

THE LAW FOR JUVENILE INJUSTICE: CRITICAL ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

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ABSTRACT

Brutal assault and rape incident of 16th December 2012 in Delhi in which one of the accused was alleged to be juvenile raised a boiling debate on reducing the age of juvenile in India. Although Amendments in the Juvenile Justice (care and Protection of Children) Act of 2000 after debate in Parliament and in compliance with International obligations raised the age of juvenile from 16 for male to 18 years. The Issue of 'age of juvenile' reached the Apex Court of India in the form of bunch of writ petitions asking for completely striking off the Act of 2000 to make changes in various provisions to enhanced punishment to juvenile in conflict with law hence, as a result of deliberations the Juvenile Justice Amendment Act of 2015 was passed despite being vociferously opposed by Child Rights Activists all over the country. Many aspects of this law are vague, unsettling and worrisome; one of them being the fact that more juveniles will be incarcerated as the said Act promotes the adoption of a retributive and punitive stance against them. Under the newly amended law, adolescents alleged to have committed a heinous crime will be confined to a "place of safety", which is essentially a place of imprisonment, both during the period of inquiry and after the conviction. Tragically, the grave human rights violations inherent in the transfer system were recognised by the multi-party Parliamentary Standing Committee, but dismissed entirely by the Ministry responsible for protecting children. The Cabinet's successful attempt to make amendments in the Juvenile Justice Act of 2000 has not only violated the basic principles of the Constitution, but also arrived in conflict with evidence-based criminal justice system. The present paper is a result of a socio-legal-historical- analytical study and research of Juvenile Justice Act of 2015 which will

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systematically reveal how the new Act has directly violated not only the constitutional rights of children but also the International Law.

INTRODUCTION: HISTORICAL ORIGIN AND EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA

Long ago, somewhere, sometime in the history the voice of great Abraham Lincoln echoed: *“A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”*.²

The problem of juvenile delinquency is not a product of modern world of 21st Century, as shown by historical evidence that it occurs in all societies simple as well as complex, that is, wherever and whenever a human relationship is affected between a group of individuals leading to maladjustments and conflict. In developing countries that forms the third world the problem of juvenile delinquency is very serious. With reference to India, the share of INDIAN PENAL CODE crimes committed by juveniles to total IPC crimes reported in the country during 2003-2005 remained static at 1.0% which marginally increased to 1.1% in 2006 and remained static in 2007. This share increased marginally to 1.2% in 2008 thereafter decreased to 1.1% in 2009. This share further decreased to 1.0% in 2010 and thereafter marginally increased to 1.1% in 2011 and 1.2% in 2012 and remained static at 1.2% in 2013. However, juvenile crime rate has shown a mixed trend during 2003- 2013 which proves that the share of crimes committed by juveniles to total crimes reported in the country has also increased in last three years.³

Considering the gravity of the problem and issues involved, analysis indicates that the number of factors for neglect and delinquency are mostly common and correlated, based on socio-economic and psychological reasons. Poverty, insufficient education, family tensions, emotional abuse, substance abuse, rural-urban migration, lack of strong social and moral values

² Wroblewski, M., Henry (2000) an introduction to law enforcement and criminal justice, Thomson learning, USA, pp-540-541

³ “National Crime Record Bureau Report of 2013” <http://ncrb.nic.in/CD-CII2013/compendium%202013.pdf> (Accessed on 12 Sept. 2017)

and joint family system, atrocities and abuses by parents or guardians, degraded educational system, the influence of media besides the unhealthy living conditions of slums and such other conditions explain the phenomena of juvenile delinquency.⁴ The neglect of children by their parents, family, society and the nation create detrimental effect on their physical, mental growth and over all development. Needless to say that most of the factors causing delinquency are in plenty in the Indian context and any attempt to prevent and control them can be fruitful for society. After all, the children represent the nation and the coming future of the country. Even international instance like UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985⁵ and UN Convention on the Rights of Child, 1989⁶, are notable and has articulated the global consensus on giving special attention and treatment to the children who come in conflict with law.

