

Juvenile Courts and Juvenile Justice in India

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- Introduction: The Need For A Separate System!
- Juvenile Justice has always been a talking point world over, be it developed, developing or under developed countries and of course, international platforms such as the United Nations. The issue is debated over and over again as it concerns the well-being and future of a child who has been in conflict with law. All institutions are universally in agreement on the point that a child cannot be treated as an adult and hence, a separate justice system was essential for the protection of the rights of such child!
- Defining & Comprehending ‘Juvenile’:
- ‘Juvenile’ has been derived from Latin word ‘Juvenis’ which means young and thus, it can be stated that a juvenile is a child or young person who is not yet old enough to be considered an adult.

Most of the countries consider children below 18 years as juvenile and are not mature enough to understand the gravity of wrongdoings.

Reasons For Juvenile Delinquency:

Crime committed by juveniles is prevalent in all parts of the world and the reasons for it are manifold. There are umpteen social, economic and psychological factors that are the culprit—poverty, physical or emotional abuse, broken homes, atrocities by parents or guardian, family tensions, neglect, frustrations, lack of proper education, influence of media, etc. The situation worsens if a child is orphaned or abandoned or disabled, and therefore, if a juvenile breaks the law, the blame should go on parents, family or society, more than him, as the conditions presented by them has led to such consequences.

Historical Background: International Perspective

The juvenile justice system has evolved from 19th Century, when awareness for a distinctly different legal system was felt. Elizabeth Fry, the renowned English prison reformer, established a separate institution for juvenile offenders, and later in Britain, Reformatory Schools Act and Industrial Schools Act were introduced.

The first ever Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. In England, the first Juvenile Court was set up in 1905.

UN Congress on Prevention of Crime and Treatment of Offenders held a strong view that there should be standard minimum set rules for Juvenile Justice. In 1989, the UN Convention on Rights of the Child drew attention to four sets of Civil, Political, Social, Economic and Cultural rights of every child. These are:

Right to survival: This includes not only right to life but also health, nutrition and good standard of living, in addition, right to a name and nationality.

Right to protection: This talks about protection from exploitation, inhumane treatment, abuse and neglect. It also stresses of special protection during armed conflicts and emergencies.

Right to development: This incorporates social security, early childhood developmental care, right to education, leisure and cultural activities.

Right to participation: This refers to respect for the views of the child, freedom of expression and freedom of thought, conscience and religion.

Till date, this convention provides the legal basis to most of the nations for initiating action to ensure the rights of children in society.

Historical Background: Indian Perspective

India boasts of a long history of evidence of a separate juvenile justice system that can be traced as far back as 1790 BC, in what is known as the Code of Hammurabi. Under this Code juveniles were entrusted in the care and protection of families.

In the pre-independence era, in 1843, Lord Cornwallis established the first center for such children and it was called ‘Ragged School’.

In the chronological order it was ‘The Apprentices Act’ of 1850 was the first law which provided vocational training as part of rehabilitation process to children between the ages of 10-18, convicted by Courts.

This act was replaced later with Juvenile Justice Act, 1986.

In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC), and in order to incorporate the set standards of the convention, the Juvenile Justice Act of 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000, came into force.

The Act of 2000 lays out a special framework which deals separately with two categories of children.

Children in need of care- To cater to the needs of this category of children, a Child Welfare Committee was established.

Children in conflict with the law- The Juvenile Justice Board was set up to deal with such children.

Need To Repeal Juvenile Justice Act, 2000:

Incidences of crimes, especially atrocious offences, committed by juveniles, has been increasing alarmingly, year over year, that has been confirmed by the data provided by National Crime Records Bureau.

Although all stake holders are on the same page when it comes to the treatment that should be given to juvenile delinquents, but ‘Nirbhaya Case’ changed the perception of many people. This horrific gang rape & murder of a 23-year-old girl, in the capital, shook the conscience of the nation.

One of the culprits of this heinous crime, Raju, was just six months away from attaining majority. He was tried under Juvenile Justice Act, 2000, and awarded the maximum punishment possible under the Act, i.e. three years, which he spent at a reformation home and was released in 2015. A huge hue and cry was made by many in the society, at the lenient sentence for the juvenile where as all other had been awarded life sentence.

