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JUVENILE JUSTICE IN THE PRESENT ERA

AUTHORED BY - MD. TAUSEEF ALAM & SUJAL KUMAR

Abstract

The protection of children from all types of exploitation and abuse is the main objective of our society today. The system gives juvenile delinquency priority treatment and protection. Juvenile delinquency occurs when a young person under the age of 18 commits a crime. The Indian Legislative System states that a legislative framework governs juvenile justice. A person who may be charged with a crime despite being older than the legal age of majority but who is nonetheless assumed innocent is referred to as a "juvenile." A kid under the age of seven is given complete protection from criminal responsibility under the Indian Penal Code of 1860 since it is believed that he is incapable of committing a crime (doli incapax). Criminal Code. A major flaw in this Act is the lack of oversight and cooperation among the numerous agencies. The reforming aspect of juvenile criminal legislation must take precedence over the deterrence aspect. A categorical legal system that divides the juvenile justice system into various age groups is now urgently needed. In order to ensure that the juvenile is effectively rehabilitated while simultaneously being discouraged from breaching the law, the 2015 Act establishes a balance between protection and punishment. The disease that afflicts our broken civilization must be made known to civil society. In reality, children who commit crimes are victims of society rather than true criminals. Juvenile delinquency can be prevented early on if additional care is given at home and at school. In order to foster a child's ability to think, parents and teachers are essential.

KEYWORDS: Juvenile Justice, Child in conflict with the law, Age determination, Bail.

INTRODUCTION

We are guilty of many errors and many faults, But our worst crime is abandoning children and neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made, and his senses are being developed. To him we cannot answer 'Tomorrow'. His name is 'Today'. – said Gabriela Mistral. Considering that the future of every nation depends on how its children age and develop, children

are seen as a vital national asset. One of the legal maxims we follow is “Nil Novi Spectrum” which means nothing is new on earth. The primary goal of our society today is the protection of children from all forms of exploitation and abuse. Today by the virtue of the Juvenile Justice (Care and Protection) Act 2000 we strive for the interest of the children and their rehabilitation through various institutions established by the act. According to the Indian Legislative System, juvenile justice is defined by a legal framework. Juvenile delinquency is receiving preferential care and protection from the system. A crime committed by a young person under the age of 18 is considered juvenile delinquency.

The Hon’ble Supreme Court in its ruling of *Sheela Barse II v. Union of India*¹ held that Children's statutes provide that a kid shall not be detained in jail because if a child is a national asset, the State has a responsibility to care for the child in order to ensure the complete development of the personality. It was mandated that kids should never be detained in jail, and if a state government does not have enough space for kids in its remand homes or observation homes, kids should be released on bond instead than detained in jail. The provisions of juvenile justice have their roots lying down in art. 15(3) which empowers the government to make special laws for children. In, *Satto v. State of Uttar Pradesh*² the Hon’ble Supreme Court remarked that “correctional informed by compassion, not incarceration leading to degeneration, is the primary aim of this field of criminal justice.”

BACKGROUND

The word "juvenile" has recently received a lot of significance. In the current context, the term "juvenile" refers to a person who, while being older than the minimum age of criminal responsibility, may be held criminally liable but who is still presumed innocent.³ As the law of children changed throughout time to meet the demands of the circumstances that were in play at the time, numerous enactments also emerged in India slowly but gradually. It should be acknowledged that taking a too-lenient stance would undoubtedly compromise the necessary steps that need to be taken to maintain the social as well as the moral foundation of society. However, an overly strict approach would undoubtedly crush the dreams of young people who haven't had a chance to see the world but who, despite the government's best efforts, tragically

¹ *Sheela Barse II v. Union of India*, (1986) 3 SCC 632.

² *Satto v. State of Uttar Pradesh*, AIR 1979 SC 1519.

³ Juvenile Justice (Care and Protection of Children) Act, 2015, § 3, No. 2, Acts of Parliament, 2016 (India).

were embroiled in crimes when they were still very young. Under the Indian Penal Code, 1860, by virtue of Section 82, absolute immunity from criminal liability is provided to a child under the age of 7 years as he is considered incapable of committing a crime (*doli incapax*). Section 83 of the Penal Code provides partial/qualified immunity to a child above 7 years and under the age of 12 on the grounds of immaturity. The Penal Code treats a child above 12 years at par with adults.