The term 'Juvenile justice' was used for the first time by the legislature by the state of Illinois, USA, in 1899, while passing the Juvenile Court Act. The approach under laying this law was that juvenile offenders should not be meted out the same punitive and retaliatory treatment as adults but rather given individual attention for their own protection as well as that of the society.⁷ The word 'Juvenile' has been derived from Latin term 'juvenis' meaning thereby Young. The term 'delinquency' has also been derived from the term *do* (away from) and *liqueur* (to leave). The Latin initiative 'delinquere' translate as to emit in its original earliest sense. The term 'juvenile delinquency' applies to the "violation of criminal code and /or pursuit of certain patterns of behavior disapproved of for children and young adolescents". Thus, both age and behavioral infractions prohibited in the statutes are important in the concept of juvenile delinquency.⁸ 'Juvenile delinquency', when employed as a technical term rather than merely a descriptive phrase is entirely a legislative product....', But generally speaking, the term refer to a large variety of disapproved behavior of children and adolescent which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest.⁹

⁴ <http://criminology.regis.edu/criminology-programs/resources/crim-articles/contributing-factors-to-juvenile-crime> (Accessed on 12th Sept, 2017)

⁵ <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (Accessed on 12th Sept, 2017)

⁶ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Accessed on 14th Sept, 2015)

⁷ Chinte, C.I.(1949):fifty years of juvenile court. In M.Bell(Ed.)Current approaches to delinquency, New York: National Probation and Parole Association.

⁸Reckless, Walter, hand book of practical suggestions for the treatment of adult and juvenile offenders, government of India, 1956.

⁹Black's law dictionary, (1999), seventh edition, west group.

India has a long history of Juvenile Legislation that originated in British Raj. The Apprentices Act, 1850 is the first law meant to deal with the children in distress who are to be trained for trade and industry. Even the penal laws such as the Indian Penal Code, 1860 not only clearly exempts children under the age of seven years from criminal responsibility (Section 82) but also exempts children between the age of seven to twelve years, who have not attained sufficient maturity of understanding to judge the nature and consequences of their conduct, from criminal responsibility (Section 83). The Act also provides some protection to the children from the evil designs of the adults (Section 363-A). The Reformatory School Act came into being in 1876 and later amended in 1897, was the next landmark legislation in the treatment of juvenile in conflict with law. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years but they would not be kept in the reformatory schools after they had attained the age of eighteen years. There was also a provision to license out boys over fourteen years of age if suitable employment could be found. In Bombay Presidency, the Act was applicable to boys under sixteen years of age, while elsewhere it applied to boys under fifteen years of age. The Code of Criminal Procedure of 1898 provided specialized treatment for juvenile offenders. The Code also envisaged the commitment of juvenile offenders up-to the age of fifteen years to Reformatory Schools and provided probation for good conduct to offenders up-to the age of twenty one. Subsequent Indian children Acts passed by the Presidencies and provinces maintained this thinking. These laws contained provisions for the establishment of a specialized mechanism for the identification of handling and treatment of children and juveniles.¹⁰ In this regard, recommendations of the Indian jails committee, 1919-20, gave an added impetus to legislative action. In the post independence period; the Government of India was seized of the problems among others, of juvenile justice particularly in the centrally administered union territories. This is what led to the Children Act.1960. The law was in full force in all the UTs, but the states, not having juvenile legislation, were free to adopt it. As would be expected, at this stage, juvenile justice in the country was uneven and had varying standards, norms and practices.¹¹ These problems were sought to be removed through the Juvenile Justice Act 1986. Prior to this law, since each state had its own enactment on juvenile justice with there being

¹⁰ <http://www.ijims.com/uploads/c516b1534d85a22ad192z9.pdf> (Accessed on, 21st Sept, 2017)

¹¹ https://www.academia.edu/7198863/FAMILY_LAW_A_PROJECT_REPORT_ON_Child_Delinquency_Early_Intervention_and_Prevention_SUBMITTED_AS (Accessed on, 24th Sept, 2015)

differences in the way juveniles were treated by different state legal systems. The Juvenile Justice Act was thus passed exclusively to provide care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the settlement of certain matters related to and disposition of delinquent juveniles. The law was in force throughout the country.¹²

At the same time at International level the Beijing rules¹³ and the UN Convention on Rights of the Child¹⁴ were proposed and adopted worldwide. India was also one of the signatory and then the ratifying party to them. This led to the formulation of the Juvenile Justice (Care and Protection of Children) Act, 2000.

