A STUDY ON THE AGE OF JUVENILE CRIMINALITY FOR HEINOUS OFFENSES IN INDIA: AN AFTEREFFECT OF JUVENILE JUSTICE ACT, 20151

ABSTRACT

“On December 22, 2015, the Juvenile Justice (Care and Protection of Children) Act, 2015 received parliamentary approval, bringing forth an entirely new regime with respect to juveniles above the age of sixteen, accused of committing heinous offences. The background for its introduction was set by the horrific rape of a young student in 2012. The government justified the law as a measure which would have a deterrent effect on potential juvenile offenders. However, the opponents argue that the law would defeat the objective of having a separate juvenile justice system, and would not serve the goal of deterrence. They instead suggest that efforts be expended in ensuring more effective implementation of the Juvenile Justice (Care and Protection) Act, 2000. The NCRB report of 2013 state an alarming increase of 13.2% in crimes committed by delinquent juveniles as compared to the data of 2003. This research paper will focus on determining the age of juvenile criminality in India. While a maximum period of imprisonment is laid down, there has been no attempt to grade the offences as per their nature or gravity. This paper deals with historical background of law on juvenile justice, scenario across the globe vis-a-vis in India and various amendments done from time to time, human rights aspects of children recommendations for decreasing the crime and its impact on the society.”

Keywords: juvenile, heinous, criminality, maturity, delinquent, justice, deterrence, protection.

1. INTRODUCTION

“Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and citizens of tomorrow”

-Jawaharlal Nehru

The frightful incident of Nirbhaya Rape case raised many debates. And the prime issue among these was the involvement of the juvenile perpetrator, who was only six months short from becoming adult2. This attracts the law of Juvenile Justice (care and protection) Act, 20003 and the culprit was sentenced by the court only for three-year confinement4. Against this decision of Apex Court, several protests were made, which demanded amendment in the existing Juvenile Justice Law5. However, this case is not only reason for the Government to introduce this bill. The Ministry of Women and Child Development justified the introduction of bill with several other reasons6. The prime two reasons of all were, first, the Juvenile Justice Act, 2000 was facing implementation and procedural delays. Secondly, the National Crime Records Bureau (NCRB) Reports indicate increase in the Juvenile Crime between the age group of 16-18 years (i.e.1% in 2003 to 1.2% in 2013)7. Along with the huge proponents, there were some child activists, who criticized this Act on many grounds: first, stating it to be retributive not reformative.

The prologue of The New Juvenile Justice (care and Protection of children), 2015, has introduced some of the remarkable changes in the existing Juvenile Law. One of such major changes is, juvenile of age group of 16 to 18 are to be tried like an adult. Also, the person who has attained the age of twenty -one while in sentence will be send to the jail for rest of the time span. However, all these decisions will be taken by the Juvenile Justice Board. This paper has highlighted on various controversial issues relating to new Juvenile Justice Act with special reference to the views of different activists. Along with this, the paper has focused on the anticipated situation which may arise when the New Juvenile Justice Act, 2015 will be read with Protection of Children from Sexual Offences Act, 2012 and Prohibition of Child Marriage Act, 2006.
2. **BACKGROUND AND EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA**

India has had a chequered history with regard to the determination of the age of juveniles in conflict with law. **The Children Act, 1960** was the first central legislation post-independence that aimed at conceptualizing a system, separate from the criminal justice system under the **Code of Criminal Procedure, 1973**, for the treatment of juvenile delinquents. It defined a “child” to be a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. However, during this period, each state was allowed to frame its own laws on the subject as the 1960 Act extended only to the Union Territories. This resulted in similar cases of juvenile delinquency being dealt with differently by courts of each state, thereby leading to discrepancy in judicial practice. This discrepancy prompted the Supreme Court to observe that a parliamentary legislation on the subject of juvenile justice was desirable.

