

JUVENILE DELINQUENCY AND LEGAL AID

DR. ASHU MAHARSHI VYAS*

ABSTRACT

Children are the foundation on which the dynamic and vibrant future of a nation is built. So we can say they are the greatest asset of a nation. One can easily mould the delicate mind of a child and inclined him towards criminal activities. Juvenile delinquency is the participation by a minor child, usually between the ages of 10 and 17, in illegal behaviour or activities. The problem of juvenile delinquency is not new. It occurs in all societies simple as well as complex, that is, wherever and whenever a relationship is affected between a group of individuals leading to maladjustments and conflict. In a developing country like India the problem of juvenile neglect and delinquency is considerably low but gradually increasing according to the National crime record bureau report 2007. The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribes a set of standard to be adhered to by all the States parties in securing the best interest of the child. The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child. Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India amidst intense controversy, debate and protest on many of its provisions by Child Rights fraternity. It replaced the Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, and allows for juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, to be tried as adults. The Act came into force from 15 January 2016. To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively. A separate chapter on Adoption provides detailed provisions relating to adoption and punishments for non compliance. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

KEYWORDS: CHILDREN, JUVENILE DELINQUENCY, JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, UNICEF.

* (Assistant Professor), AMITY LAW SCHOOL, AMITY UNIVERSITY (JAIPUR)
(RAJASTHAN)

Children are the foundation on which the dynamic and vibrant future of a nation shall be built. So children are the greatest asset of a nation. One can easily mould delicate mind of a child and inclined him towards criminal activities. This has now become the most debatable and sensible issue for today's society. Juvenile delinquency is the participation by a minor child, usually between the ages of 10 and 17, in illegal behaviour or activities. Juvenile delinquency is also used to refer to children who exhibit a persistent behaviour of mischievousness or disobedience, so as to be considered out of parental control, becoming subject to legal action by the court system. Juvenile delinquency is also known as "juvenile offending," and each state has a separate legal system in place to deal with juveniles who break the law.¹

Juvenile means one who has not yet reached the age of adults in terms of childishness or immaturity. According to law, a juvenile can be defines as a child who has not attained a certain age at which he can be held liable for his criminal acts like an adult person under the law of the country. There is a difference between minor and juvenile. A minor can refers to a person who is not yet an adult in the eyes of the law. On the other hand, juvenile indicates legality. In technical terms, it does mean young but has a negative connotation to it. It tends to imply immaturity and childishness and in legal terms, it refers to a young person who has been accused of a crime. So the minor indicates an innocent child whereas juvenile tends to imply a young criminal.²

The problem of juvenile delinquency is not new. It occurs in all societies simple as well as complex, that is, wherever and whenever a relationship is affected between a group of individuals leading to maladjustments and conflict. In a developing country like India the problem of juvenile neglect and delinquency is considerably low but gradually increasing according to the National crime record bureau report 2007. What is worrying more is that the share of crimes committed by juveniles to total crimes reported in the country has also increased in last three years.³

1 "JUVENILE DELINQUENCY", <https://legaldictionary.net/juvenile-delinquency/> last seen on 3rd October, 2018.

2 "JUVENILE DELINQUENCY IN INDIA: A CRITICAL ANALYSIS", http://www.lex-warrier.in/2017/09/juvenile-delinquency-India-critical-analysis/#_ftn5 last seen on 3rd October, 2018.

3 "JUVENILE JUSTICE SYSTEM & ITS DELINQUENCY IN INDIA", <http://www.legalservicesindia.com/article/1031/Juvenile-Justice-System-&-its-Delinquency-in-India.html> last seen on 2nd October, 2018.

Considering the magnitude of the problem and issues involved, analysis indicates that the number of factors for neglect and delinquency are mostly common and interrelated, based on socio-economic and psychological reasons. Poverty, broken homes, family tensions, emotional abuse, rural-urban migration, break-down of social values and joint family system, atrocities and abuses by parents or guardians, faulty educational system, the influence of media besides the unhealthy living conditions of slums and such other conditions explain the phenomena of juvenile delinquency. The neglect of children by their parents, family, society and the nation create detrimental effect on their physical, mental growth and over all development. Needless to say that most of the factors causing delinquency are in plenty in the Indian context and any attempt to prevent and control them can be fruitful for society. After all, the children represent the nation and the coming future of the country. Even international instance like UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985 and UN Convention on the Rights of Child, 1989, are notable and has articulated the global consensus on giving special attention to the children who come in conflict with law.⁴

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribes a set of standard to be adhered to by all the States parties in securing the best interest of the child.⁵ The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse.⁶ The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child.

Following are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children⁷:-

1. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
2. UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
3. UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)
4. Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

4 Ibid.

5 Prof. N.V. Paranjape , Criminology , Penology with Victimology, page no 662 ,Central Law Publications, 17th edition,2017.

6 “JUVENILE DELIQUENCY IN INDIA ” , http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf last seen on 4th October,2018.