INTERNATIONAL STAND ON THE RIGHTS OF CHILDREN

A 'child' is defined in the UN Convention on the Rights of the Child (CRC)¹⁵ as a person under the age of 18. This includes infancy, early childhood, middle childhood and adolescents.

The UN Convention on Rights of the Child, 1989 draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are:

- (i) **Right to survival:** Which includes the right to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right to a name and a nationality.
- (ii) **Right to protection:** Which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect including the right to special protection in situations of emergency and armed conflicts.
- (iii) **Right to development:** Which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.
- (iv) **Right to participation:** Which includes respect for the views of the child, freedom of

¹² Juvenile justice system & rights of child, (2003) Prayas institute of juvenile justice, pp. 9-20

¹³ <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (Accessed on, 28th Sept, 2017)

¹⁴ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Accessed on, 28th Sept, 2017)

¹⁵ UNICEF (1985): united nations standard minimum rules for the administration of juvenile justice (Beijing Rules): new Delhi, UNICEF

expression, access to appropriate information, and freedom of thought, conscience and religion

The Convention provides the legal basis for initiating action to ensure the rights of children in society.

Relevant articles from the UN Convention on the Rights of the Child:

Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

Article 35:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale or traffic in children for any purpose or in any form.

Article 36: States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Any child primarily on account of his dependence and vulnerability deserves to be completely looked after by others. As a child, he needs support and care to survive since the nature does not provide to the human infant any protection at all. The need to survival and protection continues till the child attains maturity and adulthood. The child being the nursery of all civilization and all human potential has to be provided with various institutional and non-institutional system of development which consists of programs pertaining to education, life skills, nutrition, health, shelter and most important, the right to childhood.

Article 40 of the U.N. Convention provides that a child who has been accused of having violated the penal law shall have the following guarantees: to be presumed innocent until proven guilty according to law, to be informed promptly of the charges against him and to have legal or other appropriate assistance in the preparation of his defence, to have the matter

determined without delay by a competent and impartial authority or judicial body, not to be compelled to confess guilty, and to examine witnesses. Moreover, the state can establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Therefore, in accordance with the U.N. Convention, the JJ Act could have established an age limit, such as 14 or 16, below which a person could not be deemed to have the capacity to commit an offence. In short, the U.N. Convention does not prohibit prosecuting a child under 18 who has committed an offence under the regular penal laws.

BRIEF COMPARATIVE ANALYSIS OF JUVENILE CRIMINAL LAW

FRANCE:

France has three stages of criminal minor:¹⁶

1. The infant, who doesn't have his own perception of his acts yet, doesn't commit any offence and consequently, can't be convicted.
2. Minor between 7/8 and 13 years old, has its own discernment. No criminal punishment, but educative measure can be pronounced against him, since a 2002 law.
3. Minor between 13 and 18, commit an offence, and punishment can be educational and criminal in special cases.