It would not only bring about uniformity in provisions relating to children but also ensure better and more effective implementation of the same. This led to the enactment of the **Juvenile Justice Act, 1986**, the first comprehensive legislation, which had countrywide application, except the state of Jammu and Kashmir. Notably, the provision relating to the age limit of juveniles was carried forward from the 1960 Act and was kept unchanged. In 1992 India signed the **United Nations Convention on the Rights of the Child, 1989**. The CRC defined a child as “every human being below the age of eighteen.” Being a signatory, India sought to fulfil its international obligation by enacting the **Juvenile Justice (Care and Protection of Children) Act, 2000**. Importantly, this led to the age of juvenile irrespective of gender, being fixed at eighteen years. The brutal gang rape and murder of a female physiotherapy intern in Delhi in December, 2012, by six men, one of whom was a seventeen-year-old juvenile, retriggered the debate on the age limit of juveniles. Under the existing law, the maximum punishment that could be awarded to juveniles was three years of detention in a remand home, irrespective of the gravity of the offence. This led to tremendous public outcry demanding a change in the juvenile justice laws, lowering the age limit of juveniles, and stricter punishment for juveniles committing grave offences like rape and murder.

The Committee on Amendments to Criminal Laws, headed by Justice J.S. Verma, was constituted to examine the deficiencies in the existing criminal law regime governing sexual assault against women. The Committee categorically rejected the demand for lowering the age of juveniles to sixteen. Instead, it opined that there was a pressing need to reform and restructure the existing juvenile justice and welfare system and called for stricter implementation of the 2000 Act. It found no merit in reducing the age of juveniles for certain offences and relied, among others, on the fact that recidivism had fallen from 8.2 percent in 2010 to 6.9 percent in 2011. However, the government disregarded these recommendations and heeded to popular demand by introducing the **Juvenile Justice (Care and Protection of Children) Act, 2015**, with the twin objectives of setting deterrence standards for juvenile offenders and protecting the rights of the victims. The 2015 Act differentiates between petty, serious, and heinous offences, and proposes to treat

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9. Id., sec 1(2).
15. Id., sec 15.
18. Id., pg 44-47, 49.
juvenile offenders who commit “heinous offences” between the ages of sixteen and eighteen as adults by putting them to trial under the criminal justice system. The 2015 Act legitimizes the transfer of juveniles above the age of sixteen to adult courts, if the Juvenile Justice Board concludes that the level of maturity of the juvenile indicates that he committed the heinous offence as an adult and not as a child.

3. AGE DETERMINATION OF JUVENILE CRIMINALITY

With regards to determining International Standards on setting the minimum age of criminal responsibility, guidance has been provided by the ‘Beijing Rules’ which recommends that any minimum age of criminal responsibility ‘shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity’. This rule largely indicates that the modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility. In contradiction, the Act of 2015 has reduced the age of juvenility from 18 to 16. A juvenile or a child is a person who has not completed 18 year of age while a juvenile in conflict with law means a juvenile who is alleged to have committed an offence. The Juvenile Justice Act is built upon a model which addresses both children who need care and those who are in conflict with law. The definition of a child is governed by several rules and conventions that India is a signatory to. The United Nations Convention on Rights of child was ratified by India in December, 1992, thus binding India to define a juvenile to be under the age of 18.

The Supreme Court stated in the landmark judgement of Salil Bali v Union of India.

“There are incidents where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.”

The Supreme Court itself seems to be treading on rather rocky grounds flailing flimsy arguments able to corrupt its own logic. There have been incidents when one-man classifications have been denoted by the same court so that the fundamental rights of even one individual are not infringed. Here, under the garb of protecting a segment of the children in conflict with law, instead of devising innovative and effective rules, the Court chooses to sit idly as a by-watcher.

4. GLOBAL SCENARIO

- **England & Wales** - The minimum age of criminal responsibility in England and Wales is ten years and those below the said age are considered to be doli incapax and, thus, incapable of having any mens rea, which is similar to the provisions of Sections 82 and 83 IPC.

- **USA** - In the United States of America, there is no uniform standard regarding the minimum age of criminal responsibility and thus, different states have different standards. In most states, 7 is fixed as the age of criminal responsibility however the age has been fixed at 6 years in North Carolina. In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a

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22 Id., sec 19.
28 The Juvenile Justice and Delinquency Prevention Act, 1974, USA.
juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court.

- **Canada**: In Canada, the age of criminal responsibility has been set at 12 years. Youth between 14-17 years may be tried and sentenced as an adult under certain situations.

