THE IMPACT OF LEGISLATIVE DISPENSATIONS ON THE CHANGING DIMENSIONS OF JUVENILE DELINQUENCY IN INDIA: AN ANALYSIS

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INTRODUCTION

The advent of modernization, urbanization and industrialization has ushered in many problems leading to social disorganization including 'juvenile delinquency'. This problem needs the greatest attention for the maintenance of social and cultural systems of any country.[1]

The need for a uniform frame work for juvenile justice in India, the provision for a specialized approach towards the prevention and treatment of juvenile delinquency' and the necessity for spelling out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children as required by international norms motivated the enactment of the Juvenile Justice (Care and Protection) Act. In the preamble of the Act, the constitutional provisions, (Art.15 (3) Art. 39 (e) Art. 39 (f) Art. 45 and Art. 47.) and International norms and United Nations Standard Minimum Rules for Juvenile Justice are recited. In 2016, the total number of cases against juveniles in conflict with law as reported in states and union territories was 35,849. In India, providing requisite detention facilities, institutional care, training and rehabilitation poses a serious challenge.

Juveniles in conflict with law need to be provided with care, protection, maintenance, education and training in order to ensure their rehabilitation in the society. The programmes carried out in juvenile institutions do not automatically result in rehabilitation of a juvenile "from the artificial and restricted environment of institutional custody, from doubts and difficulties, hesitations and handicaps to satisfactory citizenship, resettlement and to ultimate rehabilitations in the community.

The present paper focus on the legislative dispensations is changing of juvenile Justice Act, 1986, with the help of judicial pronouncements and in light of international and national norms.

DEFINITION OF JUVENILE DELINQUENCY

Etymologically, the term ‘delinquency’ has been derived from the Latin word delinquer which means ‘to omit’. The Romans used the terms to refer to the failure of a person to perform the assigned task or duty. It was William Coxson who 1484, used the term delinquent’ to describe a person found guilty of customary offence. The word also found place in Shakespearean famous play ‘Macbeth’ in 1605. In simpler words it may be said that delinquency is a form of behavior or rather misbehavior or deviation from the generally accepted norms of conduct in the society.

The basic principle of criminal law are expressed through the Latin expression *nullum crimen sine lege*, ‘no crime without law ‘. Laws defining crimes should not be vague since the citizens must be able to know with a fair amount of certainty the acts which are proscribed for them. To quote Ruth Cavan:

“Most of the behaviour which gets a child into trouble with the police and courts 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. Laws in some other States are still vaguer. New Maxico 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 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?”

OBJECTIVES OF INSTITUTIONAL TREATMENT OF JUVENILE DELINQUENTS

Section 9, in chapter 31 of A Manual on Human Rights Training for Prison Officials under the Office of the United Nations High Commissioner for Human Rights, provides the objectives of institutional treatment for juvenile delinquent. They are:

(i) The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

(ii) Juveniles in institutions shall receive protection and all necessary assistance- social, educational, vocational, psychological, and medical and physical- that they may require because of their age, sex and personality and in the interest of their wholesome development.

(iii) Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

(iv) Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, treatment and training than young offenders male offenders. There fair treatment shall be ensured.

(v) In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

(vi) Inter- ministerial and inter-departmental co- operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage

UNITED NATION’S GUIDELINE PRINCIPLES FOR JUVENILE DELINQUENCY

Juvenile delinquency in developed and developing countries drew attention of the United Nations to work out some guiding principles for Juvenile Justice System. The United Nations

Asia and Far East Institution made significant contribution in this behalf as a result of which the seventh U.N. Congress on Prevention of Crime & Treatment of Offenders adopted, in September 1985, the Standard Minimum Rules for Administration of Juvenile Justice. These Rules were subsequently adopted by the U.N. General Assembly in November 1985 and embodied the following basic Principles:

(i) Juvenile in trouble with law should be provided with carefully constructed legal protection.

(ii) Pre-trial detention should be used only as a last resort. Child and juvenile offenders should not be held in a jail where they are vulnerable to the evil influences of the adult offenders.

(iii) Juvenile offenders should not be incarcerated unless there is no other appropriate response that will protect the public safety and provide the juvenile with the opportunity to exercise self-control.

(iv) Member nations should strive individually and collectively to provide adequate means by which every young person can look forward to a life that is meaningful and valuable.

India, being a U.N. member has responded favourably to this call of the international body and enacted a comprehensive law on the subject called the Juvenile Justice Act, 1986.