USA:

In the U.S.A., the juvenile's definition varies from state to state. The system applies to anyone between the age of 6-10 depending on the state and 18¹⁷ except for eleven states (including Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas) where a juvenile is a person under 17 and New York and North Carolina where it is under 15. So the criminal majority begins at 16, 17 or 18 years old. In France, the criminal irresponsibility of children under 13 is defined by the article 122-8 of the criminal code. Young aged between 13 and 18 are assumed irresponsible, but they can be involved in a criminal sentence if circumstances and juvenile delinquent personality justify it.¹⁸

UNITED KINGDOM:

¹⁶Jurispedia, Minorite penale in French

¹⁷Federal Juvenile Delinquency Act, 1974

¹⁸<http://usinfo.state.gov/journals/itdhr/0701/ijdf/frjacdb.htm> (Accessed on, 23rd Sept, 2017)

Youth Justice system in England considers that the young people are offenders under the age of 18, or in some cases aged 18 but remaining in the under 18 estate, and will be held in either a Secure Children's Home (SCH), a Secure Training Centre (STC) or a Young Offender Institution (YOI). The Youth Justice Board is responsible for placing young people in custody and typically those aged under 15 will be held in an SCH and those over 15 will be held in either a YOI or STC. Only 17 year old female young people are normally placed in a YOI.

CANADA:

The YCJA (Youth Criminal Justice Act) governs the application of criminal and correctional law to those 12 years old or older, but younger than 18 at the time of committing the offence. Youth aged 14 to 17 may be tried and/or sentenced as adults under certain conditions, as described later on in the act. Though all trials will take place in a youth court under the Youth Criminal Justice Act, for certain offences and in certain circumstances a youth may receive an adult sentence.

ITALY:

Article 98 sub section 1 of Italian Penal Code states that in turn a person who has reached the age of 14 but not 18 at the time of committing a crime and who is "capable of understanding and willing" must be punished but the punishment may be reduced. Between the ages of 14-18 the ability to understand and to form mental intent must be clearly ascertained in each case by the presiding judge. Concerning the decisions that the court can impose, the penal code states that the orders and sentences applicable to adults may also be applied to minors with considerable latitude and reductions. If the youth is deemed likely to re offend he/she can be confined to a judicial reformatory.

GERMANY:

Only a small part of the convicted juveniles is sent to prison; in 2009, unsuspended youth penalty was imposed on 2,076 convicted minors only. Unsuspended youth penalty in Germany means high security prisons for duration of 6 months up to 5, or in exceptional cases, 10 years. The minimum length of youth imprisonment is six months, the maximum five years for 14 -17 year-old juveniles. In cases of very serious crimes for which adults could be punished with

more than ten years of imprisonment, the maximum length of youth imprisonment is ten years. In the case of 18-20 year-old young adults sentenced according to the JJA (see 4. below) the maximum penalty is ten years, too. The preconditions for youth imprisonment are either the “dangerous tendencies” of the offender that are likely to exclude community sanctions as inappropriate, or the “gravity of guilt” concerning particular, serious crimes (like murder, aggravated robbery etc.

PAKISTAN:

Where a child under the age of fifteen years is arrested or detained for an offence, which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence. No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Criminal Procedure Code. Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

Despite the variance in specific issues across regions, some general comments can be made about the administration of juvenile justice. While the majority of the countries have committed in principle to a comprehensive juvenile justice system, with many having specific legislation for young offenders, there remains a lack of full implementation in practice.

CONSTITUTIONAL PROVISIONS AND SAFEGUARDS FOR CHILDREN IN INDIA

After Independence, the constitutional provisions have inspired the developments in the field of juvenile justice. Part III and Part IV⁹ which deal with Fundamental Rights and Directive Principles of state Policy respectively contain some special provisions with respect to children.

Article 15(3): Permits the State to make special provisions for children and women

Article 23: Prohibits the traffic in human beings and forced labour

Article 24: Forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations

Article 39 (e): Directs the State to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced be economic necessity

Article 39 (f): Directs the State to secure facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

Article 45: Requires the State to provide free and compulsory education to all children up to age of 14 years.

Article 47: states it is the duty of the state to raise level of nutrition and standard of living. Parliament has enacted the 86th Constitutional amendment in 2002 and made Right to Education a fundamental right.

ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000

Juvenile Justice (Care And Protection Of Children) Act, 2000 The Act is a central Act, which came into force on April 1, 2001, throughout the country. It is based on (i) provisions of the Indian Constitution; (ii) United Nations Convention on Rights of the Child, 1989; (iii) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); (iv) United Nations Rules for the Protection of Juveniles deprived of their Liberty, 1990.

