

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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REHABILITATION AND REFORMATION OF JUVENILES IN CONFLICT WITH LAW IN INDIA:

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ABSTRACT

According to the most recent version of the juvenile justice act, if a child is not released on bail or is not placed in a special home, place of safety, or facility that is fit for them or with a fit adult, the Board shall order, the process of rehabilitation and social integration of juvenile delinquents or children in conflict with the law shall be undertaken in the observation homes.

The District Child Protection Unit, a social worker, or a probation officer may be tasked with providing follow-up care for a child under the supervision of the Children's Court to ensure that the final order for a child in trouble with the law includes an individual care plan for the child's rehabilitation. The Children's Court must also make sure that the probation officer, the District Child Protection Unit, or a social worker submits a periodic follow-up report each year to assess the child's development in the place of safety and to guarantee that the child is not experiencing any form of maltreatment.

However, despite the strictness and use of strong punitive measures for juvenile offenders committing heinous crimes, the Act respects International treaties and conventions signed and ratified by India. In accordance with Section 21 of the JJ Act of 2015, "No child in conflict with the law shall be sentenced to death or life imprisonment without the possibility of release."¹ As a result, while

¹ Section 21 of the Juvenile Justice Act, 2000 as amended by the Juvenile Justice (Amendment) Act, 2015

punishment for an offense may be “death” (Section 302, IPC) or “imprisonment for life, which may mean imprisonment for the remainder of that person’s natural life” (Section 376-A, IPC), such a sentence cannot be imposed on a juvenile offender.

Juvenile Immunity: (In IPC; Section 82 and Section 83)

Juvenile offenders are exempt from criminal responsibility under Indian Penal Code Sections 82 and 83.² Juvenile offenders should be granted immunity because it is widely believed that moral delinquency is a requirement for criminal responsibility and that young children should not be held accountable for criminal guilt.

Act of a child under the age of seven, according to Section 82. Nothing that a child under the age of seven does is unlawful. A child under the age of seven is exempt from criminal responsibility under Section 82 because, according to the law, children under this age are *doli incapax* (deemed incapable). As a result, if a child younger than 7 years old is accused of committing a crime, the fact that the accused child was younger than 7 years old automatically disqualifies the accused from prosecution. A child is exempt from prosecution for crimes under the IPC as well as under special and local laws because the absolute immunity granted by this section is broad enough to cover both types of crimes. A child between the ages of 7 and 12 is granted qualified immunity under Section 83. This section states that if it can be proven that a child of the aforementioned age group is not mature enough to understand the nature and repercussions of his or her actions, then the child is exempt from criminal liability. The notion that malice compensates for age is the foundation of the presumption of innocence for children. i.e. *Aetatem militia supplet*. As a result, the maxim becomes less valid with age. Evidence of "mischievous discretion" can also be used to refute the presumption of innocence. E. A conscious awareness that what was done was morally wrong.

Under Indian law, a child above the age of 12 is fully liable and responsible for his or her deeds under criminal law. However, unless the child attains the age of majority i.e. 18 years there are certain safeguards for juvenile offenders. These include – prohibition on execution, classification of offenses into –petty, serious, and heinous offenses, and separate trials for children.

² Section 82 and 83 of the Indian Penal Code 1860

Indian law holds that anyone over the age of 12 is fully culpable and accountable for their actions. But until the youngster reaches the age of majority, i.e. Juvenile offenders have some protections until they turn 18 years old. Among them are the ban on capital punishment, the division of crimes into petty, serious, and heinous offenses, and separate trials for minors.

Delinquency among Juvenile Girls:

Criminologists all agree that girls and women break the law much less frequently than boys or men, similar to crimes committed by adults. They can be viewed as dangerous and can be considered in a much less serious light even if they engage in delinquent activities because they are not particularly aggressive or harmful to society. Girls are less aggressive, which is partially due to biological factors. Progesterone and estradiol are two hormones that are present in girls in high amounts, and there is some evidence that suggests that these two hormones are linked to low levels of aggression. In addition, girls have very strong familial ties, which is much stronger than it is for boys, who during adolescence tend to have strong peer ties. As is well known, peer pressure and peer misdirection, which frequently push young people toward delinquency, are largely absent among girls. Thus, in addition to genetic or biological factors, their social upbringing also reduces their propensity for acting out in a delinquent manner. Women are raised to be largely reserved, and because of the patriarchal society in which they grow up, they develop personalities that are more cautious, timid, and lacking in initiative, which, most importantly, protects them from becoming juvenile offenders. Boys' behavior is more susceptible to environmental influences, so becoming delinquent may only require minor stresses as opposed to major stresses in the case of girls. However, the greater immunity that girls have over boys in terms of their propensity and susceptibility to delinquent behavior can be harmed by physical and psychological disadvantages, and they may be overpowered if environmental forces are unusually strong and may drive them to engage in illegal activities. Most female juvenile offenders are discovered to be involved in prostitution, aiding family members in their illegal trade, or in rare instances, stealing (due to poverty). 99 percent of the young people detained for crimes in 2018 were boys, according to the "Crime in India" report.