JUVENILE DELINQUENCY IN UNITED KINGDOM

For the problem of juvenile delinquency, the English criminal justice administrators have preferred to deal with it outside the framework of criminal law. Though the problem has attracted nationwide attention, many reformists feel that delinquency among adolescents is a transient phase and will disappear as they grow older; hence they need to be tackled differently. Moved by this consideration, the English penal reformists adopted different procedure and methods for treatment of juvenile offenders in United Kingdom.

Section 77 of the Children and Young Person Act, 1933, provided for the establishment of Remand Home in England for the treatment of children and young offenders. The children and adolescents below the age of seventeen were kept under observation in these Homes before

their trail in a juvenile court. Similar arrangements were recommended for young adults between the age group of 17 and 21 by the English Criminal Justice Bill, 1938.

But the Bill could not be finally passed due to the outbreak of World War II. The Criminal Justice Act, 1948, however, provided certain degree of security to young adult offenders through Remand Homes. Two Remand Centre's were set up one each at Ashford and Middlesex in July 1961 for handing juvenile offenders who were in the age group of seventeen and twenty-one years of age. With the enactment of Criminal Justice Act, 1982 in U.K., the law relating to juveniles has been considerably liberalized.

JUVENILE DELINQUENCY IN UNITED STATES

The Juvenile 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.

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 behavior, while malleability might make juveniles vulnerable to bad influences, particularly from peers.

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, and 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 punishment 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 court is automatically in such cases.

HISTORICAL EVOLUTION OF JUVENILE DELINQUENCY IN INDIA

Before the British rule, both the Hindu and Muslim customary laws were in operation in India. Both these laws had no specific reference to the juvenile delinquents. With the advent of British rule in India, English laws with certain modifications were applied in the presidency towns of Bombay, Calcutta and Madras. The English idea of separate treatment for juvenile delinquents as distinct from adult criminals, was passed on to India in the last quarter of the nineteenth century and all subsequent Indian Children Acts twentieth century derived their framework from English juvenile Legislation. The earliest special law was the Apprentices Act 1850 providing for binding over as apprentices children between the age of 10 to 18 years instead of sending them to prison for minor offences. So, the Act was an attempt to keep the petty child offender out of prison to prevent his contamination by the adult offenders. In 1876 the Reformatory School Act, was passed, which was a landmark in the treatment of delinquency in India. Under the Act the state governments were authorized to establish and maintain reformatory schools, and the courts were empowered to send delinquent boys below 15 years of age to such schools. The Act continued as the primary law in those areas where no Children Act or any other special laws dealing with juvenile offenders were enacted. This Act, though provided distinct machinery for dealing with young offenders, but the real impetus for a separate comprehensive legislation to deal with children was provided by the Report of the Indian Jail Committee (1919-20). The creation of children's court for the hearing of all cases against children and young person's was recommended by the committee.

Recognizing that the child who showed any deviant behavior should be dealt with in a different manner, Madras was the first state to pass the Children Act in 1920. This was followed by Bengal and Bombay in 1922 and 1924 respectively. Five more provinces had Children Acts by the time the country got its independence and many more states had enacted legislation during

the years after independence. All the states except Nagaland had enacted their Children Acts. The Government of India enacted the Children Act in 1960, which was made applicable to the Union territories. With a view to provide uniform pattern of administration of justice and to ensure that no child under any circumstances is lodged in jail or police lock up, all state Children Acts including the Children Act of 1960 have been replaced by the Juvenile Justice Act,1986 as enacted by the Parliament. The Act provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles. The new law envisages a comprehensive approach towards justice for children in situations of abuse, exploitation and maladjustment. From 2nd October 1987, the Act has come into force throughout the country except the state of Jammu and Kashmir.

