

“Constitutional Provisions in Relation to Juvenile”

Akshita Khandelwal
S.S. Jain Subodh Law College,
Mansarovar
Jaipur

INTRODUCTION

“Injustice anywhere is a threat to justice everywhere”-Martin Luther King Jr.

From the last few years , crime rate is increasing at a very high rate and the persons who are involved , most of the time they are children . They are committing crime due to poverty, lack of education , upbringing environment of the child , parental case , etc.

Previously there are many loopholes in the system in which juvenile after committing heinous crimes escape very easily. Nirbhaya Delhi Gang Rape Case , forced the Indian Legislation to introduce a new law and thus , Indian Parliament came up with a new law which is known as “**Juvenile Justice (Care and Protection),2015**”

The major change this act brought is that juvenile who is under the age group of 16 to 18 years can be tried as an adult¹.

NEED OF REPLACING OLD JUVENILE ACT 2000 WITH THE JUVENILE JUSTICE ACT , 2015

After the 2012 , **Juvenile Act 2000** was a major issue and debatable topic as in **MUKESH & Ors. V. State of Delhi**² (popularly known as **Delhi gang rape case**) among the six accused , one accused was a few months away from being 18. He was 17 and a half when he took part in the gang rape of Nirbhaya in December 2012 . If he was six months older , then he would have been facing the prospect of capital punishment like his fellow convicts. Instead he was sent to a juvenile reformation home for 3 years on August 31, 2013 and after release placed under non- profit organization³.

In July 2014, Minister of Women and Child Development , Maneka Gandhi announces that they were working on a new law which will allow 16 year olds to be tried as adult. She said that more than half of the juvenile crimes were committed by teens who know that they get away with it. Changes in law will definitely lead to step back their feet while doing something wrong.

Juvenile Justice (Care and Protection),2015 was passed on 7 May 2015 by the Lok Sabha amid intense protest by several members of Parliament. It was passed on 22 December 2015 by Rajya Sabha and got presidential assent on 31 December, 2015. It came into force from **January 15, 2016**.

¹ Juvenile Justice Act§15(2015)

² 1998 SCC, Del 879:(1999) 77 DLT 181

³ Smriti Singh & Manoj Mitta, Nirbhaya case juvenile wasn't most brutal?, Times of India, Oct.3,2013

Juvenile Justice (Care and Protection), 2015 brings following major changes-

- 1.If the Juvenile under the age of 16-18 years commits offence of heinous nature , then they can be tried as adults.
- 2.The group of 16-18 years can be further examined by the Juvenile Justice Board to know if the crime was committed by that person as an adult or a child.
- 3.The Juvenile Justice Board is required to have a team of social experts and psychologists and this is done to ensure that the rights of a juvenile are protected if the crime was committed by him as a child.

DEFINITION OF JUVENILE UNDER THE JUVENILE JUSTICE ACT , 2015

JUVENILE⁴ means a child below the age of eighteen years.

The act classifies the term Child into two categories namely-

- 1.Child in conflict with Law⁵
- 2.Child in need of care and protection⁶.

Therefore, Juvenile i.e. child in conflict with law means a child who has committed an offence but has not completed 18 years of age on the date when the offence took place.

In modern law, many countries have adopted principle of “**Doli Incapax**”⁷ which means the person incapable of understanding the commission of crime⁸.

CONSTITUTIONAL PROVISIONS RELATED TO JUVENILE

The Constitution is the basis of framing any law. Any law which is framed should not be in violation with Constitution. It is the supreme power. Constitution has given certain rights and duties to its citizens.

When the Juvenile act is framed, these Constitutional rights and duties are taken into consideration so that the Act should not violate the rights of children and the state would be able to perform all its duties which are mentioned in Indian Constitution.

The rights and duties in the Constitution regarding children are as follows-

- 1.Article 14-Right to Equality.
- 2.Article 15(3)-It provides the state to make special laws for women and children.