The data provided by National Crime Records Bureau also painted a grim picture of the reality of juveniles aged 16-18 apprehended under IPC.

CRIME	2003	2013
Burglary	1,160	2,117
Kidnapping	156	933
Rape	293	1,388
Robbery	165	880
Murder	328	845

These statistics were conclusive proof that there was a dire need to relook the provisions existing in the Act especially relating to heinous crime.

A roaring debate ensued, writ petitions filed, even progressive groups of citizens vociferously advocated towards lowering the age of juveniles to 16. As a result, JJ act of 2000 was repealed and replaced by Juvenile Justice (Care and Protection of Children), 2015, came into force from January 15, 2016.

Juvenile Justice (Care and Protection of Children), 2015

The Act contains 112 sections in total, which are divided into ten important chapters. The thrust of JJ Act, 2015, remains the same as the previous Act and deals with both categories of children, but with some key amendments.

The most significant derivation that has come in JJ Act, 2015, is that the phrase ‘juvenile’ has been removed and replaced by ‘child’ across the Act. This has been done with the intention to eradicate the negative connotations associated with it.

But apart from this there are many more provisions introduced in this Act for both categories of child and which were seemingly considered essential for the well-being of such children.

Preamble of the Act:

“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 children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.”

Going by this, it is quite evident that the main thrust still remains on working towards giving these children the opportunity to re-integrate in society, lead a worthy life, not to alienate them from mainstream.

A Comparative Assessment of Age Related Aspects of Juvenile Justice in Various Countries:

Country	Minimum age to be charged of an offence	Age at which Juvenile can be charged as an adult	Types of offences a juvenile can be charged
USA	6-10 years	13 years	murder, assault, robbery, firearms offences, drug offences
UK	10 years	17 years	murder, rape, causing any explosion likely to endanger life

South Africa	10 years	16 years	murder, rape, robbery
France	Depends on the offence committed	16 years	armed robbery, murder, rape, drug offences
Canada	12 years	14 years	serious bodily harm to any person, murder, aggravated sexual assault
Germany	14 years	14 years	abuse of persons incapable of defense, sexual abuse, child abuse leading to death
India	7 years	16 years (only in cases of heinous crimes)	murder, rape, robbery

Prominent Features of Juvenile Justice Act, 2015:

The act states in the preliminary chapter that the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law.

Chapter 1. Definitions of Some Legal Terms:

Juvenile- a child below the age of eighteen years.

Heinous offences- for which the minimum punishment under IPC is imprisonment for seven years or more.

Abandoned child- a child deserted by his biological or adoptive parents or guardians.

Adoption- the procedure through which a child's ties with his biological parents are broken permanently and at the same time, he becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.

Aftercare- is provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the society.

Child- refers to a person who has not completed eighteen years of age.

Petty offences- those offences for which the maximum punishment under the IPC is imprisonment up to three years.

Serious offences- those offences for which the punishment under the Indian Penal Code is imprisonment between three to seven years.

Surrendered child- a child, who is given up by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control.

Chapter II. General Principles of Care and Protection of Children:

This chapter lays down the fundamental principles that shall guide the Central Government, the State Governments, the Board, and other agencies, in implementing the provisions of this Act.

- i. Principle of presumption of innocence
- ii. Principle of dignity and worth
- iii. Principle of participation
- iv. Principle of best interest
- v. Principle of family responsibility
- vi. Principle of safety
- vii. Positive measures
- viii. Principle of non-stigmatizing semantics
- ix. Principle of non-waiver of rights
- x. Principle of equality and non-discrimination
- xi. Principle of right to privacy and confidentiality
- xii. Principle of institutionalization as a measure of last resort
- xiii. Principle of repatriation and restoration
- xiv. Principle of fresh start
- xv. Principle of diversion
- xvi. Principles of natural justice

Chapter III. Juvenile Justice Board:

This chapter of the Act enumerates all regulatory aspects of Juvenile Justice Board (JJB).

4(1) It mandates setting up of at least one JJB in every district.