CHANGING DIMENSIONS OF JUVENILE DELINQUENCY SYSTEM AFTER J. J. ACT, 1986

India signed and ratified the United Nations Convention on the Rights of the Child in December, 1992. As per the Convention the Government needs to take step in order to ensure that:

> "(a) No child shall be subjected to torture or other, inhuman or degrading treatment or punishment . Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not

to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

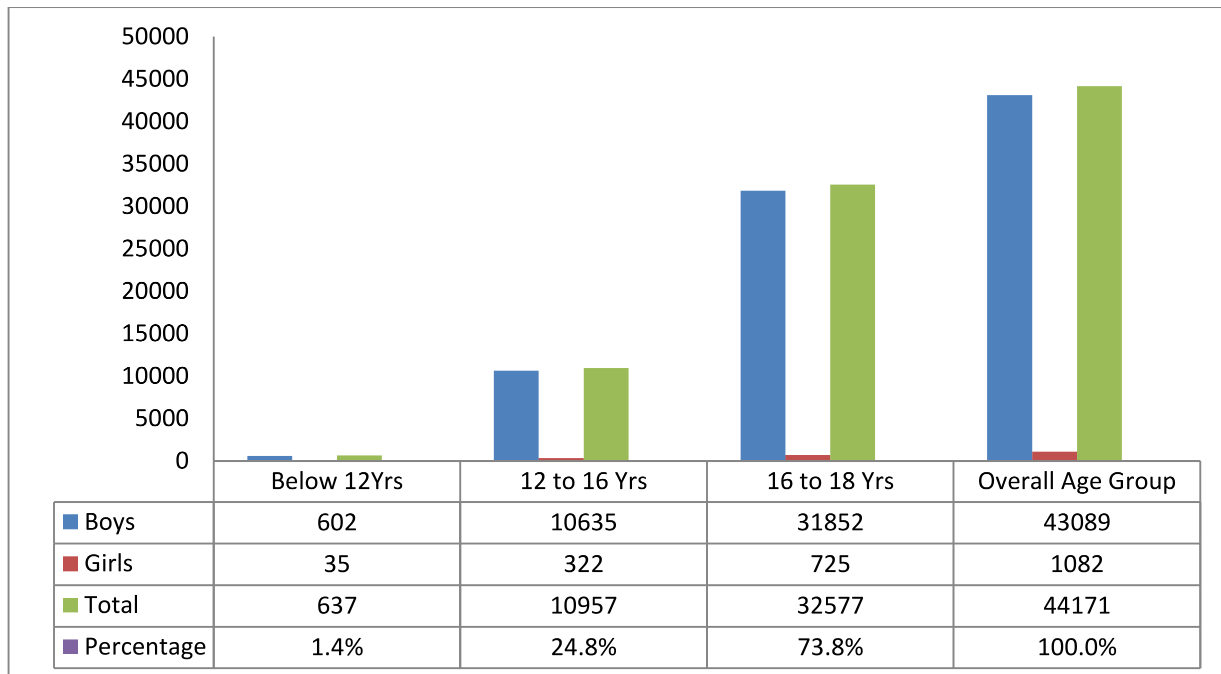
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

It was considered essential to adopt the uniform cut off age of 18 years for both girls and boys in conformity with the definition of child in the Convention on the Rights of Child, 1992 (hereinafter CRC). The Juvenile Justice (care and protection of children) Act, 2000 extended the ban on use of prisons or police station at any stage of proceeding and under any circumstance for children below the age of 18 years found to have committed any offence under any law in force in India.

All these enactments since 1850 were moving in one direction to bring an increasing number of children within the protective umbrella of juvenile justice. However, the gang rape of Delhi girl, Jyoti Pande (named Nirbhaya by media) on 16th December, 2012, resulted in use of social media to organize spontaneous protests the gruesome rape. It resonated in different parts of India. Soon media coverage shifted the focus from women's safety to the involvement of a 17 year old child in this gang rape. The newspapers and multi-media screamed with flashing headlines that the child was 'the most brutal' of all accused in this rape. The media created and promoted the frenzy around this lie.

With the passing of the Criminal Law Amendment Act, 2013, all women were presumed to have become safe except from 'juveniles' who were continuing to pose the biggest treat to safety of women in India. Newspapers and multi-media flashed more lies of 50% increasing in juvenile crime, 60% increasing in sexual offences by children and so on even though the National Crimes Records Bureau (NCRB) data continued to show that there was no substantive change in either the rate of crimes or share of juvenile delinquency to total crimes.

JUVENILE APPREHENDED (CRIME HEAD, AGE GROUP & GENDER WISE) – 2016:



	Below 12Yrs	12 to 16 Yrs	16 to 18 Yrs	Overall Age Group
Boys	602	10635	31852	43089
Girls	35	322	725	1082
Total	637	10957	32577	44171
Percentage	1.4%	24.8%	73.8%	100.0%

Source: National Crime Records Bureau

The above graphic has also mentioned that the majority of Juveniles in conflict with law apprehended under IPC & SLL (Special & Local Law) crimes where in the age group of 16 years to 18 years (73.81%) (32577 out of 44171) during 2016.

