

Remember The Victim of Juvenile Offenders

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Abstract

Now days there are lots of cases in which teens demonstrate heinousness and culpability and carry out truly horrific crimes, such as planned murder, rape, robbery etc. And for those culprits only a couple years of detention and rehabilitation programs are not enough. Now, the times come when the juvenile justice system should be framed according to the mental age of the offender not according to the physical age.

These offenders need to be tried as adults. They need to grow older before release. They need long term monitoring to make sure if they will ever be able to rejoin the society. Right now our legal system is focused on securing juvenile offenders rights. Let's also remember that the victim of violent juvenile crime also needs justice without compromise. There is a great need to balance the victim's right with the protections provided to the young offenders for giving them a chance to

Learn from their mistakes.

Keywords: Criminal responsibility, Juvenile offenders, victims of juvenile offenders, Juvenile proceedings, mental age

Introduction

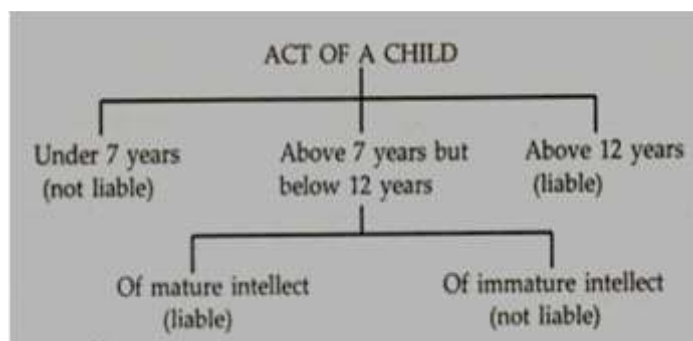
Juvenile delinquency rates increased almost in every country. Every day in the news we keep hearing about youngsters involvement in crimes be it a petty or serious offence. Juvenile is anyone who is under the age of 18 years and a delinquent is who fails to abide by the law. A juvenile delinquent is a person under the age of 18 years and fails to abide by the law. Every country makes separate law for the juvenile delinquent and these law focuses on rehabilitation of juvenile instead of punishing them. A very minimum punishment is given to these offenders even if they found guilty of serious crimes.

Analysis of Juvenile law in India

In almost every country there are separate laws to deal with the juvenile offenders. In India also there is special act named Juvenile Justice (Care and Protection of Children) Act, 2015, which deals with the rights of the juveniles who are in conflict with law. And along with Juvenile Justice (Care and Protection of Children) Act, 2015, section 82 and 83 of the Indian penal code also deals with the juvenile offenders.

Indian penal code

In Indian criminal procedure, Section 82 and 83 of the Indian penal code deals with the offence committed by juvenile. The provision provided by the Indian penal code under section 82 and 83 can be divided into three parts.



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According to section 82 of IPC

"Nothing is an offence which is done by a child under seven years of age." Section 82 of the Indian penal code provides the *Doli Incapax* theory. Which mean that a child below the age of 7 years is incapable of doing harm. The theory of Doli Incapax is based upon the intention to cause harm. And it is believed that a child below the age of seven year is not truly capable in differencing between wrong and right.

And Section 83 of the Indian Penal code provides:

"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."

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

Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India. It aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.

The Act came into force from 15 January 2016. It 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 the Rajya Sabha.

The amendment in juvenile justice act was introduced after the incident of 2012 Delhi gang rape. In this case the age of one of the accused was found few months less in completing 18 years. And due to that he gets advantage under the Juvenile Justice (Care and Protection of Children) Act, 2000, which provides that a person below the age of 18 years will be tried by juvenile court. After huge protest by many groups the government initiates steps towards making amendment in the Juvenile Justice (Care and Protection of Children) Act, 2000.

The major changes introduced by the Juvenile Justice (Care and Protection of Children) Act, 2015 are:

The Juvenile Justice Act divided the crimes into three different categories i.e. the petty offence, serious offences and heinous offences. The Act provides that if the offenders is of the age of 16 years or older and committed any heinous offence than such offender will be tried as an adult. . Heinous offences are those which are punishable with imprisonment of seven years or more. The decision to try juvenile of the age of 16 years or older as an adult will be taken by the Juvenile Justice Board, which will have a judicial magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation. And for petty and serious offences the juveniles will be treated in juvenile's courts only.

Situation of Victims of Juvenile offenders

"The flower of dignity never fades" is a part of our cultural heritage. The fundamental duty of every country is to protect its citizens from crimes. And in case of any wrong committed against its citizens than to provide justice to the victim. Every person has a right to get equal justice for the equal wrong committed against him. Then why the victim who suffers loss by the hand of a juvenile do not get equal justice as he/she deserve. The fact that the crime has been committed by a juvenile does not decrease its effect upon the person who suffered the loss.

It's hardly makes any difference for the victim that the crime has been committed by a juvenile or adult. The amount of loss suffered by the victim remains same. They suffer equal emotional trauma, physical pain or the financial losses. Then why they are not entitle for the equal justice.