(2) It shall consist of a Metropolitan Magistrate or a First-Class Judicial Magistrate (but not Chief Metropolitan Magistrate). Additionally, two social workers will be on the Bench of the Board, out of them one shall be a woman. The JJBs shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate.

(3) The social workers appointed to JJBs shall have to be an active participant in the field of health, education, or welfare of children; or a practicing professional in the field of child psychology, psychiatry, sociology or law.

(4) No person having any criminal record shall be eligible for selection as a member of the Board.

(5) Induction training and sensitization of all members regarding care, protection, rehabilitation, legal provisions and justice for children, shall be ensured by the State government.

5. If an inquiry initiated in favour of a child and during the course of inquiry if he completes 18 years of age, then also the Board shall continue the inquiry as if he was a child.

6. In case the child is not released on bail by the Board, then he shall be placed in a 'place of safety' during the process of inquiry.

8. (1) The JJBs shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law.

(2) Under section 19 or in appeal, revision or otherwise, if such proceedings come before the High Court and the Children's Court, the powers conferred on the Board by or under this Act, may also be exercised by them.

(3) Functions and Responsibilities of JJBs:

Continuous participation of the child and the parent or guardian;

Protecting the child's right throughout the process;

Ensuring legal aid for the child;

Provide an interpreter or translator, if needed.

Direct the Probation Officer to undertake a social investigation into the case and submit a report within 15 days.

Adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14.

Transfer those cases to the Committee, where the Board realizes that the child in conflict with law needs care and protection.

Dispose of matter and pass a final order for the child's rehabilitation.

Conduct inquiry for declaring fit persons regarding care of children in conflict with law.

Conduct at least one inspectional visit every month of residential facilities where the children in conflict with law are kept.

Order the police to file an FIR for offences committed against any child in conflict with law.

Order the police to file an FIR for offences committed against any child in need of care and protection.

Conduct inspection of adult jails and if any child is lodged there then take immediate action to transfer the child to observation home.

Any other functions as may be prescribed.

Chapter IV. Procedure in Relation to Children in Conflict with Law:

Chapter IV of the Act states all regulations related to the procedure to deal with a child in conflict with law, to be followed by various authorities.

10. (1) Whenever a child in conflict with law is apprehended by the police, he shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, and produced before the Board within a period of twenty-four hours.

Under no circumstances, a child alleged to be in conflict with law, shall be placed in a police lockup or lodged in a jail.

11. Any person under whose charge such a child is placed, shall bear the responsibility of him as if it were his own child.

12. (1) A child who is alleged to have committed a bailable or non-bailable offence, shall be released on bail, with or without surety, or placed under the supervision of a probation officer, etc.

(3) During the pendency of the inquiry of such cases, if the child is not released on bail then, he shall be put in an observation home or a place of safety.

13. When a child is apprehended for any crime, then, the Child Welfare Police Officer shall immediately inform the parent or guardian about the Board before which the child is produced.

A social investigation report shall be performed by the Child Welfare Officer or probation officer, containing information regarding the antecedents and family background of the child and other material circumstances, within 15 days.

14. (1) When a child is produced before the Board, the Board shall hold an inquiry and pass orders in relation to such a child under sections 17 and 18 of this Act.

(2) The Board shall complete the process of inquiry within four months, unless extended, to two more months, at the maximum.

(3) In case of heinous offences under section 15, a preliminary assessment shall be disposed of by the Board within a period of three months.

(4) For petty offences, if the inquiry by the Board under sub-section (2) remains inconclusive, even after an extended period, then the proceedings shall stand terminated.

But in cases of serious or heinous offences, extensions can be granted by the Chief Judicial Magistrate or, the Chief Metropolitan Magistrate.

(5) The Board shall take all the required steps to ensure fair and speedy inquiry.

15. (1) In cases where a child, who has completed or is above the age of sixteen years, and has been alleged to have committed a heinous offence, 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 the offence. The Board is free to seek assistance of experienced psychologists or psycho-social workers or other experts in this matter. Further, it is clarified that preliminary assessment is not a trial, but just an assessment.

(2) If the Board is satisfied on preliminary assessment that the matter should be disposed by it, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973.

