lot many ways but there are many improvements which can be made which would be elaborated in the Key Recommendations.

KEY RECOMMENDATIONS

There are few suggestions which can be made not per se in the act but after enactment of the act the courts and others need to take care of this

Inquiry - The Inquiries done by the Inquiry Committee or the Rehabilitation Centers should be quicker but appropriately done which is presently haywire and haphazard. They can improve their recording styles and rather than doing it manually, now Digital India encourages the use of electronic gadgets to record and feed all the information into their system.

Improvement in maintenance - The Juvenile Homes is not all kept tidy and healthy. Their conditions need to improved drastically. Hygiene needs to be maintained completely where there are children, it's for their betterment and health. The washrooms need to be clean and tidy.