



Research Paper

Statutory Provisions Dealing With Child Offenders: Is It Excessive Protective to Them

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“There can be no keener revelation of a society’s soul than the way in which it treats its children.”
-Nelson Mandela

ABSTRACT:

Juvenile crime is a crime committed by minors under a certain age. It is a common phenomena in any nation including India. There is a growing number of juvenile offenders around the world. Children are found to be involved in both petty and heinous crimes. Majority of the offences is committed by children between the age group of 16 to 18 years. The government has passed statutes dealing with this issue. Certain special provisions are also exist in the Constitution of India, the Indian Penal Code and the Code of Criminal Procedure .The Juvenile Justice (Care and Protection of Children) Act, 2015 is also an important legislation that deals about children in conflict with the law. But there is no strict provisions about the punishment for juvenile offenders as it primarily aims at reformatory purpose .Many experts have criticized the Act as it is too lenient on juveniles who commit heinous crimes may be ordered to be kept in a place of safety. The present law dealing with children is not adequate to deal the situation.

Keywords: Juvenile, Crime, Minors, Heinous Crimes, Statutes.

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I. INTRODUCTION:

Children are the greatest wealth of a nation. The concept of children brings a picture of miniature human being to our mind. They constitute more than one-third of our country’s total population. As per Census 2011, India is a young country with 472 million children. Children in the age group 0-18 years constitute 39 per cent of the country’s total population. An analysis of age wise distribution shows that 29.5 per cent of children are aged 0-5 years, 33 per cent are aged 6-11 years, 16.4 per cent are 12-14 years and 21 per cent are 15-18 years respectively. The majority of India’s children live in rural areas (Myneni, 2018 p.76). A child means a person who has not completed 18 years of age. Juvenile means a person who is very young, adolescent or minor. The term child is also used interchangeably with the term juvenile. The mind of a child is not mature enough to understand the nature and consequence of all its acts. For the satisfaction of its needs, the child depends on adults.

According to International Law, a child means every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC). A child attains physical maturity at puberty, an individualistic factor and is attained at different ages by different persons. Generally, puberty occurs in girls between the twelfth and fifteenth years with the range of about two years on either side of these figures. For boys, puberty tends to occur from one to two years later than it does for girls.

WHO IS A JUVENILE OR CHILD?

More than a century ago, Abraham Lincoln said,

“A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things which you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He will assume control of your cities, states

and nations. He is going to move in and take over your churches, schools, universities, and corporations. All your books are going to be judged, praised or condemned by him. The fate of humanity is in his hands”.

The dictionary meaning of the English word “Child” is

- (i) A person between birth and puberty;
- (ii) A young human being below the age of full physical development;
- (iii) A person who has not attained maturity or the age of legal majority;
- (iv) A son or daughter of any age;
- (v) An infant; a baby; and
- (vi) One who is childish or immature.

Biologically, ‘a child’ is generally anyone between birth and puberty.

In Shimil Kumar v. State of Haryana, 2013 (4) RCR (Cri.)16., it has been held that the word child connotes ‘one who is between birth and full growth’.

The word juvenile is derived from Latin ‘juvenilis’ [youthful (adj.)] and from juvenis’ (young (n)). The dictionary meaning of juvenile as an adjective is ‘young ‘ or ‘youthful’ and as a noun is ‘a young person’, ‘child’ or ‘youth’. We can say that a juvenile is a child or young person who is not yet old enough to be regarded as an adult and violates the law and commits an offence under the legal age of maturity (Rathore,2019 p.10).

Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act,2015 ,child means a person who has not completed 18 years of age.

According to Section 2(35) of the same Act, juvenile means a child below the age of eighteen years.

The Act classifies ‘child’ into two (2) categories. They are-

- (i) Child in conflict with law
- (ii) Child in need of care and protection.

Thus, juvenile i.e. child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence.

In India different laws describe various ages of the child. Some of these are given in Table 1.

