



Child Rights & Juvenile Justice

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Abstract

The juvenile crime rate, defined as offences committed by those less than 16 years old, has been on the rise in recent decades. It's possible that a child's upbringing, economic situations, a lack of education, or the absence of parental attention are to blame for the rising crime rate. These are some of the most fundamental explanations. The worst thing is that young children (particularly those between the ages of 5 and 7), whose minds are still impressionable and open to persuasion, are increasingly being used as tools in criminal activity.

Several arguments were sparked among the legal community and socialists after the horrifying "Nirbhaya Delhi Gang Rape Case," which occurred on December 16, 2012, and stunned the entire country. The participation of the accused, who was just six months shy of becoming 18, was at the heart of the dispute. "The accused's participation in such a horrific act of rape prompted the Indian Parliament to pass a new legislation, the Juvenile Justice (Care and Protection) Act of 2015. The Act has superseded the previous juvenile laws and implemented significant reforms. One notable shift is that juveniles under the age of 16-18 must now be prosecuted as adults."

Keywords: Crime rate, parental care, children, heinous crime, Rape, Juvenile Justice.

Introduction

"A child is recognized as a person under 18, unless national laws recognize the age of majority earlier".¹ Our nation's children are its most valuable resource, therefore we should all do everything we can to save them from harm. Yet in a growing nation like India, the rate of juvenile criminality has increased dramatically over the last decade. Youth criminality is a plague on modern society.

The Indian criminal justice system tackles various offences in different ways and provides special considerations and exemptions for certain groups. The Indian criminal law makes certain allowances, the court is tolerant when dealing with minors, and a special legislation has been passed to protect them. Several laws have varying definitions of what

¹ <http://www.crin.org/docs>

constitutes a juvenile, but the most recent law, the Juvenile justice (care and protection) Act, defines juveniles as anybody under the age of eighteen.

Juveniles are given special consideration in the criminal system because of the widespread cultural consensus that they may be rehabilitated more easily and should be held to a lower standard of accountability than adult offenders. Public safety and holding juvenile criminals responsible are important, but in the juvenile justice system, rehabilitation is prioritised above punishment. To "rehabilitate" someone is to return them to productive society by means of treatment and training. A juvenile offender may be obliged to attend therapy or a programme designed to teach responsible decision-making skills. But does "Rehabilitation" actually result in the child's reformation in light of the current scenario? There is an increasing number of juvenile criminals notwithstanding the existence of welfare regulations for children. It is expected that with the proper supervision and care, these troubled youths may be changed and returned to society as productive members of society. The study focuses on the rights of juveniles and how a rehabilitation centre operates.²

Objectives and Principles of Juvenile Justice

Principles of "promoting, defending, and preserving children's rights form the foundation of the Juvenile Justice (JJ) system. In 1986, the Indian Parliament passed the law into law. Based on the CRC, which India ratified in 1992, the Beijing Rules, the United Guidelines for the Protection of Juveniles Disadvantaged of Their Liberty, along with all other national and international tools, the Act was extensively revised in 2000, making clear children as persons up to the age of eighteen. A kid is defined as an individual who has not reached the age of eighteen under Section 2 (k) of a Act." The Act is grounded on the four universal rights recognised by the UNHCR and the Constitution of India.

- a) A Fight for One's Life
- b) Guaranteed Safety
- c) To Progress in Development
- d) Participation Guaranteed

The Juvenile Justice Act of 1986 was superseded by this law, which has since been revised in 2006 and 2011. The fundamental legislative foundation for juvenile justice in India is the Juvenile Justice (Care & Protection of Children) Act, 2000. Juvenile delinquency and the care and protection of vulnerable children are two of the main areas of emphasis in the JJ Act. The JJ Act, 2000 was significantly revised by the JJ Amendment Act of 2006. Child labourers are included in the scope of this law, which was passed to aid the care, protection, development, and rehabilitation of children who have been neglected or who have committed crimes.

² R. V. Kelkar's Criminal Procedure, K. N. Chandrasekaran Pillai, 6th Edition, Eastern Book Company.