The Juvenile Justice Act, in its preamble itself signifies the need of the child care by providing that it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. Recently the exhaustive amendments of 2006, and rules framed in the year 2007 is credit worthy as it incorporates many aspects regarding juveniles.

Introduction to the Juvenile Justice (Care and Protection of Children) Act, 2000

1. The Title of the Act stresses on the need for care and protection to both categories of children
2. Uniform age for both boys and girls – any child who has not completed the age of 18 fall within the jurisdiction of the Act to comply with the CRC definition of the child
3. Separation of child in need of care and protection and child in conflict with law
4. Constitution of Child Welfare Committees to deal with children in need of care and protection and Juvenile Justice Boards to handle children in conflict with law
5. The category of children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, child who is found vulnerable and likely to be inducted into drug abuse
6. More legal protection assured for the child in conflict with law – detention to be resorted to as the last option, disqualification of past records and privacy maintained
7. The innovation the law makes with respect to children in need of care and protection is the conceptualization of restoration of the child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents. (Sec39).
8. The law outline four options of restoration for children in children's homes and special homes which include adoption, foster care, sponsorship and after care (The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006)
9. The Amendment Act of 2006 brought about 26 amendments which are in force
10. This Act forms the legal system and framework for the care, protection, treatment and rehabilitation of children of both categories

Salient features of Juvenile Justice (care and protection of children) Act 2000:

1. a. The Act known as 'The Reformatory Act' deals with two categories of children, namely children in need of care and protection and children in conflict with the law. **b.** The competent authority to deal with children in need of care and protection is the Child Welfare Committee which constitutes a Chairperson and four other members, one of whom atleast should be a woman. Chapter IV of this Module would focus in detail about Children in need of care and protection and the functioning of the CWC in rehabilitation and disposition of cases **c.** Juvenile Justice Board (JJB) is the competent authority to deal with children in conflict with law which comprises of three members. The Chairperson of the Board should be a First Class Judicial Magistrate and two honorary social workers out of whom at least one should be a woman. Special provisions for children in conflict with law and the responsibilities of the Board are discussed in detail in Chapter III of this Module.

2. The Act provides for the establishment of various kinds of Institutions such as - Children's Home for the reception of child in need of care and protection. - Special Homes for the reception of child in conflict with law - Observation Homes which are meant for the temporary reception of children during the pendency of any inquiry. - After-care Organizations which are meant for the purpose of taking care of children after they have been discharged from Children's Home or Special Homes.

3. A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a child such as assault, causing mental or physical suffering and employment of a child which are considered as non bailable offences. iii. Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000) and the Amendment Act 33 of 2006): The Ministry of Women and Child Development at New Delhi, the 26th day of October, 2007 notified the Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 and the Amendment Act 2006 to be administered by the States for better implementation and administration of the provisions of the Act in its true spirit and substance. These rules called the Juvenile Justice (Care and Protection of Children) Rules, 2007 has come into force on the date of its publication in the Official Gazette and these Rules will be conformed to until the concerned State Government formulates Rules specific for the State with effect to implementation of the JJ Act. The Act in Section 68 prescribes various areas wherein the Rules can be applied to for better implementation of the Act, specifically with management of the homes, standards to be adhered to, roles and responsibilities of the JJ functionaries, procedures and functioning of the competent authorities, rehabilitation mechanism and operation of JJ Fund.

Major problems identified with Juvenile Justice Act of 2000

1. No flexible procedure for sentencing
2. This is a system in which the maximum amount of sentence served by a delinquent who say partakes in armed robbery in order to feed himself is the same as the one given out to a serial rapist or murderer; just so long both are under eighteen years of age. This is the serious problem identified with the Act.
3. There is no logical or scientific reason which shows that total and complete rehabilitation can be achieved by a delinquent/ offender/ child in conflict with the law within a maximum period of three years.
4. The act does not deal with physical and psychological maturity of a Juvenile.