Table-1: showing age of child under various Laws

Sl. No.	Legislation	Age Specified (in Years)
1.	Constitution of India Articles 24, 45	14
2.	Juvenile Justice (Care and Protection) Act, 2015	18
3.	Indian Penal Code , 1860 i) Section 82 ii) Section 83 iii) Section 361 iv) Section 372	Below 7 7-12 16 for boys, 18 for girls 18
4.	Criminal Procedure Code, 1973 i) Section 27	16
5.	Factories Act, 1948	14
6.	Hindu Minority and Guardianship Act, 1956	18
7.	Indian Contract Act, 1872	18
8.	Indian Majority Act, 1875	18
9.	Minimum Wages Act, 1948	14
10.	Child Labour (Prohibition and Regulation) Act, 1986	14
11.	Child Marriage Restraint Act, 1929	18 for girls, 21 for boys
12.	Immoral Traffic Prevention Act, 1956	16
13.	Children Act, 1960	16 for boys,18 for girls.
14.	Right to Compulsory Education, 2009	14

(Compile by Author)

Table 1 shows the ages specified in various laws dealing with children. There is no clear cut off age to determine the physical and mental maturity of children. For example, in Hindu Minority and Guardianship Act, a person below the age of 18 years is considered as a child. The Children Act, 1969 introduced the sex-based definition of child for the first time in the area of juvenile justice. In this system, the right cut-off age was considered as 16 for boys and 18 for girls. But, in Child Marriage Restraint Act, the cut-off age for marriage was 18 and 21 years respectively. Thus, it is clearly shown that the cut-off age seems to depend on the basis of law, policy and administrative considerations. It is not an easy task to give a standardized definition of a child.

CRIME:

The concept of crime is essentially concerned with the social order. Crime is a form of conduct which is declared to be socially harmful in a state. Crime is an act that has been shown to be actually harmful to the society. But, crime is an inevitable part of human society. With the complexities of human life and advancement thereof with the civilization, the number and crimes also increased. The inevitability and universality of the phenomenon of crime has been described by Emile Durkheim in the following words:

“There is no society that is not confronted with the problem of criminality. Its form changes; the acts thus characterized are not the same everywhere; but, everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression.... No doubt it is possible that crime itself will have abnormal forms, as for example, when its rate is unusually high. This excess is indeed undoubtedly morbid in nature. What is normal, simply, is the existence of criminality, provided that it attains and does not exceed, for each social type, a certain level...To classify crime among the phenomena of normal sociology is not to say merely that it is inevitable, although regrettable, phenomenon, due to incorrigible wickedness of men, it is to affirm that it is a factor in public health, an integral part of all healthy societies” (Siddique,1999 p.1).

A definition of crime is not to suit at all the times or to same time at all the places. Following are some definitions of crime-

According to Austin, a wrong which is pursued by the sovereign or his subordinates is a crime.

Blackstone defines crime as an act committed or omitted, in violation of a public law either forbidding or commanding it.

Professor Kenny has defined the crime in these words,” wrongs whose sanction is punitive and is in no way remissible by any private person, but is remissible by the crown alone, if remissible at all” (Srivastava,2002).

Paul W. Tappan has defined crime as “an intentional act or omission in violation of criminal law, committed without defence or justification, and sanctioned by the laws as felony or misdemeanour” (Siddique,1999 p.3).

Thus, a crime is an act forbidden by law and the punishment for which is provided by the State. For a crime it is necessary that the person committing the act must have a guilty intention and the act must cause injury not only to an individual but also to the public at large.

JUVENILE CRIMES

No one is a born criminal, neither does anyone become so by choice. Crimes by juvenile or child have become common phenomena in any nation and even in India. Juvenile crime is not naturally born in the child but it may be because of the surroundings that the child is brought up. In recent times, children were found to be involved in petty crimes in general and heinous crime in particular. Anyone who is not adult is called a juvenile. Any crime refers to any person below the age of 18 years who comes into conflict with the justice system as a result of being suspected or accused of committing crimes. Juvenile crime can refer to two different things. First, acts committed by children which, if done by adults, would be considered a crime. Second, acts committed by children which are charged into adult court. Many justice systems have a two pronged approach to criminal acts committed by minors; some offences stay in juvenile system in which emphasis is rehabilitation, while the rest go into the adult system where the emphasis is on punishment. Juvenile crime occurs when children violate a criminal statute.

Juvenile crimes is clearly defined as a crime committed by a person under the age of 18 years and still considered a minor under the law. Several minor crimes like thefts, pickpocketing and burglaries are perpetrated on a regular basis throughout India. They are now forming even their own gangs. There is also a trend among minors that those between the ages of 16 and 18 are more likely to be involved in terrible criminal crimes. There are some cases in which minor can be treated as an adult in court. This happens when the crimes committed is heinous.

