

Juvenile Justice Systems in United States and India

Akshay Singh*

Research Scholar, Department of Law, M. D. University, Rohtak

Abstract – “When United States and other developed nations can change their approach from liberalism to tough and sturdy practice seeing the nature of the crime, atrocities, mental level etc., why can’t India adopt the same approach and policy. It is high time now that we should not run after the age of person rather should focus on the severity of the crime, mensrea, level of understanding etc. otherwise innocent people will continue to suffer in the hands of these not so naive and not so guiltless persons. The worst part is that these persons will continue to take advantage of the lacuna(three years punishment) which the present juvenile Justice Act is bestowed with as it is not carrying any deterrent impact on the minds of these young offenders. They very well know that even after committing such heinous crimes, they are let loose after a period of three years. This is a staid and sombre issue which requires attention, deliberation and definitely a change is required for the betterment of the society as a whole”.

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Every child has a right to joyful, elated and jubilant childhood, the right to grow in a harmless and nurturing environment, the right to be free from the intricacies and convolutions of life etc but there are some unlucky and doomed children who are deprived of these things and they grow out to be children not wanted for or to term it other way juvenile delinquents.[1] The word “Juvenile is derived from Latin term “juvenis” which means “young”. As far as the word delinquent is concerned, it is derived from do (away from) and liqueur (to leave). A delinquent child is considered as a “wayward, irredeemable, inveterate, incorrigible, unable to rectify or habitually disobedient child. Juvenile delinquency basically can be meant as such an irresponsible and disapproved behaviour of children which is not allowed by society and in the interest of the public some kind of reproachment, admonishment, punishment or corrective measures is given to the child or adolescent to rectify them. These juveniles are not mature enough to realize the consequences and outcome of the crime they have committed and in law such human beings are considered as doli incapax meaning thereby incapable of committing crime.[2]

The practice of juvenile delinquency is not the norm of the present day society. It has existed since ages. This is endorsed by two quotations given by Edward H. Stulken.[3]

“An Egyptian priest almost 6000 years ago wrote on the walls of a tomb: Our earth is degenerate in these latter days. There are signs that the world is coming to an end because children no longer obey their

parents. Socrates wrote a paragraph over 2400 years ago that might well have appeared in the morning paper of today: Children now love luxury, they had bad manners, contempt of authority, they show disrespect for elders, and love chatter in place of exercise. Children no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs and tyrannies over their teachers. These quotations given by the author many years ago are very well the factual situations today. Juvenile delinquency is a matter of serious consideration which really requires contemplation and pond ration as it is mounting up not only in developing or underdeveloped nations but this has plagued and has trapped even developed nations. Of late it is seen that these juveniles are not only committing mild and serene crimes but are also indulged in ferocious, heinous and wicked crimes. We consider children below 18 years of age as persons who do not have sufficient maturity and if they indulge in any kind of crime they are sent to reformatory schools to get rectified, reformed and transformed. The question- can they actually be called as innocent persons if commit heinous crimes seriously require deliberations. When they can commit crimes like murder, rape, dacoity etc –where is the innocent part?”

Aren’t they taking the benefit of the laws enacted for their betterment? No doubt in United States also reformatory schools were established and are till date serving these off the track gone children but seeing the demand of the time United States has in some cases changed its policy and are heading

towards tough reforms for the interest of the public. In India, as far as juveniles are concerned we bank upon Juvenile justice System which talks about care, protection and reformation of such children. United States have changed its policy seeing the types of crimes committed by these so called juveniles. India is still clinging on reformatory part. It is quite surprising that even after much horrifying, much horrendous Nirbahya's case we have not budge and nudge an inch. The paper would be focussing on Juvenile justice systems prevalent in United States and India, what are the lacuna, should age factor of a person play an important role in determining his culpability and what can be done. To begin with, here it will not be out of place to first discuss the juvenile justice system prevalent in United States of America Position in United States Since America has been ruled by England for number of years, the laws in America are highly influenced by the Common law of England. Blackstone in his commentaries had talked about people who were incapable of committing crime. In order to commit a crime mens rea and actus reus are the two essential elements. For the want of any of these, a man cannot be held liable. According to Blackstone, children could be divided into two categories. Children below the age of seven years are doli incapax i.e. incapable of committing crime and children above the age of fourteen years. If they commit crime, they would be liable in the same manner as an adult i.e. no distinction between a child above fourteen years committing a crime and an adult guilty of crime as both of them would be treated at par. Now the question is about the child committing a crime aged between seven and fourteen years. In normal circumstances, children between such ages would be considered as incapable of committing a crime.

