



Juvenile Delinquency – The Emerging Trends in India

Ch.Srinivas,

PhD Scholar, Faculty of Law, Osmania University

Abstract : *In India juvenile delinquency is a huge problem and also to the world. It is a fact that “if today’s delinquent child is not appropriately taken care then tomorrow he can be a hard-core criminal”. Criminal behavior or delinquency among the children can be controlled before they become serious danger to the society and nation. The data provided by various authorities/agencies from time to time show a rising trend in the incidents of crime by the juveniles. A thorough study is needed based on various facts and causes leading to delinquencies will provide the answer to the problem of the delinquent child. In India various acts are passed by the parliament periodically for fulfilling the objectives to a substantial extent and still lot of work is required to be done in order to make juvenile justice system in India become a reality.*

The reality, fear, and consequences of juvenile violence continue to plague this Nation and drive legislative and political agendas at every level of government. More and more States are lowering the age at which juveniles can be waived or transferred to criminal court and enacting other measures to "get tough" with violent juvenile offenders. Meanwhile, prognosticators warn of a coming tide of juvenile violence, driven primarily by increased arrests of juveniles for serious and violent crime over the past 10 years and shifting demographics of age and race.

Key Words: *Juvenile Delinquency; Heinous Crimes; National Crimes Record Bureau (NCRB); United Nations Child Rights Commission*

Introduction

In a society Crime is not only committed by the adults but also by the young persons. The commonly used term for referring to young offenders is ‘Juvenile Delinquent’ and is currently known as in the Juvenile laws as ‘Juveniles in conflict with law’ in the Indian context. Juvenile who has committed an offence or has breached the system of Criminal law is ‘Juvenile in conflict with law’¹.

The crime history of every adult offender in majority shows that the adult

offender at one point of time was a juvenile offender. This is a clear indication that there is an urgent need to reform and reintegrate the juvenile offender to prevent the future crimes in the society. The juvenile offenders have to be tactfully handled and molded to make them as the law abiding citizens of the state. This is fundamental philosophy behind the penology of juveniles in conflict with law that they are being reformed and reintegrated into the society, instead of punishing them as adult criminals.

The legal system in India has been very careful in handling the juveniles in conflict with law. The

¹ Section 2(l), Juvenile Justice (Care and Protection of Children) Act, 2000



juvenile offenders are treated with an intention of reform. The legal system believes that the bolt caused by the adult crime in the society can be reduced, if the juveniles in conflict with law can be set right at a tender age and prevent them blossoming them into adult criminals through various methods of reformation and reintegration into the mainstream society. There has been a great influence in the law making for juveniles under the Indian legal system by international law. The policy on juveniles in conflict with law has been widely influenced by the international conventions and the practices of British legal system in relation to juvenile offender.

The first law on juvenile justice in India came into force 1850 with the "Apprentice Act" which had provision of vocational training as a part of their rehabilitation process for the children who are convicted by the court and between the ages of 10-18 years. Later on the Act was replaced by the "Reformatory Schools Act 1897" and then it was followed by "The Children Act of 1960".

The primary law for juvenile justice in India was the juvenile Justice Act, 1986 which was applied throughout the country. The JJ Act, 1986 has replaced the Children Act, 1960. The JJ Act had a wide-ranging structure for the prevention and treatment of juvenile delinquency. Guidelines for the protection and rehabilitation of children were also provided in the Act. A uniform law on juvenile justice system for the whole country was brought in by the JJ Act, 1986.²

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<http://www.altlawforum.org/publications/TheJJ Act2002>.

India had its own juvenile justice law prior to the JJ Act, 1986; every state of the country treated the juveniles differently. In spite of the uniformity brought in by the juvenile law throughout the country there was neither modification nor change in the handling of juveniles.

