

ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 IN RELATION TO FEMALE JUVENILE

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Abstract

In India, the girls are introduced to Juvenile judicial procedure due to discriminatory and derogatory circumstances faced by them at home as well as in society. It has been observed that such circumstances forced the female juvenile delinquents to elope from home and commit various offences. Consequently the society symbolise them as an offender. Absence of a special law for female Juvenile delinquents has debarred them from getting justice. Also the deteriorating conditions of Juvenile Reform Centres and exploitation of female Juvenile delinquents by the authorised officers drive them towards committing sexual offences and other related activities. Juvenile delinquency is a global issue under which the number of female Juvenile delinquents is increasing vigorously.

Keywords: Juvenile, Justice, Female, Relation

INTRODUC TION

No child is born with evil mind But his or her contacts and circumstances of the society paves the way towards the world of crime. The all round development of a child does not merely include the physical and mental development but also the inculcation and development of moral values. To ensure the continuing detachment of a juvenile from the world of crime, the essential requirements are proper supervision, protection, appropriate education and easy availability of required resources. This restricts a child from deviating his or her mind and helps in the development of a positivity embraced brain. Family plays a major role in the upbringing of a child. It has been observed that children of nuclear family are more susceptible towards opting the road to crime than those of joint families. Lack of maturity, inability to differentiate between right and wrong and negative mindset are some of the probable consequences of such tendency. Even though a lot of programs are organised for the welfare of juveniles, yet the increasing number of juvenile offenders is an issue of serious concern. Now the question arises whether the existing laws are inefficient or are not effectively executed?

HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM

Before 1850, neither there was any law for the juveniles nor it was required. In 1850, Apprentices Act was passed which was meant to provide commercial training to children. In 1860, Indian Penal Code came into existence under which children below 7 years of age were absolutely exempted from any kind of criminal liability. However, in case of children between 7 to 12 years of age Indian Penal Code granted qualified exemption subject to the condition of their understanding. After independence, Government of India passed Children Act, 1860. To govern the juveniles committing offence, Juvenile Justice Act, 1986 came into existence. But even after the law was made, there was a consistent increment in the number of juvenile offenders and irregularities were observed in the security and rehabilitation of such juveniles. As a result, Juvenile justice (Care and Protection of Children) Act, 2000 was enacted by the Parliament substituting the previous law on juveniles.

After the heinous incident of “Delhi gang rape” in 2012, the need to amend the law on juveniles was felt more than before. Consequently, the previous law was repealed and Juvenile Justice (Care and Protection of Children) Act was passed by Parliament in 2015. The said law not only provides for commission of offences by the children but also provides for the proper rehabilitation of juveniles and it's proper supervision by the appropriate agencies. An important feature of the present law is that if a juvenile, above 16 years of age but below 18 years of age, commits any heinous offence and is found to be sufficiently mature by Juvenile Justice Board to understand it's consequences, will be tried as an adult.¹ The Act is applicable equally to both male and female juveniles.

JUVENILE

The word 'juvenile' has originated from the latin word 'juvenis' which means young or youth. The word 'delinquency' owes it's origin from the latin word 'delinquer' which means involved in wrongful acts.² The words 'juvenile' and 'minor' are used to signify children below 18 years of age. While the word 'minor' is used for determining legal qualification of a person, 'delinquent' is used for the person below 18 years of age and are tried under the Juvenile Justice (Care and Protection) Act,2015 for committing offences.

The juvenile justice procedure under the Act provides for two kinds of juveniles - Firstly, those who violate the law and commit any offence; Secondly, those who are debarred from the essentially required care and protection i.e. orphan, sexually exploited and deserted. According to section 2(12) of the Act, “child” means a person who has not completed 18 years of age.³

JUVENILE JUSTICE PROCEDURE IN INDIA

India is a land of culture and values. Joint family tradition, parental regulation, religious values, etc. are some of the factors which have prevented the rise in the number of juvenile offenders in India in comparison to other countries. But it does not mean that our country is free from them. The number is still not small and needs to be regulated with immediate effect. Ancient laws provided similar kind of punishment irrespective of the fact that the offender is male, female, minor, adult or aged. But with the adoption of Reformatory form of penal procedure, the offenders is treated with sympathy and greater stress is laid on their rehabilitation and involving them back in the main stream of the society. This is the reason for keeping children and minors in the category of inquisitives and innocent. This inquisitive nature often deviates minor towards the world of crime and tempting atmosphere. Juvenile offenders are a worldwide problem and to overcome the rising number of juvenile offenders in India, Juvenile Justice (Care and Protection)Act, 2015 was enacted.