5. Provisions of Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 failed to reflect in the Act.

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

The Government even after facing strong opposition and condemnation from various sections of the society passed the Juvenile Justice (Care and Protection of Children) Act, 2015 which will now allow children in the 16-18 age group to be tried as adults if they commit heinous crimes.¹⁹ The bill which was pending in Parliament, where the government despite lacking a majority, managed to get it passed. The amendments were prepared in the backdrop of public outcry over the Delhi gang rape case of 2012 in which a juvenile accused received a lighter punishment because of his age.

Apart from the hue and cry from society against the Act, several members in Lok Sabha also opposed the controversial amendment that provides for treating juveniles between the age of 16 - 18 years on par with adults for crimes such as rape. It is necessary to understand that Rehabilitation and not retribution should be the policy and therefore it is necessary to examine the provisions of the Act carefully to assess its possible impact on society.

Examination of Act: Analysis of notable amendments:

1. Any child that found committing any crime will now be send for a preliminary assessment for a period of three months, up from the earlier one month
2. A clarification is added that the preliminary assessment is not a trial, but to assess the child's capacity to commit the crime.
3. The Act will allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 should tried as an adult or not.
4. A new clause on fair trial is added, under which the assessment will look into the special needs of the child, under the tenet of fair trial under a child-friendly atmosphere.
5. The child will not suffer from any disqualification that arises from any conviction under the Act.

¹⁹<http://indianexpress.com/article/india/india-news-india/new-juvenile-justice-act-to-come-into-force-from-today/> (Accessed on, 28th Sept, 2017)

6. The records of any conviction will be destroyed after the expiry period of appeal, except in the case of heinous crimes.
7. Biological parents giving up children for adoption, will be given three months to rethink their decision, instead of the existing one month.
8. The Act introduces foster care in India.
9. The aftercare of the child in institutional care will not be restricted to only one time.
10. Any child leaving institutional care can now receive financial support more than one time.
11. Disabled children will be given precedence in inter-state adoption.
12. Abandoned children, found by the childcare facilities, will be kept for 60 days before being given up for adoption or foster care, instead of the existing 30 days.
13. Any child who has been abandoned by biological parents due to unavoidable circumstances will not be considered to be wilfully giving up the child.
14. In acting on an appeal against an order passed against the child, the board will now take help of experienced psychologists and medical specialists.
15. There will now be proper training of special juvenile units in the police force.
16. NCPCR and SCPCR will be the nodal authorities to be responsible for monitoring implementation, the publicity of the amended act, and to look into cases that arise out of the Act.
17. The discretionary powers will be given to Juvenile Justice Board to transfer juveniles to criminal court for trial and punishment. "Since JJB is presided over by Chief Judicial Magistrate of the district, one could assume that the chances of transfer of adolescents to adult court would apparently be more
18. Judicial weavers as provided in the present Act, that will subject a juvenile to the jurisdiction of the regular criminal court to be tried as an adult will not create any kind of deterrent effect and may turn juvenile into a hardened criminal.
19. The proposed legislation, clearly defined and classified offences as petty, serious and heinous, and defined differentiated processes for each category

The Draconian side of the Act:

With reference to the aforementioned analysis it can be understood that many aspects of the provisions of this Act are unsettling and worrisome; one of them being the fact that more juveniles will be incarcerated as it is seen that the Act evidently promotes the adoption of a retributive and punitive stance against them. The Act further recommends to adopt Judicial

