

## Who is a child: An analysis on recent trends

Dr. Nutakki Sateesh , Child Rights Activist , Near APR School,D.NO.21-33, Tadikonda Post & Mandal, Guntur DT.

### **Abstract:**

*Age determination has been a tricky and controversial issue in juvenile justice. A number of cases have been decided by the courts in this regard. The present government proposed bill an up to seven year rigorous imprisonment, 5 lakh rupees fine or both for militant groups who recruit child soldiers or use children for any purpose. The Bill widens the definition of corporal punishment by including physical by verbal abuse. It proposes stringent punishment for those who subject "a child to corporal punishment causing hurt and emotional distress for the child.*

**Key words:** Children, conventions, treaties, declarations

### **Introduction**

Children are considered as national asset and the way of looking at children has radically changed. From a primitive perspective to modern civilized outlook. In the ancient days concerned as legitimate<sup>1</sup> in all societies. Only the with March of civilization children were considered as entitled for humane treatment. Slowly this progress has led to making of various child rights conventions, treaties, declarations, and rules<sup>2</sup> culminating in the child rights convention. The objectives of the child rights convention declares<sup>3</sup> "the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in article 23and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article10) and in the statutes and relevant instruments of specialized agencies and international organizations

concerned with the welfare of children, bearing in the mind that, as indicated in the Declaration of the Rights of the Child, the "child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

However recently there is a reversal of trend to treat children on par with adults in prosecuting them for certain serious offences. In India after the ghastly Delhi gang rape case there was a public demand to reduce the age of child and prosecute children between sixteen and eighteen on par with adults. As per this demand legislation was enacted reducing the age of the child<sup>4</sup>. There are pros and cons in reducing the age of the child before considering the impact of this amendment it is proposed to review who the child is under various laws.

### **Who is a child?**

Age determination has been a tricky and controversial issue in juvenile justice. A number of cases have been decided by the courts in this regard<sup>5</sup>. The issue of age determination controversial because there is not clarity on the point. Even in the case of Indian Penal Code, talk about

children below and above seven years of age but it is silent about seven year old children. Juvenile Justice (Care & Protection of Children) Act, 2000 confers the power on competent authority to determine whether the person brought before it is a juvenile, if he/she appears to be so<sup>6</sup>. But the procedure to determine juvenility of a person cannot be relied on<sup>7</sup>.

At the International level various conventions prescribe the age of the child as follows:

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) defined that 'juvenile' is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult<sup>8</sup>. According to the United Nations Convention on the Rights of the Child 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'<sup>9</sup>.

At the National level child is defined as follows; The Apprentices Act, 1850 was provided for binding over of children under the age of fifteen years found to have committed offences as apprentices. The Indian Majority Act 1875 was enacted in order to bring about uniformity in the applicability of laws to persons of different religions<sup>10</sup>. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of eighteen years of age. However, in case of minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been assumed by the Court of Wards

before the minor has attained that age, the age of majority will be twenty-one years and not eighteen.<sup>11</sup> The Reformatory Schools Act, 1897 'youthful offender' means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.<sup>12</sup> The Madras Children Act, 1920 defined child as persons below the age of fourteen years but applied it to young offenders till the age of eighteen years. The Bombay Children Act, 1922 included children till the age of sixteen years. The West Bengal Act, 1924 includes children up to the age of seventeen years. The Minority and Guardianship Act (HMGA) 1956, defines a 'minor' as a person who has not completed the age of eighteen years.<sup>13</sup> The age of majority for the purposes of appointment of guardians of person and property of minors according to the Mohammedan law is also completion of eighteen years.<sup>14</sup> Christians<sup>15</sup> and Parsis<sup>16</sup> also reach majority at eighteen. According to the Child Marriage Restraint Act, 1929 child means a person who, if male, has not completed twenty one years of age, and if female, has not completed eighteen years of age<sup>17</sup>, and the age of marriage is twenty-one years for males and eighteen years for females.<sup>18</sup> Minor means a person of either sex who is under eighteen years of age.<sup>19</sup> According to the Constitution of India all children between the ages of six to fourteen should be provided with free and compulsory education<sup>20</sup> and the state should provide early childhood care and protection to all children below the age of six<sup>21</sup>. Lastly the parents/ guardians of the children between the age of six and fourteen should provide them opportunity for education.<sup>22</sup> The Factories Act 1948 and Plantation Labour Act 1951 states that a child is one