There are certain special provisions in Indian Penal Code 1860 and Code of Criminal Procedure 1973 which provides for special treatment and procedure for Juvenile offenders. Section 82 and 83 of Indian Penal Code provides age category of children who could commit offence.

According to section 82 of Indian Penal Code “Nothing is an offence which is done by a child under seven years of age.”⁴

¹ Juvenile Justice (Care and Protection of Children) Act, 2015

² Malik.krishna pal,(2012) Administration of juvenile justice in india, Allahabad law agency

³ Juvenile Justice (Care and Protection of Children) Act, 2015

⁴ Indian Penal Code,1860

According to section 83 of Indian Penal Code “Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”⁵

These provisions of Indian Penal Code provide immunity to the children up to 12 years of age if the act committed by them, though an offence, is still not punishable but where an offence is committed by a child above 12 years of age, he or she shall be tried as per the act passed by the parliament.

According to section 27 of Code of Criminal Procedure, 1973 “Jurisdiction in the case of juveniles - Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.”⁶

Code of Criminal Procedure specifically provides for keeping the name and address of the juvenile offenders confidential so that juvenile remains protected from public insult as well as the society keeps sympathetic attitude towards him or her. Section 360 of Code of Criminal Procedure Act, 1973 provides for release of juvenile offenders on probation in order to keep them away from the usual court procedure and provide appropriate care and rehabilitation.⁷

In the amended Juvenile Justice (Care and Protection of child) Act 2015, two bodies have been specifically empowered to deal with juvenile related matters; they are Juvenile Justice Board and Child Welfare Committee. As per the act, both the institutions will be constituted in every district.⁸

After the ‘NIRBHAYA CASE’, the act was amended Mainly for two purposes. First, juvenile offenders between the age of 16 to 18 years committing heinous offences will be tried as adult and secondly the age of juvenile offenders was reduced from 18 years to 16 years.

According to section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 where an offender who is above the age of 16 years but below the age of 18 years commits any heinous offence, The juvenile justice board will make a preliminary evaluation as to the mental and physical capacity of such juvenile in relation to the consequences and circumstances of the offence. In making such evaluation, the board may take the assistance of experienced psychiatrist and social worker.

After such evaluation, if the board is of the opinion that such a juvenile is to be tried as an adult it may transfer the case to the competent court.⁹

⁵ Indian Penal Code, 1860

⁶ Code of Criminal Procedure Code, 1973

⁷ Code of Criminal Procedure Code, 1973

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

⁹ Juvenile Justice (Care and Protection of Children) Act, 2015 Section 18(3)

In the case of Sampurna Bahru vs Union of India¹⁰, Sampurna Bahru was a social activist and filed a PIL on behalf of HRLN¹¹ in 2005 which was pending from 12 years.

On 9th February 2018, Supreme Court made a judgement Under which certain directions were given to the various state governments to improve the conditions of juvenile justice board. The court ordered that the state child protection society and district child protection society should contain the members of civil society as well as police. Also every district of every state should have a juvenile justice board consisting of trained workers for providing appropriate environment to the juvenile. The court also directed the State Government and the related authorities to appoint a sensitive and trained advocate and probation officer for the purpose of dealing with the juvenile offenders. Every district should also consist of special juvenile police. The juvenile justice board and child welfare committees should make a regular online update of their administrative work at Central level. The Court also pointed out towards lack of protection homes for juvenile offenders and advised a mandatory Registration of childcare institutions running through Governmental and Non Governmental organisations so that incidents such as child trafficking and sexual exploitation of child could be avoided. In the end, the court ordered for the audit of the implementation of the act in every six months.

In Saurabh Jalinder vs State of Maharashtra (2018),¹² a petition challenging Juvenile Justice Board was admitted by Bombay High Court. The board was challenged for charging the petitioner for attempt to murder under section 307 of Indian Penal Code 1860. The petitioner was of 17 years of age and came under the definition of juvenile as provided under Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The petitioner was presented before the psychiatrist for evaluation and as per his report Petitioner was found to be mentally and physically capable enough to commit the offence. The case was transferred to children's court. This order was challenged before the High Court. The honourable court set aside the procedure adopted by the board and directed rehearing of the case.

CONDITION OF FEMALE JUVENILE IN INDIA

India is a male dominated country where the situation of female has always been inferior from their counterpart. Even today the society discriminates between girl and boy. The girls neither have many options to work nor do they have the facility for it as compared to the boys. This is the reason why the male juvenile offenders commit heinous offences while the female juvenile offender commit comparatively less grave offences. Before we discuss the rising number of female juveniles delinquents we need to understand the reasons which are forcing the women to opt the road to crime.

