

A Comparative Study of Juvenile Justice System in India as in the USA and UK

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1. Introduction

Juvenile Justice (Care and Protection of Children) Act, 2015 was enforced by Government of India to repeal and re-enact the existing Juvenile Justice (Care and Protection of Children) Act, 2000 and it was in force from 15th January 2016. The major objective of the present act was to address the issues related to juveniles in conflict with Law especially between 16 to 18 years. These crimes include heinous offences by committed by juveniles along with other offences.

In America, *Haley vs Ohio*¹ and *Gallegos vs Colorado*,² the admissibility of a child was and *Kent vs United States*³ considered the requirements for a valid waiver of the exclusive jurisdiction of the juvenile courts. Though these cases related to certain restricted aspects, they made a mistake in indicating that constitutional safeguards were not for adults.⁴

An apparent set of principles focused on reformation and rehabilitation has dominated academic and political discourse concerning the drafting of laws related to juvenile justice and children in conflict with the law. The Juvenile Justice Act of 1986 and its subsequent amendments can be considered in many ways a landmark in signifying changes in the thought process of lawmakers. At the turn of the 21st century, a need was felt to update the laws bearing in mind prescribed standards set by the UN Convention on the Rights of the Child, 1989. The UN Standard Minimum Rules for Administration of Juvenile Justice, 1985, as well as the UN Rules for Protection of Juveniles Deprived of their Liberty, 1990. The legislative exercise subsequently culminated into the Juvenile Justice (Care and Protection of Children) Act, 2000, along with the Juvenile Justice (Care and Protection of Children) Model Rules of 2000, are replaced by the Juvenile Justice (Care and Protection of Children) Model Rules of 2007. In the wake of the 2012 Delhi gangrape and murder case, on of the accused, who was a juvenile, was sentenced to three years in a reformation home as per the provisions of the juvenile justice Act, 2000. In light of the Supreme Court judgement upholding the constitutional validity of the Act, in December 2015, the Delhi High Court held itself to be bound by the provisions and refused to extend the sentence of the accused. This led to a widespread feeling of a failure of justice, with the masses protesting in unity with the victim's family. Drawing much flak from the various sections to correct the supposed gap in the previous act, the government delivered the juvenile justice (Care and Protection of Children) Bill, 2014, which was surpassed by the Parliament in its present shape on 22nd December 2015. It acquired the President's assent on 31st

December 2015, and came into impact on 15th January 2016, as the juvenile justice (Care and Protection of Children) Act, 2015.

2. History:

India has a long history of Juvenile legislation; most of the legislative provisions have followed the British law pattern like most others provisions related thereto. The British law was having a separate provision for juvenile delinquents and the same was passed in India in the last quarter of the nineteenth century. According to the chronology, the Apprentices Act, 1850 was the first law to deal with the children in distresses that are to be trained for trade and commerce. According to the Indian Penal Code 1860, children under the age of seven years are exempted from criminal responsibility⁵ and also children between seven to twelve years of age, who have not attained maturity to understand the right and wrong or any kind of immoral act are exempted.⁶ Under IPC, children are also protected from the evil designs of adults.⁷ The Reformatory School Act was enacted in the year 1876 and later the act was again modified in the year 1897, and was considered the landmark legislation in the treatment of juvenile delinquents. It empowered the governments to establish reformatory schools.

The Criminal Code also visualizes the commitment of juvenile offenders up to the age of fourteen years to Reformatory Schools and provided probation on good conduct up to the age of 21 years. These enactments had provisions for the establishment of a specialized mechanism for the handling and treatment of juveniles. In the post independence period; the Government of India understands the problems of the juvenile, and in this regard government took steps for juvenile justice particularly and apply law in the centrally administered Union Territories, i.e., the Children Act 1960. The law was in force in all the UTs, but the states were not having juvenile legislation but the state was free to adopt it. At this stage, juvenile justice in the country was not uniform because each state had its own standards, norms and practices. These problems were sought to be removed by passing the Juvenile Justice Act, 1986.⁸ On the other hand, the concepts of juvenile justice was undergoing through various basic changes, as it is indicated by Beijing Rules and the UN Convention on Rights of the Children.