According to National Crime Records Bureau (NCRB) data, 34527 juveniles were apprehended all over India during 2007 out of which 32671 were boys and 1856 were girls. It is also found that from 2002 to 2012, there has been a 143 percent rise in the number of rapes by juveniles. It also indicated that the number of murders has increased by 87 percent, while the number of women and girls kidnapped by juveniles has increased by 500 percent. Of 43,506 crimes registered against minors under Indian Penal Code and Special Local Law by juveniles, 28,830 had been committed by children between the age of 16 to 18 years.

However, between 2007 and 2012, heinous like rape and murder add up just about 8 % of the total crimes committed by minors. Nearly 72% of the cases against minors between 2007 and 2012 were for theft, burglary and causing hurt.

According to statistics from the National Crime Records Bureau (NCRB), it has revealed that juvenile offenders between 16 and 18 years accounted for more than 60 %. Of the 43506 crimes registered against

minors under the Indian Penal Code (IPC) and the Special Local Law (SLL) by juveniles, 28830 had been committed by children between the ages of 16 and 18.

The statistics also show the number of juveniles found to be in conflict with law under the IPC and SLL has risen 13.6 % and 2.5 % respectively in 2013, as compared with 2012. NCRB in 2013 shows that the rise in crime against women committed by juveniles was highest in case where modesty of a woman was outraged (132.3%) followed by word, gesture or act intended to insult the modesty of a woman (70.5%) and rape (60.3%). The “Crime in India 2014: Compendium” published by NCRB shows an increase in number of children who were in conflict with law since 2010. The crime rate has risen up from 1.9 in 2010 to 2.4 in 2014. But, majority of the cases are petty crimes. These can be prevented by providing proper guidance and counseling to children (Myneni, 2018 p.94).

From the same source, the report of 2015, a rate of crime committed by juvenile in conflict with law has increase from 1.7% to 2.5% since 2005 to 2015. There has been 0.8% increase in cases registered under IPC against juveniles in conflict with law during 2015. In 2015, 33,526 cases were registered against juvenile in conflict with law. The number of cases was 18,939 in 2005. This shows that the rate of crime committed by such children has increased from 1.7% to 2.5% since 2005 to 2015 (Myneni, 2018 p.184). In 2021, a total of 31170 cases were registered against juveniles in India. It shows that a 4.7% increase over 2020, when the number of cases were 29,768. Majority of them were in the age group of 16 to 18 years. Crime rate had gone up from 6.7% to 7.0%.

INTERNATIONAL CONCERNS ON JUVENILE CRIMES:

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on November 20, 1989, which establishes a series of norms that all state parties must respect to guarantee the best interests of the child. International instruments and conventions have contributed significantly to the issue of children’s rights and the prevention of child abuse. United Nations and UNICEF have always paid more attention to the development of children. Following are some of the international tools and conventions signed by all United States to protect the rights of the child-

1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
2. United Nations Guide for the Prevention of juvenile delinquency (Riyadh Guidelines)
3. United Nations Rules for the Protection of Juvenile deprived of liberty (Havana Conventions)
4. United Nations Guidelines for Action on children in the Criminal Justice System (Vienna Guidelines).
5. International Covenant on Civil and Political Rights
6. United Nations Convention on the Rights of the Child.

STATUTORY PROVISIONS DEALING WITH CHILD OFFENDERS:

A nation depends on the quality of Human Resources for its developments. It is said that children are the future of the nation and the State has a greater responsibility to ensure a proper development of children in our country. According to United Nations Convention on Rights of the Child (UNCRC) ; A child means every human being below the age of 18 years unless , under the law applicable to the child, majority is attained earlier.

Certain special provisions also exist in the Indian Penal Code (IPC) , 1860 and the Code of Criminal Procedure (CrPC) , 1973 which is to provide special treatment and procedure to the young and juvenile offender. They are as follows –