While every state has set its minimum age of criminal responsibility on basis of capacity to adjudge implications of one’s act, there are also certain exceptional situations where children may be tried as adults. For example, in countries like **Japan** and **Netherlands** charge the juveniles to lifetime imprisonment if they are found to have committed a grave offence with due maturity and intention. Countries like **Australia**, **Denmark**, **Germany**, **Hungary** and **Russia** have adequate provisions to charge the juvenile offender of heinous crimes to be sentenced to imprisonment from ranging to 7 years to half the time of the adult sentence.

5. **Constitutionality of the Juvenile Justice Act, 2015**

The new Juvenile Justice Act, 2015 was also criticized by many protestors as being unconstitutional. It violates Article 14, 15(3) and 20 of Indian Constitution. Constitution of India enumerated every person is equal before law but if we read this article with 15(3) then it is very much clear to us that Government can make special provision for the benefit of children. It is also enumerated in the United Nations Standard Minimum Rules for the Administration of Juvenile, 1985 that the prime important should be given to the juvenile Justice and while considering a juvenile in conflict with law. That means one must give importance to both offender and the offence, but in the current Act only the type of crime is given importance.

In Pratap Singh v. State of Jharkhand, it was observed by Court that in Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, while defining a juvenile criminality or criminal responsibility, the moral and the psychological components must be given prime importance. However, in the present law, this psychological component has been given least importance. The 2015 Act violates the spirit of Article 20(1), where a person cannot be subjected to greater punishment than what would have been applicable to him under the law of land. Under new Act, if a juvenile who has completed the age of twenty-one but has not completed the full period of his sentence may be sent to the jail if it is considered so proper.

6. **Concept of Determinate Sentencing**

Under the 2015 Act, juveniles who have committed heinous offences between the ages of sixteen and eighteen are mandatorily detained in a place of safety till the age of twenty-one. Subsequently, the Children's Court conducts an evaluation to determine whether the offender has become a “contributing member of society”. As abovementioned, this test is highly subjective. On the basis of this subjective threshold, if the Children’s Court determines that the offender has not rehabilitated sufficiently, the offender is placed in an adult jail, for the remainder of the sentence. Such a blended sentencing model results in a situation where an offender who continues to exhibit recidivistic tendencies is relegated to an adult prison, where he is away from the rehabilitative environment of the juvenile homes. In such an environment, the positive changes brought about by rehabilitation mechanisms could ebb away, making the offender a greater threat to public safety. It is to avoid such an outcome that the Child Rights Committee clarified that

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30Constitution Of India, Article 14.
Justice-Care-And-Protection-Of-Children-Bill-2014-3362/.
34Juvenile Justice (Care and Protection of Children) Act, 2015 Sec 20.
the mandate to separate juvenile offenders from adults is not purely technical, it does not mean that children placed in a juvenile facility are to be shifted to adult prisons after they attain eighteen years of age.\footnote{36 Committee on the Rights of the Child, Convention on the Rights of the Child, General Comment No. 10 Children's Rights in Juvenile Justice, ¶42, U.N. Doc. CRC/C/GC/10 (April 25, 2007).}

Thereby the Child Rights Committee issued an implicit prohibition on blended sentencing. The period of the sentence may be used to judge if the sentence is determinate or indeterminate. Determinate sentencing envisages a fixed sentence, determined by the juvenile court on the basis of the offence committed by the juvenile; the more serious the offence, the greater is the sentence. Release of juvenile occurs only after expiration of the complete term of the sentence.\footnote{37 Martin L. Forst, Bruce A. Fisher & Robert B. Coates, Indeterminate and Determinate Sentencing of Juvenile Delinquents: A National Survey of Approaches to Commitment and Release Decision-Making, 36 Juvenile and Family Court Journal 4 (1985).} The 2015 Act follows a determinate structure, since the term of sentence is fixed, though the sentence, being a blended sentence, may be spent either in juvenile homes or in adult prisons, based on the contributory potential of the offender as determined by the Children’s Court. The term of the sentence is thus mandatory, and is predetermined by the Children’s Court. Instead of the determinate model currently enacted, an indeterminate model of sentencing for juvenile offenders committing heinous crimes should be brought.

