



REDUCING THE AGE OF CRIMINAL RESPONSIBILITY OF JUVENILE- A NECESSARY OR UN-NECESSARY STEP?

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Abstract-- The increase in number of heinous crimes committed by juveniles between the age group of 16 -18 years as per the report of National Crime Record Bureau along with the Nirbhaya rape case led to the amendment of Juvenile Justice Act, 2000 to Juvenile Justice Act, 2015. In this act two major provisions have been introduced- first, putting the children who are above sixteen years of age under trial as adult if found guilty of heinous crime and second, putting the juveniles in adult prison after the juveniles turn twenty-one years old if the sentence term is not over. Along with these two provisions other provisions relating to children in conflict with law under Juvenile Justice Act are under critical scrutiny in this paper. The present juvenile crime scenario after the passage of Juvenile Justice Act, 2015 is discussed in this paper. Finally some points for improvement in the Act as well as in the juvenile justice system is suggested.

Keywords: *Crime, Juvenile Justice Act, 2015, Juvenile Justice System, Age, Juveniles*

INTRODUCTION

The incident that shook the nation out of its stupor and created a furore and fury among the masses in the matter of women safety was the dastardly incident that happened on 16th December 2012.

On this day, a medical student who was returning home along with her friend around 9 PM and was brutally raped and was left on the roadside to die. The girl and her friend had taken lift in a bus. Little did she know that this journey in the bus will be her last? In the bus she was raped by six persons present while her friend was beaten badly as he tried to save her. The six persons involved in this heinous crime were the bus driver, conductor and cleaner and three of their friends. After she was raped, her body was badly mutilated and her intestine was pulled with a rod. Then she was thrown out of the bus to die by the roadside. When this incident came into limelight, it led to national anger and protest as well as many debates and discussion on various matters like, woman safety, kind of punishment to be given to the rapists etc. But with the release of the juvenile with only three years of imprisonment led to further outcry and protest by the masses to change the Juvenile Justice Act and to punish the juvenile at par with the adults for heinous crimes.

The juvenile apprehended in this case was only seventeen years and six months. So the age factor became an important issue in this case and the punishment given to him was based on his age as per Juvenile Justice (Care and Protection) Act (JJA), 2000. According to the Juvenile Justice Act, maximum three years of imprisonment can be given to any juvenile offender if found guilty. What galled many is that the juvenile who is said to be the most brutal of the six as per the media reports, was released after three years of imprisonment in a Special/Observation Home (the maximum time period a juvenile can be detained in any Observation Home) while other five were sentenced to be hanged till death. The release of the juvenile raised many eyebrows and was not taken well by people who created an uproar demanding more punishment for the juvenile considering the heinous nature of the crime he committed. The public outcry and constant media banter made Government amend the old Juvenile Justice (Care and Protection) Act, 2000 to new Juvenile Justice (Care and Protection) Act, 2015.

A per the Ministry of Woman and Child Development the new Juvenile Justice bill was introduced to amend the existing Juvenile Justice (Care and Protection) Act, 2000 as it was facing implementation and delay. Not only that the reports published by National Crime Record Bureau also provided data that there was an increase in number of crimes committed by juveniles between the age group of 16-18 years (i.e. 1.2 % in 2013 in comparison to entire crime rate of the rate) (Saha, 2016).



PROVISIONS FOR CHILDREN IN CONFLICT WITH LAW UNDER JUVENILE JUSTICE ACT, 2015

Juvenile Justice (Care and Protection) Act, 2000 was amended and was enacted Juvenile Justice (care and protection) Act (JJA), 2015. Juvenile Justice Act, 2015 had a lot of amended details relating to children in conflict with law (CCL) as well as relating to children in need of care and protection (CCP). The amendments found in Juvenile Justice Act, 2015 relating to Children in conflict with law are discussed below:

- 1) The act makes its compulsory to set up Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) in every district. Both JJB and CWC must have at least one woman member each.
- 2) The decision to try a juvenile who is sixteen years or older as an adult will be taken by the Juvenile Justice Board, which will have a judicial magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation.
- 3) The Child Welfare Committees will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children.
- 4) The Juvenile Justice Act, 2015 will consider any minor in the between age sixteen-eighteen years as an adult only in case of commission of heinous crime by him. While a minor in case of serious offences will be treated as adult only after he is twenty one years old during apprehension.
 - If a juvenile of seventeen year and above committed any serious offence and gets apprehended before turning twenty-one years old, then the approved punishment is maximum three years in a special home with counselling.
 - In case a juvenile committed a serious crime and gets apprehended twenty-one years of age in that case then minor will be put to trial as an adult and the imprisonment of three to seven years can be given.
 - If a seventeen year old juvenile commits a heinous crime and gets apprehended before reaching the age of twenty-one year then the punishment will be specified based on assessment report submitted of their mental and physical capability, etc.. Based on the evaluation, the juvenile can be tried as a child (max. three years) or adult (more than seven years)
 - If a juvenile committed heinous offence and gets apprehended after the age of twenty-one year, then in that case the juvenile will be tried as an adult and imprisonment of seven years and above is to be given.
- 5) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall 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 it with the help of psychologist or a psycho-social worker. Then the Board after preliminary assessment may pass an order that there is a need for trial of the said child as an adult. The Board then may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.
- 6) The inquiry of the case should be completed within four months of the first production of the child in the Juvenile Justice Board. This can be extended for maximum two more terms.
- 7) The assessment of the heinous crime should be disposed of within 60 days from the first production of the child before the Juvenile Justice Board.
- 8) "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 a fair trial under a child-friendly atmosphere."
- 9) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail. The child in conflict with law will be provided with the reformative services including educational services, skill development, and alternative therapy such as counselling, behaviour modification therapy, and psychiatric support during the period of stay in the place of safety.
- 10) The Children's Court shall ensure that there is a periodic follow up report every year by the Probation Officer or the District Child Protection Unit or a social worker, as



required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

- 11) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall ask for a follow up to the Probation Officer or the District Child Protection Unit or a social worker or itself, as required, to evaluate if the child has undergone reformatory changes, whether the child can be a contributing member of the society and for this purpose the progress records of the child, along with evaluation of relevant experts are to be taken into consideration.
- 12) After a thorough study of the submitted reports, the Children's Court may –
 - 1) Decide to release the juvenile on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;
 - 2) Decide that the juvenile shall complete the remaining period of the term in a prison
- 13) Each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.
- 14) No life-imprisonment or death sentence shall be given to a juvenile.

The major highlight of Juvenile Justice Act, 2015 was the trial of juveniles who are sixteen years and above as adults on commission of heinous crime like rape, murder etc. Thus, the age of criminal responsibility of the juvenile in case of heinous offences was reduced from 18 years to 16 years. The reduction of the age of juveniles and the provision to be tried as adults brought a lot of commotion in various platforms and led to a lot of discussion on this matter among intellectuals. While the laws under the Juvenile Justice Act, 2015 was appreciated by the general masses, it has become the cause of a lot of debates and discussions relating to various flaws of Juvenile Justice Act, 2015 among child experts, academicians, psychologists, lawyers, social workers working for children etc. This paper has emphasized on the various debate-able issues relating to Juvenile Justice Act, 2015 based on the opinions of various activists. Along with this, the paper also has focused on the present scenario of juvenile crime rate in the aftermath Juvenile Justice Act, 2015.

Accordingly, the paper is divided under various subsections. The first section focuses on the controversy of breaking the treaty signed by India with UNCRC (United Nations Convention on the Rights of Children). Second section will deal with the points raised by many activist stating the Juvenile Justice Act, 2015 to be retributive rather than reformatory. Third section will look into Juvenile Justice Act and the various issues relating to the level of maturity of juvenile and the necessity of considering it. Fourth section of the paper will highlight on the violation of Fundamental Rights of the children by Juvenile Justice Act, 2015. Fifth part of the paper will provide how JJA, 2015 along with various provisions of Protection of Children from Sexual Offences (POCSO), 2012 and Prohibition of Child Marriage Act, 2006 can lead to increase number of cases for juveniles. Sixth part deals with non-clarity of various terms used in the Act. Seventh part of the paper will deal with gaps and lacunae found in implementation and working of Juvenile Justice Act, 2015. In the last part, the paper will show the crime rate scenario of the juveniles after the implementation of Juvenile Justice Act, 2015 based on National Crime Record Bureau.

