



## Juvenile Justice System in Comparison to Criminal Justice System in India

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### ABSTRACT

Children and adults are treated differently as far as the legal perspective is concerned. Law considers the offence committed by the child as a delinquent act rather than a crime. Courts have established a different procedure for trial in case of a child. The child and adult not only differ in criminal proceedings but on other grounds also. They do not have the same constitutional rights as adults. The administration of justice system has a different perspective in case of an offence committed by a child. If an offence is committed by an adult, it is perceived as a crime and he or she is taken under legal consideration for the same. On the other hand, if an offence is committed by a child, the court observes the delinquency of the act. However, there is an exception in some case where the child can be treated as an adult. The main objective of the juvenile justice system is to make sure that the child is rehabilitated so that he or she does not repeat the same crime in future. In an adult justice system, the main objective is to threaten the accused by way of punishment so that he or she should not commit such heinous offences in future.

### WHO ARE JUVENILES?

In general, a person is said to be a child if he is below the age of 18 years. They are considered as the fragile and weaker section of the society. If the child commits any crime, his status changes to a juvenile. Basically, the juvenile is a child who has committed any crime. The age of the child is different according to the different acts. The most commonly accepted age of the child is defined by UNCRC as-

The UN Convention on the Rights of Child, 1989 defines that "child" means a human being below the age of eighteen years unless the law declaration

applicable to the child, the majority is attained earlier.<sup>1</sup>

If a child commits a crime, a separate procedure is to be followed for its prosecution. The provisions related to the procedure and offences committed by the child are defined in the juvenile justice act.

### JUVENILE JUSTICE SYSTEM

Our constitution guarantees the Fundamental rights to all its citizens either they are adults or children. The directive principles of state policy as stated under part 4<sup>th</sup> of the constitution obliges the state government to make appropriate laws for the protection and development of child. There is a different definition of child and juvenile in legal terms. According to the legal point of view, a child is a person who is below the age of 18 years<sup>2</sup>. On the other hand, a juvenile is a child who commits any offence.

In order to ensure the free and full development of the child as well as to provide protection to a child, it is necessary to establish a separate act that will offer the basic rules and procedures while dealing with the child offenders. For this purpose, the first and foremost act relating to the protection and promotion of child was established during the British rule and is known as Apprentice Act, 1850. Later on, various acts were passed on this issue. For the purpose of justifying and gathering all the provisions that deal with a child, the Indian parliament passed the Juvenile Justice Act on 22<sup>nd</sup> August 1986. India became the

<sup>1</sup> UN convention on the rights of child, art. 1.

<sup>2</sup> Juvenile justice (care and protection of children) Act, 2015. section 2(12).

signatory to the child rights convention in the year 1992. After that, this act was repealed and a new act was passed in 2000. The new act was known as Juvenile justice act, 2000. This act has been amended constantly to meet the requirements of the child and child offenders. Finally, the Indian parliament passed the Juvenile Justice (care and protection of children) Act, 2015. It replaced the previous acts. This act was passed on 22 December 2015 and it came into force on 15 January 2016.

Juvenile justice act has differentiated the minor into two categories:

- Firstly, it has defined the “child in conflict with law” as a child who is below the age of 18 years and has committed the certain offence.<sup>3</sup>
- Secondly, it has defined the “child in need of care and protection” as a child who is below the age of 18 years and needs some special care and protection by the state government.<sup>4</sup>

As established by the act, the maximum punishment to be provided to the child is 3 years. But the new 2015 act, has made some specific changes. According to the new act, if the child has committed some grave and heinous offence and he is above 16 years of age then he can be treated as an adult. However, this is done only after considering the mental capacity of the child at that time.

#### **ADULT JUSTICE SYSTEM:**

In ancient time, the general rule is that the king is above the law and he can do no wrong. All the rules and laws were made and executed by the king himself. The scenario is different in modern society. In modern times, the powers are divided among various authorities. Reliable laws are made for every citizen. The treatment of adults is quite different as compared to children. Although the part 3<sup>rd</sup> of the constitution guarantees a number of Fundamental rights to every adult, it also deals with the remedies provided to a person whose fundamental rights are infringed. The basic objective of the constitution is that everyone should receive due care and protection. The main aim for establishing separate criminal justice system in India is to ensure that society is

<sup>3</sup> Juvenile justice (care and protection of children) Act, 2015, sec. 2(13).