7 “An Analytal Study of Juvenile Justice System in India”, <https://blog.ipleaders.in/juvenile-justice-system-india/> last seen on 3rd October, 2018.

During the British Rule certain laws were enacted to address the issue of juvenile delinquency and child welfare. laws like Whipping Act of 1864 was passed to punish the juvenile through whipping and then setting him free so that he should not repeat the same act, it was to deter the child against committing crime. The Indian Penal code Act 1860 and criminal procedure code 1861 treating child differently through various procedures. Act XIX of 1850, 1876 reformatory schools act, the Borstal School Act, Children's act of 1920, and other state specific legislations like Bengal children's Act, Madras children's Act to address neglected and deviant children's these laws gave delinquents some special provisions regarding their Institutionalization and rehabilitation.⁸

Colonial masters dealt with the problem of delinquents, through the laws of Reformatory schools and Borstal School Act to reform and rehabilitate juvenile delinquents. Although there were state laws the children's Act but post-Independence a central law The Juvenile Justice Act 1986 was introduced for a uniform system, procedure and personnel in the domain of juvenile justice throughout the country, in this Act the age of male juvenile was kept at sixteen years while the girl age was kept at eighteen years.⁹ These cut off age were chosen because in the children Act 1960 where the age was sixteen years and also the children bill of 1953 which defined children as below sixteen years also because of the Bombay children Act of 1948 which was one of the model legislation.

As this law was passed prior to the UNCRC 1989 which India ratified in 1992.¹⁰ In 2000 the former law was repealed and a new law which was more exhaustive and one of the best law was enacted The Juvenile Justice (care and protection of children) Act 2000 but the age was kept at 16 only later it was Amended in 2006 to increase the age of the child which increased to 18 years to adhere the International ratified laws.

The juvenile justice is one of the steps taken by the state so as to attain constitutional vision of India pertaining care and welfare of children. The provisions of constitution which grants the

8 Sen, Satadru. (2004), A separate punishment: Juvenile offenders in colonial India, Association of Asian studies, 63(1), 81-104

9 Section 2(h) Juvenile Justice Act, 1986.

10 <http://www.unicef.org/crc> last seen on 3rd October, 2018.

special status to the children Article 15(3), 24, 39(e) & (f) and 45, National policy for children 1974, 2013, declare that children are national asset. Further through constitutional directions many other laws and statutory provisions have been enacted to protect the rights of children like RTE 2009, child labor prohibition act 1986, Juvenile Justice Act 1986, later Juvenile Justice (Care and Protection of Children) Act 2000.

The Juvenile Justice (Care and Protection of Children) Act 2000 was passed in December 2000 and came in force on April 1, 2001 and was amended in 2006 aiming to protect, care, rehabilitate and educate the juvenile and to provide them with vocational training opportunities. As the Preamble clearly states that the “*object of the law relating to juveniles in conflict with law is providing proper care, protection and treatment by catering to their development needs and by adopting a child with friendly approach which helps in the adjudication and disposition of matters in the best interest of children and to provide the rehabilitation center established by law*”.¹¹

The law underlines a welfare approach by inclusion of non-criminal justice language (arrest is replaced by apprehension, act does not speak about Jail, court, police, trial), After the ratification of United Nations convention the age of juvenile was mandate as eighteen years. There was more emphasis on rehabilitation, re-socialization and reintegration of juvenile in conflict with law rather than punishment, placing minimal intervention of the correctional authorities and there was special provision for special juvenile police to handle the cases for inquiry and replacing juvenile courts by Juvenile Justice Boards so as to make more child friendly in adjudication. The Law specifically mandates for the Rehabilitation and social re-integration, after a long service process, There were some special provisions for adoption and sponsorship were also meant for mainstreaming them into society.

The new law also emphasized on the involvement of voluntary organizations and urged for their participation in the process of juvenile justice through running the Observation homes, special

¹¹ “history of juvenile justice in India - WordPress.com”, <https://cjcapu.files.wordpress.com/2014/11/history-of-juvenile-justice-in-india.docx> last seen on 4th October,2018.

homes, compiling social investigation reports.¹² There is no such provision of death sentence in the law and juvenile cannot be sent to prison if unable to pay the fine. and Establishing of separate homes for different age groups were made in order to separate younger offenders from mature juveniles so that the system could meet the requirements of the Beijing Rules on Administration of Justice.