CRITICAL EVALUATION OF JUVENILE JUSTICE ACT, 2015: CHILDREN IN CONFLICT WITH LAW

Certain issues have been discussed below to explain how reducing the age of criminal responsibility of the juveniles and trying juveniles between the age bracket of 16-18 years committing heinous crimes as adults will not be as fruitful and productive as it is considered to be:

Breaking the Treaty

India became a signatory member of the United Nations Convention on the Rights of Children (UNCRC) on 11th December 1992. UNCRC has established a set of standards to which all state parties should adhere to in the best interest of child (both children in need of care and protection and children in conflict with law). But according to Clause 20(3) of Juvenile Justice Act, 2015, the Children's Court has to ensure that "the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty one years, thereafter, the person shall be transferred to a jail", thus violating Article 37(b) of the UNCRC which states that "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”. But Juvenile Justice Act, 2015 bill makes detention and institutionalization of the child as the only way to reform the children in conflict with law. The UNCRC has clearly stated that there is a clear demarcation between all children deprived of their liberty and adults. The Convention on Rights of Children has clearly established that this demarcation is not merely technical and “does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/ she turns eighteen”. Juvenile Justice Act, 2015 has not taken into consideration both Article 37 (c) and Convention on Rights of Children’s concluding remarks, and have established a clear distinction between adults and children by proposing the latter to be transferred to adult jail once the child turns 21 years of age (Section 20 (3)); thereby, clearly overlooking the rule set by UNCRC on prohibition of detention of children with adults.

Another recommendation given by the Committee on the Rights of the Child has been violated by the Juvenile Justice Act, 2015. The recommendation was made by the Committee to ensure agreement with Children’s Right to equality and non-discrimination under UNCRC and this is apparent from the Statements of Objects and Reasons which stated that “the justice system as available for adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers or parents and guardians throughout the country.”

VIOLATION OF FUNDAMENTAL RIGHTS OF THE CHILDREN BY JJA, 2015

Although Juvenile Justice Act, 2015 doesn’t reduce the age of criminality to 16 years in case of juveniles, it has still made provision for juveniles who have committed heinous offences i between the age group of 16-18 years to be tried and sentenced as adults; thus completely destroying the rehabilitative foundation of the juvenile justice system. Added to this the JJA, 2015 also goes against the Article 14, Article 15 (3) and Article 20 (1) of the Indian Constitution.

Article 14 states equality of all before law. The Juvenile Justice Act, 2015 has created a division between two types of juvenile offenders committing the same offence on the basis of the age in which they are apprehended. The reason behind differentiating these offenders committing same offence based just only on the date of their apprehension is unclear. (Shankar and Deshpande, 2015). In table 1 the implications of this provision based on the age and type of offences is explained:

Table 1: Distinction made on the basis of date of apprehension for serious and heinous offences

| <i>Juvenile Offender</i> | <i>Types of Offences</i> | <i>Age when offence committed (in years)</i> | <i>Age on date of apprehension (in years)</i> | <i>Punishment</i> |
|--------------------------|--------------------------|--|--|---|
| Juvenile P | Serious offences | 17 | Below 21 | Counselling and maximum 3 years in special home |
| Juvenile Q | Serious offences | 17 | Above 21 | To be tried as an adult; Imprisonment of 3-7 years |
| Juvenile R | Heinous offences | 17 | Below 21 | Based on evaluation reports , may be tried as a child (max. 3 years) or adult (more than 7 years) |
| Juvenile S | Heinous offences | 17 | Above 21 | To be tried as an adult; Imprisonment of 7 years and above |

Source: The Juvenile Justice Act, 2015: PRS

As can be seen, juveniles P and Q will be put under trial differently based on the age they were on the date of apprehension even though they have committed similar kind of crime. While juvenile P will be treated as a child and juvenile Q will be tried as an adult. Similarly, in case of heinous offences, juvenile R may be tried as an adult based on the preliminary inquiry, which will help to determine the mental and physical capacity of the juvenile and his/her ability to understand the consequences of the offence. While on the other hand, juvenile S



will be tried as an adult without the process of a preliminary inquiry for the same offence as juvenile R. This differentiation in providing penalty for the same offence based only on the date of apprehension violates the very essence of Article 14 of Indian Constitution.