However if they understood the nature of crime, then of course they are liable and would suffer the consequences of crime.[4]

Nineteenth century witnessed a drastic change as far as treatment of Juveniles in United States was concerned. Big cities like New York and Chicago opened New York House of Refuge in 1825 and Chicago Reform School in the year 1855 respectively for juveniles to separate them from adult hardened criminals. Not only this opportunities of rehabilitations were also provided to deter them from committing future and prospect crime. The first juvenile Court in United States (US) came into existence in the year 1899 in Cook County, Illinois. After this within a span of 25 years most states in US had established juvenile court system. As far as these early juvenile court systems were concerned their main aim was to rehabilitate and reform the offender rather than impose punitive and penal measures on them.[5] In the rehabilitative model of juvenile system, the immaturity of young offenders played an important role.[6]

The Juveniles require different treatment to rectify them and therefore their correctional methods should also be different from adults. Both of these cannot be treated at par. The protagonist of this also believed that the criminal acts committed by young offenders reflect their immaturity and thus similar procedure and punishment should not be meted out to the juveniles as is inflicted on the adults.[7]

Not only this, some people also believed that juveniles should be less accountable because sometimes due to impulsiveness or malleability of youth a crime may be committed. Impulsiveness presumably contributes to incapacity because it impedes the ability to weigh the consequences of behaviour, while malleability might make juveniles vulnerable to bad influences, particularly from peers.[8]

During the 1970's and 1985, all the states adopted juvenile policies relating to decriminalization and deinstitutionalization. However such policies were not longlived and in the mid-1980s due to change in the nature of crime by young offenders, increase in violence etc, criminalization of delinquents were revived. During the early 1990s several states in US had called for special legislative session to deal with youth crime. Presently, in United States, slogan 'adult crime adult time' is being adopted. In 38 states of US, upper age of juveniles is seventeen years while in other three states it is fifteen years.

There is unanimity in almost all US States on the point of trying juveniles at par with adults on juvenile attaining the age of fourteen years in certain circumstances barring states like Vermont, Indiana, South Dakota where a child of even ten years can be tried as adult. As far as punishment part is concerned there are various forms of penalties that are given to the juveniles. In heinous crimes even life imprisonment can be granted to child aged twelve years which is considered to be the maximum punishment. Juveniles who have the potential to try serious offences are detained in secured and tenable environment and are made to take part in rehabilitative programme. All this is done to control young juveniles. Additionally rigorous punishments relating to drugs and gang related offences, stringent treatment such as boot camps and blended sentence have also been introduced to put them right. As far as the jurisdiction part is concerned if a child usually 13 or 15 commits a grave and grim crime then their case is automatically shifted to adult court. Jurisdiction of juvenile courts is automatically waived in such cases. Position in India As far as position of Juveniles in India is concerned, since ages there has been a trend of providing different treatment for juvenile offenders. In the year 1843, i.e. during colonial regime, Lord Cornwallis established Ragged School for such children. The Apprentice Act.[9], which talked about juvenile legislation came

in the year 1850. After a decade, Indian Penal Code was enacted. Though the Code doesn't specifically talked about Juvenile offenders nevertheless there are certain provisions in the Code which deals with underage criminals[10] 2. According to section 82, IPC, children who are less than seven years of age are *doli incapax* i.e. they are incapable of committing crime. They do not have *mens rea* or intent to commit a crime. Section 83 basically talks about children between seven to twelve years of age. These children while committing crime if they can understand the nature of crime, they are punishable. Additionally sections 27[11] and 360¹² of Code of criminal procedure, 1973 also talk about young offenders.

Then came in the reformatory School Act of 1876[13] After this, the reformatory school Act of 1876 and 1897 were the next milestones for treatment of juveniles in India and with it there was a shift of penal philosophy from punitive to reformatory measures i.e. now the main aim was to reform the juveniles rather than imposing punitive measures on them. The present juvenile justice system is governed according to several International Covenants. For example: UN Conventions on the Rights of the Child(CRC), UN Standard Minimum Rules for administration of Justice (Beijing Rules) .Also in India Article 15(3)[14] of the Constitution talks special provisions for children. This article has been specifically framed in the constitution for protection of children. Not only this, Article 21[15], 23[16] and 24[17], deals with fundamental rights and are also available to children. Additionally Article 39(e)[18] and (f)[19] and article 45[20] also talks about children.

