

THE TRIAL FOR THE JUVENILES IN CASE OF HEINOUS CRIME***MAYANK KHARI****1. Juvenile Trial in the Indian Courts: An Analysis of the Pattern**

In India, The Juvenile Justice (Care and Protection of Children) Act, 2000 is applicable for those juveniles (children less than 18 years) who have committed a crime. This act has been amended in 2015. Under this act the juvenile in conflict with law (juvenile offender) is sentenced to a maximum 3 years in a remand home or a juvenile home (never in prison) if he has committed a petty or a serious offence. If the juvenile commits a heinous offence between 16-18 years of age then he can be given any punishment as per law.¹ The objective of this act was “to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment”.²

In the case of Dr. Subramanian Swamy V. Raju & others³ it was observed by the Apex Court-
“That the international commitments entered India obliges it to set up a particular framework to deal with juvenile offenders and such obligations can be more comprehensively met and effectuated by understanding the Act in the aforesaid manner. The practice in vogue in several foreign jurisdictions, particularly, in the U.K., USA and Canada for adjudicating criminal liability of young offenders has also been placed before the Court.”

Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India. It aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.

In the case of Jitendra Singh @ Babboo Singh & others vs. State of U.P.⁴ it was observed -

¹ Amann, Diane (2002). "Calling Children to Account: The Proposal for Juvenile chamber in the Special Court for Sierra Leone".

² Roberson, Cliff (2010-08-20). *Juvenile Justice: Theory and Practice*.

³ SLP (CRL.) No.1953 of 2013.

⁴CRIMINAL APPEAL NO 763 OF 2003.

“That in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty.”

In July 2014, Minister of Women and Child Development said that they were preparing a new law which will allow 16-year-olds to be tried as adult. She said that 50% of juvenile crimes were committed by teens who know that they get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults, will scare them. The bill was introduced in the Parliament by the Minister on 12 August 2014 and later in April 2015 it was passed.

2. Salient Features of the Act

The bill allows for juveniles 16 years or older to be tried as adults for heinous offences like rape and murder. Heinous offences are those which are punishable with imprisonment of seven years or more. The bill mandates setting up Juvenile Justice Boards and Child Welfare Committees in every district. Both must have at least one-woman member each.⁵

Once the bill becomes law, the decision to try a juvenile 16 years or older as an adult will be taken by the Juvenile Justice Board, which will have a judicial magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation. The Child Welfare Committees will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children.⁶

The government says it listed the bill more than a dozen times in the monsoon session and the ongoing winter session but it could not be taken up due to disruptions. The opposition, led by

⁵ Ainsworth, Janet (1991). "Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court" *Seattle University School of Law Digital Commons*.

⁶ Pakes, Francis (2010). "Global forces and local effects in youth justice: The case of Moroccan youngsters in Netherlands". *International Journal of Law, Crime and Justice*.

the Congress, had assured support to pass the bill today. The bill aims to "consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach."⁷

The proposed law also aims at adjudicating and disposing cases dealing with juveniles keeping in mind "the best interest of the children and their rehabilitation." India is a signatory to the UN Convention on the Rights of the Child which mandates that all children under the age of 18 years be treated equal. The pending bill has been criticized for violation of the Convention.

The bill also deals with adoption of children and lays down the eligibility criteria for adoptive parents. A central adoptive resource agency will frame the rules for adoption, which will be implemented by state and district level agencies.

3. Are we on the Right track?

The violation of the cardinal principle of classical juvenile justice jurisprudence is justified due to the consequences attached to heinous crimes committed by a few juveniles in the age group of sixteen to eighteen. But then the State's response in terms of repressive laws in violation of international law is a case of the remedy being worse than the disease.⁸

Our new labor law reforms are in violation of the rights of labor; the land acquisition law against the interest of farmers; the Union budget is tilted in favor of corporate and makes huge reductions in terms of allocation to the social sector; and now the Cabinet has approved the trial of juveniles by adult courts under the new juvenile law.⁹

It is too small a concession that the decision in this respect would be made by the Juvenile Board. It seems all vulnerable groups are suddenly at the receiving end. There is consensus amongst experts that putting children with adult criminals is self-destructive and self-defeating.