Under Article 15 (3) of the Indian Constitution states nothing shall prevent the state from making special provision for women and children. Special provisions can be made by Government for the children. United Nations Standard Minimum Rules for the Administration of Juveniles, 1985 stated that juvenile justice should be given prime importance while dealing with children in conflict with law. Therefore, not only the offence but also the circumstance that lead to committing the offence by the offender should be taken into consideration. But the present JJA, 2015 only gives importance to type of crime rather than the psychological aspect of committing the crime (Saha, 2016)

Article 20(1) of the Constitution states that a person cannot be subjected to a penalty greater than what would have been applicable to him, under a law in force at the time of commission of the offence. According to JJA, 2015, if a juvenile who has completed the age of twenty-one and has still his period of sentence to serve, then the juvenile may be sent to jail to complete the remaining period of sentence based on the evaluation and assessment reports of the juveniles submitted to the Children's Court. This provision of the Act ignores the very nature of Article 20 (1) of the constitution as it sends the juvenile to adult prison where he will be treated as an adult and this may lead to recidivism (Saha, 2016).

JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015 – RETRIBUTIVE OR REFORMATIVE

The main purpose of introducing Juvenile Justice Act, 2015 was the constant report of increasing number of crimes (crime against women especially rape), by the juveniles in the age group of 16 to 18 years and on how to deal with them. However, several questions were raised and many debates were held when Juvenile Justice Act, 2015 was passed and implemented to find whether the new Juvenile Justice Act, 2015 was reformatory or retributive in nature. It was considered as retributive by many experts because it overlooks the principles of restoration, rehabilitation and re-integration of juveniles. It also overlooks the following points like protection, development, treatment, adjudication and disposal of matters in the best interest of the children and contained provision for punishing children between the age group of 16 -18 years as adults if they have committed heinous crime (punishment of seven years) by children's court. The children's court will send the child if found guilty of the heinous crime to a place of safety initially and can further order a child to be shifted to adult jail when he turns 21 years old if he still has got some time to serve and his conduct report submitted to the court is not good. This provision present in the JJA, 2015 shows that it has completely ignored the Preamble of JJA, 2015 which states that "to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social –reintegration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of the children and for their rehabilitation". But no such objective can be reached by sending children in conflict with law to place of safety and/or an adult jail.

Sending juveniles to stay in adult prison if sentence time is not over for the crime he/she had committed is not a very well thought out step and is in no way beneficial to the juvenile too. This will increase the chances of criminal contamination of the juvenile. As rightly pointed out by Justice Verma Committee when a juvenile completes his/her sentence of life imprisonment within a given time span and comes out of the prison, the juvenile would be an adult and might have his behaviour, attitude and outlook changed completely because of his prolonged stay with adult criminals (CHILDLINE India Foundation). The child may also be subjected to various physical and sexual abuse by the convicts and by the adults under trials leading the juvenile further into the path of criminality

Since the age of sixteen to eighteen years is considered to be a very sensitive and critical period for the overall development of a child, therefore, the child needs to be protected and should be prevented from learning bad ideas and behaviour. He/she should rather be trained and taught how to live a crime free life. But, when a child who has already committed a crime is further put in such an environment where there is greater chances of deterioration of their morality and learning further criminal behaviour, the child will easily turn into a criminal and will continue committing further offences. There are evidences of failures of this transfer system (children in conflict with law to be sent to adult prison on reaching eighteen years) in US.



CONSIDERING THE LEVEL OF MATURITY OF JUVENILES

Understanding the level of maturity of children in conflict with law is very crucial. Article 14 prevents equal treatment of unequal persons. Therefore, subjecting children to the criminal justice system as adults will be wrong and flawed as children and adults cannot be held to the same standard of culpability of a crime nor can a child participate in legal matters like adult criminals can do. Various studies in developmental psychology and neuroscience have been conducted to understand when and at age people mature? While researches in developmental psychology states that there exists a difference in cognitive capacity and psycho social maturity between adults and children and this influences the decision making capacity in anti-social situations. It is very difficult to explain whether the juvenile understands the consequence of his action and whether the juvenile had that much mental and physical capacity to commit such a serious/heinous crimes. It fails to understand the ongoing development that goes on during adolescence phase of a child.

In young adolescents reasoning capacity cannot be expected to be fully comprehensive about the basic interests of the people and how committing these crime will affect those interests because having these kind of understanding requires full developmental growth. Developing such understanding will require development of cognitive skills and increased moral reasoning which happens over a period of time and this too continues to happen during the adolescence phase too (Hirsch, 2001). Cauffman and Steinberg (2000) explained that the cognitive level of a sixteen or seventeen year old may show similar level of maturity but findings from the study show that there is a lack of psycho-social maturity levels between children and adults. Apart from these, during the adolescence phase children are more influenced by their peers; do not focus much on the outcomes; are more risk takers than adults and risks and benefit of an act is evaluated very differently (Scott and Steinberg, 2008). Therefore, their understanding of the legal processes and decisions relating to their case is not same as adults.