Also National Policy for Children which talked about training and rehabilitation, destitution, neglected and exploited children came in the year 1974[21] A comprehensive legislation on juvenile known as Juvenile justice Act was passed in the year 1986[22].

In the year 2000, the Juvenile Justice (Care and Protection of Children) Act was enacted. The Act provides that a child who has not completed the age of 18 years is a juvenile[23].

This 2000 Act has been amended several times in the years 2006, 2010 and 2011 i.e. in the years 2006, 2010 and 2011 amendments have been made. The 2006 Amendment Act included 26 amendments. The Act provides for legal system for care, protection, treatment and rehabilitation of both the categories of children i.e. children in conflict with law and children in need of care and protection. Presently also the Govt. of India is further contemplating for various amendments and a draft bill is pending before ministry of Law and Justice for scrutiny. There is no doubt about a fact that India hails in a comprehensive legislations and in spite of the fact that a detailed, comprehensive and several times amended legislation is prevalent in India, the

crimes committed by juveniles are swelling and mounting up every day. Isn't the liberal and open minded approach on juveniles one of the reasons why such crimes are elevating and escalating every day[24]. The total number of crimes in different years committed by juveniles clearly endorse this view[25]. How can one forget ever burning case of Nirbhaya. In the said case, a 23 years old woman was gang raped by six men, one of whom was a minor, in the moving bus. The woman was dragged to the rear of bus and was beaten with rod and simultaneously raped in the moving bus. According to medical reports she suffered serious injuries in her abdomen, intestines and genitals. The doctors stated that some blunt object (may be iron rod) was used for penetration. According to the International Bureau Times, a police spokesman said, the minor in the said case was the nastiest, brutal, fierce attacker and had sexually abused his victim twice and had ripped out her intestines with bare hands. The woman struggled for so many days to beat death but unfortunately she succumbed to injuries on 29th December, 2012 after suffering from brain damage, pneumonia, abdominal infection etc."

Nirbhaya is one of those cases where innocent people are tormented, anguished and persecuted by juveniles for no fault of theirs. In the said case minor was described as the most vicious, unruly and fierce attacker who was actively involved in the crime. He was the one who had sexually abused woman twice and had ripped out her intestines with bare hands. Now the question is doesn't he know the nature of crime and what act he is committing? The answer is probably 'Yes' he knows everything. Is he really innocent? Perhaps No. Nirbhaya is not the only case. There are catenas of cases where innocent people are agonised and pestered by juveniles without any fault on their part[26]. These juveniles are involved into heinous and odious crimes like murder, rape, theft, robbery etc and the worst part is they are taking the protection of the Act accorded to them."

REFERENCES:

1. Juvenile delinquency in a layman's language is crimes by children. No precise definition can be provided due to difference in approach of sociologists and persons with legal acumen. Sociologists maintain that legal definitions won't be of any use because they vary from time to time and place to place. Another problem is laws defining crimes relating to juveniles are very vague and uncertain. Due to this ambiguity nothing can be said with certainty whether a particular act by a juvenile is a crime or not. In the words of Ruth Cavan: "Most of the behaviour which gets a child into trouble with the police and court comes under a much less definite part of the law on juvenile delinquency.

The Illinois law defines a delinquent as one who is incorrigible or who is growing up in idleness, one who wanders about the streets in night time without being on any lawful business, or one who is guilty of indecent or lascivious conduct. Law in some other states are still more vague. New Mexico rests its definition on the word 'habitual'. A delinquent child is one who, by habitually refusing to obey the reasonable and lawful commands of his parents or other persons of lawful authority, is deemed to be habitually uncontrolled, habitually disobedient, or habitually wayward, or who habitually is a truant from home or school; or who habitually so deports himself as to injure or endanger the morals, health or welfare of himself or others. In these laws there is no definition of such words or phrases as incorrigible, habitual, indecent conduct or in night time. How much disobedience constitutes incorrigibility? How often may a child perform an act before it is considered habitual?" The Concepts of Tolerance and Contra-Culture as Applied to Delinquency"(Fall 1961) 2 Sociological Quarterly 244. See Prof. Syed Mohammad Afzal Qadri, "Criminology and Penology 6th Ed 252-53.