“Section 2 (d) (ia) includes working children, within the purview of a child in need of care and protection”.³ The Act expanded “the range of options available for the non-institutional treatment of kids who require attention and protection or juvenile offenders. When a person under the age of 18 commits an offence punishable by law, the JJA establishes a juvenile court system where they can expect to receive advice/admonition, counselling, community work, payment of a fine, or at most, confinement in a remand home for 3 years rather than incarceration in the adult penal system.”

JJ Act, 2000

To ensure compliance with the CRC and to promote efficient resolution of disputes, the 2000 Act established a standard age restriction of 18 for both men and girls. Child in Conflict with the Law (CNCP), formerly known as a "neglected juvenile" under the 1986 Act, and Child in Need of Protection and Care (CNCP), formerly known as a "juvenile delinquent," now need state action. The JJ (C&P) Act of 2000 was passed in order to "consolidate and modify the laws pertaining to juveniles in conflict with law as well as children who require care and protection," as its name suggests. The act's goals are to "provide for proper care, protection, and therapeutic interventions by having to cater to their infrastructure needs and by trying to adopt a child-friendly approach inside the adjudication as well as disposition of things matter in the best interests of kids and for their final rehabilitation through different institutions established under the Act."

The Juvenile Justice Board is the competent authority for "juveniles in conflict with the law," while the Child Welfare Committee is the competent authority for "children in need of care and protection." A judge and two social services, including at least one woman, will make up the Board. They should all be experts in child development and welfare. In stark contrast to the JJA's juvenile court, the Board established under the JJ (C&P) Act has a very different make-up. As per the JJA, the Board now includes the two social workers who were previously just there to assist the magistrate. If this clause is followed to the word and spirit, Board processes that are now of a legal and technical character might be transformed into health and welfare proceedings. The JJ (C&P) Act stipulates that all investigations must be concluded within four months. Children who fall underneath the JJ (C&P) Act might be turned over to the care of the police, government employees, NGOs, authorised people, or even the children themselves.⁴

Programs designed to change the way delinquent youth think and act should be funded. The goal of these initiatives should be to equip the next generation with the skills the motivations they'll need to contribute positively to society and contribute to a better world (Kumari, 2004).⁵

³ Juvenile Justice Act in India

⁴ Juvenile-justice-board Author: Amar Gupta

⁵ Juvenile-justice-system-in-india- Author: Devdatta Mukherjee

While both types of juveniles are included in this system, anybody who is unhappy with a decision made by a juvenile authority has the right to file a complaint with the High Court or Session Court. The development of facilities for these children and their protection by the state is also envisioned under this Act. There are Children's Homes and Shelter Homes (for temporary stays) for kids who need a safe place to live (Long-term stay). There are Observation Houses and Special Homes for youngsters who have been in trouble with the law. The former locations where the accused will remain until the investigation is finished and a rehabilitation order is issued. These two types of establishments are often combined into one. In addition, there are After-Care Facilities that are dedicated to the unique task of rehabilitating and reintroducing children who have been raised in Special Homes back into mainstream society.

Juvenile Delinquency in the Extreme: Nirbhaya Case

One of the inmates was a juvenile who was a few months shy of turning 18, and this greatly affected how the public viewed the Act. That's why he has to spend the next 3 years in a juvenile detention centre. Despite many writ petitions challenging the Act's constitutionality on the grounds that it is too "soft" on juvenile offenders, the Indian Supreme Court has upheld the Act. When more and more youngsters in this age range are committing crimes, discussions have begun over whether or not the juvenility age should be lowered to 16. According to NCRB statistics, between 16 and 18-year-olds were responsible for 844 of the total 1163 homicides committed by minors in 2014. The director of the non-governmental organisation Childline expressed concern that youngsters are being exposed to material that makes them incapable of considering the potential consequences of their behaviour. That's why it's important to punish them severely when they break the law; doing so sends the appropriate message to the public and deters gangs from recruiting young people to conduct violent crimes (Hindustan Times, 2015, December 23).