Not only developmental psychologist but also neuroscientist have studied the brain to understand about the maturity of a person. Neuroscientist in their findings state that the prefrontal cortex which is responsible for all important functions like planning, reasoning, judgement and impulse control matures very slowly. The maturation of the prefrontal cortex though begins at twelve years of age but it continues to grow and mature till twenty years of age. Therefore, people in this age group are at risk of getting involved with negative influences, underestimate the risk involved and lack far-farsightedness. These are some of the reasons why juveniles make poor decisions and therefore should be kept within the juvenile justice system.

NON- CLARITY OF TERMS USED IN JUVENILE JUSTICE ACT, 2015

In JJA, 2015 some terms like heinous offences, serious offences and petty offences are used based on these category of offences for which a juvenile will be put to trial. Clause 2 (33) of Juvenile Justice Act, 2015 states that "heinous offences" include "the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more". So based on the definition of heinous offences there are many offences like murder, rape , gang rape, theft in dwelling house, robbery, dacoity, preparations for dacoity, belonging to a gang of persons habitually committing dacoity, dishonestly receiving stolen property obtained by dacoity, habitually dealing with stolen property, mischief, house trespass, counterfeiting, abetment of offences punishable with death or imprisonment for life if the offence is not committed, collecting arms, culpable homicide not amounting to murder, attempt to murder, abetting commitment of suicide, voluntary hurt for extorting property, grievous hurt by acid attack, kidnapping or obtaining the custody of minor, kidnapping or abducting to murder and many other provisions (Ameena, 2015). Several other enactments like Narcotic & Psychotropic Substances Narcotic Drugs and Psychotropic Substances Act, Arms Act, Unlawful Activities (Prevention) Act, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Arms Act, Terrorist and Disruptive Activities (Prevention) Act etc. also prescribe offences punishable with imprisonment of seven years or more, thus bringing them within the purview of 'heinous offence' (Ameena, 2015).

Clause 21 of the Juvenile Justice Act, 2015 states that a juvenile who has completed twenty one years of age in the place of safety as per the sentence provided is needed to be transferred to adult jail. Before transferring such a juvenile to adult jail another Children's Court session will be held in which it will be decided whether the



juvenile can be a “contributing member of the society” as per the reports submitted to the courts by social worker, psychologist etc. or needs to be sent to adult jail. The terms “contributing member of the society” is not defined nor what all attributes are needed to be a contributing member of the society is defined anywhere in the Juvenile Justice Act, 2015. Due to absence of clarity of the term “contributing member of the society” many children who live in streets and belong to poverty stricken background will be put at risk and therefore maybe put in jails.

INCREASE IN FALSE ACCUSATION CASES

The Juvenile Justice Act, 2015 has raised a lot of issues when it is related to Protection of Children from Sexual Offences Act, 2012 (POCSO) and to Prohibition of Child Marriage Act (PCM). POCSO act states that the age of consent is 18 years. But if a juvenile commits any crime under POCSO Act, then as per Section 23 of the POCSO Act, the case will be dealt under the provisions of Juvenile Justice Act, 2000 and now under Juvenile Justice Act, 2015. PCM act states that the children marriages are voidable but not void.

In the present time there is an increase in the number of heinous crime (especially against women) and the number of juveniles apprehended in such cases has increased too. But many a time there are certain cases in which the accusation made are not fully true. Many a time boys and girls fall in love with each. This “love” may not be accepted by their family. In such a scenario usually both boy and girl with mutual consent of each other run away from their homes and get married and enter into consented sexual act. In such case if both the boy and girls are juveniles, then many provisions of POCSO Act and Juvenile Justice Act, 2015 are put into work. In such cases when both minors have entered into consented sexual relationship, the male child is usually treated as Children in conflict with law and the girl juvenile as children in need of care and protection. It happens so under Section 3, “Penetrative Sexual Assault” which starts with ‘he’. It considers the girl to be an abettor (Saha, 2016).

Other such cases are the cases of “elopement” where minor boys and girls run away from their homes without their parents’ consent and a report is filed against the boy for kidnapping the girl (Mukundan. 2015). JJA, 2015 acts a powerful weapon in the hands of angry parents. They file kidnapping and rape case against the boy with whom their daughter has eloped. Due to this NCRB in its Crime in India publication reported that in 2013, 1388 cases were reported of rape which is only 4.18 % of the total crime committed by juveniles between the ages of 16-18 years. Now when JJA, 2015 is read with POCSO Act, providing verdict on such cases will be a challenging task for the Board.