2. Causal factors responsible for innocent children turning into juvenile offenders could be mental illness, corporal punishment, attention seeker, enmity with peers and surroundings, revolutionary and rebellious nature, deprivation of parent's love, greediness, poverty, personal problems etc.
3. Edward H. Stulken, "Misconception about Juvenile Delinquency, Journal of Criminal law, Criminology and Police(1956) 46, No.6 at 833-36. Also see Prof. Syed Mohammad Afzal Qadri, "Criminology and Penology 6th Ed 251-252.
4. According to Blackstone, "By the law, as it now stands.....the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these case our maxim is, that malitia supplet aetatem ["malice supplies the age"]. Under seven years of age indeed an infant cannot be guilty of felony; for then a felonious discretion is almost an impossibility in nature: but at eight years old he may be guilty of felony. Also, under fourteen..... if it appear to the court and jury, that he.... could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her

mistress: and one boy of ten, and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged; because it appeared upon their trials, that the one hid himself, and the hid the body he had killed; which hiding manifested a consciousness of guilt.....Thus also, in very modern times, a boy of ten years old was convicted on own confession of murdering his bedfellow; there appearing in his whole behaviour plain tokens of a mischievous discretion: and, as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject to capital punishment, William Blackstone's Commentaries on the Laws of England, Book IV, Chapter 2 ("of the persons Capable of Committing Crime") See also Andrew Walkover, The Infancy Defence in the new Juvenile Court, 31 UCLA L. Rev, 503, 505-506 (1984)

5. States were inclined to the doctrine of *parens patriae* i.e. "parent of the country" means the state had the power to act as the guardian of the people with legal disabilities. This includes juveniles also. Based on this doctrine, the juvenile courts followed less technicalities, informal, friendly procedure for the juveniles keeping in view welfare of the child paramount. Julian Mack J. Had very aptly described the goals of Juvenile Courts. He observed: The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the court room are out of place in such hearings. The judge on a bench looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with a child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work". Julian Mack, "The Juvenile Court", Harvard Law Review, vol 23(1909), 1201.
6. Acknowledging the main principles of juvenile courts, Judge Julian Mack observed: "the child offender.....should receive at the hands of the law a treatment differentiated to suit his special needs; that

- the courts should be agencies for the rescue as well as the punishment of the children". Julian Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 115(1909). According to him, the main aim of the juvenile courts should be to do everything which is in the interest of juvenile and the state and to safeguard the career of the juvenile. See also Elizabeth S. Scotland & Thomas Grisso, "The evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform: the Journal of criminal Law and Criminology (1973), vol.88, No.1 (Autumn 1997) at 141, 143.
7. See also Martin R Gardner, *The right of Juvenile Offenders to be Punished: Some Implications of Treating kids as Persons*, 68 NEB.L.REV,182,191(1989).
 8. Elizabeth S Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*; the journal of criminal law and criminology(1973), vol 88, No.1(Autumn 1997) at 144. Also see Ben B. Linsay & Harvey J. O. Higgins, *the Beast* 82-83 (1909).
 9. According to the Act, children in the age group of ten to eighteen years who committed crime were placed in apprenticeship in a trade.
 10. 2 The talked about provisions dealing with underage criminals are sections 82 and 83, IPC SECTION 82, IPC: Act of a child under seven years of age-Nothing is an offence which is done by a child under seven years of age. Section 83,IPC: 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.
 11. Section 27, Cr.P.C.: If a person below sixteen years of age commits an offence other than the one punishable with death or imprisonment for life, he should be awarded a lenient punishment depending upon his previous history, character and circumstances which led him to commit the crime. His sentence can further be commuted for good behaviour during the term of his imprisonment.
 12. Section 360, Cr.P.C: Any person below twenty one 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 such person, the Court may having regard 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 punishment.
 13. According to this the government was empowered to establish reformatory schools and to habitat criminals till suitable job was found for them 16Article 15(3) Constitution, India: Nothing in this article shall prevent the State from making any special provision for woman and children.
 14. Article 15(3) Constitution, India: Nothing in this article shall prevent the State from making any special provision for woman and children.
 15. Article 21 Constitution, India: No person shall be deprived of his life or personal liberty except according to procedure established by law.
 16. Article 23 Constitution, India: Prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.(2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such services the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.
 17. Article 24, Constitution, India: Prohibition of employment of children in factories, etc: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
 18. Article 39(e), Constitution, India: Certain principles of policy to be followed by the state: that the health and strength of workers, man and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
 19. Article39(f), Constitution, India: that children are given op[opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected

against exploitation and against moral and material abandonment.

