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Fractured Juvenile Justice System

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Children are the actual shaper, the gentle push, the change-makers, creators of the future of the nation. They are the most dynamic segment of the population and so the wealth of the nation lies in them. As the saying goes, “the future of the country is in the hands of the young mind of the country”. The young mind helps in the development of the country but if this young mind is not made on the right path, then how will the country develop? The age at which children should study, play and do something productive, the rate of crimes committed by children is increasing day by day which is affecting the future of the country and so it is a worrying issue for our country. Several cases of juvenile delinquency have been reported from different parts of the country. The Government is trying to prevent such offenses by juveniles by enacting various laws, but the results have been fruitless.

Keywords: *juvenile delinquency, care, protection, motive, crimes, doliincapax.*

INTRODUCTION

The rate of various serious offenses such as theft, robbery, and even rape and murder by children who is not more than 16 years, has increased and become common now. For committing the crime, children under the age of 10-12 years are used as a tool as it is easy to manipulate them at this stage. Minors who have experienced violence at home or sexual abuse, are likely to enter into such offenses. The best future behavior predictor is past behavior.

Children who are first involved in delinquency face a great risk of becoming chronic offenders. Population constituted of Child delinquents is generally not recognized as something to prevent them from becoming a serious issue in the future. When there is the involvement of a kid under the age of 10-17 in some illegal activity then it is Juvenile Delinquency. To rehabilitate the child who has committed the offense instead of punishing them, the Juvenile Justice System was made. This system aims to enhance positive change in the behavior of those children who had committed an offense as children can sometimes make wrong decisions but the same treatment as an adult is not correct, juvenile delinquency should not be punished with equal severity but there should be special juvenile custody centers which can guide them and make them understand what they did harm the society in various ways and how can it be rectified by them.

LEGAL PROVISION UNDER THE INDIAN PENAL CODE, 1860

Indian Penal Code, 1860 provides provisions for the protection of children. Under section 82 of this code, it is clearly stated that “Nothing is an offense which is done by a child under seven years of age¹”. No child can be held criminally responsible who is under 7 years of age as such child is incapable to understand the difference between correct and incorrect or acceptable and not acceptable². The Law provides complete immunity to such a child from trial and conviction. According to section 83 of this code, it is provided that an act of a child who is above seven and under twelve of immature understanding, will not be an offense³. It means that the Law confers absolute immunity from criminal trial to the child on the date of committing the offense is between 7 to 12 years of age only if it can be proved that the child had not attained sufficient maturity to understand the consequences of the conduct.

Doli incapax, which is a Latin maxim it means ‘incapable of committing a crime’ and behind the definition of juvenile, *Doli incapax* is the principle⁴. It assumes that children below a certain legally specified age do not have the cognitive ability to discern right and wrong. Based on this

¹ Indian Penal Code, 1860, s 82

² PSA Pillai: *Criminal Law* (12th Edition, Lexis Nexis 2014) 71

³ Indian Penal Code, 1860, s 83

⁴ Nidhi Bajaj, ‘All you need to know about Doli Incapax’ (Ipleaders, 3 January 2022) <<https://blog.ipleaders.in/all-you-need-know-about-doli-incapax/>> accessed 08 February 2022

principle, it is held that children below a certain age do not understand the consequences of actions done by them and therefore they should not be subjected to the criminal justice system. Before the Juvenile Justice Acts of 1986, 2000, and 2015, there was the Children's Act of 1960, which aimed to provide a uniform policy that further protect the rights of Juvenile and rehabilitation. It gave effects on the issue of Juvenile Justice. After this, the lawmakers of India for the concerned Juvenile Justice System came forward with new and stricter law. So, the Juvenile Justice Act, 1986 then, the Juvenile Justice Act, 2000, and then in 2015, an amendment was passed by the Parliament.

WHO IS A JUVENILE?

Juvenile Justice Act, 1986 defines a juvenile, who in the case of a boy has not completed the age of 16 years and in the case of girl 18 years of age.⁵ Later, the Juvenile Justice (Care and Protection of Children) Act, 2000 was passed and it raised the age of a boy to 18 years and maximum detention of 3 years⁶. But the purpose for which this system was enforced is not served properly. In some cases, Youths were treated just as an adult and sometimes the juvenile courts act leniently and avoid harsh punishments even in case of grave offense which for an adult possess punishment of 10 years or more, and the juvenile offenders are held at juvenile home for 3 years only because they were under 18 years of age.

In the case of Mukesh & Ors. v State of Delhi⁷, which is the "Delhi Gang Rape case" was refused to grant the harsher punishment by the apex court and tried as a minor. One of the rapists was under the age of 18 at the time of the offense and so, it gave him security from harsh punishment. But this decision led to questions and led the apex court to rethink. In 2015, an amendment was brought to the prior legislation and the Juvenile Justice (Care and Protection) Act⁸ was approved which tried children of age 16-18 years as an adult in case of a

⁵ *Juvenile Justice Act, 1986*

⁶ *The Juvenile Justice (Care and Protection of Children) Act, 2000, s 2(k)*

⁷ *Mukesh & Anr. V State for NCT of Delhi & Ors (2017) 6 SCC 1*

⁸ *The Juvenile Justice (Care and Protection of Children) Act, 2015*

heinous crime committed by them⁹. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 looks to alter the previous Act. This amendment is intended to strengthen children's protection.