⁴ Juvenile Justice Act,2015 §2(35)

⁵ Juvenile Justice Act,2015 §2(13)

⁶ Juvenile Justice Act,2015 §2(14)

⁷ IPC §82 states that a child below the age of seven years is doli incapax

⁸ Namrata, Juvenile Justice System in India, ipleaders, May 30,2019,<https://blog.ipleaders.in/juvenile-justice-system/>

3. Article 21A-Right to free and compulsory education to all the children aged between 6 to 14 years of age.

4. Article 24-Right to be protected from any hazardous employment under the age of 14 years.

5. Article 39-Right to be protected from Human Trafficking and forced Labour.

6. Article 39(f)- Children should be given opportunities and facilities to develop in a healthy manner and they must be protected against exploitation.

7. Article 47-Right to be provided with proper standard of living and good nutrition.

To protect Article 14, Right to Equality for children who belong to different age group, the act provides for intelligible differentia. So, there is classification for the children who have committed petty offences, serious offences, heinous offences.

The test of permissible classification requires two conditions to be fulfilled-

- that the classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.
- that differentia must have a rational relation to the object sought to be achieved by the statute in question.

There must be nexus between the object of the Act and basis of classification⁹.

BASIS OF CLASSIFICATION-

Children under the age group of 18 years may have different mental capabilities since the development of brain takes place at different stages in different individuals, the severity of the crime committed can also differ thus indicating different levels of maturity¹⁰.

Thus, the children who have committed petty crimes such as pickpocketing should be differentiated with those who have committed heinous offences and thus the crimes are divided into three-

- i. Petty Offences
- ii. Serious Offences
- iii. Heinous Offences

Case- Roper v. Simmons

The Supreme Court of United States opined that all juveniles should not be treated in single class instead juvenile should be considered on the basis of their maturity level, life

⁹ D.S.Nakara v. Union of India, (1983) 1 SCC305, para11

¹⁰ Astha Mishra, Adult time for adult crime, The SCC Online Blog, Jan.31,2018,<https://www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>

experience, moral responsibility, etc. It held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18¹¹.

CONSTITUTIONAL AIM IS ACHIEVED

In the Juvenile Justice Act, 2015 if the child between the age of 16-18 years committed a heinous crime can be treated as an adult. In this, it is to be considered that by which intention the child has committed offence, his/her background, his/her mental ability to understand its consequences. In the previous Act Juvenile Justice Act, 2000, the punishment for all of the child committing offences are same but now in Juvenile Justice Act, 2015 the children's Court will examine that whether the child have committed offence like an adult mind or not thus it qualifies the test of permissible classification. Article 14 clearly indicates that Equals should be treated as equals, unequals should not be treated as equals. The child before attaining 21 years of age can be sent to reformation centres and after attaining age of 21 years shall be transferred to jail. Therefore, protecting the fundamental rights to live with dignity given under the Constitution of India¹².

Case- Bodhisattwa Gautam v. Subhra Chakraborty¹³

Offence of rape was held to be a violation of the right to life guaranteed under Art. 21 of the Constitution of India. Fundamental rights are superior to any other right guaranteed by any statute. Thus, making the blanket immunity to the juveniles as being ultra vires the Constitution¹⁴.

Case- Munna v. State of U.P¹⁵.

The Apex Court give certain directions regarding children in prisons. The Supreme Court says that even if a child is found to be guilty of an offence, he should not be mistreated. They should not lock-up their fundamental rights when they enter in jail¹⁶.

Case- Ram Prasad Sahu v. State of Bihar

Supreme Court held that a child offender can be convicted of committing rape and an attempt to commit rape¹⁷.