The Supreme Court challenging the constitutionality of definition of child in Salil Bali V. Union of India case and for lowering of cut-off age for defining child in Subramanian Swami V. Raju through the Juvenile Justice Board case but were dismissed by the Supreme Court with cogent reasoning. The Juvenile Justice Bill, 2014, as introduced in Lok Sabha was examined by the Department related Parliamentary Standing Committee on Human Development Resources consisting of 11 members of Parliament from Rajya Sabha and 32 members of parliament (MPs) from Lok Sabha belonging to different parties and headed by Satyanarayan Jatia, a BJP leader.

In its 264th report on Juvenile Justice (care and protection of children) Bill 2014, the Parliamentary Standing Committee rejected the bill being unconstitutional and unwarranted in the following words:

"The existing juvenile system is not only reformative and rehabilitative in nature but also recognizes the fact tha,t 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to different or adult judicial system as it will go against Articles 14 and 15(3) of the constitution".

The JJ Bill, 2014 was passed in Lok Sabha despite very cogent arguments presented by the MPs who were in the miniscule minority there. In Rajya Sabha, the JJ Bill, 2014 had reached that point where various political parties had given notice to the chairman for sending it for further examination to the select committee.

However, the concerted efforts by the media savvy experts playing on the emotions of the bereaved family of Jyoti Pande, succeeded in the withdrawal of this notice at the last minute and passing of the JJ Bill, 2014 in the Rajya Sabha in the emotionally charged atmosphere created by the presence of Jyoti Pande's parents in the gallery, without any debate on the provisions of the bill or the objections to the bill raised by the Parliamentary Standing Committee.

Now that the JJA, 2015 has been enforced, it is essential to clearly understand the scheme of the new Act and the challenges presented by its various provisions in its implementation and also clear impact of legislative dispensations.

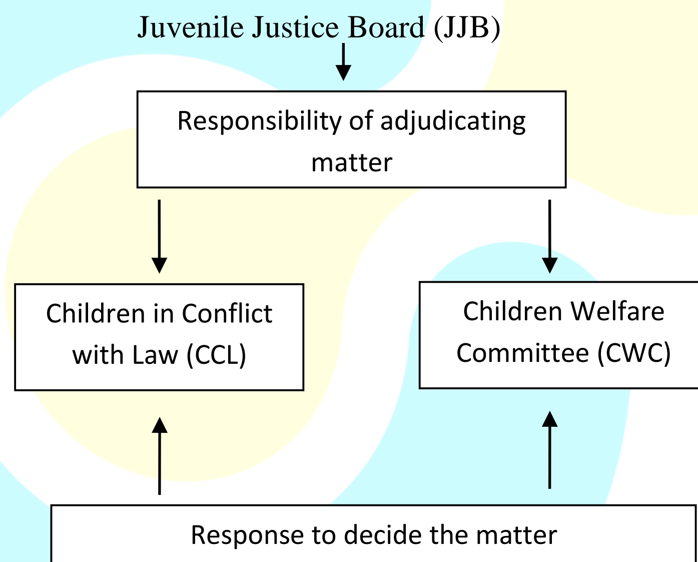
POSITIVE DISPENSATIONS OF J.J. ACT, 2015

The preamble of the JJ Act, 2015, states that the act is aimed at "catering to their basic needs through proper car, protection, development, treatment, social re-integration, by adopting a child- friendly approach in the adjudication and disposal of matters in the best interest of children and their rehabilitation through processes provided, and institutions and bodies established".

A positive change of the J.J. Act, 2015, has dropped the usage of the term 'juvenile' and retained it only in the title. Section 1(4) now gives overriding effect to provisions of this Act in case of conflict with any other law not only in relation to children in conflict with law but also in case of all matters relating to children in need of care and protection.

No change has been made in the definition of 'child' which means a person who has not completed the age of 18 years. For purposes of clarifications it must be noted that the J.J. Act, 2015 has not reduced the age of defining a child to 16 years but children between the age of 16-18 years alleged to have committed a heinous offence may be transferred to an adult criminal court, known as the children's court to be tried as adults in certain circumstances.