The biggest example of loss caused by juvenile is Delhi gang rape 2012. The victim of Delhi gang rape 2012 was raped on 16 December 2012 by six males, one of whom was few months less in completing the age of 18 years and that's why treated as minor and gets the protection under juvenile justice care Act 2000. It was the most heinous act which was beyond human imagination. The girl was not only sexually assaulted but her body was also so much mutilated that her intestine were pulled out which led into her painful death. Now the question arise whether her family gets the proper justice because one of her culprit gets immunity of being minor. Or does this makes any difference in the pain of kin of the victim that one of the offender was juvenile.

The another example is Ganesh(6year old boy) kidnapping and murder case. A six-year-old boy was kidnapped for ransom from central Delhi by his teenager neighbor. The kidnappers have demanded Rs1.5 lakh for his safe release. After one day the child's body was found in a park in Naraina. On the basis of local investigation, police found that the boy was last seen playing with a juvenile who stays in the area. On the basis of suspects case has been registered against the juvenile. And during the investigation the juvenile confessed that he kidnapped the victim for the ransom of RS.1.5 lakh by which he wants to buy a new iPhone. The juvenile was sent for trail into juvenile justice board, where the juvenile justice board finds him guilty for the kidnapping and murder of 6 years old Ganesh. And the board sent him to a correctional home for three years.

Again the question arises is it sufficient punishment for the offender who commits such heinous crime of killing a six years old boy. Or the fact that the offender was juvenile helps in reducing the pain of parents of victim.

When the Juvenile system is not enough

When the offence is so grave and heinous than the point comes whether the juvenile system is enough or not. The murders, rapist and other serious criminals released from jail after facing a very minimum and easygoing punishment. Who are these offenders, and why they are being treated just like they did not commit any serious crime. They are living very happily in our surroundings only. And more often they commit other offences after release. On the other hand their victims and families suffer throughout the life. And off course it does not release their pain that the wrongdoer was a juvenile. The parents of Delhi Gang rape victim were going through lots of emotional trauma after the death of their daughter and the fact that one of the culprits of their daughter gets protection due to juvenile Act increase their pain for life time. And when the bill for amendment in juvenile act was introduced in parliament the victim's parents were looking from the visitor gallery with a hope to get justice for their daughter. The bill was passed and makes amendment in Juvenile justice care act. The most important amendment made by the new juvenile justice care Act 2015 is adding the provision to try a child as an adult if he/she has completed 16 years of age, but only in cases of heinous offences. Along with this a another clause is also added which states that a preliminary inquiry must be held to ascertain the mental and physical capacity of juvenile to commit such an offence and the circumstances in which he committed the offence.

After this amendment also the question remains same that whether it is justified to decide whether or not and to what extent to punish a culprit based on their age? Is it justified to take the age factor the only parameter to give punishment irrespective of the nature of offence they have committed?

According to me, no it's not justified to only consider the age of the culprit for deciding his accountability. Now it's high time to consider their mental age because now days the child gets mature at an earlier age due to their access to lots of information and technology. There are lots of cases in which we can see that

the teenagers are committing really serious offences. And some of them are really pre designed or well planned crimes. If a juvenile can rape a girl so brutally or he can plan a pre planned kidnapping for the ransom are they really child or deserve to be treated like a child. As child are known for their innocence. The offenders should be treated as per their mental capability to understand what they are doing. It is really unfair to the victims if his/her wrongdoer gets pardoned just because they did not fulfill the age criteria. There is a great need to bring up a new juvenile law which considers not just the physical age, but also consider the mental maturity of the offender. The new amendment introduced in the juvenile justice care Act does not completely serve the purpose. The criteria added by new amendment that only juvenile of 16 years or above only will be considered whether or not to try them as an adult again left many rooms for the culprits to take advantage.

Conclusion and suggestion

However it cannot be denied that children are the future of a nation, so we all must try to rehabilitate those children who forgets right path but on the same hand it cannot be ignored that crime sees no age. It is sad fact that some child starts dangerous and remains dangerous all of their life. Due to our system even when a juvenile commits a heinous crime such as murder, rape etc. even than the juvenile is sent only for rehabilitation and never face serious consequences by which they never get a chance to learn from their mistakes. If only the juvenile offenders get in trouble first time when he commits petty offence than they will learn a lesson from their mistakes and will refrain themselves from committing any other wrong. Fifty percent of the juvenile crimes are committed by teens who know that they get away with it due to our systems. Many times we hear that a child found stealing money from their parent's wallet and most of us did not even bother to take a note of this act of any child and after some time we came to know that the same child robbed a shop and on next day the same child killed his teacher or classmate on very petty issue. There is a great need that these offenders learn from their first mistake so they will not commit more serious offences. These offenders should be appropriately tried as adult. If someone is not punished for their crimes than of course they are not going to learn. Punishing them will show then and also to others that they are not doing the right thing.

Our present juvenile justice system is too soft on delinquent, who are thought to be potentially as much threat to public safety as their adult criminal counterparts. There is a great need that juvenile justice board should emphasis on public safety, certainty of sanctions and accountability of offenders. The rights of the victim to get equal justice for their loss should always be kept in mind. Laws are not to be made on emotions rather the motive of making law should be doing justice to the victim. Because no justice no peace in the society.

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