Challenge faced by Juvenile Justice Act 2000

Concerns that the Juvenile Justice Act of 2000 was inadequate to deal with this new breed of offenders, the so-called juvenile super predators, were stoked by the horrifying rape in the Nirbhaya case,⁴ in which one of the offenders was 17 years old and just 3 months away from reaching majority. The legality of the juvenile laws and the necessity of adopting harsh punishments as deterrents were questioned by policy elites, the media, as well as regular individuals from all walks of life. The Parliament gave in to the demands of some critics riding on the myth of super predators after coming under unprecedented scrutiny and criticism for what was seen as an inability to address the juvenile threat. The Parliament gave in to the demands of certain critics riding on the concept of super predators after coming under extraordinary criticism and scrutiny for what was seen as an incapacity to address the juvenile threat. The JJ Act, 2015 was therefore introduced by the Parliament to facilitate the prosecution of juveniles in adult court. A kid between the ages of 16 and 18 who is accused of committing a severe crime may be sent to an adult criminal justice system, sometimes known as a children's court, to be prosecuted as an adult under the current system. The most controversial part of the JJ Act, 2015, is Section 15, which requires the Juvenile Justice Board (*hereafter referred to as JJB*) to send cases involving a minor between the ages of 16 and 18 who is accused of committing a serious offense to a children's court. The Board will make this judgment based on an initial evaluation to determine the child's capacity to commit such an offense. This Section places an onerous on the JJB to enlist the help of psycho-social workers, psychologists, and other specialists in order to determine the accused's mental ability. The Board may transfer the child to the Children's Court under Section 18 if it is satisfied with its preliminary evaluation.

⁴ Mukesh & Anr. v. State for NCT of Delhi & Others, (2017) 6 SCC 1.

Procedure Outlined under Section 15

If the Juvenile Justice Board (JJB) determines decisively that the juvenile's degree of maturity shows that he committed the heinous crime as an adult and not as a kid, the transfer of the juvenile to adult courts is justified under the 2015 Act. The JJB must make a preliminary determination about "his mental and physical competence to commit such an act, the ability to appreciate the consequences of the offense, and the conditions wherein he allegedly committed the offense," according to Section 15 of the Act. The Board may move the case's trial to a children's court if it determines that the youngster needs to be tried as an adult.

The adolescent must commit a heinous offense, as defined in section 2 (33) of the Act, for this provision to be applicable. Section 2(33) read as “*‘Heinous offenses’ includes the offenses for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.*” In contrast to minor and serious offenses, this category of crimes is unique. The Board must adhere to the Code of Criminal Procedure's 1973 summons case trial procedure for such severe offenses. The court in *Subramanian Swamy v. Raju The Member, Juvenile Justice Board*⁵ observed that a certain incident leaves a lasting impression on the nation's or society's mind. One such incident was the Delhi Gang Rape Case, which happened in December 2012 aboard a moving bus. Six people, one of whose ages was a few months under 18, gang-raped a 23-year-old college student. As a result, the juvenile accused in the JJB trial was given a three-year sentence to serve in a special home. The irony of the law is that the young offender was allowed to live freely in society even after committing the heinous crimes of rape and murder, which included inserting an iron rod into the victim's private area.

Procedure to apprehend a child in conflict with the law

Section 10⁶ talks about the apprehension of a child in conflict with the law. Whenever the police get a piece of information regarding any offences in which the child is in conflict with the law, then they will relay this information to the Special Juvenile Police Unit. After that, the case will be handed over to the child welfare police officer of the relevant police station, and an entry will be created in the track child portal to maintain track of the case. Depending on the type of offence the suspected kid committed, either a DDR(Daily dairy register) will be filed in the event of a minor offence or an FIR would be filed in the case of a significant or heinous act. The Chief

⁵ Subramanian Swamy v. Raju The Member, Juvenile Justice Board, Criminal Appeal No, 695 of 2014.

⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, § 10, No. 2, Acts of Parliament, 2016 (India).