If we compare the offences committed by a male and a female, it is clear that gravity of offences committed by women is lesser as compared to those committed by men. Where the men are involved in commission of offences such as theft, dacoity, murder, the women are mostly involved

¹⁰ <https://hrln.org/litigation/after-12-years-a-victory-for-the-children-of-india>

¹¹ Human Rights Law Network

¹² <https://www.scconline.com/blog/post/2018/12/28/juvenile-cannot-be-transferred-to-childrens-court-if-crime-committed-not-heinous-offence-under-jj-act/>

in sexual offences or eloping from the home. Involvement of women in sexual offences is mostly because of biased behaviour of society and family towards them. When a woman doesn't feel safe at home she prefers escaping from such home which eventually makes her a victim of sexual exploitation. There are various reasons behind the increasing number of offences¹³:-

- 1) **Biological Outlook**- It is always said that all children are equal in the eyes of parents. But in a male dominating country like India the rule of gender inequality still exists. When a girl takes birth in any house she is made to feel that her birth is not as auspicious as the birth of a boy. Also, the facilities and rights available to a boy are not considered as viable for a girl due to which She remains panicked and fearful right from her birth. As a result of such restrictions, if any undesirable event occurs with her she doesn't carry the courage to face it or to share it with someone and finally falls into the pit of crime and offences.
- 2) **Psychological Outlook**- Family is considered to be the first school of a child. But if the child doesn't get the required affection and protection from the family, it becomes difficult for him or her to acquire a firm Mental strength. A child is not an offender by birth but certain factors drive the child towards the world of crime. Family issues, inferiority complex, introvert nature and comparison with other children are such factors which helps in inculcating the seeds of crime in the mind of a child. This mindset of providing every possible freedom to a boy while restricting a girl in every possible way opens the gate of criminal world for such girl child.
- 3) **Social Logical Outlook**- In present era both the parents being working is one of the reason why the children are unregulated and not properly supervised. This work pressure and lack of conversations between parents and children create differences between them. No regulation and supervision and lack of affection makes it easy for criminal thoughts to find a habitat in the mind of children.

Apart from the family, a child spends most of the time with his friends which include friends from the school as well as from the locality. Lack of affection and supervision from the family makes it difficult for a child to distinguish between a good company and a bad company. Similar situation is faced by a girl child when her childhood remains devoid of love and affection from her parents.

Poverty, lack of education, unemployment, family problems, child marriage, etc. are some of the reasons which forces a woman to commit crime. Eloping from home is the most common event which occurs with most of the girls. After escaping, she becomes the subject of sexual exploitation and certain other criminal acts which makes it almost impossible for her to return back to her normal life. Consequently, there is a flurry of crimes in her life one after the other.

REHABILITATION HOME AND FEMALE JUVENILE

According to sec 47 of Juvenile Justice (Care and Protection of child) Act 2015 "The State Government shall establish and maintain in every district or a group of districts, either by itself, or through voluntary or non-governmental organisations, observation homes, which shall be registered under section 41 of this Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act".¹⁴

¹³ Malik.krishna pal,(2012) Administration of juvenile justice in india, Allahabad law agency

¹⁴ Juvenile Justice (Care and Protection of Children) Act, 2015 Section 47(1)