The frightful incident of “*Nirbhaya Delhi Gang Rape Case*”, on December 16, 2012 shocked the whole nation and there were debates among the legal fraternity and socialists. The main cause for the debate was the involvement of accused, which was six months short to attain the age of eighteen years. The involvement of the accused in such a heinous crime forced the Indian Legislation to introduce a amendment in old law and thus, Indian Parliament came up with a amendment which is known as “Juvenile Justice (Care and Protection), Act, 2015”.¹³

Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India within the amidst of intense controversy, and protest which was in regard to the provisions of child right fraternity. It was by replaced Juvenile Justice (Care and Protection of Children) Act, 2000, and allowed the juveniles who are in conflict with laws and with the age group of sixteen to eighteen years. .and also they are involved in heinous crimes and treated as adults.¹⁴ The Act came into force on 15th January 2016. It was approved by both the houses after the intense protest done by several members of parliament.¹⁵

The bill allowed to establish a Juvenile Justice Board, which comprised of psychologists and sociologists, who decides whether a juvenile criminal is in the age group of 16–18 and whether he should be considered as an adult or not.¹⁶ The bill introduced certain concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which was missing from the previous act.¹⁷ The bill also seeks for the adoption process of orphans, abandoned and surrendered children in a streamlined manner.¹⁸

12 Ibid

13 Supra 7.

14 “Juvenile Justice (Care and Protection of Children) Act, 2015”, [https://en.wikipedia.org/wiki/Juvenile_Justice_\(Care_and_Protection_of_Children\)_Act,_2015](https://en.wikipedia.org/wiki/Juvenile_Justice_(Care_and_Protection_of_Children)_Act,_2015) last seen on 5th October, 2018.

15 “Commencement notification”. Retrieved on 5th October, 2018.

16 “Cabinet approves amendments to Juvenile Justice Bill”. Business Standard. 22 April 2015. Retrieved on 4th October 2018.

17 “Towards a comprehensive Juvenile Justice law”. The Hindu. 18 July 2014. Retrieved on 5th October 2018.

18 Supra 16.

The bill seeks the provision for foster care. Children who are in conflict of law or the abandoned and orphan child are sent there. They are kept under the domestic environment Such foster families will take care of the children and these families are monitored and they are been provided financial aid from the state. In adoption of any child, disabled children, physically and mentally challenged are given priority. Parents who give their child for adoption get three months to reconsider, as compared to the earlier provision of 1 month.¹⁹

A person who gives alcohol or drugs to a child shall be punished with imprisonment of 7 years and fine of ₹100,000. Corporal punishment will be punishable by fine of ₹50,000 or Three years of imprisonment. A person who sells a child he shall be liable to fine of one lakh rupees and imprisonment for 5 years.²⁰

One of the most criticized steps in the new JJ Bill 2015 was introduction of "Judicial Waiver System" which allows treatment of juveniles, in certain conditions, in the adult criminal justice system and to punish them as adults. This is for the first time in Indian history that such a provision has been recommended. After severe criticism, the bill was referred to a Standing Committee of Parliament where the provisions were rejected. Since recommendations of Parliament's Standing Committee are not binding so government moved ahead and introduced the bill in Lok Sabha, where later on it was passed.²¹

Bill was also criticized for recommending an opaque Age Determination System and its poor draft. There were numerous errors in drafting which came into notice after the bill came for implementation on 15th January 2016. Now Government is working on the amendments to clarify these errors. The bill was finally passed by Rajya-Sabha on Tuesday 22 December 2015, after the Nirbhaya case accused juvenile was released.²²

19 "Juvenile Justice Bill passed; 16-18 years to face adult laws in heinous crimes". DNA India. 8 May 2015. Retrieved on 4th October 2018.

20 Ibid

21 Supra 14.

22 <http://timesofindia.indiatimes.com/india/Rajya-Sabha-passes-Juvenile-Justice-Bill-Nirbhayas-mother-satisfied/articleshow/50285328.cms> Retrieved on 5th October 2018.

From the above discussion we can figure out that crimes like rape and murder also go unpunished with the offender wearing the grab of juvenility. Without the proper implementation and amendments of Juvenile Justice Act such heinous crimes performed by juveniles cannot be stopped. In order to reform the juvenile who are in conflict with law, the juvenile system as a whole needs to be reformed first. The deteriorating conditions of observation homes need to be addressed immediately to Juvenile justice board's. The nation must strive for the provision of education, health care, sanitation and housing to every child. Apart from the above mentioned problems there are other issues also and for that government has to reach to the grass root level. Children homes which are established under government supervision are often unable to accommodate neglected children and due to this juveniles are kept in jail. Thus, there is a huge gap between implementation and execution of law pertaining to juvenile care and also the maintenance of children's homes. Another drawback is lack of awareness about child rights and India's burgeoning child population.

Without proper implementation of law we cannot overcome the Juvenile crimes. There should be awareness in the civil society about this disease which exists in our sick society. Juveniles involved in such heinous crimes are not criminals by natural, in fact, they are victims of society. Juvenile delinquency can be overcome at an early stage, provided special care is taken both at home and in school. Parents and teachers play a significant role in nurturing and in upbringing of the child. Instead of labelling them as "criminals" or "delinquents" –There should be proper care and support to be given to them. Certain decisions to be taken for the scope of rectification and reformation. And it would be better if they are been made noticeable about their behaviours which involves both social and pshycological. The problem of crime amongst children is like many other social evils which is prevalent in our society. The idea in regard to juvenile care and protection is gradually gaining wider acceptance but it should be followed with juvenile delinquent needs, sympathy and understanding of our society and not the heavy hand of the law.