SOME OTHER LACUNAE IN IMPLEMENTATION OF JJA, 2015

Juvenile Justice (Care and Protection) Act, 2015 states that “The board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offenses, ability to understand the consequences of the offenses and the circumstances in which he allegedly committed the offenses.....for such assessment the board may take the assistance of experienced psychologists or psycho-social workers or other experts” (Vij, 2015).

Based on this clause included in the Act regarding conducting an assessment of the child involved in heinous crime before trial, the following factors are to be considered.

- 1) There is a shortage of staff in all the Special and Observation homes meant for the children in conflict with the law. Adding to it there exist no permanent counsellor or child psychiatrist in these homes. Only temporary counselors and psychiatrists visit these homes sometimes and therefore do not have enough time to understand and work with these children for their improvement and development.
- 2) The number of backlog cases under the Juvenile Justice Board is very large. Adding such clauses further will put pressure on the JJB members and in order to avoid public upsurge in the matters of heinous offenders, the JJB will be influenced by media outlook of the cases and public pressure (Vij, 2015). Thus, determination of the reason and the condition under which the crime has been committed will be overlooked and the child may be dealt with as an adult; thereby crushing the rationality of the factors
- 3) The Children’s Court orders to put the children in conflict with law above the age of sixteen in a place of safety if found guilty of the crime. Sec 50 (1) places responsibility on the State Government to



establish at least one place of safety in their respective state so that juveniles who are found guilty can be sent to the place of safety to complete their sentence. But there are some crucial factors which were overlooked while formulating these policy

- Most of these children belong to family whose annual income is less than Rs 25,000 a year based on the NCRB data that means many juveniles belong to economically backward families. When such children are put in the place of safety which is far away from their home, their parents will not be able to visit them easily because of their economic condition. Due to this the child may feel neglected and abandoned. This may lead to many break outs from the place.
- For each trial the child will face under JJB or Children's Court there will be need for transportation to the jurisdictional police station from where the juvenile has been kept. This will unnecessarily increase the pressure on the officials and the juveniles as well.

Reducing of age of criminality of juveniles and sending them to adult jail has been adopted from US. But what we have failed to notice is that in US this has failed miserably. The transfer policies have led to subsequent increase in crimes including violent offenses, by those who have been sent to adult jails.

JUVENILE CRIME SCENARIO- PRESENT TIME

It has been two years since Juvenile Justice (care and protection) Act, has been passed. But nothing has changed since the implementation of JJA, 2015. The crime rate of India goes on increasing with each passing year but the juvenile crime rate has remained the same 1.2% of the total crime since 2012 to till date with marginal decrease in the 2015. Table 2. below throws light on this fact.

Table 2. Juvenile Crime from the year 2012 -2016

| | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|----------------|----------------|----------------|----------------|----------------|
| Juvenile crime incidences (IPC & SLL) | 31,973 | 31,725 | 38,565 | 33,433 | 35,849 |
| Juvenile Apprehended (IPC & SLL) | 35,123 | 43,506 | 46,38 | 41,385 | 44,171 |
| Increase in crime in age group of 16-18 years | 26,473 (66.5%) | 28,830 (66.3%) | 36,138 (74.9%) | 29,731 (71.8%) | 32,577 (73.8%) |

Source: National Crime Record Bureau (NCRB): Crime in India (2012- 2016).

Table 2. clearly shows that juvenile crime incidences, juveniles apprehended under various IPC and SLL and a steady increase in the number of juveniles apprehended under various IPC and SLL crimes in the age group of 16- 18 years. Though a slight decrease is seen in juvenile crime scenario in 2015, an immediate rise is also seen in the year 2016. In India the juvenile crime forms a small percentage of the total crimes committed. Hence, Juvenile Justice Act, 2015 has little impact is evident in the juvenile crime rate as well as in the crime committed by juveniles in the age of 16 -18 years.