20. Article 45, Constitution, India: Provisions for early childhood care and education to children below the age of six years- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
21. Hansaria V, Jose Pl. Juvenile justice System, Universal Law Publishing Company Pvt Ltd, 2011.
22. Under the Act, the juvenile age for boys and girls is 16 and 18 years respectively.
23. In 1992, India became a signatory and ratified Child Rights Convention, 1989. Juvenile Justice Act, 1986 got repealed. The Juvenile Justice (Care and Protection of Children) Act, 2000 has made a departure from juvenile justice Act, 1986 as now under the Act uniformity of age i.e. 18 years is made both for boys and girls. The Act basically talks about two types of children one, who are in conflict with law (an individual under the age of 18 years who is accused of committing an offence) and second- those who are in need of care and protection (children from deprived and marginalised sections of the society as well as those with different needs and vulnerabilities). Under the Act, Juvenile Justice Boards were established to deal with children in conflict with law. Juvenile Justice Board consist of three members First Class Judicial Magistrate(who should be well versed in child psychology or child welfare) and two honorary social workers(who should be actively involved in welfare activities of children for minimum period of seven years). One of these two members has to be a woman. Provision is also made for termination of the members if they misuse the power vested by the Act, they have been convicted of an offence involving moral principles, failure to attend proceedings of the board for three consecutive months or is absent for three fourth of the sitting in the year. When the Board is not sitting the child can be produced before any member of the Board. As far as the decision of the Board is concerned it is the majority rule that prevails and if no majority is there, then the opinion expressed by Principal Magistrate is final. For such children more legal protection assured detention to be the last resort.
24. The child apprehended by the police under juvenile justice Act is brought within a period of 24 hours before JJB. The child is sent to the observation home for safe custody. The child can be set free on bail if the parents are present on certain terms and conditions. If bail not given the child continues to stay in observation home and is presented before JJB after every 15 days. After the charge sheet is filed by the police the child is told about the charges brought against them by the JJB. If the child admits his guilt, final order is passed and the child is admonished/ counselled/fine imposed or is told to remain in special home till he attains the age of eighteen years. If the child does not admit his guilt the trial continues and the orders are passed under section 15 of the juvenile Justice Act.
25. NCRB reports that from 2003 to 2013 various crimes committed by juveniles (age group 16-18 years) have increased by 59.7% (at <http://ncrb.gov.in/CD-CII2013/CII13-Tables/Table%2010.7.pdf>. Accessed 11/22/2014) Juveniles are not only committing mild and petty offences but are also involved in heinous and serious crimes. For example In 2012, NCRB reported that police had charged 35,465 juveniles for crimes like banditry, rape, murder etc. (<http://www.thehindu.com/news/national/35465-juveniles-arrested-under-ipc-in-2012/article4869193.ece>. accessed 11/22/2014) As far as rape cases by juveniles are concerned, they were 485 in the year 2002 and this has aggravated to 1,175 in 2012. (Ministry of home affairs, National Crime Records Bureau, N. Delhi, Govt of India, 2012) According to NCRB two third (66.6%) aged between 16 and 18 years, 30.9% aged between 12 and 16 years and 2.5% aged between 7 and 12 years faced juvenile boards in the year 2012. (<http://ncrb.nic.in/CD-CII2012/Statistics2012.pdf> accessed 11/24/2014).
26. 33 year old nurse gang raped in the fields of Gurna village near Budladha town in Mansa district (at <http://timesofindia.indiatimes.com/city/chan-digarh/gangrape-survivor-nurse-sent-home/article1show/42205095.cms> accessed 11/24/2014). Five juveniles were apprehended by police for gang rape of 12 years old in Guwahati. (at <http://www.thehindu.com/news/national/otherstates/5juveniles-held-for-gang-rape-inguwahati/articles5137332.ece>. accessed 11/23/2014). 13 year old boy was charged for raping nine year old girl in Electronics city (at <http://www.thehindu.com/news/cities/bangalore/juvenile-held-for-raping-nine-year-old-girl-in-electronics-city> accessed 11/23/2014).

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Corresponding Author

Akshay Singh*

Research Scholar, Department of Law, M. D.
University, Rohtak