7. **Critic to the JJA 2015**

The provisions of the 2015 Act sentence juveniles committing all forms of heinous offences to detention in a place of safety till the age of twenty-one.\footnote{38 The Juvenile Justice (Care and Protection of Children) Act, 2015, sec 19(3).} “Heinous offences” have been defined widely to include all offences which have a punishment of seven years or more, under any law in the country.\footnote{39 The Juvenile Justice (Care and Protection of Children) Act, 2015, sec 2(33).} This could lead to a conflation between civil and criminal offences, which are now subjected to the same mandatory period. In fact, an examination of offences under the Indian Penal Code which command detention for more than seven years reveals that they include a wide range of offences from forgery for the purpose of cheating,\footnote{40 The Indian Penal Code, 1860, sec 468.} counterfeiting and attempt to commit robbery to murder and rape. Therefore, as a consequence of the 2015 Act, a juvenile who forges a document is mandatorily required to stay in a place of safety till the age of twenty-one.

There are certain ostensible drawbacks of the current legislation on juvenile justice:

- **Article 21** of the Indian Constitution provides a right fundamental to each individual assuring a life of peace and dignity. By shielding a juvenile fully cognitive of the cascading consequences of his acts, the Centre is at constant risk of infringing that fundamental right by protecting a class of criminal tendencies.

- Keeping the entirety of the juvenile offenders in one bracket would lead to a multiplier effect of criminal tendencies. Those who have wriggled through this loophole, like the minor in the Delhi Gang Rape case, may adversely affect the psyche of docile individuals, corrupting their minds with criminal affinities.

- Since the name and link to an offence cannot be tagged with a juvenile offender, the offender under the lacking infrastructure, if not reformed, is capable of acting as a threat to the society in rem.

- Sending delinquents aged between 16 and 18 years to adult prisons for seven years or more will likely ensure that there is little chance of reformation. Spending such a prolonged period in jail with other criminals will make it hard for young delinquents to come out of the cycle of crime and punishment.

The contravening opinions to the concept of lowering the age of the juvenile believe that there needs to exist a differing accountability and punishment for developing adolescents which is in proportion to their varying psychological make-ups.\footnote{41 Preibisius, Paul, Petition: Don't Let Children Be Tried As Adults In India, Force Change as available on http://forcechange.com/64558/dont-let-children-be-tried-as-adults-in-india/ (Last visited on November 11, 2017).} This, however, is another contentious yet acceptable proposition that could work for the benefit of the society, at least in the present scenario when the dire need to amend and dictate the loopholes into clotting is one of immense necessity.
8. **Reasons for Fixing the Age at 18 Years:**

The age of eighteen should be 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. **Legal Basis:** The basis of fixing of the age till when a person could be treated as a child at eighteen years in the JJCPA, 2000, was Article 1 of the United Nations Convention of the Rights of the Child, adopted in September 1990.\(^4^2\)

- **Scientific Basis:** Scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions.

9. **Conclusion**

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and that they can grow up in peace.”

– Kofi Annan\(^4^3\)

India is a developing country with a developing law. Since the last couple of years, a fear has also developed in the society. This fear is of criminals who wield their intentions without hesitation by the virtue of inherent lacunae in the Juvenile law of our nation. Indian law recognizes the concept of a Juvenile or a child in conflict with law; however, it remains oblivious to the separate concept of an innocent child in conflict with law. It overlooks the varying psyche of individuals and sways the blanket of protection plainly on the basis of one’s age. This gives rise to the profligate demonic overt actions that the population of India has been witness to, over the past couple of years. The JJA 2015 is a major step backward in the progressive forward-looking philosophy of juvenile justice especially by providing the use of prisons in certain cases. The contradictions and the complexities of the Act double up in the poor and ambiguous implementing guidelines. The number of Schemes, Acts, Model Rules that have been created to get this Act implemented questions the efficiency of the Act, it highlights the gaps in empowering the children and questions the possibilities. The multiple bodies responsible for implementation with no clarity on the expected outcomes and no view towards the goals makes lose confidence in the Act. The law needs to be amended, or if not that, then the loopholes of the legislation need to be adequately grounded and thenceforth covered, the inability of which would lead to grave consequences.

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