Many observation homes have been established for the rehabilitation and protection of juvenile offenders in India. Separate observation homes have been established for female and male juvenile offenders. If we discuss about the environment of such observation homes we'll come to know that Instead of helping the juvenile offenders from escaping the world of crime, they probably are becoming the centres where the such juveniles can find more ways of involvement in criminal activities. State govt., who was responsible for maintaining these observation homes is escaping from the liability by simply handing them over to the Non Governmental Organisations. Most of the observation homes are under inhuman conditions where we cannot imagine the rehabilitation or improvement in juveniles. That's why news of juveniles running from the observation homes is common now. Treatment like an adult offender, absence of appropriate facilities, sexual misconduct with the female juveniles forces them to run away from these homes. A news broke out in the Muzaffarpur district of Bihar where an observation home which was regulated by 'Balika grah sewaevam sankalp samiti'¹⁵ was a centre of sexual exploitation and rape of female juveniles and culprits were the female workers of that shelter home. We all are aware that such shelter home is a place where female juveniles or victims of misconduct are kept. Such juveniles are not only encouraged towards getting educated but are also provided an opportunity of getting trained in cloth stitching, drawing, etc. and alike commercial activities for ensuring a better future for them. Coercive behaviour and sexual misconduct forces girls to escape from the house. Habitual consumption of drugs is another reason of concern for juveniles. An instance of discovering ganja in the eatables sent to a child observation home in Sikandarpur puts a question mark on the aim of rehabilitation of such juveniles. Another such incident was exposed in Bihar where one of the female juvenile who got pregnant and delivered a child was actually raped in the observation home and that too in the presence of police.¹⁶ In November 2017, the victim was transferred from an observation home in north Bihar to a Women Protection home in Patna. After some time, when she was unwell and brought to hospital, it was found that she was pregnant. An investigation in the matter revealed that when the victim was being brought to be presented before Court in Betia in January 2017, she was raped in the train in the presence of police. Such instances prove that rehabilitation home for female juveniles are in deteriorating condition and require immediate attention of the concern authorities. Apart from Juvenile Justice (Care and Protection of Children) Act, 2015, the government of India has also framed Juvenile Justice (Care and Protection of Children) Rules, 2016 for the juveniles under 18 years of age.¹⁷ These rules prescribe qualifications for appointment of officers and workers in Governmental and Non-Governmental children protection home as well as provide for directions for regulation of their work. They also mandatorily provide for appropriate management of child care institutions and appointment of experienced and qualified officers to take care of various needs and requirements of children. Such officers and workers should be sensitive and duty bound in accordance with the given rules for the holistic development and security of the juveniles in the institutions. The rules also provide that character of such officers and workers should be verified by police. Even with such a detailed provision book, the condition of child care institutions has been a topic of serious discussion. Those who were supposed to be the caretaker of the whole procedure, their neglecting behaviour and lack of determination towards the work has brought the institutions in a traumatized condition.

¹⁵ <http://thewirehindi.com/76310/bihar-sheltor-home-sexual-harassment-case-chargesheet-against-21-accused-including-brajesh-thakur/>

¹⁶ <http://ni24news.com/minor-raped-in-presence-of-policemen-betiya-bihar/>

¹⁷ [Rlsa.gov.in/guidelines for children](http://Rlsa.gov.in/guidelines%20for%20children)

CONCLUSION

The indulgence of women in crimes in similarity with the men attracts our focus towards female juvenile offences. The prime reason of commission of offence by a woman is societal and sexual misconduct towards her. The lack of proper sensitivity and misconduct by police officers and the female workers of observation homes and rehabilitation centres drives a woman towards the world of crime. In order to prevent and eradicate this evil of female juvenile crime, the combined effort of women themselves, police and concerned officers and the social workers is required.

SUGGESTIONS

- A separate law should be made focussing only on female juveniles.
- Periodic training should be provided to officers appointed in relation to observation home.
- A legal procedure should be provided in order to regulate the conduct of such officers.
- State Government should conduct inspection of observation homes from time to time and ensure strict steps for procedural misconduct of concerned officers.
- Penal provisions should be included in the Act for any officer who is found to be indulged in inappropriate activity or is inadequately dedicated towards his or her duties.
- A wrong outlook of society towards any female juvenile offender always makes a way of her exploitation. In order to stop it, welfare programmes should be organised by the State authorities in order to spread awareness among the members of society.

REFERENCE

1. Juvenile justice (care and protection of children) Act 2015
2. <http://www.legalservicesindia.com/article/1486/Female-Juvenile:-Law-and-Society>
3. <http://www.wisdomcruix.lawtimesjournal.in/index.php/2017/03/07/increasing-female-juvenile-offenders-causes-concerns/>
4. <https://link.springer.com/article/10.1023/A:1025728822468>
5. <https://www.ncjrs.gov/pdffiles1/ojdp/226358.pdf>
6. <https://hrln.org/litigation/after-12-years-a-victory-for-the-children-of-india>
7. <https://www.sconline.com/blog/post/2018/12/28/juvenile-cannot-be-transferred-to-childrens-court-if-crime-committed-not-heinous-offence-under-jj-act/>
8. Indian Penal Code 1860
9. Criminal Procedure Code 1973
10. <https://hindi.livelaw.in/know-the-law/introduction-and-definitions-of-juvenile-justice-care-and-protection-of-children-act-171009>
11. <http://thewirehindi.com/76310/bihar-shelter-home-sexual-harassment-case-chargesheet-against-21-accused-including-brajesh-thakur/>
12. <http://ni24news.com/minor-raped-in-presence-of-policemen-betiya-bihar/>
13. [Rlsa.gov.in/guidelines for children](http://Rlsa.gov.in/guidelines%20for%20children)