The issue of juvenile justice was debated internationally in the late 1990's, and then "the issue was deliberated on the centre stage with a number of debates held on juvenile justice at national and regional level". In India, the issues relating to juvenile justice came to be highlighted with the demands faced by the central government, to submit Report to the Committee on the Rights of the Child. The Ministry for Social Justice and Empowerment had to frame/draft a new law on Juvenile Justice. The outcome was "The Juvenile Justice (Care and Protection of Children) Act, 2000".

The Government of India took a bold step in repealing the Juvenile Justice Act 1986, and replacing it with "Juvenile Justice (Care and Protection of Children) Act in 2000". The JJ Act, 2000 was yet again amended in 2006, to meet the emerging needs of juvenile justice. The JJ(C&P) Act, 2000 was drafted in such a way that it matched with UNCRC guidelines. In the adjudication and disposition of matters in the best interest of children the Act of 2000 adopted child friendly approach and for their rehabilitation through various institutional mechanisms.

The JJ Act, 2000 had approved the states to make Rules to deal with the juvenile delinquency. But many States did not frame their Rules under the JJA 2000. Amendments were brought to the parent Act by the JJ (C&P) Amendment



Act, 2006 in Sections 2 (1), 20, 64 and 68 and insertion of new Section 1(4) and 7A. After the amendment, the Central Government framed new Model Rules in 2007.

The Juvenile Justice (Care and Protection of Children) Amendment Act 2011 provided for the inclusive and non-discriminatory practices relating to children suffering from leprosy, T.B., mental and other disabilities.

After the Nirbhya (Jyothi Singh Pande) rape incident in Delhi on 16th December, 2012, there was hue and cry in the country demanding the punishment of juvenile involved in the crime. Owing to the public opinion the Government of India repealed the existing JJA 2000 and brought in the JJA 2015 which introduced the possibility of treating 16 – 18 year old children as adult criminals involved in heinous crimes.

Rise in juvenile crime

To protect all children including those who are in conflict with law and bring them within juvenile justice is the main purpose of juvenile justice system. However, the word "conflict with law" and delinquency is often transposable or can be used jointly which describes the children who are caught up with the judicial system as a result of committing or being alleged of a crime. The protective approaches of juvenile justice and the traditional approach of criminal justice system has created a major clash in front of juvenile justice system. Constitution of India has guaranteed various civil rights and child centric services to the children of the country. But still a large number of Indian children face unfairness and denial on many grounds. According to data of the National Crime Record Bureau (NCRB)

there has been a gradual rise in the juvenile crimes since the last two decades.

The figures released by National Crime Records Bureau (NCRB) have revealed some of the interesting aspects of juvenile crime:

(i) According to the NCRB data from 2002 to 2012, there has been an increase of 143% in the number of rapes by juveniles. It also revealed that the figures of murder have gone up by 87% while at the same time there has been an alarming increase of 500% in the number of kidnappings of women and girls by minors.

(ii) However, it is equally pertinent to note that (between 2007- 2012) the number of heinous crimes such as rape and murder account for only 8% of the total crime committed by minors. 72% of the crimes committed by minors are petty crimes like theft, burglary and causing hurt. Though there is not a rise in the heinous crimes committed by juveniles as such, there has been an increase in the gravity of the heinous crimes committed by them.

(iii) According to the NCRB data there is a considerable decrease in the juvenile delinquency among the girls under IPC and SLL crimes from the year 1996 to 2006. The juvenile delinquency which was around 26.3% during 1996 came down to 5.3% by 2006. In report published by NCRB it is shown that the juvenile delinquency among the girls shows a considerable decline. The statistics show that during the year 2001 the number of girl delinquents (IPC + SLL) was 2300 and during the year 2015 it was 900. This decline is an encouraging feature in relation to the juvenile delinquency trends in India.



Hence the question is — whether the legislators should go by the magnitude of the heinous crimes or by the percentage of the minor population (which is very less) that may commit such offence?