This new legislation will take the place of the Juvenile Justice (Care & Protection of Children) Act of 2000. It focuses on kids who are in need of nurturing and safeguarding or who are involved with the legal system. Juveniles between the ages of 16 and 18 may be tried as adults under this bill. In addition, if a person is between the ages of 16 and 18 and commits a major crime, he may only be prosecuted as an adult.⁶

Juvenile Delinquency and Punishment Meted to Wrong Doers as Deterant

Most respondents (75.9%) said that adolescent delinquency was on the rise when questioned about recent national trends. Although 82% of respondents believed more juvenile criminals were being sent to jail, just 16% were aware of any change in behaviour. These findings show that, according to the respondents' psychological views, the number of juvenile offenders locked up in Vizag city is on the rise. But, young people's

⁶S.N Mishra,

behaviour is not improving. The majority of adolescent offenders are engaged in violent acts, with stealing coming in second.

The significant discrepancy between reality and people's predictions on crime and punishment rates may have several causes. Secondly, it's not unexpected that people don't know much about crime since official crime figures are kept secret and are frequently inaccurate. Second, as the media are the primary source of information, biased reporting may influence public opinion. Finally, there may be disagreements due to variances between the local and national crime rates. As a result, residents in such areas would have been swayed by their personal experiences with crime in their communities when responding to questions about crime rates throughout the country. Low-income and unemployed survey takers were more inclined to exaggerate the share of young criminals who commit violent offences. The incarceration rates for young offenders who committed larceny and burglary were overestimated by younger respondents and underestimated by older respondents.

Classification of Rights Provided to the Juveniles

- a) Everyone has the right to life, the right to be born, the right to enough nutrition, housing, and clothes, the right to lead a dignified life, and the right to quality medical treatment, clean and safe living conditions, access to adequate sanitation facilities, and health education.
- b) You have the right to be safe from all forms of abuse, including physical and sexual assault, neglect, and exploitation, as well as harmful substances like narcotics.
- c) The right to education includes the freedom to pursue one's own interests in the realms of education, leisure, and personal growth (on all levels, not just intellectual).

To further protect women's and children's rights, on July 17, 1998, the International Criminal Court was founded in addition to the Convention. One of the tenets of the UNCRC is that every child has the right to their own name and family.

Youth all across the globe have benefited from the Convention's effects, which have led to a greater level of activism. The Right to an Education Act (RTE) hastened the process of bettering children's lives, which in turn has increased educational chances for people all over the globe. In August 2009, India implemented RTE. Every kid between the ages of 6 and 14 has the right to an adequate education, according to this document. No kid should be demoted, expelled, or made to take a final test before graduating.

Directive Principles pertaining to Rights of Children are:

- Article 39(a) and (f) require that governmental policies prioritise the safety of children.
- According to Article 45, the state must make every effort to provide early childhood education and care for all children up until they reach the age of six.

- Parents and legal guardians have an obligation under Article 51-A to provide educational opportunities for their minor children between the ages of six to fourteen.

“All states have adopted the Juvenile Justice (Care & Protection) Act, 2000 as a human rights law. The Act deals to kids who are breaking the law, defined by section 2(1) and juveniles in need of protection and care, defined by section 2(d) (d).” According to the Act's section 2(k), a "kid" is someone less than 18 years old. The goal of juvenile justice is to separate juvenile offenders from those of legal age and to rehabilitate and reform them.

In the case **Sheela Barse v. Union of India**⁷, Sheela Barse, a social worker, took up the cause of defenceless minors held in illegitimate detention facilities, especially those less than 16 years old. Whether or whether the petitioner's (Sheela Barse and others) right to freedom of expression, as guaranteed by Article 19(1)(a) or Article 21 of a Indian Constitution, had been violated by the government's refusal to allow interviews with inmates was at the heart of the case. According to Article 21 of Indian Constitution, the highest court ruled that the public should be allowed to see the inmates.

The court ruled that the petitioner has the right to request interviews with inmates from the appropriate authorities, and that such requests are subject to the constraints of public order, morality, and morals.