¹¹ 543 U.S.551(2005)

¹² Astha Mishra, Adult time for adult crime, The SCC Online Blog, Jan.31,2018, <https://www.scconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>

¹³ (1996) 1 SCC 490

¹⁴ Astha Mishra, Adult time for adult crime, The SCC Online Blog, Jan.31,2018, <https://www.scconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>

¹⁵ AIR 1982 SC 806

¹⁶ Anubhav Pandey, Challenges to Juvenile Justice Laws in India, ipleaders, Sep. 12,2018 <https://blog.ipleaders.in/juvenile-justice-2/#:~:text=According%20to%20Section%2082%20of,be%20endowed%20with%20any%20discretion.>

¹⁷ (1980) 1 SCC 74

CRITICAL ANALYSIS OF JUVENILE JUSTICE ACT, 2015

- Section 4(2)(viii) provides child in need of care and protection for those who have been to abused exploited for sexual abuse. This provides protection to children to those who have been victim at this time but ignores who have faced the sexual abuse in the past.
- The method of identifying whether the child age of 16 to 18 years committed the crime as a child or as an adult is very subjective and there is assumption that the child is guilty of an offence or not. This is infringement of Art.14 and 21 as the procedure is arbitrary and irrational.
- When the person has reached the age of 21 years the fate of the person will fall in the hands of Children's Court . The Court will decide whether a person has undergone reformatory changes or can be a contributing member of society. Such thing is very arbitrary which falls foul of Article 14 and Article 20(1) of Indian Constitution and if a 21 year old adult will be with hardened criminals, the child will be like them¹⁸.
- It is pointed out by experts that Juvenile Justice Act,2015 is in violation of the norms of United Nations Convention on the Rights of Child since it requires every child under 18 to be treated as equal. Article 14 Right to Equality is violated in that sense.

Justice J.S.Verma Committee report-

Justice J.S.Verma Committee report on 'Amendments to Criminal Law' has noted that 'The Juvenile Justice Act,2015' has failed miserably to protect the children in the country. We cannot hold the child responsible for a crime before first providing to him/her the basic rights given to him by the Indian Constitution. Committee member Gopal Subramaniam told a press conference that the issue has to be looked into its totality¹⁹. The juvenile homes are unable to provide for the children what is their constitutional rights and these children without proper and adequate fulfillment of their nutritional, emotional, physical and mental requirements are often not able to contribute productively to the society.

Case-Shilpa Mittal v. State(NCT of Delhi)

In July 2016, it was the first case after the enactment of New Juvenile Justice Act, 2015 whereby the accused was tried as adults. The accused 17 year and 11 months ran over a 32-year-old marketing executive while driving his father's Mercedes. Only those offences which prescribe minimum sentence of 7 years or more can be regarded as heinous offences. Offences not providing minimum sentence of 7 years, held, cannot be treated as heinous offences²⁰.

¹⁸ Deepali Sherawat, Analysis:The Juvenile Justice (Care and Protection of Children) Act,2015, Lex Life India(Jan.1,2020), <https://lexlife.in/2020/01/16/analysis-the-juvenile-justice-care-and-protection-of-children-act-2015/amp/>.

¹⁹ Bindu Shajan Perappadan, Juvenile Justice Act has failed miserably, The Hindu(June 13,2016,10:10), <https://www.thehindu.com/news/national/juvenile-justice-act-has-failed-miserably/article4337040.ece>

²⁰ (2020)2 SCC 787

Case- Jhabua Murder Case

Two minors aged 17 and 16 years were given life imprisonment. The two accused stabbed the deceased(teenager) over a matter of 800 rupees²¹.

Case-Saurabh Jalinder Nangre v. State of Maharashtra

Juvenile cannot be transferred to Children's Court if crime committed is not heinous offence under Juvenile Justice Act²².

CONCLUSION

The rising rates of juvenile delinquency and crime committed by juveniles is a pertinent issue today and due focus must be provided. Though the govt. has passed statutes dealing with this issue, these statutes have shown to do nothing to neither reform juveniles, nor deter them from crime. Reducing the age of the juvenile delinquents from 18 years to 16 years is not a solution. It is appreciable that Indian Legislature has fulfilled its obligations which are mentioned under Convention, the govt. should try to implement the Act properly and should follow reformative approach.

²¹ Sakil Mekaad, Tried as adults, minors sentenced to life for murder by Jhabua Court, Times of India, March1, 2017

²² 2018 SCC Online Bom. 6295.