Weaver to try Juvenile as an Adult in so called heinous crimes. The concept of judicial weaver and provision for imprisonment is nothing but gross violation of international norms of human rights. Under the newly amended law, adolescents alleged to have committed a heinous crime will be confined to a “place of safety”, which is essentially a place of imprisonment, both during the period of inquiry and after the conviction. A study of the juvenile homes in various parts of the country done by Asian Centre for Human Rights and published in March 2013 found that the ‘inmates’ of these homes were housed in “inhuman conditions”. Disturbing incidents of sexual abuse and assault, exploitation, and torture were documented during the study, irrespective of whether the home was run by the government or private agencies. Perpetrators included caretakers, cooks, other Class IV employees, directors, founders, senior inmates, etc. The United States of America has for some time adopted laws that allow juveniles to be tried as adults. They also have one of highest rates of juvenile incarceration among the developed countries. Research in this population now suggests that alternatives other than incarceration are probably more beneficial in the long run. Studies by Aizer and Doyle (2013) and Usher (2013)²⁰ have shown that juveniles who were incarcerated had higher rates of recidivism and poorer educational attainments than juveniles who were not detained in correctional institutions.²¹ This Act has further violated the fundamental rights guaranteed under Article 14 and Article 15(3) of the Constitution, and said that of the 472 million children of the country, only 1.2% have committed crimes. And that, of these, only 2.17% had committed murder and 3.5% had committed rape. Since the Act is now passed and has come into force has evidently jeopardised the other 99.98% children in this country. Even countries such as the U.S. and U.K., which introduced the judicial waiver to try juveniles as adults, have now accepted that they have been ineffective in addressing juvenile crime rate, public safety and recidivism.²² According to the National Campaign to Reform State Juvenile Justice Systems (U.S.), 80 per cent of the juveniles who are released from adult prisons go on to commit more serious offences. It is now require to be decided whether this nation wants juveniles to reform and rejoin society in a productive manner or become hardened criminals themselves.

The Act that advocates imprisonment and regular trial in the criminal court for Juvenile in conflict with law shall from all possible angles require condemnation. The ultra vires nature of

²⁰http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf (Accessed on, 1st October, 2017)

²¹<http://www.firstpost.com/india/killing-jj-act-throwing-juveniles-jail-condemning-life-crime-2359166.html> (Accessed on 1st October, 2017)

²²http://www.civildaily.com/en_US/story/juvenile-justice-jj-act/ (Accessed on 5th October, 2017)

the Act is indeed a stigma on Indian constitutional morality. It is required to note that The Parliamentary Standing Committee, which was chaired by a member from the Bharatiya Janata Party, studied the Bill in detail and stated that subjecting children in the age group of 16 to 18 years to an adult criminal system would be unconstitutional. Keeping in mind the prevailing scientific, judicial and parliamentary wisdom, it is necessary to scrap the “Act-in-Question” altogether and require to adopt novel approach to the problem of juvenile delinquency in humane manner. Prejudices, misinterpretation of available data and politics are detrimental to the making of just and fair law.²³

Stand of Supreme Court:

The Supreme Court of India earlier on 18th January, 2013 issued notice to Union government on a public interest litigation petition seeking a direction to amend the Juvenile Justice Act. A three-judge Bench of incumbent Chief Justice Altamas Kabir, and Justices S.S. Nijjar and J. Chelameswar, while rejecting the batch of petitions quoted-“If what has come out from the reports of the Crime Records Bureau is true, then the number of crimes committed by juveniles comes to about 2% of the country’s crime rate. The JJ Act is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at 18 years in the JJ Act was Article 1 of the Convention of the Rights of the Child. The age limit, which was raised from 16 to 18 years in the JJ Act, is a decision which was taken by the Government, which is strongly in favour of retaining Sections 2(k) and 2(l) in the manner in which it exists in the statute book.” The Bench said that, “... a misunderstanding of the law relating to sentencing of juveniles needed to be corrected. The general understanding, the court further opined, was that a juvenile guilty of a heinous offence could be allowed to go free on his attaining the age of 18 years. The Bench made it clear that even if a juvenile attained the age of 18 years within a period of one year, he would still have to undergo a sentence of three years. The Bench pointed out that the essence of the Juvenile Justice Act is “restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the mainstream society.”

²³<http://xaam.org/tag/gs-2/page/8?print=pdf-search> (Accessed on 12th October, 2017)

“The age of 18 has been fixed on account of the understanding of experts in child psychology and behavioral patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future.”

