



Civil Liberties in Case of Juvenile Delinquents

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Abstract

Children around the world who are arrested and detained for alleged wrongdoing are often not given the protection they are entitled to get under the law on the rights of the child. However, a juvenile under custody has the right to be free from unreasonable searches and seizures. Conditions for detention or release and constitutional limitations on police must be followed. Many are brought to trial and sentenced in ways that violate their human rights. In some countries children are put to death for their crimes, with judicial systems ignoring the value of a child's life. The reasons for the confinement of children in conflict with the law vary not only from country to country but from jurisdiction to jurisdiction within a country. Children who commit crimes from petty theft to murder often face harsh sentences and confinement in adult systems rather than traditional youth justice practices such as rehabilitation, counseling, and restorative justice programs.

Children are considered the future of the country. Their safety and development is of utmost concern as they are the assets of the future. It is important to look into the matters of their growth and development. Children are born innocent and they would blossom into a person of good character if nurtured with care and attention. Growth of a child depends on the upbringing they get in the surrounding atmosphere. Media and technology also play a critical role in affecting a child's mind. Mostly the problems arise when children develop criminal tendencies and get into law and order problems. It is seen that there has been continuous experimentation in the juvenile justice system by making, amending, repealing and again making legislations and new policies. It is also the fact that the Supreme Court of India has laid down law for proper implementation of the juvenile justice system from the year 1995. It is also the fact that despite the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile Justice Act of 2015.

Keywords: Juvenile Justice, criminal tendencies, Children, Detention, Rehabilitation.



Introduction

“If you want real peace in the world, start with the children.” – Mahatma Gandhi "Youth shows the man as morning shows the day" John Milton The growth of any civilization depends upon its children because they are the future. On the other hand, there are juvenile delinquents since the beginning of human civilization and in every time-phase it was decided to treat the cause not the symptoms, that is, to help the juvenile delinquents to help them through restorative process rather than penalizing them, that's why we have incorporated juvenile welfare laws in India. In the last few decades, the crime rate by children under the age of 16 years has increased. The reason for the increasing crime rate may be due to the upbringing environment of the child, economic conditions, lack of education and parental care etc. Women and Child Development

Minister Smriti Irani, who tabled the Bill in Rajya Sabha, said the changes, which give increased powers and responsibilities to District Magistrates, were being made to not only ensure speedy trials and increased protection of children at the district level, with checks and balances in place, but to also speed up the adoption processes in the country. According to the amendment, District Magistrates, including Additional District Magistrates, can now issue adoption orders under Section 61 of the JJ Act, in order to ensure speedy disposal of cases and enhance accountability. Adoption processes were currently under the purview of courts, and with an overwhelming backlog, each adoption case could take years to be passed. This change will ensure that more orphans in need of homes will be adopted faster. The District Magistrates have been further empowered under the Act to ensure its smooth implementation. This means that DMs and ADMs will monitor the functioning of various agencies under the JJ Act in every district this includes the Child Welfare Committees, the Juvenile Justice Boards, the District Child Protection Units and the Special Juvenile Protection Units.¹

The amendment has been brought is based on a report filed by the National Commission for Protection of Child Rights (hereinafter NCPCR) in 2018-19 in which the over 7,000 Child Care Institutions (or children's homes) were surveyed and found that not a single Child Care Institution (hereinafter CCIs) in the country was found to be 100 percent compliant to the provisions of the JJ Act 2015. CCIs can be government-run, government-aided, privately-run or run through government, private or foreign funding².

¹ Available at <https://www.livelaw.in> Last visited on February 21, 2022

² Ibid



of Juvenile Justice System in India

In the present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like the U.K, U.S.A. This movement started around the 18th century. Prior to this, juvenile offenders were treated the same as other adult criminal offenders. And for the same reason, the General Assembly of the United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social reintegration of juveniles, there shall be no judicial proceeding and court trials against them. The Convention led the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as “**The Juvenile Justice (Care and Protection of Children) Act, 2000**”³.