It is after the incident of 2012 Delhi gang-rap it was found that a juvenile boy who was nearing his 18th too was found to commit along with other adult offenders. Though he was tried to be treated as adult. It is in this regard that Subramaniam Swamy filed a PIL in the Supreme Court that the boy be treated

¹332 US 592; 92 L ed 224 (1948)

²370 US 49; 8 L ed 325 (1962)

³383 US 541; 16 L ed 2d 84 (1962)

⁴Ved Kumari, *The Juvenile Justice System in India*, 2nd Edition, The Oxford University Press

⁵Section 82 of IPC

⁶Section 83 of IPC

⁷Section 363A of iPC

⁸Black Law Dictionary, (1999), seventh edition, west group

as an adult and also the then Minister for Women and Child Development, Maneka Gandhi has warned unilaterally that “an adult crime by a juvenile requires adult punishment, not leniency.”

Juvenile Justice (Care and Protection of Children) Act, 2014 aims to replace existing the Indian juvenile delinquency law i.e. Juvenile Justice (Care and Protection of Children) Act, 2000, so that juvenile criminals in the age group of 16-18 can be tried as adults for serious crimes. It was passed on 7th May 2015 by the Lok Sabha unanimously. Juvenile Justice (Care and Protection of Children) Act, 2014 will allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16-18 should be tried as an adult or not. The bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter Country Adoption, 1993 which were missing in the previous act.

3. Causes of Juvenile Delinquency:

(i) Adolescent Instability:

The biological, psychological and sociological factors are important in adolescent behavior. Puberty or physical maturity is also an important factor. The intolerance against restrictions appears in this stage. The child in this age wants to maintain his own identity, dress, language, fashion, dance, food and play are also attractions of this age. The problem of adolescence is not much in the societies which are less fluid because the elders always keep their eyes on their children during the transition period i.e., in the age of adolescent. The problem becomes more when the adolescents are not kept in containment and their growth is not chasten.

(ii) Uncongenial Home:

The juvenile delinquency in some cases is the result of uncongenial home atmosphere. The behaviour of their parents with the children and their behaviour among themselves are of vital concern in moulding the child psychology from the very beginning. The way the child is nursed is very important throughout his life and not only during the immaturity of age. The families where parents observe virtuous path, the children also tend to become virtuous.

(iii) Ecological Approach:

Sociologists, mainly in the last four decades, were increasingly interested in applying ecological factor in order to understand socially deviant behaviour like delinquency. Ecology means, the effect of physical surroundings especially the soil climate and sunlight, on the growth and development of organisms. Undoubtedly, ecological approach for our purpose includes the effect of the neighbourhood, going school etc. on human character formation.

(iv) Association Impact:

When the child starts to move outside his family, he comes in contact with various classes of persons of all ages and both the genders. He develops a definite circle of association outside the home and in the school also. The associational impact on the child is very important. He adapts the culture of the group to which he is associated. If he falls in bad association, he starts to behave accordingly. If the parents

are negligent in keeping their children in discipline, the children may suffer irreparable throughout the whole period of life. They may develop delinquency and that may ultimately turn into criminality with maturity of age.

(v) Poverty:

Poverty is the cause of delinquency and so of juvenile delinquency. When the children see others enjoying the life with comforts and better living, the discontentment and consequently the desire to have these things by hook or crook develops giving birth to delinquency. The theft and gambling generally are the starting points of it. Sometimes, the poverty is so acute in the family that the bare needs are difficult to be satisfied from the income of the parents. The children in such a situation may develop the tendency to steal things of others which if not checked timely may result in criminal advancement.