The factors that lead girls to engage in delinquent activities are the same as for boys- these include mostly families engaged in criminal or unlawful activities, extreme poverty, broken homes, and the presence of or contact with antisocial elements in the area or nearby.

As far as Juvenile cases are concerned the Pratap Singh case requires special mention.

Supreme Court of India

Pratap Singh vs. State of Jharkhand & Anr on 2 February 2005

Author: J Hotoi Sema

Bench: N Hegde, S.N.Variava, B P.Singh, H K Sema

CASE NO.: Appeal (crl.) 210 of 2005

This appeal is directed against the judgment and order dated 10.9.2001 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 98 of 2001.³ A First Information Report was submitted to the Bokaro City Police Department under the name P. S. Instance No. 1/99, with the date 1.1. 1999 for the offense in violation of Sections 364A, 302/201 IPC read in conjunction with Section 120B IPC to the effect that on 31.12. It was claimed in 1998 that the appellant was a member of the group who intentionally poisoned the victim. The appellant was detained and brought before the C. Based on the FIR. J. M. Chas at 22.11. 1999. The appellant was estimated by the learned CJM to be around 18 years old based on the production.

On 28.2.2000, a petition was submitted on behalf of the appellant, who claimed that he was a minor on the day of the incident. i.e. 31.12.1998, the learned CJM forwarded the case to the Juvenile Court. On 3.3, the appellant was presented in juvenile court. 2000. The juvenile court determined the appellant's age based on appearance to be between 15 and 16 years old and ordered the civil surgeon to form a medical board with the goal of determining the appellant's age based on a scientific examination and submitting a report. A medical board of that nature was not established.

Following his request for the parties to present evidence, the learned ACJM determined that the appellant was under 16 as of 31.12 after reviewing the school leaving certificate and mark sheet issued by the Central Board of Secondary Education. 1998, using the appellant's birth year of 18.12. 1983 is listed in the aforementioned certificate. Then, on bail, the appellant was released.

The informant, who was upset by this decision, appealed before the First Additional Sessions Judge, who did so after citing this Court's decision.

³ *Pratap Singh vs. State of Jharkhand & Anr* on 2 February 2005, Appeal (crl.) 210 of 2005

The two questions that demand a final determination are:

(a) Whether the date of the alleged offense will be used to calculate the alleged offender's age for purposes of categorizing him as a juvenile offender or the date on which he is brought before the court or another competent authority.

(b) Whether the Act of 2000 will be applicable in the case of a proceeding initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

Compared to the 1986 Act, the 2000 Act has brought about a few changes.⁴ It has obliterated the distinction between a male juvenile and a female juvenile. In contrast with the definition of delinquent juvenile in the 1986 Act who was found guilty of the commission of an offense, a juvenile in conflict with law is defined in the 2000 Act to mean a person who is of below 18 years of age and is alleged to have committed an offense.

Section 3 provides for continuation and after mirth of inquiry in respect of a juvenile who has ceased to be a juvenile.

Because of the aforementioned provisions, a legal fiction has been developed that allows for the treatment of a juvenile who has stopped being a juvenile as if he had still been one. A Juvenile Justice Board is created according to Chapter II. Section 6 of the law had set forth its authority.⁵

According to Section 7, a Magistrate who is presented with a juvenile must immediately record his judgment. If it is determined that the person presented to him is a juvenile, he must also record that fact and send the person, along with the proceeding's record, to the appropriate authority with jurisdiction over the case.⁶ For all of these reasons, the Court must establish the appellant's age in this case while taking into account our earlier conclusions that the relevant date for calculating the juvenile's age should be the date of the incident rather than the date on which he appeared before the Board.

⁴ The 1986 Act was called the Juvenile Delinquency Act.

⁵ Section 4 of the Juvenile Justice Act as amended by the Juvenile Justice Act 2015.

⁶ Section 7 of the Juvenile Justice Act as amended by the Juvenile Justice Act 2015

The following case also requires mention. Supreme Court of India
Balu @ Bakthvatchalu vs. State Of Tamilnadu on 12 February 2008

Author: S Sinha

Bench: S Sinha, V Sirpurkar

CASE NO.: Appeal (crl.) 295 of 2008

The appellant was prosecuted for the commission of an offense under Section 302 of the India Penal Code. The occurrence took place on 20th April 1998.⁷ He was arrested on the charge of murder of one Ramu Maistry on 8th May 1998.⁸ Upon completion of the investigation, a charge sheet was filed against him on 30th November 1998. On April 28, 2000, the knowledgeable trial court issued a ruling. His age was indicated in the aforementioned judgment as "18.". He requested to be sent to a Borstal School in accordance with Section 10-A of the Tamil Nadu Borstal Schools Act, but that request was denied. An appeal preferred by the appellant before the High Court has been dismissed by reason of the impugned judgment.