The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:

1. The act basically laid down a uniform framework for the juvenile justice in the country in such a way that it protects the rights and interest of juveniles.
2. It talks about the machinery and infrastructure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “**Delhi Gang Rape Case**” has forced the law makers to come up with the law.

³Available at <https://blog.iplayers.in> Last visited on February 21,2022



The major drawback of the Act was that it contained ill equipped legal provisions and malfunctioning juvenile system was also the major reason for not preventing the juvenile crimes in India. The act was replaced by **The Juvenile Justice(Care and Protection) Act, 2015**⁴.

Juvenile Justice and Constitution of India

The Constitution of India is the Superior law of the land and the constitution lays down the rights and duties of its citizens which are to be followed. The working of government machinery is also provided by the constitution. And in addition to all this, Part IV of the Indian Constitution provides for Directive Principles of State Policy and this is provided mainly to ensure the smooth functioning of the society. And regarding the rights and welfare of the children following has been provided by the constitution⁵.

Right to Free and compulsory education to all the children aged between 6 to 14 years of age Article 21A, right to be protected from any hazardous employment under the age of 14 years Article 24 of the Indian Constitution. Right to be provided with proper Standard of living and good nutrition under Article 47 of the Indian Constitution. Right to be protected from human trafficking and forced labour under Article 39 of the Indian Constitution.

The lawmakers while drafting the Juvenile Act of 2015 have hence taken into consideration all the provisions which have been laid down by the constitution for the welfare and protection of the rights of children. And for the same reason chapter IV of the Juvenile Justice Act lays down ``numerous provisions which have focused their attention on the betterment and welfare of children and also the reformation and rehabilitation of juveniles in every possible circumstance.

⁴ Available at <https://www.lawaudience.com> Last visited on February 22,2022

⁵ Available at <https://www.justice.gov> Last visited on February 22,2022



Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by the Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. In case of *Deoki Nandan Dayma v. State of Uttar Pradesh* the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

Again in the case of *Satbir Singh & others v. State of Haryana*, Supreme Court again reiterated that for the purpose of determining whether an accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board. In case of *Krishna Bhagwan v. State of Bihar* the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for considering the age of juvenile should be on which the offense has been committed. But later in the case of *Arnit Das v. State of Bihar*, the Supreme Court overruled its previous decision and held that the date to decide in the claim of juvenility should be the date on which the accused is brought before the competent authority⁶.

Causes of Juvenile Delinquency

Research and Studies shows that there are various causes of juvenile delinquency in India. Every person has different behavioral patterns so as in case with children also. The behavior patterns develop in early childhood and at an early stage it is very difficult to identify any kind of behavior. But as soon as, child grows up and comes out to the real world, behavior patterns change from time to time and many circumstances or situations may arise in them. Following are some of the causes of Juvenile Delinquency⁷.

⁶ Available at <https://www.thelawgurukul.com> Last visited on February 22,2022

⁷ Available at <https://www.thelawgurukul.com> Last visited on February 22,2022



1. **Adolescence Instability-** The biological, psychological and sociological are one of the important factors in the behavior pattern of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play, etc. And at this age, they want freedom and they want to be independent but sometimes they are given many chances and opportunities by their parents, teachers and elders. This leads to development of antisocial behavior in them. Thus, this antisocial behavior, biological changes, psychological causes are some of the reasons which are responsible for juvenile delinquency.
2. **Disintegration of Family System-** Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections, negative atmosphere in the family are the major factors of juvenile delinquency.
3. **Economic condition and Poverty-** Poverty and poor economic condition is also considered major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfill the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by crook and when their desires are not met they start themselves indulging in stealing money from homes. And this develops a habitual tendency of stealing which results in theft at large scale.
4. **Migration-** Migration of deserted and destitute juveniles, boys to slum areas brings them in contact with some anti social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.
5. **Sex Indulgence-** The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. Easy availability of adult content on internet is also a very important factor involving children in rape offences etc⁸.