From 2001 to 2015 there has been a steady increase in the juvenile delinquency. During 2001 the total juvenile delinquency cases were 16,509 and the juvenile delinquency cases by 2016 are 35,849.³

The NCRB data on juvenile crimes shows increasing cases of sexual abuse by juveniles. As many as 1,419 cases of rape were recorded in 2011 as compared to 399 cases in 2001. The cases of rape and murder by juveniles have shown a steady growth from 2012 – 2016. If the family background of the juveniles is taken into consideration for the understanding of the juvenile crime, it is found that juveniles living with families have committed more crimes than the juveniles living with guardians and caretakers. For example, out of 27,577 juveniles suspected of committing a crime during 2011, 1,924 were homeless, 4,386 were living with care-takers and rest of them living with their parents. This shows that majority of the juvenile offenders are living with their families.

Any interesting feature of juvenile delinquency observed in the last three years has been that there is a slight decline in the juvenile crime especially relating to the IPC crimes. In the year 2014 it was 38,455, 2015 it was 33,433 and in the year 2016 it was 35849. The reason for the decline in juvenile especially relating to IPC crimes might be

because of the new juvenile justice Act, 2015 which treats 16 – 18 years children as adults in relation to heinous crimes like rape and murder.

A notable feature of juvenile crime in the last one and half decade is that the female juvenile crime rate has been on the decline. The female juveniles who were apprehended under IPC+SLL were around 2300 during the year 2001. This number has gradually decreased and by 2015 it is 900 only. The percentage of juvenile crimes committed by the female juveniles to the total crimes committed by the juveniles shows an interesting picture. During 2001 it was 6.9% and by 2015 it came down to 2.2%.

The approach of the society towards the delinquents has to be changed. Instead of treating them as bad individual or unworthy persons of the society, they should be either considered as mentally diseased persons or victims of circumstances around them. In the initial period small children were badly punished for committing even minor crime. In current period psychologists have proceeded to draw the awareness in the civilized world the causes of juvenile delinquency. The convention of punishing children has been replaced through rehabilitation and reintegration. Presently all the countries of the world are making efforts to redress the juvenile delinquents rather than punishing them.

JJ Act 2015 and the victims' rights

The JJ Act, 2015 protects the fundamental right to life of the victim. The right to life also includes right to justice. The previous Act by providing blanket immunity to the juvenile offenders and subjecting them to the same punishment irrespective of the

³ National Crimes Records Bureau, Ministry of Home affairs



severity of the crime committed by them denied the victim the right to justice.

A lot of atrocities committed upon women, in the recent past, such as sexual harassment, rape, acid attack, brutal murders have the involvement of juveniles in it. To curb this menace the JJ Act, 2015 states under Section 18(3) that if after a preliminary assessment, with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence⁴, if the juvenile is found to have committed a heinous crime and is above the age of 16 years then the Juvenile Board may transfer the case to a Children's Court where they may send him to a place of safety and after the attainment of 21 years and thereafter he shall be transferred to a jail.⁵ Thus protecting the fundamental rights to live with dignity is guaranteed under the Constitution of India.

In *Bodhisattwa*

Gautam v. Subhra Chakraborty,⁶ offence of rape was held to be a violation of the right to life guaranteed under Article 21 of the Constitution of India. Fundamental rights are superior to any other right guaranteed by any statute. Thus making the blanket immunity to the juveniles as being ultra vires of the Constitution.

In *Ram Prasad Sahu v. State of Bihar*⁷, the Supreme Court held that a child offender can be convicted of

committing rape and an attempt to commit rape. Where a child is not entitled to be punished but is capable of committing rape or murder it is against the principle of justice and principle of proportionality of punishment if he is given blanket immunity. It is a well-established medical psychological fact that the level of understanding of a 16-year-old was on a par with that of adults.

The JJ Act, 2015 under Section 47(4) states that: "Every child alleged to be in conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed." Thus the JJ Act, 2015 indeed protects the fundamental rights of the citizens of India.