CONCLUSION:

For over a century, states have firmly believed on the notion that the juvenile justice system was a weapon to protect the public by providing a system that responds to the criminal acts of children who are maturing into adulthood. States recognize that children who commit crimes are different from adults: as a class, they are less blameworthy, and they have a greater capacity for transformation. To respond to these differences, states have established a separate judicial system for juveniles, and they have created a separate, youth-based service delivery system that is different than that provided to adults. It has seen that the countries with economies in transition have witnessed a dramatic rise in delinquency rates. Most children and young people in conflict with the law have committed minor crimes barring some exceptions. Reducing the age of Juvenile in conflict with Law can never be the solution to the problem of Juvenile Delinquency. Considering Nirbhaya Case as a whole and sole reason and also the moral foundation and justification to reduce the age of Juvenile from 18 to 16 and thereby causing the Juvenile Justice (care and protection) Act of 2000 to undergo the drastic and dramatic changes is nothing but a pathetic exhibition of social prejudices by the central government. The demand to lower the age of age of Juvenile to 16 was misinformed, emotive and motivated. It is nothing but a ploy to add to already overwhelming powers of the state that it exercises over its citizens. The centre of interest in juvenile court is always a juvenile and his welfare, and not the act or its consequences which might have resulted in his or her being brought before the court. Juvenile justice system needs to maintained rehabilitation as its primary goal and should clearly distinguish itself from the criminal justice system.

Hence, instead of reducing the age, an attempt should have been made to remove the very root cause of the problem i.e. mould our juveniles in such a way and provide them with such a socio-psychological-emotional atmosphere and support that they don't commit crime at the very first step itself. We should not forget that the essence of the Juvenile Justice System should

be “restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the mainstream society.” It is pertinent to understand that Juveniles need reforms, not prison. The new Amendment in Juvenile Justice Act will throw open the gate for frivolous FIRs. The Juvenile Justice Act of 2000 was comprehensive and if would have been implemented honestly could have curbed incidents like Delhi gang rape by providing timely help and necessary support to juveniles who might turn into hardened criminals. The problem is not with the act but with its implementation. The Juvenile Justice (Care and Protection) Act, 2000 was a progressive piece of legislation with its heart in the right place. The need of an hour is to fix the systemic problems and strengthen the existing juvenile justice system such that it can fulfil its objectives to reform and rehabilitate the young people who need it the most. History, from time to time has witnessed that the sole measure of stipulating stringent laws would only promote hatred and injustice. Law can never be the solution. Law can only supplement the solution. Therefore, the time has come to adopt a flexible, novel approach to tackle the problem of Juvenile Delinquency, an approach- full of love, compassion, understanding, values and last but not the least- the JUSTICE.

RECOMMENDATIONS

1. Implementation of Juvenile Justice Act should be made heavily. Act without hands willing to implement it is ineffective and dangerous. Therefore, the Government should see that the Act is properly implemented by the authorities.
2. India should not have common Juvenile age for every crime. The system can be made on the lines of USA, UK and France to categorize and divide Juvenile Justice System into different age groups.
3. Case of Juvenile should not be transferred to the Adult Court.
4. Every Juvenile Justice Board should work with local child welfare organizations to improve their effectiveness in providing abused and neglected children with safe shelters.
5. Members of Juvenile Justice Board should advocate for adequate court resources and community systems to respond promptly and appropriately.
6. All members serving in a juvenile justice board or juvenile court should be required to have intensive and ongoing training not only in the statutory and case law governing delinquency but also in child development, socio-cultural factors, resources for families, the Board’s relationship with and duties toward social welfare agencies, and research findings regarding rehabilitative interventions.

7. The age with reference to Juvenile should not be reduced at all, because it will have far fetching impact on Criminal Justice system in India which will be detrimental to the growth of Justice and Equity.
8. Ensuring and enhancing the quality of the process of the juvenile correctional services would bring about justice to juveniles in conflict with the laws.
9. Possibility of creating Non-Judicial Juvenile Justice System should be examined.

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