Welfare Police Officer under section 13 of the act owes the duty to inform the parents or the guardians of the child in conflict with the law about the situation and subsequently direct them to be present before the board where the child will be produced. After recording the case the child is sent for a medical examination a designated Child Wellbeing and Protection Officer (CWPO) or Special Juvenile Police Unit will conduct his evaluation (SJPU). Additionally, the parents and the probation officer will get notification of the arrest in order to conduct an investigation. It is important the child is produced before the Juvenile Justice Board by a designated child welfare officer. After the production of the child before the Juvenile Justice Board, the child is sent to the Observation which is generally the shelter for the child in conflict with the law. State Legal Services Authority duly receives the file from the Child Wellbeing and Protection Officer in order to access the situation of whether free legal aid is required or not.

Social Background Report: The major important document which has to be prepared within two weeks, is called the social background report. A report on a kid in conflict with the law that the child welfare police officer has prepared, including the child's history. It is the responsibility of the Special Juvenile Police Unit or the Child Welfare Police Officer to get in touch with the child's parents or legal guardians in order to acquire the best information possible. When making decisions about the children's case, this report is regarded as a crucial document for their welfare.⁷

Judicial Take on Criminal Liability of Juvenile

The court once convicted a 13-year-old boy in its ruling of *Kakoo v. State of Himachal Pradesh*⁸ accused of raping a two-year girl. The attorney for the accused pleaded with the court to examine Sections 83 and 84 of the Indian Penal Code, which provides that children and adults should not be treated equally while a criminal case is being heard, in order to reduce the term of the penalty. Even though the youngster was found guilty of rape, the court decreased the punishment by taking the attorney for the accused child's case into consideration. Thus, it may be inferred from the verdict that Sections 82 and 83 do more than only provide for "doli incapax"; they also serve as a reminder to courts that minors are not to be regarded equally to adults when considering a matter.

⁷ Ramachandran v. The Inspector of Police, 1994 CriLJ 3722

⁸ Kakoo v. State of Himachal Pradesh, AIR 1976 SC 1991.

Further Court in *Durga v. State of Rajasthan*⁹ observed that this is a really fascinating scenario to comprehend the caliber of the evaluations done upon juveniles. According to Section 15, a committee made up of psychologists and psychosocial workers with extensive expertise working with problematic adolescents shall be chosen to carry out the initial evaluation. The Honourable Rajasthan High Court noted that the girl called Durga, who was in trouble with the law, was not given "any meaningful opportunity of hearing or legal counsel" in the current case, which is truly intriguing to read. The Juvenile Justice Board violated the principles of natural justice, the Juvenile Court Board failed to consult appropriate psychologists with experience working with troubled children as required, and the child was unjustly admitted to the MBH Hospital's psychiatry department. These findings were made clear to the court.

Age Determination

The present piece of legislation beautifully craved down the provision based on the present-day scenario of the nation creating a concrete hierarchy of documents. The primary document which is taken into consideration is the matriculation certificate. The conflict arises when there exists any variation in the documents by the Board of education and the government municipal corporations which issue the Birth certificate. But the entry of the matriculation certificate or any equivalent document can only be discarded when it is established the document is fabricated.¹⁰ Further, the stand was made clear in the case of *Sheela Devi v. State of Haryana*¹¹ which involved a juvenile accused of rape. When the offense was committed the accused was below 18 years as per the matriculation certificate of the accused. The court held that since the accused had appeared in the examination before the date of the accident, the certificate issued by the board of examination cannot be said to be fabricated. The court made the stand of matriculation as the primary evidence to establish the age of the accused on the basis of the matriculation certificate. Moreover, the court can rely upon other documentary evidence such as transfer certificates and other documents, without going for the records from the gram panchayat.¹² Once it is an established fact that the age as per the birth of date in the matriculation certificate is genuine then in no possibility the court will go for the admission of any evidence, if so then it will violate the statutory provision.¹³

⁹ *Durga v. State of Rajasthan*, 2019 CriLJ 2720.

¹⁰ *Leena Katiyar v. State of Uttar Pradesh*, 2015 CriLJ 4683.

¹¹ *Sheela Devi v. State of Haryana*, 2016 CriLJ 1340.

¹² *Kiran Laxman Dabade v. State of Maharashtra*, 2016 CriLJ 3165.

¹³ *Tausif Ahmed v. State of Bihar*, Criminal Revision No. 981 of 2015.

