

## CRITICAL ANALYSIS OF JUVENILE JUSTICE SYSTEM IN INDIA

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### Abstract

The children are considered as the assets of our nation and it is our duty that we must protect their rights and provide them an opportunity for their overall development. Aim of the juvenile justice is based on the rights of the child. Juvenile justice focuses on prevention as a primary objective as well as makes custody a sanction of last resort. However, the brutal gang rape case which took place in Delhi on 16<sup>th</sup> December 2012 proved to be the landmark case which changed the present law of Juvenile Justice System. As soon as this Act i.e., Juvenile Justice (Care and Protection of Children) Act, 2015 came into existence, there was a lot of criticism from various social workers, NGOs fighting for the rights of the child as this Act was enacted following public outrage over the release of the Juvenile offender in *State v. Ram Singh & Ors.* (hereinafter referred to *Nirbhaya case*). The Authors have discussed in this Article the various aspects of recently enacted Juvenile Justice (Care and Protection of Children) Act, 2015, with its shortcomings thereof.

**Keywords:** juvenile, child in conflict with law, rehabilitation, age of criminal responsibility.

### Introduction

Aim of the juvenile justice is based on the rights of the child. Juvenile justice focuses on prevention as a primary objective as well as makes custody a sanction of last resort and for the shortest possible period of time while taking into account the effects on the victim and community. Large numbers of 'Child in conflict with law' are socio-economic victims, denied their rights to education, health, shelter, care and protection. This Article involves the critical analysis of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to J.J.A.2015) which though amended several times in the year 2000, 2006, and 2015 but still needs a serious concern from Authors' point of view. It is well said that the law has to be

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changed sometimes as per the requirements of the society. Mere lowering down the age of juvenile from 18 to 16 years that too in exceptional cases only, is not a solution over the rampant involvement of juveniles in heinous crimes.

The Authors have selected this topic due to rapid involvement of children in commission of crime. After unfortunate incident of Delhi Gang rape case, there was agitation from all over the world to take serious action and to prevent such heinous crime in future. Surprisingly enough, an accused person who was most actively involved in an act of brutal gang rape was a minor, i.e. he was 17 years of age. Law blindly believes in a Latin phrase i.e. “*Doli incapax*” which means a child is incapable to commit a crime. But, nowadays children are getting matured earlier day by day. Whether a child is a matured or not, it differs from child to child and age to age. Authors are going to study about age of maturity of child, its nature & whether a child shall be exempted from criminal liability based upon his maturity or upon his age. In such a situation, it is necessary to study the different aspects of present juvenile justice system with its shortcomings and improvements needed thereof.

### **Historical background**

The Apprentices Act, 1850 was the first piece of legislation dealing with children in conflict with law. On November 20, 1959, the United Nations General Assembly met in a plenary session with representatives of 78 countries and unanimously adopted the Declaration of the rights of the child. India was a party to the declaration. In the same year, the Children Bill was moved in the Parliament. It was passed in 1960 as the first model central legislation on the subject. The Children Act, 1960 set up two adjudicatory bodies to deal with children in conflict with law and children in need and care of protection, prohibited the imposition of death penalty or sentence of imprisonment on children and the detaining of children in jails or stations.

A year later in 1986, the Supreme Court, in *Sheela Barse v. Union of India*<sup>1</sup> ordered that the delivery system suitable for juvenile offenders should be enforced on all States and such enforcements had to be reported back to the court. In the same year, the Parliament passed the Juvenile Justice Act, 1986 (hereinafter referred to J.J.A.1986). However, this Act existed for a few years as the Parliament enacted Juvenile Justice (care and protection of children) Act, 2000 (hereinafter referred to J.J.A.2000). This Act,

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<sup>1</sup> (1989) 3 SCC 596.

unlike J.J.A.1986 moved away from sex-discriminatory definition of juvenile and defined a child (whether a boy or girl) as a person who has not attained 18 years of age. This was done keeping in mind the UNCRC (United Nations Convention on the Rights of the Child) norms as well as the global understanding of fixing 18 as the cut-off age for criminal culpability. As this Act keeps on changing due to shortcoming in it, we have now J.J.A, 2015 which was enacted after public pressure following *Nirbhaya's* brutal gang rape case.<sup>2</sup>

### **Who is a juvenile?**

Before talking about the various crimes which are committed by the juveniles we should first understand that who is a juvenile. In simple language, a juvenile is a child who has not attained the age of maturity at which he could understand the difference between right and wrong. Legally speaking, a juvenile is a minor who has not attained a certain age at which he can be held liable for his criminal acts like an adult person under the law of the country.