Even after knowing the consequences a juvenile will face if he/ she commits heinous crime, such cases do not get prevented. Some cases relating to juvenile involvement in heinous crime are discussed below:

- In 2013, in Mumbai two juveniles were involved in rape and assault of two different girls in the deserted Shakti Mill at two different times along with same adult offenders.
- In 2016, a juvenile heavily under the influence of alcohol ran down a man and was tried as an adult in the court.
- In 2017, a class eleven student (sixteen and half years) murdered a seven year old boy and has been put to trial as an adult.
- In January of 2018 an eight year old girl was kidnapped, raped and murdered by seven persons. Among them one is a juvenile and three others are police personnel.



Many such heinous crime cases involving juveniles are reported throughout India. They commit such crimes knowing well about the punishment they have to suffer.

There are many lacunae evident in the present Act. These are described above. The western countries which have transferred their juveniles not completing their sentence period after attaining eighteen years, have faced failures. Therefore, looking at the increasing rate of juvenile crimes, India should make a better policy to deal with children in conflict with law based not only on the crime they have committed but based on the environment and circumstances which have forced these children into the dark alley of criminality.

RECOMMENDATION

Based on the problems found in the present Juvenile Justice (care and protection) Act, 2015 there is a need to change certain provisions of the Act. They only the present Act can be more reformative than retributive in approach.

The following recommendations should be looked into:

- 1) *Need for better implementation:* JJA, 2015 is facing the same implementation problem as JJA, 2000. The provisions relating to children in conflict with law should be systematically implemented and uniform system should be established.
- 2) *Recruitment of Competent Authorities:* One of the major drawbacks is the absence of competent authorities like psychologist, psycho-social worker, social worker, Probation Officers etc. to deal with children in conflict with law, the situation that have forced them into crime can be better understood. Based on that information, reformation can be brought into them. They can be easily rehabilitated as disciplined members of the society, after their release and won't commit any crime in future. Apart from the psychologists, social workers, there is also a need for teaching assistants who will impact these children with proper education and vocational and technical training/skill so that these children can get work and become contributing members of the society once they get out.
- 3) *Filling the Vacant Official Positions:* Inadequacy of staff in various Observation and Special Homes has been found. The actual staff present in a Home established for children is very less than the required staff as per the Juvenile Justice System. Large number of posts are lying vacant. This puts a lot of work pressure on the existing officials. Due to work overload the officials usually overlook the problems faced by the children in these Homes. This leads to many break outs in the Homes adding more cases against the children.
- 4) *Different places of residences for children:* Many a time it is found that children in conflict with law and children in need of care and protection are all kept together in a combined Special and Observation Homes. This can lead to further development of criminal tendency in children due to criminal contamination. The transfer of juveniles to adult jails to complete their term of sentence on attaining 21 years and lead the juvenile further into the path of criminality. Therefore, different places of residence should be established for children in need of care and protection and children in conflict with law. They rather should be provided with proper psychological, moral, self-developmental assistance.
- 5) *Need to Learn from Mistake of others:* India should learn from the problem of increased crime rate faced by US due to transfer of the juveniles to adult prisons after they turned eighteen years. A study was conducted by the independent Task Force on Community Preventive Services established by US Centre for Disease Control based on review of nine studies stated that "*transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system*" (as cite in Centre for Child and the Law, NLSIU Bangalore). Therefore, based on such findings India should stop these transfer policy of juveniles into adult prison once they turn twenty-one years. This transfer will not do any good to these juveniles rather will further push them into the path of crime. Rather than transferring juveniles to adult jails, community based supervision and assistance should be provided to them.

CONCLUSION

Reducing the age and trying juveniles as adult criminals when involved in heinous crime is not a well thought out step taken by the Government. Putting adolescent children in trial as adults and punishing them as adults



will not be beneficial for them as well as for the society. By implementing this law, it seems Government wants to create fear in the mind of the children, so as to prevent them from committing heinous crimes. This process does not abide by the very objective of the Juvenile Justice whose main aim is reformation and re-integration of the juveniles into the mainstream of the society. Reformation of juvenile delinquents should be prioritized. There is a need to understand the adolescent minds of juveniles and make provisions to approach and treat them. Creating a demarcation based on age and type of crimes committed is not sufficient as this will lead to further development of behavioural problem in children. The gaps and the problems that exist in the present juvenile justice system should be rectified. Children should be treated and dealt with utmost care, instead of turning to punitive law. The government should try to improve and eliminate the factors that have led the children to commit such an offence and provide the children who are already in the system with a better reformatory measures as well as public awareness should be created relating the law. So, that people have a better understanding of the system and the rules thereby preventing their children from committing any kind of offences.

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