The Hon'ble Supreme Court in the case of *Rajinder Chandra v. State of Chhattisgarh*¹⁴ held that in the case of there is any question as to whether the accused was a juvenile or not on the day of the offence, the juvenile should be given the benefit of the doubt. In case of the absence of the matriculation certificate then the other admissible document available in the hierarchy are: -

- I. The Certificate of birth issued by the Municipal corporation or authority or panchayat
- II. In the absence of a matriculation certificate or any equivalent document or the certificate issued by the municipal authority then, the age shall be determined by an ossification test or any of the latest tests if the committee orders such. The age determination test must be completed within 15 days of such order by the Board or Committee.

It is imperative to note that Section 94 (2)(iii) clearly states that the ossification test is only to be done if the documents mentioned under sub-clause (i) and (ii) are not available. Justice Banumathi and Justice Sikri through their ruling in the case of *Mukarrab v. State of Uttar Pradesh*¹⁵ express that the age determination based on ossification may be useful but not conclusive. The test can by no means be accurate and so infallible as to indicate the correct number of years and days of a person's life he lived. Further, the hon'ble supreme court in the ruling of *KulaiIbrahim v. State of Coimbatore*¹⁶ held that the accused has the right to raise the question of juvenility at any point of time during the trial or even after the disposal of the case as empowered under the section 9 of the Juvenile Justice Act, 2015.¹⁷

Bail in case of a child in conflict with the law

Every juvenile criminal has a right to bail, and the spirit of the juvenile justice laws clearly indicates that kids in legal trouble should be freed on bond, excepting three things: (a) The juvenile will be put in danger on a moral, physical, and psychological level or, (b) the bail will defeat the ends of justice or, (c) the bail is likely to associate them with any known criminals.¹⁸ In so far as Juveniles are concerned granting bail is the rule and the rejection of the bail is the exception. The court must ensure the balance between the situations and the rights of the juvenile. The Hon'ble apex court has cautioned the court to try the cases with much more sensitivity while

¹⁴ *Rajinder Chandra v. State of Chhattisgarh*, [2002] 2 SCC 287.

¹⁵ *Mukarrab v. State of Uttar Pradesh*, (2017) 2 SCC 210, para 29.

¹⁶ *KulaiIbrahim v. State of Coimbatore*, 2014 (12) SCC 332.

¹⁷ Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 9.

¹⁸ *Vigneshwaran v. State*, 2016 SCC OnLine Mad 20388.

dealing with juveniles in serious and heinous crimes like sexual harassment and molestation, gang rape, rape, murder, trafficking, drugs, etc.¹⁹ The major aim of the Juvenile Justice Act is to treat the juvenile with care and sensitivity and help them reform and settle into the mainstream of society.²⁰ The court in *Manoj v. State*²¹ held that “*Grant of bail is mandatory, unless and until exceptions carved under section 12 are made out.*”

The Hon’ble Allahabad High Court in *Sanjay Kumar v. State of Uttar Pradesh*²² granted the bail to the juvenile booked under sections 392 and 411 of the Indian Penal Code, 1860 and held that, “*The existence of such ground should not mean the guess work of the court but it should be substantiated by some evidence on record.*” Further, The Rajasthan High Court in *Prakash v. State of Rajasthan*²³ granted bail for the alleged offence of rape²⁴ in the absence of reasonable ground to believe that the juvenile if released on bail, is likely to come into association with any known criminal or he will be exposed to physical, moral and psychological danger. The court further observed that “*from the kind perusal of section 12 of the act, it is clear that a delinquent juvenile ordinarily has to be released on bail irrespective of nature of the alleged to have been committed by him*”, unless there are pieces of evidence to prove that the bail will lead to harming the juvenile accused.

The provision is to save the innocent who has been caught in the throes, not the criminals of heinous crimes to obtain selfish means. As seen in the case of *Bholu v. Central Bureau of Investigation*²⁵ that the bail application can also be rejected if the juvenile is accused of a heinous crime and is to try as an adult as decided by the Juvenile Justice Board under section 15. Granting the bail becomes a matter of cautiousness and not a matter of right. The Allahabad High Court rejected another bail application of the juvenile in the case of *Monu alias Moni alias Rahul alias Rohit v. State of Uttar Pradesh*²⁶ where the accused was apprehended for the offence of kidnapping and rape at gunpoint, the court observed that “*Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter*

¹⁹ Om Prakash v. State of Rajasthan, (2012) 5 SCC 201.

²⁰ Ibid, para 3.

²¹ Manoj v. State, 2006 Cri LJ 4759 (Delhi).