The J.J. Act, 2015 continues to apply to two categories of children, namely, children in conflict with law and children in need of care and protection. While the term 'children in conflict with law' (CCL) continues to refer to children alleged or found to have committed any offence, some changes have been made in the definition of 'children in need of care and protection' (CNCP).



CHILDREN IN NEED OF CARE AND PROTECTION (CNCP)

The juvenile justice board (JJB) continues to have the responsibility of adjudicating matters relating to 'children in conflict with law' and child welfare committee (CWC), the responsibility to decide matter connected with 'children in need of care and protection'. While the JJB continues to be constituted by one judicial magistrate and two social workers, it is no more required that the magistrate must have special knowledge of child psychology and child welfare. "A practicing professional with a degree in child psychology, psychiatry, sociology or law" are among the categories of persons who may be appointed as members of the JJB and the child welfare committee (CWC).

Section 6 of J.J. Act, 2015 clearly laid down that if a person who has crossed the age of 18 years is apprehended for an offence committed prior to age of 18 years, is to be treated as a child and their cases are to be disposed under the provisions of the Act.

When a CCL, is produced before the JJB, if it is obvious from the appearance of the child that it is so, it may note the age and proceed with inquiry. In other cases, the age is to be determined by adducing evidence. In order of preference, age is to be determined by reference to:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board;

(ii) the birth certificate given by a corporation or municipal authority or a panchayat; and

(iii) only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

The Juvenile Justice Board is free to choose any of the following orders for any offence on the basis of the social investigation report and suitability of the order in the best interest of the child:

(a) allow the child to go home after advice of admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian;

(b) direct the child to participate in group counseling and similar activities.;

(c) order the child to perform community service under the supervision or institutions, or a specified person, persons, or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be assured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the case of any parent, guardian or fit person, on such parent, guardian or fit person executing a bound, with or without surety, as the Board may require, for the good behavior and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behavior and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding tree years, as it thinks fit, for providing reformative services including education, skill development, counseling, behavior modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behavior of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

In addition to the above orders the JJB may also direct the child to: (I) attend school; (ii) attend a vocational training centre; (iii) attend a therapeutic centre; (iv) prohibit the child from visiting, frequenting or appearing at a specified place; (v) undergo a de-addiction programme.

In case of 16-18 years old child alleged to have committed a heinous offence, the JJB has to "conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence" taking the help of experienced psychologists or psycho-social workers or other experts. After this assessment, the JJB may choose to dispose of the case itself or may decide to transfer the case to the children's court.

LEGISLATIVE CLASSIFICATION OF OFFENCES AND THE J.J. ACT, 2015

The J.J. Act, 2015 has introduced legislative classification of offences into three categories, namely, petty, serious and heinous. (Ibid. s. 2(45) (54) (33) It includes:

(a) 'Petty offences' includes the offences 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;

(b) 'Serious offences' includes the 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

(c) 'Heinous offences' includes 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.

Above all the three definitions use word 'includes ' and not means while defining these categories leaving the question alive as to what else is included in these definitions beyond what has been specifically mentioned in these definitions. In criminal law, the accepted principle of interpretations is the strict and narrow interpretation as not to extend the criminal liability of the accused. Hence, no offence that provides for greater criminal liability than provided in it may be included within these categories.

For the first time a distinction was made between offences punishable with seven years or more in case of children by the order of the Supreme Court in Sheela Barse V. Union of India. By this order the Supreme Court directed that all inquiries in offences punishable with less than seven years of imprisonment must be completed within three months of filing of the complaint, filing which the case must be treated as closed.

It is the first time in the history of juvenile justice in our country that a distinction has been made on the basis of punishment prescribed for the offence for trying children as adults.

The Minister for Women and Child Development, Maneka Gandhi in her reply to the discussion in Rajya Sabha on 22nd December, 2015, started that herinous offence have been spelt out in the bill as follows:

It is every crime that is listed by the IPC, as seven years or more…..I just want to tell you that what it is ….. I will explain to you what they are. They are murder, rape, acid attack, kidnapping for ransom, Dacoit with Murder. That's it.

The above explanation is not in accordance with the words contained in the definition of heinous offences. Offences included within the heinous offences category are not limited to offences only under the IPC but include offences under 'any other law' for the time being in force.

Now the centre for child and law of National Law School of India University has prepared a list of heinous offences,

It will be advisable for the JJB to take the following simple steps while determining if an offence is to be classified as a heinous offence:

Firstly, examine if the section provides for imposition of a minimum sentence?