Adolescents in conflict with law need adult guidance, not the company of hardened criminals. In the company of hardcore criminals, they are bound to become street gladiators.

⁷ Kirk, David S.; Sampson, Robert J (2012) "Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood" *Sociology of Education*.

⁸ Shover, Neal; James, Jennifer; Thornton, Williams (2011) "Gender Roles and Delinquency".

⁹ Dodge (2003) "A biopsychosocial model of the development of chronic conduct problems in adolescence". *Developmental Psychology*.

After all children learn only from adults while the Delhi gang rape was tragic, using this incident to take away the rights of juveniles is not justified.¹⁰

In giving excessively wide definitions of crimes against women, creating all kinds of presumptions against the accused, shifting the burden of proof and providing very harsh penalties such as death or life imprisonment till the natural extinction of life, we are already violating the classical principles of criminal law.

Similarly, just because one of the accused happened to be a juvenile, the proposal of trial of juveniles by the adult courts is not justified. We should not convert this into a battle between women and children. To protect one vulnerable group, we cannot take away the rights of the other.

Children are not committing crimes on their own, but in the company of adults. As children they tend to follow adult accomplices in the commission of crime. Violent and heinous crimes are generally committed by adolescents when they are emotionally aroused and are with their adult friends. These two factors lead to a dramatic increase in the likelihood of their impulsivity and sensation. Why are we condemning and demonizing our children? Where is the authentic evidence of a rapid rise in the commission of heinous crimes by juveniles in the age-group of sixteen to eighteen?

By punishing juveniles as adults, we may join the company of Saudi Arabia, Iran, Sudan and Yemen where children are still sentenced to death. In 2005, the Supreme Court in America abolished death penalty for children below 18 years of age. Recently it ruled against life imprisonment without parole in all juvenile crimes. It is painful to note that the otherwise liberal apex court of India has of late been insisting on harsher penalties for juveniles.

In the case of *Pratap Singh v. State of Jharkhand*¹¹ it was observed -

“Having regard to Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of the criminal responsibility was also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective bring about the principle of proportionality whereby and where under the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded.”

¹⁰ Woolard; Scott (2009) "The legal regulation of adolescence" In Lerner, R. Steinberg, L. *Handbook of Adolescent psychology* (3rd ed.). New York: Wiley.

¹¹ SLP (CRL) No. 3749 OF 2001.

As regards the rise in juvenile involvement in heinous crimes, facts speak for themselves. The problem is not as serious as it is made out by the media, government and judges. In 2012, approximately 434 million children were below the age of 18 in India. While no clear figures are available for children in need of care and protection, in a report submitted to the Supreme Court in Bachpan Bachao Andolan case, the government declared that 40 per cent of the children were vulnerable to the commission of crimes. With such a large number of children susceptible to crimes, one would expect a huge majority of them getting involved in criminal activities. However, the number of children even alleged to have committed an offence is relatively trifling. A total of 39,822 children were arrested for the commission of 31,973 incidents of crime in 2012; 35346 among these were new cases while 4476 were repeat offenders. Out of 39,822 children arrested, 2572 were acquitted or otherwise disposed off and only 18,529 children were found to have committed any offence in India in 2012. Cases of 10,721 children were pending disposal.

Out of the total incidence of crime, 27,936 crimes were committed under the Indian Penal Code (IPC) and 4,037 under the Special and Local Laws (SLL). Children committed just 1.2 per cent of the total of 2,387,188 crimes. Thus, out of 100,000 children, only 2.3 children were arrested for commission of any offence. In the past decade, juvenile crime has shown only a slight increase.