16. The pendency of cases of the Board shall be reviewed by The Chief Judicial Magistrate or the Chief Metropolitan Magistrate, once every three months, and he shall direct the Board accordingly, or even recommend additional Boards if need be.

17. (1) If a Board is satisfied after inquiry that the child has not committed any offence, it shall pass order to that effect.

(2) But in case, it appears to the Board that the child referred to in sub-section (1) needs care and protection, then it may refer the child to the Committee with appropriate directions.

18. (1) When a Board is assured after inquiry that a child (irrespective of his age) has committed a petty offence, or a serious offence, or even a child below the age of sixteen years has committed a heinous offence, then the Board may-

(a) allow the child to go home after advice or admonition; and counselling such child and his parents or guardian;

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

(c) order the child to perform community service under the supervision of an organization or institution;

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

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility, for a period not exceeding three years;

(g) direct the child to be sent to a special home, for a period not exceeding three years.

(2) The Board may, in addition pass orders for the child to attend a school, vocational training, or undergo a de-addiction program, etc.

(3) If the Board, after conducting the preliminary assessment, under section 15 passes an order that there is a need for trial of the said child as an adult, then it may order transfer of the trial of the case to the Children's Court.

19. (1) After receiving preliminary assessment from the Board under section 15, the Children's Court may decide if-

(i) there is a need for the child to be tried as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders regarding the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult then, the Board may conduct an inquiry and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, regarding such a child, shall include an individual care plan for his rehabilitation, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall further ensure that the child is sent to a place of safety, with reformatory services, till he attains the age of twenty-one years and thereafter, he shall be transferred to a jail.

(4) The Children's Court shall also ensure a period follow-up.

(5) The reports shall be forwarded to the Children's Court for record and follow-up.

20. (1) When such a child attains the age of twenty-one years and is yet to complete the term of stay, then it is for the Children's Court make the call. After an evaluation, the Children's Court may decide either to release the child or that the child shall complete the remainder of his term in a jail.

21. No such child shall be sentenced to death or life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of IPC.

22. No proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

23. There shall be no joint proceedings of a child, with a person who is not a child. If the child attains twenty-one years of age and is yet to complete the prescribed term, then he shall stay in place of safety.

24. (1) No disqualification shall arise for the child from any conviction under this Act. The only exception shall be in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with the law by the Children's Court.

(2) Except in cases of heinous crimes, all records of any conviction of juveniles shall be destroyed after the period of appeal expires.

25. All proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

26. (1) A child who has run away from a special home or an observation home, etc. any police officer may take charge of such a child.

(2) The child referred to in sub-section (1) shall be produced, within twenty-four hours, preferably before the Board which passed the original order or to the nearest Board where the child is found.

(3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders in the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.

Chapter V. Child Welfare Committee

27. (1) The Act mandates that the State Government by notification shall set up of Child Welfare Committee (CWC) in every district, which shall exercise the powers and discharge the duties conferred on them. It shall further ensure induction training and sensitization of all members of the committee within two months from the date of notification.

(2) The Committee shall consist of a Chairperson, and four other members, of whom at least one shall be a woman and another, an expert on the matters concerning children.

(3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

(4) Any person who has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development, shall be eligible for appointment as a member.

(6) No person shall be appointed for a period more than three years as a member of the Committee.

(7) A member can be terminated if he is found guilty of misuse of power or has been convicted of an offence involving moral turpitude or fails to attend the proceedings of the Committee consecutively for three months without any valid reason.

(8) The District Magistrate (DM) shall conduct a quarterly review of the functioning of the Committee.

(9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate.

(10) The grievances redressal authority shall be the DM.

28. The Committee shall meet at least twenty days in a month. A visit to a child care institution by the Committee, shall be considered as a sitting of the Committee. A child in need of care and protection may be produced before an individual member of the Committee for being placed in a Children's Home or fit person when the Committee is not in session.

29. The Committee shall have complete authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection.

30. The functions and responsibilities of the Committee includes-

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and wellbeing of the children under this Act;

(iii) directing the authorized officers and organizations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection;
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs;
- (viii) conducting at least two inspection visits per month of residential facilities for such children.
- (ix) conduct an inquiry and give directions in case of a complaint of abuse of a child in any child care institution.