ISSUES IN THE JUVENILE JUSTICE SYSTEM

The major loophole in the juvenile justice system is age determination. There is a lack of clarity with it. There are two ways to the determination of the age of an accused, either through documentary evidence or medical evidence. In the case of *Jaya Mala v Home Secretary, Government of J & K*, it was held by the Hon'ble Supreme Court that age is not conclusive proof when ascertained by medical examination¹⁰. In another case of *Bhoop Ram v the State of UP*, it was held that documentary evidence will be considered over medical evidence. This judgement concluded that to convince the court documentary proof is required. Fake documents are already a major concern in view of internal security¹¹. In the case, *Darga Ram v the State of Rajasthan*¹², the Jagran was organized by the complainant. The complainant's daughter named Kamla who was 7-year-old went to sleep in a nearby place. When the complainant came home, he found his daughter missing. When the search was extended, it was found that she had been raped and then killed. The case was registered under sections 302 and 376 of the Indian Penal Code, 1860 against an illiterate adolescent, as injuries found in his body and blood group also matched with the bloodstain on the victim.

An appeal was raised that on the date of commencement of this offense, the offender was juvenile. As he was illiterate and did not have a school certificate, the court directed for medical evidence. After medical examination, he was found between 32-36 years. It often happens that the offender by showing false documents, escape from punishment, and take advantage of this Juvenile Justice Act, 2015. Because under the 2015 Act offenses by juveniles are categorized and based on that punishment is given. For serious offenses, imprisonment of

⁹ Esha Roy, 'Explained: What changes in JJ Act for juvenile offenders and District Magistrates?' (The Indian Express, 5 August 2021) <<https://indianexpress.com/article/explained/juvenile-justice-amendment-bill-2021-explained-7429971/>> accessed 08 February 2022

¹⁰ *Jaya Mala v Home Secretary, Government of J&K* AIR 1982, SC 1297

¹¹ *Bhoop Ram v The State of UP* AIR 1989, SC 1329

¹² *Darga Ram v The State of Rajasthan* (2015) 2 SCC 775

three to seven years is given, then the punishment of more than 7 years for heinous offenses and punishment of fewer than 3 years for a petty offense. If a juvenile who is above 16 and below 18, has committed a heinous crime then the Juvenile Justice Board decides that he should be tried as an adult based on mental and physical health assessment that they know the nature of the crime or not and after satisfaction of the enquiry, trial proceeds under Code of Criminal Procedure, 1973¹³. But then also death penalty and life imprisonment are prohibited, punishment is confined to normal jail. The court may release the juvenile if the court found him / her reformed sufficiently. This is sometimes taken as an advantage.

For instance, if a person above 18 years is charged under section 302 of the Indian Penal Code, 1860 then, he shall be punished with death or imprisonment for life with a fine¹⁴. But if the Juvenile board is of view that a person who has committed a heinous crime is below 16 years of age then the board can even leave him on probation and in the case of a minor who is above 16 years of age committing a heinous crime, punishment of more than 7 years but not capital punishment. In a report from the Times of India, a 15-year-old girl killed her mother and intended to create false evidence by showing a suicidal case. It cannot be termed as an innocent mind. The environment in which juvenile lives play a very integral role in their development both positively and negatively as it directly affects their mental state, and it changes their perception towards society and country. Their surrounding environment teaches them the difference between right and wrong. For instance, if someone has been seeing violence around him since childhood or often hears any kind of abusive words, then he learns it very easily and does not even consider it wrong. Like if a father beats the mother and disrespects her, the son may consider it right and repeat the same with his wife and he thinks that violence is the only way to prove himself superior.

Although Government with a motive to prevent juvenile delinquency and provide protection and care has adopted Juvenile Justice (Care and Protection) Act 2015. But here it is also necessary to check whether this purpose is being fulfilled properly in the juvenile home. If

¹³ Sadaf Modak, 'Explained: When a juvenile is tried as an adult, when not' (The Indian Express, 22 July 2019) <<https://indianexpress.com/article/explained/when-a-juvenile-is-tried-as-an-adult-when-not-5840823/>> accessed 08 February 2022

¹⁴ Indian Penal Code, 1860, s 302

children can be easily manipulated for a commission of an offense, then, this can be done inside the juvenile home also. The purpose of this Act will be fulfilled only when proper education and legal guidance are given to them, but it does not happen in incorrect manner. The lack of supervision results in harsh procedures only and not protecting the children and bringing them on the right path.

It is a matter of thinking that what can be the reason that forces children to follow the wrong path at such a young age. The purpose of this Juvenile Justice (Care and Protection) Act is not to treat children as criminals, but to correct them and teach them what is acceptable and what is not, and to differentiate between wrong and right. But if they are not properly supervised in the juvenile home, then what is the use of this act? Another loophole is that Juvenile homes are not properly taking care of the nutritional, physical, and mental needs of children. This is the reason why issues related to their health occur at such young age and they are emotionally abused as well. If there is any physical or mental problem at an early age, it persists in their future life as well. That's the reason why when juveniles move out of the Juveniles Home, there is a higher probability of them joining the criminal world. So, the purpose of this act is to protect and take care of juveniles and there is no discrimination against them, this purpose is not served properly.

CONCLUSION

The legislation needs to look at the seriousness of the offense rather than the age and when the board is satisfied after considering all facts and circumstances then the trial should proceed further by the Criminal Procedure Code, 1973. But this process takes so long that even their basic education is disrupted which leaves them unable to compete in jobs and leads to a higher unemployment rate. There is a lack of proper sensitization among the staff in Juvenile homes which affects the mental health of children. So, the Government should implement this act properly to ensure proper functioning, availability of qualified staff that there is no discrimination against juveniles, there should be regular auditing of the institutions for ensuring. Counselling of the juveniles should be made a norm. Try to engage juveniles in some productive work and digital learning and technology-driven courses should be preferred

which can help them to track their life on the right path and live life peacefully. After all, the dominant policy behind prosecuting children should be their proper rehabilitation and bringing them into the mainstream of society so that they will be the true asset of the country.