<sup>4</sup> Juvenile justice (care and protection of children) Act, 2015, sec. 2(14).

being protected from the criminals. For this purpose, the Indian criminal Justice system comprises of Indian penal code and Code of criminal procedure. The Indian penal code is a statute for a substantive law that lists out the offences and punishments for the same. On the other hand, the Code of criminal procedure is a statute for a procedural law that deals with the procedure to be followed in dealing with such offences.

Mainly, the Adult justice system consists of 3 branches:

- Firstly, the branches for dealing with enforcement i.e. Police.
- Secondly, the branches for solving and justifying the offence i.e. Courts.
- Thirdly, the branches for implementing the punishment so that the probability of future offences can be minimized.

#### **DIFFERENCE BETWEEN JUVENILE JUSTICE SYSTEM AND ADULT JUSTICE SYSTEM:**

##### **1. WITH RESPECT TO ARREST:**

When a juvenile commits an act, the police have a primary duty to take the custody of the child and detain him to produce him before the Juvenile justice board. The child is produced before the Board by any non-public party after informing the police. If any person commits a crime, the police have a primary duty to confirm the age of that person before arresting. If a person is found below the age of 18 years, he or she should be treated as a Juvenile. A separate investigation procedure is to be followed and charge sheet is prepared by the police to present it before the Juvenile Justice Board. The police cannot hurt the child nor do any action that is harmful to him.

On the other hand, in the case, if an adult commits any crime, he is taken under the consideration of police. The police are required to investigate on such matter and prepare the charge sheet. The person is then presented before the adult Court for further proceedings.

##### **2. WITH RESPECT TO PROCEEDINGS:**

The procedure to be followed in the Adjudication hearing is different in case of a juvenile. The Juveniles are empowered to be directly heard by the Judges and they are not entitled to be presented before the jury for hearing as in case of adults. The records

of the Juveniles are also sealed and are not likely to be reopened further as in case of Adults. As soon as the juvenile turns 18, the records are removed after considering the actions of the Juvenile. The court determines the seriousness of the act and if the act is delinquent then the juvenile is sent for rehabilitation. The purpose of the court while dealing with Juveniles are to provide the proper counselling and guidance to the child so that he or she would be able to understand the nature of the action and learn good conduct. On the next side, in a case of an adult, the purpose is to provide punishment to the offender.

### 3. WITH RESPECT TO BAIL

Juveniles do not have a right to bail as in case of adults. As soon as the juvenile is taken under the custody of police, he or she is scheduled for a hearing. The juvenile can be returned back to the custody of parents or guardian if the judge permits. However, the parents should assure to produce the child before the court during the trial. On the other hand, if the adult has committed a crime and he is taken under the custody of police, he has the right to bail depending upon the weightiness of the offence committed by him.

## RELATION BETWEEN THE JUVENILE JUSTICE SYSTEM AND ADULT JUSTICE SYSTEM:

### 1. WITH RESPECT TO COUNSEL

Both the juvenile and adult have the right to have counsel. In case of a juvenile, the counsel is responsible to find the suitable methods to provide rehabilitation to the child. While in a case of an adult, the counsel tries to minimize the quantum of punishment provided to the offender.

### 2. WITH RESPECT TO SELF-INCRIMINATION:

Self-incrimination means compelling a person to be a witness against himself before the court.<sup>5</sup> In case of a juvenile, a child cannot be compelled to testify against himself and the same rights are provided to the adults as well.

### 3. WITH RESPECT TO WITNESS

The procedure of producing witnesses is similar in both the cases. In case of a child, if the child pleads that he is not guilty of the offence, he can produce witnesses before the Juvenile Justice Board. The Board will then, decide the matter to be considered and after an appropriate hearing, the case is disposed of. In case of an adult, the procedure is same. The adult has to produce the witnesses before the court and after considering them the court will pass the order either in favour of the accused or against him.

### 4. WITH RESPECT TO NOTICE

Both adults and juveniles have the right to have notice of the charges alleged upon them. In case of a juvenile, the police must, first of all, inform the parents or guardian of the child about the charges alleged upon their child. In case of an adult, right to receive notice is similar but if the crime is heinous one then the police can arrest the person without any warrant.