that has not completed fifteen years of age<sup>23</sup> and an adolescent is one who has completed fifteen years of age but has not completed eighteen years of age<sup>24</sup>. The Motor Transport Workers Act 1961, and the Beedi and Cigar Workers (Conditions of Employment) Act 1966, both define a child as a person who has not completed fourteen years of age<sup>25</sup>. The Merchant Shipping Act, 1958 and Apprentices Act 1961 don't define a child, but in provisions of the act state that a child below fourteen is not permitted to work in occupations of the act. The Mines Act, 1952 is the only labour related act that defines adult as person who has completed eighteen years of age<sup>26</sup> (hence a child is a person who has not completed eighteen years of age). The Children Act, 1960 defines the child means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

Article 21A of the Constitution of India says that the State shall provide free and compulsory education to all children within the ages 6 and 14. Article 45 of the Constitution specifies that the state shall endeavour to provide early childhood care and education for all children until they complete the age of fourteen years. Article 51 (k) lays down a duty that parents or guardians provide opportunities for education to their child/ward between the age of 6 and 14 years. The Constitution of India protects children below the age of 14 from working in factories and hazardous jobs. But below 14, they can work in non-hazardous industries.

For the purpose of criminal responsibility, age limit is seven and twelve under Indian penal Code.<sup>27</sup> For purposes of protection against kidnapping, abduction, and related offences, age is fixed at sixteen in the case

of boys and eighteen in the case of girls.<sup>28</sup> The Children Act, 1960 defines 'child' means a boy who has not attained the age sixteen years or a girl who has not attained the age of eighteen years.<sup>29</sup> Under the Child Labour (Prohibition and Regulation) Act 1986, child means a person who has not completed his fourteenth year of age.<sup>30</sup> For the purpose of special treatment under the Juvenile Justice Act 1986, the age prescribed was sixteen years for boys and eighteen years for girls.<sup>31</sup> Prohibition of Child Marriage Act, 2006 'Child' means a person who, if a male has not completed twenty one years of age, and if a female, has not completed eighteen years of age.<sup>32</sup> According to the Juvenile Justice (Care and Protection of children) Act, 2000 'juvenile' or 'child' means a person who has not completed eighteenth year of age.<sup>33</sup> According to the Protection of Children from Sexual offences Act, 2012 child means any person below the age of eighteen years.<sup>34</sup>

Thus you can see that for various purposes child has been defined to be of various ages up to eighteen depending on the purpose thus for prohibiting child labour 14 years has been fixed while the to vote is given at eighteen. For the purpose of protecting a girl child from being kidnapped age has been fixed at eighteen. But on the whole we can see that eighteen years is the age limit for all child protective measures.

### **Juvenile Justice (Care and Protection of Children) Bill, 2014**

The Union cabinet on 6 August 2014 approved the Juvenile Justice (Care and Protection of Children) Bill, 2014 to amend the Juvenile Justice (JJ) Act, 2000.

### **Age of a Juvenile in the JJ Bill, 2014**

- The bill will treat minors above the age of 16 as adults, who are accused of heinous crimes like rape and murder. The JJ Act, 2000 treats any person below the age of 18 as juveniles.
- The bill will empowered the Juvenile Justice Board to decide whether a minor would be tried in a regular court or sent to a correctional centre.
- The bill provides that if a minor is sent to regular court, he would not be sentenced to life or death if found guilty. Currently, the maximum punishment under the Juvenile Justice Act is three years confinement at correctional homes.