1. Under Section 82 and 83 of the Indian Penal Code , elaborate provisions regarding the extent of criminal liability of children belonging to different age groups have been provided. This is based on the principle that an infant is incapable of distinguishing between right and wrong and so no criminal responsibility could be fastened in regard to his deeds. According to Section 82 of the Indian Penal Code, nothing is an offence which is done by a child under 7 years of age. This section explains that any child who is under the age of seven is exempted from criminal liability whatsoever because of a presumption of law “doli incapax” i.e., incapable of committing a crime. In India a child below seven years of age is considered to be doli incapax and therefore cannot be held guilty of any offence. Merely the evidence of that age would be a conclusive proof of the innocence of a child and would ipso facto be an answer to any charge against him (Queen v Lakhini Agradanini, (1874) 22 W.R (Cr.) 27). A child under such age group cannot form the necessary intention to commit a crime. This protection to a child is based on a legal presumption as to the incapacity of a child to have “mens rea”. In legal sense both boys and girls below seven years of age have absolute immunity against criminal liability. There may be cases of exceptional precocity but such cases are very rare. The law does not take notice of such “freaks” of Nature. Until the age of seven, law confers complete immunity and after the age of seven up to twelve years there is a qualified immunity (Nigam, Law of Crimes Vol. I). The criminal liability of juveniles differs from country to country which is shown in Table 2. Also according to Section 83 of IPC, nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. This section makes it clear

that maturity of understanding is to be presumed in the case of such children, unless the negative be proved by the defence. This section explains that two elements i.e., the child is between 7 to 12 years of age ;and that he/she has not attained sufficient maturity to understand the nature and the consequences of the act. Incapacity must exist at the time of commission of the act. It is based on the principle of “quia militia supplet actatem” which means “malice makes up for age”. However, as the age advances, the maxim loses force. Section 83 deals with the cases of qualified immunity because a child above 7 but below 12 years of age is presumed to be possessed with maturity of understanding and capacity to commit a crime. The presumption is rebuttable and the burden to rebut lies upon the defendant. In *Hiralal v State of Bihar* 1977 Cri.L.J.1921 (S.C.), a boy participated in a concerted action and used a sharp weapon for a murderous attack on the accused. In the absence of evidence leading about the boy’s feeble understanding of his actions the defence under Section 83 was not allowed.

With such provisions the age of the child is very important to be able to adjudge the proper punishment for the offender so as to meet the ends of justice. The Indian Penal Code amply provides as to ‘who is a child’ according to law. This is specifically determined and is important so as to establish criminal liability or provide immunity against it. One advantage of having a legislation dealing with the criminal liability of minors is that the accused (offenders) should not be tried as adult under the ordinary law. Children have to be dealt with under the juvenile justice system and not the adult criminal justice system. Children in conflict with law can never be imprisoned or given the death sentence. In view of young criminals, a juvenile accused of committing heinous crimes of murder and rape, went unpunished because of lenient provisions under the Indian law.

Table 2 showing criminal liability of juvenile in different countries

Country	Age of absolute immunity from criminal liability	Age for differential as juvenile delinquents
1.Russia	Below 16 years	(a) 14-16 years for serious offences only. (b) 16-18 years for other cases.
2.Poland	Below 16 years	(a) Juvenile below 18 years. (b) Young offenders below 21 years
3.Germany	Below 16 years	(a) Juvenile 14-18 years (b) Young offenders below 21 years
4.Japan	Below 14 years	(a) Juvenile under 20 years
5.England	10 years up to 14 years	(a) Under 17 years and 15 -21 years for some offences
6.Canada	Under 7 years 7-14 years	(a) Under 16 years (b) 16-18 years varying from province to province
1. 7.USA	7 years to 12 years (different for different States)	16-18 years varying from State to State but mostly 18 years.

Source: K. D. Gaur (2015) : Criminal Law Cases and Materials.

2. Under Section 360 of the Code of Criminal Procedure,1973 when any person who is below 21 years of age or any woman, is convicted of an offence not being punishable with death or imprisonment for life, and no previous conviction is proved against the offender if it appears to the court before which he is convicted, regard being had to the age, character and antecedents of the offender, and to the circumstances in which the offence was committed, order release of the offender on probation of good conduct for a period not exceeding three years on entering into a bond with or without sureties, instead of sentencing him to any punishment. Such first offenders are not to be tried in a criminal court through the ordinary procedure. Instead, they are to be dealt with and corrected through special methods or treatment under the law. The main objective is to separate the young offenders from hardened criminals so that they are not exposed to recidivistic tendencies.

3. Section 27 of the Code of Criminal Procedure, 1973 states that 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 young offenders. It further suggests that a lenient treatment to juvenile has already received statutory recognition in the Indian law. Under this section, if a person

below 16 years of age commits an offence other than the one punishable with death or life imprisonment, he should be given lenient punishment depending on his previous history, character and circumstances which led him to commit crime. His sentence can further be commuted for good behaviour during the term of his imprisonment.