Secondly, if the answer to the first question is yes, then examine if the minimum sentence prescribed for the offence is seven years or more than seven years?

Thirdly, if the answer to the second question is yes, the offence is included within the definition of heinous offence but if the answer is in the negative, it is not included within the definition of heinous offence.

However, still leaves the problem of classification of offences punishable with mandatory minimum sentence of less than seven years. An offence punishable with minimum punishment of three years touches on the boundary of petty offences but need to be classified as serious offence as the maximum punishment provided for such offences is more than three years. Other offences punishable with minimum imprisonment of less than three years but punishable with maximum of three years need to be classified as petty offences.

LEGISLATIVE DISPENSATION ON JUVENILE DELINQUENCY IN ODISHA

The Orissa Children Act, 1982 providing for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent juveniles was enforced throughout the state with effect from 31.08.1986, vide Home Department Notification No. 50146 dated 23.08.1986.

In pursuance of the provisions of the above act, two Observation Homes and Special Homes (combined) were established at Berhampur and Rourkela respectively vide Home Department Notification No. 50150 dated 28.08.1986. As per the said Notification, the Observation Home and Special Home, Berhampur was to cover seven undivided districts namely, Cuttack, Puri, Balasore, Ganjam, Koraput, Kalahandi and Phulbani whereas the Observation Home and

Special Home, Rourkela was to cover the remaining six undivided districts such as Sambalpur, Sundargarh, Bolangir, Keonjhar, Mayurbhanj and Dhenkanal with regard to the reception of delinquent and neglected juveniles.

The Juvenile Justice Act, 1986 which was applicable to the whole country came into force in the state w.e.f. 02.10.1987, replacing the Orissa Children Act, 1982 and from the said date, the implementation of Juvenile Justice Act was transferred from the administrative control of the Home Department to the erstwhile C.D and R.R. Department (now re designated as Women and Child Development Department). Subsequently, the said Act was replaced by the Juvenile Justice (care and protection of children) Act, 2000 (as amended in 20006) which was enforced in the state of Orissa w.e.f. 01.04.2001. It is to be mentioned here that above Act was once again amended in the years of 2011.

DIFFERENT TYPE OF HOMES UNDER THE JUVENILE JUSTICE SYSTEM IN ODISHA

For juveniles in conflict with law

Forwarding Authority :- J.J. Board

*Observation Home

* Special Home

For children in need of care & protection

Forwarding Authority :- C.W.C.

*Children's Home

* Shelter Home

After Care Organization

Social Reintegration/Rehabilitation

Observation Home:

Under section 8 of the Juvenile Justice (care and Protection) Act, 2000, the State Government empowered to establish and maintain observation homes in every district of the temporary reception of any juvenile in conflict with law during the pendency of any inquiry.

Classification for Juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen years to eighteen years giving due considerations to physical and mental status and degree of the offence committed, for further education in the observation.

Special Home:

Under section 9 of the Juvenile Justice (care and protection) Act, 2000, the State Government is empowered to established special home in every district required for reception and rehabilitation of juveniles in conflict with law.

Shelter Homes:

Under Section 37 of Juvenile Justice (care and protection) Act, 2000, the State Government may recognize reputed and capable voluntary organization and provided them assistance to set up and administer as many shelter homes for juvenile children as may be required.

Children Homes:

Under Section 34 of the Juvenile Justice (care and protection) Act, 2000, the State Government may establish and maintain either by itself or in association with the voluntary organization children homes in every district for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

***After Care Organization U/S-44 of J.J. Act, 2000**:*

For the reception of juveniles in conflict with law/children in need of care and protection after they leave Special Homes/Children's Homes for care and treatment so as to enable them to lead a honest, industrious and useful life (maximum period of staying three years). Juvenile/Children over 17 years of age but less than 18 years of age would stay in such organization till they attain the age of 20 years.

But some states in India, Borstal schools are still run on almost the same pattern as was introduced decades back in the colonial period and there has been no improvement in their functioning on progressive and scientific lines after independence.

INDIAN JAIL COMMITTEE'S REPORT AND CHANGING DIMENSIONS OF JUVENILE DELINQUENCY

The Indian Jails Committee 1919-20, had made a strong recommendation that children and young persons below the age of 21 years should not be kept inside a jail and separate arrangements for their custody and treatment should be made. In this report "Jail Administration in India", Dr. W. C. Reckless, the United Nations expert had emphasized the need to have separate arrangements for the young offenders. The All India Jail Manual Committee 1957-59, had also stressed the need for a different correctional approach for young offenders. The Model Prison Manual envisages separate institutions for this offender.