Compared to western countries, the figures of juvenile delinquency in India are quite low. The UK and the USA have a rate in the range of 11 to 13 per cent. But neither of these two countries are thinking in terms of juvenile trial by adult courts. The United Nations has recommended 12 years as the minimum age of criminal responsibility and non-transfer of children to adult proceedings till the age of 18 year. We will face a lot of criticism by lowering the age of juveniles from 18 to 16 years. Teenagers prosecuted in adult courts fare worse in life and can go on to commit more violent crimes than those who are handled by the juvenile justice system. Transfer of children from juvenile justice has serious repercussions on children and must not be done without scientific reasons. As a matter of fact, evidence shows that the rate of recidivism is higher amongst juveniles who are sent to adult criminal justice system and the proposed change would not achieve its stated objective. The transfer of a child from juvenile justice to adult courts is as severe as imposition of death penalty as it is a decision to end his life; the decision to send a juvenile to adult court is a decision to end his childhood. Both decisions signify a life not worth saving.

There is consensus among neuroscientists that adolescence is an age of significant change in brain structure and functions. Significant changes take place in brain anatomy and activity far longer into development than was previously thought. The US Supreme Court discussed this at length in the Simmons case which abolished death sentence for juveniles. Adults are able to employ a wider network of brain regions in comparison to adolescents and thus are successful in controlling themselves. As a modern and progressive society, we should distinguish between people who are to be held criminally liable and those adolescents who need societal care and protection. Let the science and not government decide where to draw the line.¹²

There is no authentic scientific basis either to conclude that children in the age group of 16 to 18 cannot be reformed at all. In fact, adolescents, even older adolescents, are totally different from adults as their brains are not yet fully mature and they cannot yet make rational and conscious decisions. Jonathan Lippman,¹³ Chief Judge of New York Court, rightly said that the ability of making reasoned decisions and weighing of consequences is not manifest till 18 years of age. Even teenagers in the age-group of 16 to 18 have difficulty with impulse-control and with resisting outside influences and peer pressure. They lack the capacity to fully appreciate the consequences of their actions. At the same time, the systems in the brain that control emotions are highly activated leading some to describe the teenage brain as “all drive and no brakes.” In addition to being more immature, the teenage brain is also more “plastic,” meaning that it is more malleable and capable of change.

4. Role of Social Workers and NGOs

Primary role of NGO is to offer a framework of operation in the child welfare sector, ensuring every child if ever enter the system, is treated with care and compassion with all its rights acknowledged and protected. Though since the 1980s there has been a shift from welfare to the justice approach, social workers continue to play a crucial role in the treatment of the juvenile offenders as earlier mentioned the JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers. The social workers should have “been actively involved in health, education, or welfare activities pertaining to children for at

¹² Norland, Stephen James, Jennifer; Shover, Neal (1978) "Gender Role Expectations of Juveniles" *Sociological Quarterly*

¹³ Dishion; McCord (1999) "When interventions harm: Peer groups and problem behavior". *American Psychologist*

least seven years”. The Model Rules has prescribed the criterion necessary for appointment as a social worker on the board, “the social worker to be appointed as a member of the board shall be a person not less than 35 years of age, who has a postgraduate degree in social work, health, education, psychology, child development or any other social science discipline and has been actively involved and engaged in planning, implementing and administering measures relating to child welfare for at least seven years. The two social workers are to “be appointed by the state government on the recommendation of the selection committee”. The selection committee has its members, amongst others, “two representatives of reputed non-governmental organizations working in the area of child welfare”. The social worker members on the JJB must be assertive, and not get overwhelmed by the magistrate, as they have an important role to play in the rehabilitation of the juvenile. Under section 5(4) of JJA 2000, the social worker members can overrule the magistrate. They should familiarize themselves with the provisions of juvenile legislation as also with the papers and proceeding of each case pending before the JJB to ensure that justice is done to the juvenile. It is for the social worker members to gain the confidence of the juvenile, whilst at the same time to portray to him that though his best interest is on their minds, he is going to be dealt with sternly. It is under the orders of the JJB that the juvenile is placed in an institution. Hence, it is imperative that the JJB, especially the social worker members, regularly visit the observation homes, the special homes and other institutions where juveniles are referred to ensure that the objective of reformation and rehabilitation is satisfied. The 1986 act also recognized the importance of social workers whilst dispensing justice to juveniles.¹⁴ The juvenile court was to be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the state government. The 2000 act elevated the social worker to being part of the bench that constitutes the JJB, instead of merely assisting the magistrate. Despite, social work intervention playing an important role, the same is always voiced alongside words such as “honorary”, “voluntary”, “charitable”. Not only under the 1986 act were “two honorary social workers” assisting the juvenile court, but a similar trend continues under the 200 acts. The social worker members on the JJB are to be paid “travel and sitting allowances” as may be fixed by the state government. It is high time that government recognize that social workers are professionals, playing a crucial role, and the importance of whose work requires to be accepted and appreciated. Pos are qualified social