According to the J.J.A.2015, a Juvenile means a child below the age of eighteen years.<sup>3</sup> It says a Juvenile should not be treated as an adult even if he is involved in any criminal acts for the purpose of trial and punishment in the court of law except juveniles falling under the age of 16 to 18 years and if they have committed any heinous crime. It means the court is open to decide whether a juvenile should be treated as an adult or not that too only in exceptional cases as earlier stated. This is the recent amendment brought by the J.J.A.2015. Thus in India, a juvenile is differentiated from an adult when it comes to any crime committed by him.

### **Who is a “child in conflict with law”?**

'Child in conflict with law' means a child who is alleged or found to have committed an offence and who has not completed eighteenth years of age on the date of commission of such offence.<sup>4</sup>

Thus from this definition it becomes crystal clear that a child below the age of 18 years shall be considered as a minor. The constitution of India has made special provisions under the Chapter 'Fundamental Rights' for overall development of children.

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<sup>2</sup> Jhuma Sen, “Regressive Step”, *Frontline*, The age of unreason, (22<sup>nd</sup> January 2016), 12-13.

<sup>3</sup> S. 2(35), *The Juvenile Justice (Care and Protection of Children) Act*, 2015.

<sup>4</sup> S.2(13) *Ibid*.

Especially Article 15(3) states that “nothing in this Article shall prevent the state from making any special provision for women and children.”<sup>5</sup> The Juvenile Justice Act is an outcome of this provision. The Indian Penal Code (45 of 1860), under Sections 82 & 83 also protects the children from criminal liability on the ground of Infancy. No doubt these all provisions are for the betterment and for good future prospect of the children but now it is a high time to think about children who are involved in a brutal crimes and surprisingly enough they are juveniles i.e. below age of 18 years. The effect of this minority is that juvenile is totally exempted from criminal liability without considering the seriousness of offence, maturity of juvenile and his behaviour. Therefore, sometimes law compels us to think that whether law is in favour of juvenile?

### **NCRB data with respect to offences committed by juvenile**

Latest data for 2014 released by the National Crime Records Bureau (NCRB) , under the Ministry of Home Affairs, showed that the number of cases of 'Child in conflict with law' under various section of the Indian Penal Code (IPC) reached 33,526, up 5.7 per cent from 31,725 in 2013, while 5,039 cases were recorded under various Special and Local Laws (SSL) crimes, up 21.8 per cent from 4,136 in 2013. For 2014, theft saw the highest number of cases, at 6,717, accounting for 20 per cent of all IPC cases. There were 1,989 cases of rape (5.9 per cent) and 1,591 cases of assault on women with intention to outrage modesty (4.7 per cent). Other major heads were criminal trespass and burglary with 2,546 cases (7.6 per cent), grievous hurt with 1,568 (4.7 per cent) and kidnapping and abduction with 1,455 (4.3 per cent.)

Madhya Pradesh has held the top spot every year since 2001, except in 2009 when it was second to Maharashtra. Out of the 46,638 juveniles apprehended for various crimes in 2014, 10530 were illiterate and 15,004 had only primary-level education.<sup>6</sup>

### ***Nirbhaya's Case that changed the law***

The brutal Delhi gang rape case which resulted into the death of a girl aged 23 years old was shocking news for all. There was a lot of agitation, anger, criticism from all over the world for such a heinous crime. Death penalty was imposed for all the accused

<sup>5</sup> P.M. Bakshi, *The Constitution of India*, 35 (Universal Law Publication, 13<sup>th</sup> edn., 2015).