The interviews are essential for obtaining accurate data about prison life. To avoid the spread of false information, the interviews will be double-checked with appropriate authorities.

In the case **Sheela Barse v. Secretary Children's Aid Society**⁸, A writ petition was submitted by the appellant to the high court of Bombay. The appellant claimed that children in the aforementioned observation home were engaged in dangerous labour for which they were not compensated. In this case, the parties disputed whether or not children are legally allowed to work in the Observation Houses and whether or not Children's Help Society qualified as "the state" under Article 12 of Indian Constitution.

“Child labor in the Observation homes without compensation is not unlawful per se, since the Supreme Court ruled that the Children's Aid Society came within the jurisdiction of the State as stipulated in Article 12 of Indian Constitution.” Via arrest, investigation, aftercare, and rehabilitation, the Act safeguards the rights of children. Legal representation and a sworn interpreter or translator are made available throughout the whole process.

⁷1986 SCC (3) 596

⁸AIR 1987 SC 656

The goal of the Act is to meet the developmental requirements of children who are in conflict with the law or who are in need of safeguarding and nurturing by amending existing laws and consolidating these populations.

Adolescents who are physically and mentally capable may work in factories for up to half a day under the terms of the Factories Act. The goal is to prevent youngsters from being exploited in the workplace and to keep them from taking up dangerous jobs.

In the case **MC Mehta v State of Tamil Nadu**⁹, Concerns about children's education, health, and safety, as well as their overall growth and development, were central to the discussion. The highest court in the land has ruled that it is against the law to employ minors in potentially deadly industries like pyrotechnics and matchbox production. It is imperative that measures be implemented to keep an eye on youngsters, improve their living conditions, and prevent their exploitation.

All forms of sexual abuse, crimes, exploitations, and harassment against minors (male and female) are illegal under the Children's Protection from Sexual Offences Act (POCSO), 2012. The statute creates secret juvenile courts to hear matters involving children whose identities must be protected. The statute encompasses kid-friendly processes, such as recording a child's comments in the child's home or another location chosen by the child, as well as other locations.

While taking statements, it's best to have a female police officer do it. The officer should act professionally and out of uniform. No minor should ever spend the night in a police station. Only in the company of the parent or other trusted adult would the youngster submit to a medical examination. The youngster should be given many pauses throughout the trial, and he shouldn't be required to testify more than once. There should be no hostile interrogation or attacking of character.¹⁰

Conclusion

Juvenile justice, it is stated here, is a right-based approach that is unfortunately absent from this statute. Current approaches to kid safety are more like acts of charity than serious commitments. The wellbeing of such youngsters is seen as charitable rather than a human entitlement. In considering what is best for the Indian people, politicians must abandon the "note and vote" Children at risk of becoming into juvenile offenders or worse. What would happen if they and only them held the country tomorrow? The goal of juvenile justice has always been to help troubled youth return successfully to their homes and communities. A strong system of follow-up treatment and rehabilitation is required. These kinds of agreements are, sadly, quite rare. The existing policy of juvenile

⁹ AIR 1997 SC 699

¹⁰ Available at: <https://www.indiacode.nic.in/bitstream/123456789/9318/1/sexualoffencea2012-32.pdf>

justice does not take a preventative stance. There is a lack of a major mechanism to curb the proliferation of delinquency-prone conditions.

To flourish, a sapling needs fertile ground. Poor soil can't produce beautiful fruit. Judiciary officials have routinely taken proactive measures to enhance and secure children's rights. In accordance with the provisions of the Indian Constitution, it has instructed the states to provide conditions in which children employed in the workforce might flourish and flourish. All of the aforementioned evidence points to judicial activism and several forms of child abuse.

Persistent poverty, illiteracy, a lack of infrastructure, and a lack of reformatory philosophy contribute to the perpetuation of evils like child marriage, child trafficking, child labour, etc., notwithstanding all legal frameworks. People need to be made afraid of the repercussions of engaging in such behaviour. Juvenile justice should be guaranteed by means of a national fund. In all cases involving minors, legal representation is essential, and the law should be changed to remove any punitive elements.

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