¹⁴ DeLisi, Matt (2005). *Career Criminals in Society* London, United Kingdom:

workers. The Superintendents of child-care institutions are also academically trained social workers, as is also the other senior staff employed in the homes. Pos and the staff attached to institutions have several critical parts to play in the lives of juveniles. Their role has a great significance as delinquents often indicate that their families are not concerned about their welfare that of an advisor and guide so that the child has confidence to approach him when in need. Thirdly, that of a reformer so that the child understands that what he did was wrong. Fourthly, that of a healer who helps the child to accomplish his full potential, and directs him towards his future .The setting-up of a child guidance clinic in an institution is vital as repeated sessions with the juveniles are crucial to bring about a change in his attitude.¹⁵ It is a qualified and trained child psychologist or psychotherapist in a child guidance clinic who can bring about positive change in the juvenile's future. Non-Governmental organizations to play a pivotal role. They under JJA 2000 can seek charge of juveniles pending or on completion of inquiry in the capacity of a "fit person" or "fit institution". The 2000 act has empowered voluntary organizations under agreement with state governments to establish and maintain observation homes and special homes. Moreover, voluntary organizations need to provide services within institutions established and maintained by state government, such as counseling, imparting education and vocational training etc. to secure the juvenile his comprehensive rehabilitation.

5. Conclusion

From the above discussion we can say that serious crimes like rape and murder also go unpunished with the offender wearing the grab of juvenility. Juvenile crimes cannot be stopped only through the proper implementation and amendments of Juvenile Justice Act. In order to reform the juvenile in conflict with law, the juvenile system as a whole need to be reformed first. The ramshackle conditions of observation homes and juvenile justice boards need to be addressed immediately. The nation must strike to provide education, health care, sanitation and housing to every child. Apart from multiple laws governing children, there exist many other problems at the grassroots level. Government-sponsored children's homes are often unable to accommodate neglected children. Children are sometimes even kept in jail. Thus, there is a problem in the execution of laws pertaining to children and the

¹⁵ Mulvey, MW Arthur, ND Reppucci, "The prevention and treatment of juvenile delinquency: A review of the research", *Clinical Psychology Review*, 1993.

maintenance of children's homes due to both a lack of awareness of child rights and India's burgeoning child population.

Juvenile crimes cannot be stopped only through the proper implementation and amendments of Juvenile Justice Act. It is vital to make aware of civil society about this disease that exists in our sick society. Juveniles involved in crimes are not criminals, in fact, they are victims of society. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home and in school. Parents and teachers play a significant role in nurturing the mind of a child. Instead of labeling them as criminals or delinquents steps need to be taken to give them a scope of rectification and it would be better if the errors in their lives (involving social and psychological) are brought to their notices. The problem of child crime like many other social evils is linked up with the imperfections and maladjustment of our society. The ideal is gradually gaining wider acceptance that juvenile delinquent needs the sympathy and understanding of our society and not the heavy hand of the law.