Further, the proceedings instituted against him are not published to prevent the juvenile offenders from stigmatization and embarrassment. His name, address or identity is not disclosed and the general public is excluded from witnessing the trial. The parents of juvenile offenders may however, be allowed to attend the trial. The main objective of these closed-door proceedings is to keep off the offenders from the rigors of procedural law and make the trial simple and less formal.

4. Constitutional provisions: The basis of framing any law is the Constitution and the law should not violate the Constitution as it is the supreme power. The following Articles are included in the Constitution of India for children-

(i) Article 14- Right to Equality: According to this Article, the State shall treat citizen of India including children equally before the law and must be given equal protection by law without any discrimination or arbitrariness.

(ii) Article 15 (3): It provides the State to make special provisions for women and children.

(iii) Article 21A: It has been inserted by the eighty-sixth Constitutional amendment in 2002 making Right to Education a fundamental right to all the children between 6 to 14 years of age.

(iv) Article 24: Right to be protected from any hazardous employment under the age of 14 years.

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

(vi) Article 47: Right to be provided with proper standard of living and good nutrition.

(vii) Article 51(k): Parents and guardian should give opportunities for education to their child or ward between the age of 6 and 14 years.

Thus, we see that the Indian legal system has made separate provisions for children. The principle underlying these legislative measures pre-supposes that youngsters are innocent by nature and therefore, society's attitude towards them should be one of tolerance and generosity.

II. CONCLUSION:

Crime exists in every society. There is a growing number of juvenile offenders around the world and in India also. It may be because of the leniency when it comes to law against crimes committed by juveniles. Children are important asset of the nation and it is the duty of the State to look after the children with a view to ensuring full personality development. Juvenile offenders are also included in the population of children. They should not be suffering from any kind of abuse which may lead to criminal tendencies in the society. Once the children committed any offence they will remain as children. Children are the great imitators. We need to forgive the children even if they have committed offences to improve the society but at the same time societal interest cannot be put to stake. We should show mercy to the young offenders so as to reform them. Problems of children cannot easily be solved by law alone. The government has passed statutes dealing with this issue but these statutes have not shown a strict punishment or reformatory strategy. Instead, laws relating to children focus on their welfare provision. Reducing the age of juvenile from 18 to 16 years is not a solution. The rising rate of offences committed by juveniles is a pertinent issue and due focus must be provided. Also, the mental attitude of children in conflict with law at the time of committing crime certainly differs from that of a confirmed adult criminal. Hence, it would be grossly unjust to punish the two alike. Here, it needs to mention that in a sense constitutional aim is achieved. In the JJ Act, 2015 if the between the age of 16 to 18 years committed a heinous crime can be treated as an adult. It needs to consider his or her mental and physical capacity to commit such offence. But the prior Act of 2000, the punishment for all the child were same but in the present Act, Children Court will examine that whether the child have the mental capacity like an adult or not. Thus, it qualifies the test of permissible classification. Article 14 of the Constitution clearly indicates that Equals should be treated as equals. Unequals should not be treated as equals. The JJ Act, 2015 is a clear discrimination between the children of the age group of 16 to 18 regarding the trial and punishment as in complete violation of Article 2 of the UNCRC. The legislature has enacted laws from time to time by repealing the earlier laws for the welfare of children. The JJ Act, 2015 is based on both reformatory and deterrent theory of punishment. But, deterrent theory is to be applied only to those children in conflict with law between the age group of 16 to 18 years when they committed a heinous crime. It can be done after receiving a preliminary assessment from the Juvenile Justice Board and is to be tried by the Children's Court. Sometimes we need to see the juvenile offenders from criminal perspective. It is found that children between the ages of 16 to 18 years have committed heinous crime. The 2012 Delhi gang rape, commonly known as the Nirbhaya case is a vivid example. It is required to consider their trial and legal proceedings depending upon the severity of crime. Many experts opined that the present law dealing with children is not adequate to deal with the children in conflict with law. The present JJ Act need to

focus on a stringent punishment as an exemplary punishment to deter other children from committing offences .So, rehabilitation and ensuring their well-being for re adaption to the mainstream is the need of the hour.

NOTES:

1. A child means a person who has not completed the age of 18 years.
2. Crime is an act forbidden by law and he State provides the punishment.
3. Heinous offence is an offence that attracts a minimum penalty of seven years imprisonment under any existing law.

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