<sup>6</sup> Available at <http://ncrb.gov.in/StatPublications/MAPS-2014/cii-2014%20maps/CII-2014-JuvenileCrime.pdf> [accessed on 23/07/2016 at 8:10 pm].

persons involved in this crime except a juvenile i.e. he was 17 years age at the time of commission of crime. The juvenile, now 21, was released on December 20, three years after his conviction and sentencing, under the J.J.A. 2000. Being a juvenile he was totally exempted from death penalty and he was protected under the provisions of the J.J.A. 2000. If we take a serious look at the Juvenile's behaviour, we will come to know that he was fully aware of what he was doing and it seems that he was enough matured to know the consequences of his acts. In such circumstances, convicting him only for three years was not at all feasible.

After taking into consideration *Nirbhaya's* brutal rape case and anger of the public from world at large, the Parliament of India made the several changes into sexual offences against women. Definition of rape provided under section 375 of the Indian Penal Code (45 of 1860), has been changed, mere penetration is not an essential ingredient now. Even inserting any object into the vagina of a woman or applying mouth to her vagina, compelling her to have sex forcefully would constitute as an offence of rape. Moreover, the Minister of Women and Child Development *Maneka Gandhi* moved the Juvenile Justice Bill 2015, for bringing down the age of criminal responsibility for juvenile offenders. This bill has now become an Act which lowered down the age of criminal responsibility from 18 to 16 years that too in exceptional cases only. It was obvious that the Bill's hasty passage was surrender to the public pressure mounted against the release of the juvenile who was convicted in the case of the gang rape and murder of 23 year old *Nirbhaya* in the capital on December 16, 2012. But now the question arises that mere lowering down the age of juvenile offenders from 18 to 16 years will really help out preventing heinous offences committed by Juvenile? The question should not be left unanswered.<sup>7</sup>

### **Juvenile Justice Act, 2015: Was it really needed?**

The present Act i.e., J.J.A., 2015 makes a mockery of the constitution of India and the United Nations Convention on the Rights of the Child (UNCRC) by allowing children between 16 and 18 years, alleged to have committed heinous offences, that is, offences punishable with imprisonment for seven years or more, to be tried and sentenced as adults. In the history of the rights child in India, the new Act is in retard of what was available to 150 years ago. Even the Justice J.S. Varma Committee had

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<sup>7</sup> Jhuma Sen, *op. cit.*, p.15.

refused to recommend any change in juvenile justice law, including for sexual offences. Hence, there was no need to subject juveniles to a different or adult judicial system as it would go against Arts.14 and 15(3) of the Constitution of India, 1949 respectively.

### **Shortcomings of the Juvenile Justice Act, 2015**

- This Act allows juveniles to be tried as adults for heinous crimes, may compound the problem of juvenile crime and create more hardened criminals.
- This Act incorrectly assumes that children are competent to stand trial as adults.
- Heinous offences have been described as offences that carry more than seven years of imprisonment. There are at least 46 offences for which juveniles between 16 and 18 years could potentially be tried as adults. One is looking at only murder and rape but juveniles can be tried as adults for NDPS Act, MOCCA Act etc.
- It should be noted most offences for which juveniles are apprehended are property based offences such as theft and criminal trespass, house breaking. Rape and murder constitute very less among them.
- Subjecting children to the adult criminal justice system would thus violate the constitutional guarantee of equality and international norms.
- This Act has also failed to specify the minimum age of criminal responsibility.
- The rationale behind the creation of the category of heinous offences is not clear.<sup>8</sup>

The empirical evidence does not suggest that there is any pressing need to introduce this principle of exclusion of some children from the reformatory system as there is no any drastic increase in the rate of crimes committed by children. If we look at United States, the policy of exclusion of juveniles committing heinous crimes was introduced in the United States in 1996, they were experiencing a much higher rate of crimes committed by juveniles. There were about 8,000 crimes committed by juveniles out of lakh. This was not the position in India as to lower down the age of juvenility by surpassing the rights of children.

