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Reducing the age of criminality in juvenile justice act: Justified?

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Abstract

The Juvenile Justice Act, 2000 has indubitably been a savior for the rights of the children; however sometimes, the conflict of law with juveniles is there to stay, which is when inequity is doled out by the black quill on dull scrolls. Law without justice, after all, is nothing but a tarnished flesh-wound gaping at the dishonor it brings. On 17th July, 2013, the Supreme Court of India dismissed pleas to reduce the age for juveniles from 18 to 16.

The plea was a combination of seven writ petitions heard together which challenged the constitutionality of the Juvenile Justice Act, 2000 in response to which, the court refused to hold the act as ultra vires the constitution. Even though, this decision of the court was widely appreciated by one segment of the society due to the virtue of it being an equitable safeguard of public morality and children's rights, the counter-offensive believed that this judgment is detrimental to holistic justice.

With the recent legal skirmish between the Apex Court and the people propounding equitable relief to all, focus has been shifted on either the lowering of the age of the juvenile or the categorical exemption of the children in the age bracket of 16 to 18 being exempted from the jurisdiction of the Juvenile Justice Act. 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. Article is focused on whether the lowering of the age of Criminality in Juvenile Justice Act is justified?

Keywords: Juvenile, justice, legal, children, age, court

Introduction

A juvenile or a child is a person who has not completed 18 year of age while a juvenile in conflict with law means a juvenile who is alleged to have committed an offence. The Juvenile Justice Act is built upon a model which addresses both children who need care and those who are in conflict with law. The definition of a child is governed by several rules and conventions that India is a signatory to. The United Nations Convention on Rights of child was ratified by India in December, 1992, thus binding India to define a juvenile to be under the age of 18.

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind. However, when this is read in conjunction with Rule 4, gives a specific interpretation. The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behavior. In India, the quantum of variance between the conditions of all the juveniles is very high by the virtue of a huge gap between the socio-economic dimensions.

The Supreme Court held has said that There are incidents where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try

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and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.

The Supreme Court itself seems to be treating on rather rocky grounds flailing flimsy arguments able to corrupt its own logic. There have been incidents when one-man classifications have been denoted by the same court so that the fundamental rights of even one individual are not infringed. Here, under the garb of protecting a segment of the children in conflict with law, instead of devising innovative and effective rules, the Court chooses to sit idly as a by-watcher.

Contemporary arguments: juvenile (in) justice to children

Justice is not justice if it is not just to the stake of equity to all. If justice is doled out stepping on the agony and despair of children, then it is no justice. It is admitted that sometimes children can and do commit terrible crimes, and it is true that the reform and rehabilitation of child offenders under the juvenile justice system often exists largely on paper. However the solution is not to change the law, but to ensure it is better enforced. The lack of better infrastructural facilities for juvenile homes and access to quality counseling and support for child offenders is quintessentially responsible for the current encumbrance to unobstructed flow of justice^[1].

The superintendents and staff of observation homes and special homes that by the virtue of increasing the age of juvenile from 16 to 18 in the 2000 Amendment to the JJ act, a much larger number of juveniles are to be accommodated in the lacking infrastructure. There are a total of 815 remand homes across India with a capacity of 35,000. It is imperative that the activists asserting the lowering of the age of juvenile should work for the implementation of the recommendations made by the Justice Verma Committee in harmony with those of the child rights activists. The shelter homes/corrective institutions and CWCs should perform the role of rehabilitating the survivors. Rehabilitation will be the measure of success of the Juvenile Justice Act. However, rehabilitation when dabbling in the dregs of the lacking infrastructure that our nation is infested with, does not benefit the same purpose.

The manner in which the Juvenile Justice Act has been implemented shows a complete failure of the State. Child Rights Activists believe that reformation during imprisonment and reformation without punishment are accepted as better approaches to prevention of crime, especially in the case of children^[2].

The children if come in contact with hardened criminals in jail, it would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. Yet, juveniles have been forced to live behind the bars in prisons. The High Court of Delhi has given extensive guidelines regarding age-memos and age-perusal techniques that the prison authorities are obliged to follow procedure with. The objective of the Act is to provide care to the juveniles in need and to protect the child's innocence.