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JJ Act 2015 a conflict of international law against the national law

The JJ Act, 2015 led to a huge uproar from human right activists challenging the Act on the basis of the violation of international treaties to which India is a signatory. India has signed and ratified United Nations Child Right Convention, Beijing Rules and

⁴ S. 15(1) JJ Act, 2015.

⁵ S. 19(3) JJ Act, 2015.

⁶ (1996) 1 SCC 490; *Rly. Board v. Chandrima Das*, (2000) 2 SCC 465.

⁷ (1980) 1 SCC 74: AIR 1980 SC 83.



Havana Rules which are for the protection of the rights of the children.

Article 51(e) of the constitution provides that "The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organised people with one another." This article of Part IV of the Constitution related to DPSP is a non-enforceable part of the Constitution. Framers of the constitution intended that the will of the legislators with respect to the international treaty obligation would be supreme. Only when the treaties have been included into the domestic law through an Act of Parliament the same can be enforced in the court of law.

Enforceability of treaty obligation in the Indian court of law takes place only when they have been adopted into the domestic law by a certain Act of Parliament as held by the Supreme Court in *Vishaka v. State of Rajasthan*⁸ and *Kesavananda Bharati v. State of Kerala*⁹. If an enabling Act is not enacted by Parliament the rights conferred by a treaty cannot be enforced in an Indian court.

Parliament of India under Article 246 has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Entry 14 states that entering into treaties and agreements with foreign countries and implementing of treaties, agreement, and conventions with foreign countries is a matter of central government.

The amended Act and the international obligation

⁸ (1997) 6 SCC 241, paras 7 and 10.

⁹ (1973) 4 SCC 225

The UNCRC, Beijing Rules and Havana Rules signed and ratified by India, states under Rule 17.2 of Beijing Rule and Article 37(3) of Convention on the Rights of the Child that children under 18 years cannot be awarded death penalty and life imprisonment, the new JJ Act, 2015 provides the same under clause (21) of Section 2 of the Act.

Further General Comment No. 10 on CRC under Point 71 states that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society.

The punishment that best serves his interest of the juvenile and the interest of the society should be awarded by taking into consideration the socio-cultural economic situation and the background of the juvenile. The retribution should aim at the rehabilitation of the juvenile into the social order. The JJ Act, 2015 emphasis on reformative services including educational services, skill development, alternative therapy such as counseling, behavior modification therapy and psychiatric support. All these shall be provided to the child during the period of his stay in the place of safety.

If international law is to be referred to as customary international law which stands for law that is accepted as a standard law practice adopted by the nations across the globe than the JJ Act, 2015 is in coherence with the international practice with regards to punishment for heinous crime committed by juvenile across the globe. If the international customary law is taken into



consideration then the position in USA, UK, and Canada concludes that the minor can be prosecuted under the criminal law for grave and heinous crimes committed by them.

As according to various researchers the human brain keeps developing until the age of 18 years. But the core of understanding lies in the fact that by the age of 5 years human brain cultivates 85% of their personality. Thus making the JJ Act, 2015 completely justified. Hence neither the international law nor international conventions prohibit India from treating minors as adults under certain situations.

Conclusion

Punishment is compelled to justify itself by its actual effect, on society, in maintaining order without legalizing brutality, on the criminal, in deterring him or in aiding his reform. The moral justification for punishment lies in its effects — in its contribution to the prevention of crimes and the social readjustment of the criminal. It is based on a forward looking theory. It considers the future good we do to the society in connection with the juvenile. Thus the validity of the said Act need not be questioned based upon the presumption that it violated the fundamental rights and is opposed to India's international commitment.

The law defines the offences which it punishes in such a way as to make the state of mind or will of the offender aware of the fact that such a course of action would lead to such an infringement of law and a punishment will follow.

Same offence should attract same punishment and hence a child above the

age of 16 years does have sufficient maturity to understand the nature of the act committed to forming mens rea and should not be taken to be too innocent.