4. Juvenile Delinquency Statistics:

As many as 1,614 rapes and 1,456 other sexual assaults were committed by juveniles in the country in 2017, reveal the latest records of the National Crime Records Bureau (NCRB).

Over 40,000 juveniles were caught across the country in 2017 for their alleged involvement in various offences, with 72% of them belonging to the age group from 16 to 18 years.⁹

5. Juvenile Delinquency in India:

In India, the definition of Juvenile Delinquency present no such problems as are faced by in the USA and also in some other countries. The concept confined to the violation of ordinary Penal Law of the country so far as the jurisdiction of the Juvenile Court is concerned. At present the law which govern juveniles in conflict with law and children who are in need of care and protection is “Juvenile Justice (Care and Protection of Children) Act, 2000,” which replaces the earlier law known as Juvenile Justice Act, 1986.¹⁰

(i) Indian Penal Code:

A per the Section 82[9] up to the age of 7 years there is an absolute irrefutable presumption that the child is doli incapax. The immunity is granted to the children who are below the age of 7 years on the pragmatic approach of the State that they do not have the capacity to have requisite mens rea. According to Section 83 [10] if the child does not attain the age of maturity of mind, the burden of proof lies with the child.

In *R. v. Krishna*¹¹, where a 9 years old child stole a silver chain and sold it for 5 annas, the Court convicted the buyer and acquitted the child.

(ii) Juvenile Justice Act:

According to Section 2(k)[13], Juvenile means a person who has not completed the age of 18 years. The act provides uniform age for both boys and girls, whereas in the previous act there was different age. This definition is wider than the definition provided under Section 82 and Section 83 of

⁹The Indian Express, 22nd October, 2019

¹⁰Siddique Ahmad, “Criminology and Penology”, Lucknow Eastern Book Company, 6th Ed. 2009, p. 255

¹¹AIR 1965 Ker. 166.

the IPC. The Act of 2000 provides that no juvenile can be sentenced to death or imprisonment or committed to prison in default of payment of security.

(iii) Age Determination:

The determination of age is always is tricky and controversial issue in Juvenile Justice. In number of cases, Court had decided in this regard.

In *Jaya Mala v. Home Secretary, Government of J&K*,¹² the Apex Court held that, the age as ascertained by medical examination is not conclusive proof of age. It is the mere opinion of the doctor and a margin of 2 years could be on either side.

In another high profile case, *Bhoop Ram v State of U.P.*¹³ the apex court held in conflict between documentary evidence and medical report, the documentary evidence will be considered to be correct.

6. Juvenile Justice in USA:

The United States' Supreme Court's in the area of Juvenile Justice greatly altered both the process utilized and the protections offered to juveniles in the system. Procedure in judicial proceeding has traditionally been viewed as especially important in the US. Justice Frankfurter says, "The history of American freedom is, in no small measure, the history of procedure."¹⁴ The court's seminal opinion in *re Gault*¹⁵, the juvenile in that case was found to be delinquents after two hearings. He was sent to reformatory period for 6 years.

(i) Age Determination:

United States also focus the problem about inconsistency of the age of the individual. The terms 'infant', 'child', 'adolescent', 'teen', 'youth', 'juvenile' and 'young person' are also used, although some jurisdictions make legal distinction between these terms. Minor statutes carries with it special restrictions, penalties and protections that do not apply to adults. The United Nations defined 'child' as an individual below 21 years of age'.