There are numerous problems existent in the society that draws the scope-skillet of the Act back, thus cascading into

the abstract yet adverse implementation of its functioning, if at all. The Ministry of Women and Children Development blames the ineffective administrative efficacy of the bureaucratic setup and enumerates major loopholes in the implementation of such a rehabilitative scheme. Thus, there is an imminently precarious necessity to better the infrastructure of the reformatory process that the juvenile justice aims to provide to juveniles. The guidelines stated by the Supreme Court need to be diligently followed for better implementation of the Juvenile Justice Act. Such judicial legislation has to be promulgated for better efficacious application of the provisions for the betterment of the children in conflict with law. However, the lack of proper drafting and loose provisions in the legislation itself thwart any efforts against the correction of the same^[3].

Comparative juvenile justice provisions

It is pretty evident from the recent happenings that the Indian Juvenile Justice Act is incapable of providing avenues to bring better law and order in the society. The Indian Penal Code only talks about individuals who are under the age of 12 and thus anyone between the age of 12 and 18 would have to be dealt with under the Juvenile Justice Act. The major grievance arising from the same is that the Juvenile Justice legislation is excessively lenient to the actions of such juveniles. Thus, there is a need to bring about certain change in the existing legislation. After Nirbhaya, a careful perusal of the provisions regarding juvenile justice in other countries has become a prerequisite.

Countries like the United States of America, New Zealand, Japan, Netherlands, England, Canada, Belgium, Australia have Criminal Law provisions that edict the transfer of a juvenile to an adult court in the cases of heinous crimes. Had the same provisions been applicable in the Indian context, the juvenile in the Delhi Gang Rape Case who have been let down with no penalty (The author contends that reformation is not in the least retributive as certain contrary views express.) would have been behind bars unable to cause the society more worry.

Over 100years ago, efforts to reform children convicted of minor crimes led to the implementation of what is now the current juvenile justice system in the United States. In the United States, the maximum age of a juvenile is 18 years. When a Juvenile offender commits a heinous crime, the state can exact forfeiture of some of the most basic liberties, but the state cannot extinguish his life and his potential to attain a mature understanding of his own humanity.

In England and Wales, children accused of crimes are generally tried under the Children and Young Persons Act, 1933, as amended by Section 16(1) of the Children and Young Persons Act, 1963. As per the English law, if the juvenile has committed an offence alongside an adult, he is liable to be tried in the adult courts, or both of them are tried in the Crown Courts. Juveniles are sometimes tried as adults in Crown Courts for the commission of heinous offences.

Conflict in justice: plausible solution

There is an overriding apprehension regarding the rising graph of criminal offences being committed by the Children in conflict with law. There are certain ostensible drawbacks of the current legislation on juvenile justice.

¹ S. 90-92, Powers of Criminal Courts (Sentencing) Act 2000

² Art. 16(1), Juvenile Justice (Care and Prohibition of Children) Act, 2000

³ Art. 16(2), Juvenile Justice (Care and Prohibition of Children) Act, 2000.

The evil of the society can manifest themselves in the forms of juveniles who are fully capable and cognitive to understand their actions and reactions yet protected under the garb of law. Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws. The scheme of using mature and capable individuals but children in the eyes of law to commit offences appears to be lucrative for the bad elements of the society.

Article 21 of the Indian Constitution provides a right fundamental to each individual assuring a life of peace and dignity. By shielding a juvenile fully cognitive of the cascading consequences of his acts, the Centre is at constant risk of infringing that fundamental right by protecting a class of criminal tendencies.

Since the name and link to an offence cannot be tagged with a juvenile offender, the offender under the lacking infrastructure, if not reformed, is capable of acting as a threat to the society in rem.

Keeping the entirety of the juvenile offenders in one bracket would lead to a multiplier effect of criminal tendencies. Those who have wriggled through this loophole, like the minor in the Delhi Gang Rape case, may adversely affect the psyche of docile individuals, corrupting their minds with criminal affinities.

The ultimate aim of juvenile justice system is to rehabilitate the offender rather than to exterminate him from the society. The principles on which such protections have been granted are: natural justice (protection of basic/natural/human/fundamental rights) and of safeguarding of personal liberty. However, a person capable and mature to understand his actions and its consequences, while committing the depravity of sin, if shields himself under the false sheath of law, it does infringe *jus naturale* ^[4].