When the incident occurred, the Juvenile Justice Act of 1986 (hereinafter referred to as "the Act") was in effect. According to this law, a boy who is under the age of 16 is considered a juvenile under Section 2(h) of the Act. The Parliament, however, enacted, the Juvenile Justice (Care and Protection of Children) Act, 2000. Since April 1st, 2001, it has been in effect. Section 2(k) defines 'juvenile' to mean a person who has not completed eighteen years of age.

The text of Section 20 of the Act is as follows: "20. Regarding pending cases, a special clause. - Despite any provisions to the contrary in this Act, all juvenile cases already in progress in any court in any jurisdiction on the date this Act takes effect therein shall be continued in that jurisdiction as if this Act had not been passed. If the court determines that the juvenile has committed an offense, it shall record that determination and instead of imposing a sentence, it shall forward the juvenile to the Board, which shall issue orders in that matter."⁹

Although we are not unaware of the court's ruling in *Bhola Bhagat v. In the case of the State of Bihar*

⁷ Section 302 IPC deals with murder which has punishment which can extend to death sentence in rarest of rare cases

⁸ *Balu @ Bakthvatchalu vs. State Of Tamilnadu* on 12 February 2008, Appeal (crl.) 295 of 2008

⁹ Section 20 of the Juvenile Justice Act, 2000 as amended by the Juvenile Justice Act 2015

the court was required to examine any argument made with great care in light of the fact that socially conscious legislation is generally beneficial.

We are, therefore, of the view that in this case the trial judge should be directed to hold the inquiry in regard to the age of the appellant on the date of commission of the offense and in the event it is found that the appellant was a juvenile within the meaning of the provisions of the said Act, he should proceed with the matter in accordance with the law. It is directed accordingly. The appeal is allowed on the aforesaid terms.

Conclusion:

In Conclusion, it can be said that the Juvenile Justice system requires a fresh look in India.¹⁰ Even the observation homes require financial assistance and the scope of extending child welfare programs, community service programs, organizational behaviour programs, etc. India can learn a lot from the UK, USA, and many other developed nations where the bigger objective is in the context of reformation of the children in conflict with the law than punishing them.

In India, compared to western nations, there is very little juvenile delinquency. According to data from the National Crimes Report Bureau report, the proportion of juvenile crimes to all crimes in 2013 was 1 point 2 percent. However, it was discovered from the statistics that from 2003 to 2013, it slightly increased from 1% to 1%. Although it is a very small percentage, it is alarming, so attention must be paid to this issue if we are to make our nation free from crime. The only methods that can stop the issue are punitive or deterrent measures. It is necessary to take proactive measures in this regard, such as reformation, rehabilitation, and reintegration with society at large.

Article 40 of the U.N. Convention prescribes and provides that a child who has been accused of having violated the penal law shall have the following guarantees: being informed right away about the charges against him and receiving legal or other appropriate assistance in building a defense.¹¹ He also has the right to have the case decided quickly by a competent and impartial authority or judicial body. He is also not required to confess guilt and is given the opportunity to question witnesses.

¹⁰ It also includes the Juvenile Justice Act, 2015

¹¹ Article 40 of the UN Convention on Child Rights

At the same time, the state can establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. As a result, in accordance with U. N. According to custom, the JJ Act could have set a minimum age requirement—say, 14 or 16—below which a person could not be considered to have the mental capacity to commit an offense. In brief, the U. N. The prosecution of a minor who has committed a crime in violation of the regular penal laws are not prohibited by the convention.¹²

The Way Ahead:

The juvenile justice system in India needs a serious overhaul. Several other nations, including the U. S. also the U. K. Both of which have ratified the U. N. Convention, like India, have seen a rise in violent crimes committed by young people, but they have taken action to change their laws. The majority of U.S. S. Have passed a juvenile code with rehabilitation, not punishment, as its primary goal. Instead of appearing in adult court, juveniles do so. Only rehabilitative measures or assistance from government programs may be ordered by juvenile courts; they lack the authority to impose punishment. But ever since a rise in juveniles committing violent crimes in the 1990s, U. S. In response, states have taken a "get tough" stance.¹³

India can leave the discretion open to the Juvenile Justice Board, that if a juvenile within an age bracket of 15 to 18 years had committed any heinous crime he can be send to a Criminal Court of Original Jurisdiction to be tried. It is up to the discretion of the judge or magistrate as to whether any leniency should be shown in the context of punishment. Sending these offenders of heinous crimes to 3 years stay in observation homes is not the solution.¹⁴

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¹³ In Indian case, JJB can decide if heinous crime like rape or murder is committed whether the juvenile can be tried by JJB or Criminal Court of original jurisdiction. In US or UK they are tried by criminal court only.

¹⁴ The discretion is there with the JJB for the time being in force.

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