Juvenile delinquency then deals with children, minor or youth below 21 years of age who break laws or fails to do what law requires. The child and Youth Welfare Code, Presidential decree No. 603 defines youthful offender as "one who is over 9 years but less than 21 years of age at the time of the commission of the offence." A child 9 years of age or under at the time of the offence shall be exempted from criminal liability and shall be committed to the care of his/her father or mother, or nearest relative or family member in discretion of the court subject to its supervision. All member states of the United Nations except the United States and Somalia have ratified the United Nations Convention on the Rights of the Child, 1989. According to the Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

(ii) Causes of Delinquency:

¹²AIR 1982 SC 1297

¹³AIR 1989 SC 1329

¹⁴*Malinski v New York*, 324 U.S. 401, 414 (1945)

¹⁵387 U.S. 1 (1967)

The causes of delinquency in India or any other nation are more or less same. Some of the major causes are listed as below:

- Peer influence
- Family influence
- Self-esteem as a factor in delinquent behaviour
- Race as a factor in delinquent behaviour
- Trauma and delinquency

7. Juvenile Delinquency in UK:

We should not be surprised if 'the penalties are tougher when we have been given the opportunities but don't take them.' - Prime Minister Tony Blair

The UN Convention on the Rights of the Child stipulates that children should be protected from custody whenever possible and when deprived of liberty should be treated with humanity and respect. In Article 37 of the convention it is stated that imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

Juvenile crime and punishments can be different from the types of punishments that are ordered in adult criminal cases. The first court established expressly for juveniles was built in Chicago in 1899 to address the issue of juvenile crime and punishments. Juvenile crime and punishments peaked in 1994. The 1990s saw a swell of public scrutiny over the perceived juvenile crime epidemic. In an effort to crack down on juvenile crime and punishments, many state legislatures have adopted harsher laws regarding juvenile crimes. In 2002, 2.3 million juveniles were arrested for committing crimes. The 1908 Children Act created a separate and distinct system of justice board on the juvenile court; the 1993 Children and Young Persons Act formally required the court to take account of welfare consideration in all cases involving child offenders, and the 1969 Children and Young Persons Act advocated the phasing out of criminal in favour of civil proceedings. England and Wales' adherence to principles of children's rights does not clearly preclude the pursuit of policies with exacerbate structural inequalities and punitive institutional regimes.

(i) Age Determination:

According to Section 16,¹⁶ "a child under the age of 10 years should not be arrested", if a juvenile is arrested and later he turns out to be below the age of 10 years, he should be released immediately.¹⁷ A child may be kept in the custody of police custody for not more than 72 hours and as soon as possible the concerned constable should make arrangement for investigations to take place. If a juvenile is charged and he is detained, he must be presented in front of the magistrate's court in accordance with the provisions of Section 46(1).

(ii) Reasons for Juveniles Committing Crimes:

Over the years, criminologists have put forth a wide variety of motives that might be the valid reason for juveniles engaging themselves in criminal matters and committing heinous crimes. Few of the reasons are listed below:

- Poverty

¹⁶The Children and Young Person Act

¹⁷Section 34(2), Police Criminal Evidence Act

- Family Factor
- Environment
- Media Influence, and
- Decline in Social Morality.

8. Conclusion:

The JJ Act, 2000 is a modern and a progressive legislation which is intended to bring change and restoration in the juveniles, this legislation brought in the year 2000 brings forth a whole set of guidelines which are also open to abuse. While undertaking the work of comparison between all the three legislations of the countries, many things were found out. When question of age was compared, it was found that the approach of Indian law is very strict i.e. it does not provide much room for the discretion of the courts, unlike United States and United Kingdom where the fate of the juvenile is decided by the magnitude of crime juvenile committed, the court is empowered to consider juvenile as an adult and he is punished according

to adult laws. Whereas the JJ Act creates a juvenile justice system in which persons up to the age of 18 years who indulge themselves in any offence punishable under any law are not subject to imprisonment in the adult justice system but instead will be subject to advice, counselling, community service, payment of a fine or, at the most, be sent to a remand home for three years.

At the end, it can be concluded that, the problem of Juvenile Delinquency is not a new one rather is a century or two old problem that has been taken care of by different nations over time accordingly and has changed according to the changing scenario and type of offences committed. The age of majority differs according to different nations. The major reasons for juvenile delinquency can be many including drugs, peer groups or peer influence, surroundings and family circumstances and so on with no limited reasons to be listed therein.

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