Chapter VI. Procedure in Relation to Children in need of Care and Protection:

- 31. (1) Any child in need of care and protection may be produced before the Committee by any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any public servant or Childline Services or any social worker or by the child himself. The child should be produced before the Committee within 24 hours.
- 32. Any individual who finds the child shall inform the Childline Services or the nearest police station within 24 hours. The information regarding such a child shall be mandatorily uploaded on the portal specified by the Central Government.
- 33. If this information is not given within the period specified, then, such act shall be regarded as an offence.
- 34. Any person who commits such an offence shall be liable to imprisonment up to six months or a fine of ten thousand rupees or both.
- 35. A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee. Such parents or guardian who surrendered the child, shall be given two months time to reconsider their decision.
- 36. The Committee shall hold an inquiry and then pass an order to send the child to the children's home or shelter home or a fit facility or fit person. But all children below six years of age shall be placed in a Specialized Adoption Agency.

After the completion of the inquiry, the Committee may send the child to a suitable facility for a period as may be prescribed, or till the child attains the age of eighteen years. The Committee shall also submit quarterly report.

- 38. In case of orphans and abandoned children, the Committee shall make all efforts for tracing the parents or guardians of the child, and on completion of such inquiry with negative outcome, shall declare the child legally free for adoption.

Chapter VII. Rehabilitation and Social Reintegration

39. The process of rehabilitation and social integration of children shall be undertaken, based on the individual care plan of the child, preferably through family-based care. But for children in conflict with law, the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail.

40. The Children's Home, Specialized Adoption Agency or an open shelter, shall take steps that are considered necessary for the restoration and protection of a child deprived of his family environment temporarily or permanently.

41. All institutions for housing children in need of care and protection, or children in conflict with law, shall, be registered under this Act within six months of enforcement of the Act.

The State government shall make all the regulatory rules and ensure their implementation.

Chapter VIII. Adoption

Sections 56-73 of the Act covers each and every aspect of Adoption of orphaned, abandoned and surrendered children.

56. Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act. But nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

All inter-country adoptions shall be done only as per the provisions of this Act. Any person, sending a child to a foreign country without a valid order from the Court, shall be punishable as per the provisions of sub-section (1) of section 80.

57. The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him. In case of a couple, the consent of both spouses for the adoption shall be required. A single or divorced person can also adopt, subject to fulfilment of the criteria. But a single male is not eligible to adopt a girl child.

58. Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialized Adoption Agency. The Agency shall prepare a report on the prospective adoptive parents and if found eligible, the process commences. First, the child is given for pre-adoption foster care, later given for adoption after the formalities are completed. The progress and wellbeing of the child in the adoptive family shall be followed up regularly.

59. If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent, despite all efforts, then the child can be given for inter-country adoption.

67. The State Government shall set up a State Adoption Resource Agency to deal with related issues.

68. The Central Adoption Resource Agency performs extensive functions to regulate the entire process of adoption.

69. The Authority shall have a Steering Committee of very prominent members.

72. The Central Government shall pay to the Authority grants.

Chapter IX: Other Offences Against Children

Sections 74-89 covers all other offences against children.

74. No reporting should be done by the media regarding the judicial procedure. Police should also follow complete confidentiality.

75. Anyone who causes any mental or physical suffering to a child shall be imprisoned up to 3 years or fined one lakh rupees. If such offence is committed by a person of an organization, then rigorous imprisonment up to 5 years and a fine of 5 lakhs will occur.

76. Anyone who employs a child for the purpose of begging shall be imprisoned for five years and a fine of one lakh rupees. But if the child is amputated or maimed, then the culprit shall face rigorous imprisonment for seven years to ten years, and a fine of five lakh rupees.

77. Anyone who gives intoxicating liquor or any narcotic drug or tobacco products will invite harsh punishments under the Act.

81. Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment up to five years and a fine of one lakh rupees.