Data of crimes provided by NCRB is somewhat unreliable because it was based in the number of First Information Reports (FIRs)

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<sup>8</sup> Jhuma Sen, *op. cit.*, p.15.

registered and not on the number of cases proven in courts of law. Crime data can be effective in drumming up a political campaign in the media but they can be misleading in formulating public policy if not analysed in conjunction with other realities. The huge public uproar over the juvenile convict's release in the year 2012 Delhi gang-rape case showed that policy was guided more by emotion than evidence.<sup>9</sup>

### **International concern for juvenile justice**

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:

- Juveniles in trouble with law should be provided with carefully constructed legal protection.
- 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 influence of the adult offenders.
- Juvenile offenders should not be incarcerated unless there is no other appropriated response that will protect the public safety and provide the juvenile with the opportunity to exercise self-control.
- 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.<sup>10</sup>

### **Need for a change: Our views**

We would suggest protecting the best interests of the children by upholding their rights. We should not forget the basic aims and objectives of Juvenile Justice System while making changes in it. There was no need at all for reducing age of juvenility from 18 to 16 years because there is probability that heinous offences might be committed again by a child below the age of 16 years. Age should not be the whole and sole criteria to punish a 'child in

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<sup>9</sup> Sagnik Datta, Government giving into reactionary ideas, Frontline, The age of unreason, (22<sup>nd</sup> January, 2016), 25.

<sup>10</sup> N.V. Paranjape, *Criminology and Penology with Victimology*, 580 (Central Law Publications, Allahabad, 15<sup>th</sup> edn., 2012).

conflict with law'. Court should also take into consideration that whether a child is enough matured or not to understand the consequences of his acts which he has done. As stated earlier, age should not have been lowered down from 18 to 16 years rather it should have been 18 only as provided under the J.J.A., 2000. Children are getting matured day by day so it becomes quite difficult task to determine the age of criminal responsibility. In such cases, we would suggest that if it is proved beyond the reasonable doubt that a child committed offence in a very barbaric manner and it falls under the rarest of rarest cases then that child should be punished with more severe punishment. The prime accused in *Nirbhaya's case* should have been punished with more than 3 years punishment and that too rigorous imprisonment with hard labour. As he was able to assault, able to rape her then he is able to undergo rigorous imprisonment with hard labour as well. In such cases, no leniency should be shown towards the accused person.

A 'child in conflict with law', though if he commits any heinous offence should not be tried as an adult because if we keep him with hardened criminals, then he may also turn into hard criminal in future rather, we would suggest to make special provisions in J.J.A.2015 so as empowering the Juvenile Justice Boards to pass severe punishments in rarest of the rarest cases followed by rehabilitation of child side by side. Special homes are already constituted under J.J.A.2015, for the 'child in conflict with law' where they can be kept for years, so there is no need at all sending the juveniles in prisons like hardened criminals. Some hard labour work shall be given to such 'child in conflict with law' during his stay in special home so that he could repent for what he has done. Necessary steps shall also be taken for providing him education inside special home only. Moreover, the 'child in conflict with law' should be separated according to their age, nature of offence committed by them.

### **Conclusion**

Seriously, by enacting the J.J.A. 2015, the very purpose of the Act i.e. rehabilitation has been ignored by the so called legislators of our country. Mere lowering down the age of juvenility from 18 to 16 years is not at all feasible and convincing factor. This drastic step of amending J.J.A.2000 was taken followed by *Nirbhaya's* unfortunate rape case. We do not say that a minor who was involved in gang-rape case should have been acquitted but rather should have been punished in a different manner. But lowering down the age of juvenility was not a solution over this because



tomorrow if a child of 15 years commits offence of rape with murder, then are we going to lower down the age of juvenility again from 16 to 15? In other countries, the age of criminal responsibility is very less, when we compare to India because crime rate is more in those countries. J.J.A. 2015 has been enacted keeping aside international norms set up for the rights of the child, fundamental rights guaranteed by the Constitution of India. As soon as this Act came into existence there was a lot of criticism from various social workers, NGOs fighting for the rights of the child. The children are considered as the assets of our nation and it is our duty that we must protect their rights and provide them an opportunity for their overall development.

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