⁸ Ibid



Constitutional Rights for Defendants in the Juvenile Justice System

A narrower range of rights protects juveniles in the juvenile justice system than adult defendants in criminal court. This is because the juvenile justice system is less punitive, so the consequences of being found delinquent are far less severe than the consequences of a conviction in adult court. Historically, very few constitutional rights applied in juvenile courts, but this has started to change. Protections for juveniles vary from state to state more than protections for adult defendants⁹.

The Fifth Amendment protects an individual from self-incrimination. This right extends to juveniles, who cannot be required to provide testimony against themselves. They also have a constitutional right to confront and cross-examine witnesses. Their attorney can challenge the testimony provided by prosecution witnesses.

It has also found that juvenile court proceedings are different from proceedings in regular criminal court. Juvenile courts are supposed to rehabilitate rather than punish a juvenile, and a formal adversarial process might hinder that goal. The Supreme Court did not forbid states from providing a jury trial in juvenile cases, though. A few states offer this right in cases that involve severe penalties¹⁰.

Rights Of Juvenile Offenders

Some civil rights of Juveniles may be discussed as following:-

- Right to a lawyer
- Right to cross-examine witnesses.
- Right to provide evidence to support one's own case.
- Right to remain silent.
- Right to an appeal.
- Right to a transcript of a trail (written copy of the trail).

⁹ Available at <https://www.justia.com> Last visited on February 22,2022

¹⁰ Ibid



- Right to have fair and speedy trials.
- Right to have no juries in juvenile cases.
- Right to have parents and guardians present at hearing¹¹.

Problems with Juvenile Justice System

It is seen that there has been continuous experimentation in the juvenile justice system by making, amending, repealing and again making legislations and new policies. It is also the fact that the Supreme Court of India has laid down law for proper implementation of the juvenile justice system from the year 1995. It is also the fact that despite the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile

Justice Acts till passing of new Act of 2015. The Supreme Court of India in Sheela Barse's case itself took the responsibility of monitoring the implementation of major provisions of the Juvenile Justice Act, 1986. In Sampurna Behrua's case, again the

Supreme Court took the responsibility of monitoring the implementation (monitoring is still continuing) of major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Despite the Apex Court's intervention, the central government and the state governments have failed to implement the major provisions of the Juvenile Justice Act, 1986 (repealed) and Juvenile Justice (Care and Protection of Children) Act, 2000. Juvenile Justice Act, 2015 The ongoing failure of the juvenile justice system is admitted by the Ministry of Women and Child Development and the National Commission for Protection of Child Rights in the various reports published in their respective websites. The Sheela Barse's case and Sampurna Behrua's case also reflect the view of dismal status of implementation of the juvenile justice system. The fact that the juvenile justice system in India is dysfunctional is proved beyond doubt.

Millions of children throughout the world are held in jails, prisons and detention centers. Many are brought to trial and sentenced in ways that violate their human rights, and also international principles that recognize the deprivation of liberty to be a measure of last resort for children. In some countries children are put to death for their crimes, with judicial systems ignoring the value of a child's life.

¹¹ Available at <https://www.legalserviceindia.com> Last visited on February 22, 2022

Children who commit crimes from petty theft to murder often face harsh sentences and incarceration in adult systems rather than traditional youth justice practices such as rehabilitation, counseling, and restorative justice programs.



Conclusive Remark

Children are the valued assets they need to be tended and protected. The children need to have some basic rights which can help them to have a better future. There are a lot of juveniles who are unable to afford a lawyer and these acts do not help them to enjoy legal remedies. In our Indian Constitution every individual is equal before eyes of law thus everyone has a right to defend or protect itself with the help of law whether it is a plaintiff or a defendant, adult or minor, girl or boy the law never discriminates.

The increasing rates of juvenile crime in India is a very concerning issue and needs to be focused upon. Although the government has laid various legislation and rules to stop the incidents of juvenile crimes, the present laws on juveniles are not creating a deterrent effect on the juveniles and thus the results are not fruitful and legislative intent is not accomplished. There is no proper implementation of Juvenile Justice Act, 2015 and juveniles are not getting their basic rights like right to education, live in a healthy environment, good food etc. So the government needs to work on the proper implementation of the Juvenile Justice Act.