²² Sanjay Kumar v. State of Uttar Pradesh, 2003 Cri LJ 2284.

²³ Prakash v. State of Rajasthan, 2006 Cri LJ 1373.

²⁴ Indian Penal Code, 1860, § 376, No. 45, Acts of Parliament, 1860 (India).

²⁵ Bholu v. Central Bureau of Investigation, 2018 SCC Online 747 (P&H).

²⁶ Monu alias Moni alias Rahul alias Rohit v. State of Uttar Pradesh, 2011 Cri LJ 4496.

home for who have got criminal proclivities and criminal psychology.”

The Juvenile Justice Act is a combination of both the substantial and the procedural law and takes into consideration the interest and care of the child in conflict. A division bench of Madras High Court in the case of *K. Vignesh v. State*²⁷ held that the application of anticipatory bail under section 438 of the Code of Criminal Procedure (CrPC) is not maintainable before the Hon'ble High Court or the Court of the session as, one has to understand that without any doubt whatsoever, a child in conflict with law cannot be arrested so the apprehension of the arrest does not come into question.

Further, it is a well-settled position that under what circumstance the bail will be rejected under exceptional circumstances, even if the bail is rejected the child cannot be taken into judicial or police custody, rather the child will be taken to an Observation Home by the Juvenile Justice Board. Even the Section 12 of the act does not provide any equivalent as of section 438 of CrPC to the Juvenile Justice Board, the board has no jurisdiction to entertain the plea of Section 438 of CrPC.²⁸ The Hon'ble Supreme Court upheld the death penalty in the case of *Amrutlal Someshwar Joshi v. The State of Maharashtra*²⁹ despite there was the possibility that the offender was below the age of 18 at the time of the commission of the crime.

Conclusion

The Supreme Court of India emphasized that “obviously that in a civilized society cannot be denied the importance of child welfare because the welfare of the whole societies depends on the development and welfare as well as health and well-being of its children. Therefore, it is essential for the development of a nation, how its children grow and develop.”³⁰ The importance of real-world experience must be emphasized. The absence of coordination and control between the various agencies constitutes a fundamental weakness in this Act. Police officers, attorneys, and court officials are among the many persons involved in the administration of this Act who are not familiar with the idea and philosophy of the juvenile justice system. Juvenile criminal law's reforming component must take precedence over its deterrent component. Despite its flaws, the 2015 Act strikes a balance between protection and punishment, making sure the juvenile is successfully rehabilitated while also being deterred from breaking the law. Strengthening the

²⁷ *K. Vignesh v. State*, 2017 SCC OnLine 28442 (Mad).

²⁸ *Kapil Durgvani v. State of Madhya Pradesh*, 2010 SCC OnLine 641 (MP).

²⁹ *Amrutlal Someshwar Joshi v. The State of Maharashtra*, (1994) 6 SCC200.

³⁰ *Lakshmi Kant Pandey v. Union of India*, 1992 AIR 118.

other components is vital if the nation is to have stronger juvenile laws and regulations. There is an emergent need for constructing a judicial system and categorizing by splitting the juvenile justice system into different age groups.

Everyone is aware of the rising number of juvenile offences that are currently raising the contentious topic of age determination. The accused's age is one of the most crucial factors in assessing his or her degree of maturity. The question of whether a juvenile can be tried as an adult or not is being raised by the rising crime rate. The process of guaranteeing the best interests of children in accordance with the mandate of the Indian Constitution and international agreements includes more than only addressing the challenges of juvenile delinquency and ensuring the welfare of children in need of care and protection. To accomplish the stated goals, a lot has to be done. As Abraham Lincoln once said that "A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities, and corporations. The fate of humanity is in his hands".

Civil society must be made aware of the sickness that exists in our dysfunctional society. Children who commit crimes are not actually criminals; rather, they are the victims of society. If extra care is taken at home and in school, juvenile delinquency can be stopped at an early stage. In order to develop a child's thinking, parents and instructors are crucial. Instead of classifying them as "criminals" or "delinquents," attempts should be done to provide them the opportunity to make amends. It would also be preferable if the mistakes they have made in their life (including social and psychological issues) were made known to them. Like many other societal ills, the issue of child criminality is related to the flaws and social maladjustments in our society. The concept that young offenders require empathy and compassion from our society rather than the strict application of the law is progressively getting more support.