#### **The provisions for Children in conflict with law**

- The Bill proposes up to seven year rigorous imprisonment, 5 lakh rupees fine or both for militant groups who recruit child soldiers or use children for any purpose.
- The Bill widens the definition of corporal punishment by including physical by verbal abuse.
- It proposes stringent punishment for those who subject “a child to corporal punishment causing hurt and emotional distress for the child”.
- Offenders could face jail term between six months on first conviction. Depending on the gravity of the physical injury and mental trauma of the child, the offender could be punished with three to five years in jail and up to 1 lakh rupees fine.
- If the offender is an employee of an institution dealing with children, he can be dismissed from service for

repeat offence. Even the management of such institution can be sentenced to up to three year jail and 1 lakh rupees fine for non-compliance or non-cooperation in any probe.

- Those ragging students within or outside an institution can be sentenced to up to three years in jail and fined up to 1 lakh rupee. Anybody found to abet or propagate ragging can land in jail, too.

If the Bill is passed in Parliament, India will join 40 other countries where corporal punishment is a penal offence. Further, the Women and Child Development (WCD) Ministry in order to smoothen the procedure of adoption intended to make the Central Adoption Resource Authority (CARA) the statutory body. CARA will have powers to regulate inter-country adoptions along with issuing guidelines on adoption and related matter.

#### **Arguments in favour of the amendment**

The amendment to JJ the Act 2000 brought both male and female below the age of 18 years within the ambit of juvenile justice system, but prior to it was male below the age of 16yrs and females below the age of 18 years as per JJ Act 1986. The panel on the empowerment of Women, formed by Parliament to look into “sexual abuse and trafficking and their rehabilitation” has recommended reduction in the age of a male juvenile from 18 to 16 years. According to the report, the number of boys aged 16-18 years who were apprehended for rape was 823 in 2011- up from 645 in 2010. A similar increase from 297 in 2010 to 442 in 2011. Boys between 12 and 16 apprehended on charges of rape also shot up-from 275 to 364.

In view of an increase in crimes committed by juveniles against women, a Parliamentary Committee<sup>35</sup> in its report observed that a total of 22,740 crimes punishable under the Indian Penal Code were committed by juveniles during the year 2010. This increased to 25,125 during 2011, an increase of around 10.5 per cent. It said crimes against women committed by juveniles have also shown an upward trend. In 2010, juveniles were involved in 858 cases of rape, 391 cases of abduction of women and 536 cases of molestation. The committee also analysed the profile of juveniles apprehended, and found that most of the crimes have been committed by male juveniles in the age group of 16-18 years.

#### **Argument against the amendment**

In the wake of the brutal gang-rape and murder of the 23 year-old student, there is a growing demand for lowering the age of juvenile from 18 to 16. However the Parliamentary Standing Committee on Home has decided against lowering the age of juveniles below 18 years of age despite suggestions by several members. The Verma Committee had recommended against the lowering of age of criminality under the Juvenile Justice Act. The committee cautioned, "Any attempt of reducing the age of juvenility, or excluding certain children from the purview of the Juvenile Justice (Care and protection of Children) Act 2000 on the basis of nature of the international instruments, the United Nations Convention of Rights of the Child (UNCRC). The NCPDR (National Commission of Protection of Child Rights) however, does not agree to amend the JJ Act. The Asian Age quotes NCPDR Chairperson Kushal Singh as saying: "... lowering the age of juvenile goes against the basic philosophy of Juvenile Justice Act. We feel that we must focus on the

needs of the children. They need care instead of punitive action. Just because of few aberrations we paint all the children with the same brush." UNICEF India expressed concern over age of involved in a serious crime can be tried in an adult court, and said such a decision was a real "step back"

#### **Conclusion**

Child rights activists have expressed their resentment against the new law, which has reduced the age bar of juveniles from 18 to 16 years. Experts said that lowering the age bar of juvenile delinquents is not the solution to the ever increasing crime rate as the involvement of minors is marginal in most of the provisions under the Juvenile Justice Act have been ignored while deciding on this. Dr Asha Mukundan, director of Resource Cell for Juvenile Justice of Tata Institute of Social Science said, surprised with the way the decision was taken by the government without spreading a word about it. The amendment is purely based on the sentiments and not on hardcore facts that have been ignored".