Due to the inability of the remand homes to accommodate the growing number of juvenile offenders, the practice of looking through the holistic lens should be avoided. If the rehabilitative process is inefficient, which it is, in the present socio-economic circumstances of the country, a reversal of approach is needed to be taken. The author does not favor the detention of innocent souls through his contentions; however, the emotional and mental maturity along with the sociological psyche of the juvenile needs to be taken into consideration before the strict implementation of a vaguely drafted statute.

Arguments supporting the reducing the age of criminality in juvenile justice act

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.

After the 2012 Delhi gang rape, it was found that one of the main accused was at the verge of completing 18. So, he was tried in a juvenile court. On 31 July 2013, Subramanian Swamy, a BJP politician filed a Public Interest Litigation in the Supreme Court of India seeking that the boy be tried as

an adult in a court. The Court asked the juvenile court to delay its verdict.

After the Supreme Court allowed the juvenile court to give its verdict, the boy was sentenced to 3 years in a reform home on 31 August 2013. The victims's mother criticised the verdict and said that by not punishing the juvenile the court was encouraging other teenagers to commit similar crimes. In July 2014, Minister of Women and Child Development, Maneka Gandhi 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 Maneka Gandhi on 12 August 2014. On 22 April 2015, the Cabinet cleared the final version after some changes.

Now change was mainly due to a massive rise in the incidence of juvenile and extraordinary violence and brutality of juvenile crimes. Now, the juveniles involved in heinous crimes are heard in adult courts instead of juvenile courts. Similarly in the UK, a persons under 18 is tried by a Youth Court, which is a special type of magistrate's court that has power to issue community sentences, behavioural programmes, reparation orders, youth detention and rehabilitation programmes which last three years.

However, for serious crimes like murder or rape, the case starts in the Youth Court but is transferred to a Crown Court. It can maximum sentence punishment i.e. applicable to an offender who is 21 years or an adult.

But the scenario in India is very much different as compared to the US and the UK as the juvenile delinquency rate has ranged between 1.6 per cent and 2.1 per cent of the total crimes (as against half of the total crime rate in the US), and of these only 5 per cent to 8 per cent are violent crimes like murder and rape (as against a substantial percentage of violent crimes in the US). There is a need for ensuring proper implementation of the juvenile justice system and achieve its objective. According to a media report, the total number of remand homes in India is 815 with a capacity of 35,000, but the total number of juvenile accused under the JJ Act is 1.7 million. This shows that the lacunae in proper infrastructure in the system do not ensure a conducive environment for reformation and rehabilitation of juveniles as envisioned by the principles enshrined in international law.

But in one aspect there can be amendment to the JJ Act for a maximum limitation period for sentencing, i.e., maximum three years as per the present Act. This period is very short and is neither justifiable on grounds of deterrence nor adequate for any kind of reform programme, i.e., the main objective of the Act. This period can be extended at parance with laws similar in the UK as juveniles involved in heinous crimes can be sentenced for a maximum period as applicable to an adult.

Therefore, it can be finally said that enhancement of the period of custodial sentence and increasing it to its maximum limit would lead to a proper reformation programme and work as a deterrence among the juveniles in conflict with law. While rehabilitation is certainly an important legal and societal objective, this surely has to be balanced with creating a legal deterrent to protect women and girls from the increasing incidence of rapes by juveniles.

⁴ Section 15(1), Juvenile Justice (Care and Protection of Children) Act, 2000.

Conclusion

India is a developing country with a developing law. Since the last couple of years, a fear has also developed in the society. This fear is of criminals who wield their intentions without hesitance by the virtue of inherent lacunae in the Juvenile law of our nation. Indian law recognizes the concept of a Juvenile or a child in conflict with law; however, it remains oblivious to the separate concept of an innocent child in conflict with law. It overlooks the varying psyche of individuals and sways the blanket of protection plainly on the basis of one's age. This gives rise to the profligate demonic overt actions that the population of India has been witness to, over the past couple of years.

The step of the government reducing the age of criminality in Juvenile justice Act is welcomed by the society at large. Juvenile who had escaped from the clutches of law being tried as adult in Nirbhaya (Delhi Gang Rape case) was awarded 3 years of Imprisonment only even he was the main culprit. By making such changes that the Juvenile between the age of 16-18 years can be tried as an adult if he is committing heinous crime, it will have deterrent impact on the society, which may also reduce the crime rate.

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