### 5. WITH RESPECT TO APPEAL

Both the juvenile and adult have the right to file an appeal in the higher court. In case of a juvenile justice system, his representative can file a further appeal in the higher court if the child is found guilty of the offence which is similar in case of an adult. However, Even though the child or adult has been found not-guilty of the offence, they can file a case against the defendant for malicious prosecution if the false case has been alleged upon them.

### WHEN CAN A CHILD BE TRIED AS AN ADULT?

Apart from juvenile justice act, the IPC also deals with some of the provisions related to offences committed by a child. The Indian Penal code has differentiated the age groups in matters related to crime. If a child is below the age of 7 years then he or she cannot be deemed to have committed any crime.<sup>6</sup> A child who is between the ages of 7 years to 12 years shall also be not deemed to have committed any crime as far as the maturity of the child and the nature of the crime is considered.<sup>7</sup>

According to the juvenile justice Act, 2015 a child who is above the age of 16 years and under the age of

<sup>5</sup>INDIAN CONST. art. 20 cl. 3.

<sup>6</sup> Indian Penal code (1860). sec. 82.

<sup>7</sup> Indian Penal Code (1860). sec. 83.

18 commits any crime then the nature of the crime is concerned. If the crime committed by the child is heinous, he is taken into consideration. The maturity level and state of mind of a child are examined and if the child is found to have attained enough maturity to commit such crime then he can be tried as an adult. It is only limited to summon cases.

### **IMPACT OF THE INFAMOUS NIRBHAYA CASE:**

On the night of 16<sup>th</sup> June 2012, a girl named Jyoti Singh along with her male friend was travelling in a bus. There were 6 males present in the bus along with the driver. As soon as the bus took the wrong direction, her friend become suspicious and argued with the driver and other persons present in the bus. The argument was grown to up to such an extent that they ended up hitting her friend with an iron rod. Later on, they brutally raped the girl one by one. After raping her, they threw both the bodies out of the bus. This case brought a huge rage among the people in India. After due recognition, the accused persons who raped that girl was being sentenced with murder except for one member who is a juvenile. The argument was whether he should be treated as an adult. This case forced the parliament to make certain amendments in the Juvenile justice act. The parliament after considering the consequences passed the Juvenile justice act, 2015 with certain changes. According to the new law, if the child who is between the ages of 16 to 18 years and commits any serious offence such as rape or murder then he or she can be tried as an adult. However, they should be first observed that whether they have attained sufficient maturity to commit such crime.

After the passing of this act, a case was detected in Jhabua district of Madhya Pradesh. Two teenagers killed a girl aged 16 years. They were sent to the correction home and after due inspection, they were found to be physically and mentally fit. They were allowed to be treated as adults and were found guilty for the misconduct. They were sentenced to life imprisonment.

### **CONCLUSION**

The judiciary of India is quite lenient in treating child offenders. The crime committed by a child is given lesser significance as compared to the crime committed by an adult. If an offence is committed by a child it is considered to be the delinquent one while on the other hand if the offence is committed by the adult then it is considered to be a crime. Their treatment of a child is different from the adult. However, there are some rights that are provided to both juveniles as well the adult. Whether the offence is committed by child or adult, the court should follow the due process of law while determining the cases. Due process of law means to provide the fair and impartial judgment. Both the accused have right to be treated fairly without any biasness.

The juvenile justice system has been amended repetitively to meet the requirements of the justice system. The latest amendment made in the juvenile justice system specifies that the child between the ages of 16 to 18 should be tried as an adult if he or she commits some serious offence. The criminal justice system has also been repetitively amended to meet the requirements of the justice system. The latest amendment to the criminal law system i.e. the criminal law amendment act, 2013 provides for the amendments related to the sexual offences.

After determining both the aspects our justice system with respect to the child as well as adult, it can be concluded that the juvenile justice system in the treatment of child does not seems to be in conflict with the administration of criminal justice system. It is to be deliberated that both the systems should go hand in hand with each other. In modern era, the thinking capacity and mentality of a child is developed. A child has the capability to understand the circumstances and he can interpret the situations accordingly. Therefore, the child can be treated as an adult in certain cases looking at the mental status of that particular child.