

Journey of Juvenile Justice in India

The word Juvenile was originated from the latin term “Juvenilis”, which means young or youthful. The Juvenile Justice is a system of laws, policies and procedures which provides the manner for the treatment of the Non-adult who have violated the law and who need the care and protection, keeping in view their young age and level of maturity. In case of Juvenile Justice, the court has to consider the interest of both the victim and the delinquent for the Justice. Severely punishing an immature young person for getting into conflict with social norms, who cannot even make a proper distinction between right and wrong and can get easily influenced negatively by the surroundings and circumstances, is not justice.

A child is like the “clay” and society as a mould gives them shape and a crooked shape requires improvement not the cast-off. Justice requires that we work to restore those who have been injured. In case of a commission of an offence by the vulnerable youth, both the victim and the offender are the injured and justice can only be done by treating the both of them. Therefore, the juvenile justice in India provides the system for the rehabilitation of the young delinquents during the course of the punishment, the procedure for the care and protection of deprived children to prevent crimes and for the exercise of leniency in punishment to the young offenders. The leniency exercised by the courts in punishment has always been a subject of debate, especially in case of children aged between 16 to 18 years, as in most of the crimes, the offenders are considered young due to age but the cruel and gruesome manner or pattern in which they commit the crime manifest their tendency and capability which is far

beyond the people of their age. The Juvenile Justice Act, 2015 tried to end this debate in some way but how successful it was let's discuss it into detail.

Post- Independence development of Juvenile Justice System in India

India marks the evolution of its juvenile Justice System through the development of its domestic laws in this regard which has been described as follows:

1. Children Act, 1960.

This was the first central enactment after the independence which dealt with Juvenile Justice but it was only limited to the Union Territories as the States were entrusted with the power to make law regarding this subject under Constitution. There was still a need for the uniform legislation for the whole country. After the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 ("The Beijing Rules") by the General Assembly of United Nations on 29th November 1985, Parliament decided to enact a central legislation to give effect to the Beijing Rules by the exercise of powers provided under Article 253 of the Constitution and Entry 14 of the Union List. As a result, Juvenile Justice Act, 1986 came into force.

2. The Juvenile Justice Act, 1986.

This Act provided the unequal determination of juvenility on the basis of age and gender. In case of boys, they were treated as juvenile only up to the age of 16 years while in case of girls, the age was up to 18 years. The enactment was brought into force right after the landmark judgment of Supreme Court in **Sheela Barse & Ors. Vs. Union of India, JT 1986 136, 1986 SCALE (2)230**, which dealt with the issue of the speedy investigation and trial of Juvenile Offenders. However, the guidelines provided in the aforesaid judgment were not present in

the statute. In 1992, India ratified the United Nations Convention on the Rights of the Child, 1989 (UNCRC) and felt the need for a new enactment to bring the provisions of UNCRC in conformity with the Domestic Laws which led to the development of Juvenile Justice (Care and Protection of Children) Act, 2000.

3. The Juvenile Justice (Care and Protection of Children) Act, 2000.

This Act contained the uniform definition of the word “Juvenile”, irrespective of their gender i.e. a person who has not completed the age of 18 years. The act also provided under Section 15 that when the Juvenile Justice Board is satisfied that the juvenile has committed an offence, the board may make an order directing the juvenile to be sent to special home:-

- a) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years.
- b) in case of any other juvenile, for the period until he ceases to be a juvenile.

The Act was silent about the date on which the age is to be considered for the purpose of determination of juvenility i.e. whether it should be the date of the offence or the date when the accused is produced before the competent authorities or before the court. This confusion was removed by the judgment of the Supreme Court of India in **Pratap Singh vs. State of Jharkhand & Anr. (2005), 3 SCC 551**, where the Constitutional Bench held that the reckoning date for the determination of age of the juvenile is the date of the offence and not the date when he is produced before the authority or in a court. The Court also held that the 2000 Act would be applicable in a pending proceeding instituted under the 1986 Act in any court or authority, if the person had not completed the age as on 1st April 2001, when the 2000 Act came in to force. The Judgment provided the

hope to those minors who were more than the age of 16 years at the time of commission of offence when the Act of 1986 was in operation as they got the chance to be considered as Juveniles under 2000 Act if they have not completed the age of 18 years on 1st April, 2001. To remove the ambiguities, the Amendment of 2006 was brought into force but it could not eradicate the ambiguities completely and as a result, Judicial Intervention was sought from time to time.

4. The Juvenile Justice (Care and Protection of Children) Act, 2015.

The Nirbhaya Case which shook the entire nation resulting in nationwide outburst led to the development of the Juvenile Justice (Care and Protection of Children) Act, 2015. One of the Accused involved in that heinous crime was of the age of 17 years and 6 months at the time of commission of offence but could not be severely punished for being juvenile under the Juvenile Justice Act, 2000. The 2015 Act removed the aforesaid shortcoming and provided the provision for the regular trial of the juvenile as an adult, who is more than the age of 16 years but less than the age of 18 years at the time of commission of offence, if the Board finds in preliminary assessment that he has committed a heinous offence and should be tried as an adult by the Children Court and later the court also decides the same. The Act also provided the provision regarding the manner in which term of stay prescribed by the court has to be spent by such offender i.e. under place of safety till the age of 21 years and after that age, the court is to decide, whether the offender should be released on conditions or should continue the remaining term in jail. However, the Act especially provided under Section 21 of the Act that no child (person below the age of 18 years) in conflict with law (whether he committed petty offence, serious offence or the heinous offence) shall be sentenced to death or for life imprisonment without the possibility of

release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

The Juvenile Justice Act is broadly divided into four parts:

1. Procedure in relation to children found in conflict with law.

The Act provides for the following procedure

2. Procedure in relation to children in need of Care and Protection.

3. Procedure for Adoption of Children

4. Procedure in relation to Offences against Children.

Conclusion

The Juvenile Justice Act, 2015 also had some voids, which the Top Court i.e. Supreme Court of India has tried to fill from time to time. Recently, the Supreme Court dealt with an interesting issue in the matter of Shilpa Mittal Vs. State of NCT of Delhi & Anr., decided on 9th January 2020, that whether an offence prescribing a maximum sentence of more than 7 years but not providing any minimum sentence, or providing a minimum sentence of less than 7 years can be considered to be a “heinous offence” within the meaning of Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The Act provides the definition of three categories of offence; one of which is heinous offence as the offences 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; Second is Serious offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is

imprisonment between three to seven years; and the third is Petty offence for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years; but left the 4th category which was dealt with in the aforesaid matter.

The Supreme Court held that “an offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as “Serious Offence” within the meaning of the Act and dealt with accordingly till the Parliament takes the call on matter.”