#### **References**

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- <sup>1</sup>. Even special instruments for torturing children for misbehavior were sold in France and other European Countries
  - <sup>2</sup>. Beijing Rules, Human Rights Instruments Specific to the Rights of the Child 1924, Declaration of the Rights of the Child 1959, Convention of the Elimination of all Forms of Discrimination against Women 1979 (CEDAW), Convention on the Rights of the Child 1989 (CRC), Universal Declaration of Human

Rights 1948, International Covenants on Civil and Political Rights 1996 (ICCPR), European Convention

on Human Rights 1950.

<sup>3</sup>. United Nations Convention on the Rights of the Child, 20 November 1989.

<sup>4</sup>. Juvenile Justice (Care and protection of Children) Bill, 2014

<sup>5</sup>. Government of India, ‘Supreme Court Cases’, In *Jaya Mala v. Home Secretary*, (2010) *Bhoop Ram v.*

*State of UP case*, (1989) *Babloo passi Vs state of jharkhand*, (2010), In *Umesh Chandra Vs state of*

*Rajasthan*, (2005) *Arnit Das v, state of Bihar* (2000)

<sup>6</sup>. Section 49(1)

<sup>7</sup>. The Government of India, ‘Juvenile Justice (Care and Protection of Children) Act, (2000), Publication

Division, New Delhi. Section 49(1), (2000)

<sup>8</sup>. Section 2 (a) of the “Beijing Rules” 29 November 1985

<sup>9</sup>. Article 1 of the United Nations Convention on the Rights of the Child, 20 November 1989.

<sup>10</sup>. Indian Majority Act 1875, see preamble

<sup>11</sup>. Section 3

<sup>12</sup>. Section 4 (a)

<sup>13</sup>. The Minority and Guardianship Act (HMGGA) 1956, Section 4 (a)

<sup>14</sup>. The Dissolution of Muslim Marriage Act 1939.

<sup>15</sup>. The Indian Divorce Act 1860, related to Indian Christian Divorce (Civil Law)

<sup>16</sup>. The Parsi Marriage and Divorce Act 1936

<sup>17</sup>. Section 2 [1] (a)

<sup>18</sup>. Section 2 [1] (b)

<sup>19</sup>. Section 2 [1] (d)

<sup>20</sup>. Article 21 (a) of the Indian Constitution

<sup>21</sup>. Article 45 of the Indian Constitution

<sup>22</sup>. Article 51 (k) of the Indian Constitution

<sup>23</sup>. Section 2 (C) of the Factories Act 1948, Section 2 (c) of Plantation Labour Act, 1951

<sup>24</sup>. Section 2 (b) of the Factories Act, 1948

<sup>25</sup>. Section 2 (c) of the Motor Transport Workers Act, 1961, Section 2 (b) of the Beedi and Cigar Workers

(Conditions of Employment) Act, 1966.

<sup>26</sup>. Section 2 (b) of the Mines Act, 1952

<sup>27</sup>. Section 82 and 83 of the Indian Penal Code 1860

<sup>28</sup>. Indian Penal Code deals with kidnapping from lawful guardian, Section 361

<sup>29</sup>. Section 2 (e)

<sup>30</sup>. Section 2 (ii).

<sup>31</sup>. Section 2 (h)

<sup>32</sup>. Section 2 (a)

<sup>33</sup>. Section 2 (k)

<sup>34</sup>. Section 2 (d) of POSCO Act, 2012

<sup>35</sup>. the empowerment of Women on the issue of victims of sexual abuse and trafficking and their rehabilitation