In A. N. Mulla Jails Committee on Jail Reforms (1980-83) has viewed that there are serious difficulties in the development of a uniform approach towards young offenders. Some of these may be enumerated:

(I) Except the Borstal Schools Act, there is no other approach adopted in our legal system for the institutional treatment of young offenders. The Borstal Schools have a limited coverage in relation to young offendersof certain categories. The Prisons Act, 1894 contains provisions only for the separation of young offenders. Most of the young offenders continue to be incarcerated along with other offenders in prisons.

(II) In the existing Borstal Schools Acts, there is no uniformity in terminology (for instance there are variously referred to as adolescent offenders, offenders and young offenders).

(III) There is no uniformity about the age of young offenders.

(IV) There is no provision for compulsory committal of young offenders to Borstal Schools.

(V) The conditions governing admission in , and discharge from, Borstal Schools vary from State to State.

(VI) All Acts, except the Assam Act, provide for the application of the Prisons Act, 1894 and Prisons Act, 1900.

Said Committee has recommended that the following factors have further handicapped the development of suitable correctional programmes for young offenders:

(i) Chronic or periodical over-crowing in prisons;

(ii) Lack of satisfactory and adequate facilities for effective segregation of young offenders in the existing district and central prisons where all categories of prisoners are huddled;

(iii) Absence of scientific classification system and the resultant absence of individualization of training and treatment programmes for young offenders;

(iv) Insufficient, ineffective and unplanned educational, training and treatment programmes for young offenders in the juvenile sections of prisons and even in separate institutions for young offenders;

(v) Absence of an effective after-care programmes and follow-up;

(vi) Absence of adequate and trained staff.

So, the Committee has observed that the policy makers and prison administrations seem to have remained indifferent to the most sensitive question of the treatment and rehabilitation of young offenders.

CHANGING DIMENSIONS OF JUVENILE DELINQUENCY AND MODEL PRISON MANUAL, 2016

Model Prison Manual, 2016 has laid down the following guiding principles. They are:

(i) Young persons are impressionable. A young offender of today can be a hardened recidivist of tomorrow. Such offenders can be reclaimed as useful citizens and can have better prospects for being re-educated to a socially useful way of life. A scientific and progressive approach needs to be adopted if these offenders are to be saved from the damaging and traumatic experiences of incarceration.

(ii) As far as possible, young offenders should not be kept in institutions meant for adult and habitual offenders.

(iii) Institution for young offenders should be so classified that diverse training programmes, designed to suit each homogeneous group, can be conveniently organized.

In practice, whereas care, recreation and protection service of the observation and certified homes or other homes are fairly tolerable, educational, vocational, psychiatric and social case work services either are non-existent or wherever provided are highly inadequate.

CONCLUSION

The Juvenile Justice Act aims at providing children with proper care, protection and treatment by catering to their development needs and for adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children. It was motivated by both constitutional concerns and international commitments.

Though the J.J. Act, 2015 has many positive aspects, yet it has ignored the new knowledge generated in disciplines like criminology, penology, victimology, psychology, psychiatry, neuro science, rehabilitation, restorative justice which have equipped us better to deal with persons committing offences. Restorative justice is being successfully practiced in many countries even for such serious offences like murder and rape by adults, leading to decrease in repeat offending by them. However, the Indian Parliament buckled under the political and emotional pressure created by one bad case of barbaric gang rape in which one of the accused happened to be a child on the verge of attaining majority.

It is a well accepted principle that one bad case never makes for a good law. Ignoring that sound experience, India chose to take the most regressive step of introducing retributive approach for young children as a knee jerk reaction despite the experience of countries like the USA and UK which have been practicing exclusion of children much younger than 16 years sending them to long term imprisonments for the last 25 years. They have all reported failure of such approach based on research findings that children tried as adults ended up committing more offences in their later life compared to children who were treated within the juvenile justice system.

Juvenile delinquents need care, protections, sympathy and understanding of our society and not the heavy hand of the law, but simultaneously there should be strict laws for such juveniles who commit serious and heinous offence. However, juvenile's in conflict with law, whatever

may be the nature of crime, should not be tried like adult offenders nor placed in institutions meant for adult and habitual or hardened offenders.