82. Anyone who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees, later to imprisonment.

Related Case Laws:

#1. The Case: *Kulai Ibrahim v. State of Coimbatore*¹

In this case, the appellant approached the Supreme Court after a judgement was pronounced and the case was disposed. The contention of the appellant was that he was a minor at the time the crime was committed and hence, he should not be convicted.

Date of Verdict: July 3, 2014

Judges: Ranjana Prakash Desai, Madan B. Lokur

The Verdict: The learned judges observed that the accused has the right to raise the question of juvenility at any stage, before the trial, during the trial or even after the case was disposed. It

¹ AIR 2014 SC 2726.

should thereafter be determined whether the person falls in the category of juvenile or not, in terms of the provisions of the JJ Act.

#2. The Case: Dr. Subramanian Swamy and Others v. Raju, Through Member, Juvenile Justice Board²

A ghastly incident of gang rape took place in a moving bus in the streets of Delhi, on December 16, 2012. Six accused were arrested on December 22, 2012, one of whom, namely, the first respondent in the present special leave petition was a juvenile on the date of the occurrence of the crime. The petitioners claimed that, the accused was liable to be tried under the penal law of the land in a regular criminal court along with the other accused. They claimed that, on a proper interpretation of sections 2(I) and 2(k) of the Juvenile Justice Act, 2013, the juvenile was not entitled to the benefits under the Act. Sections 2(p) and 28 of the Act were also cited in the context.

Date of Verdict: August 22, 2013

Judges: P Sathasivam, Ranjana Prakash Desai, Ranjan Gogoi

The Verdict: The Bench of three judges of Supreme Court heard the special leave petition but left the final call on the juvenile Board that was dealing with the case. Consequently, the culprit was tried as a juvenile and given the maximum punishment that was possible under the JJ Act, 2000, i.e. three years.

Although no outstanding judgement came out of this petition but still it can be called a landmark because it triggered a massive debate in the country. Awareness about the specific law and the need to change it, took shape as people in general were of the opinion that it was unjustified to safeguard a ‘demoness child’ and give no justice to the ‘innocent victim’ who lost her life.

This case became the seed of JJ Act 2015 which was finally enforced with a remarkable change that juveniles between 16-18 years can be tried as an adult, if the crime is ‘heinous’.

#3. The Case: Sampurna Behura v. Union of India & Ors.³

This was a writ petition by the appellant towards the tardy implementation of the Juvenile Justice Act, 2000. The apathy of the entire government machinery is highlighted as not even a single aspect of the Act was enforced honestly.

Date of Verdict: February 9, 2018

Judges: Madan B. Lokur, Deepak Gupta

² SPL(CRL.) NO 1953 OF 2013

³ Writ Petition (Civil) No. 473 of 2005

The Verdict: Both the judges were in agreement in condemning the pathetic state of affairs when it came to implementing the JJ Act, 2000. They stressed on the fundamental rights and human rights of the children, and the need for the Act to be enforced strongly. The Union govt. and the State govts. and all other agencies were directed to look into the issues raised in the petition. Compassion, empathy along with sense of responsibility should be understood by one and all as the children are voiceless and can not raise voice for themselves.

#4. The Case: R.K. Tarun v. Union of India & Ors.⁴

Filed by way of Public Interest Litigation, the petitioner was seeking a declaration that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and Rule 12(3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009, which prescribe the procedure to be followed for determination of age of a juvenile in conflict with law, are ultra vires and unconstitutional being violative of the Constitution of India.

Date of Verdict: November 19, 2015

Judges: CJ Rajiv Sahai, G. Rohini

The Verdict: The Court was of the opinion that there was no need for any confusion in the procedure to be followed by JJBs in Delhi for determination of age of the child or juvenile in conflict with law. There is slight variation in the preference to be given to the evidence that is required to be produced for determination of age between the Model Rules and the State Rules, but the JJBs in Delhi are required to follow the procedure prescribed in the State Rules only.

Accordingly, it held that Rule 12(3) of both the Model Rules and the State Rules are valid. However, the Court clarified that the JJBs in Delhi are required to follow the procedure prescribed in Rule 12(3) of the State Rules.

The Last Word!

The Juvenile Justice Act, 2015, is indeed a masterpiece legislation, as it has considered all factors that touch the life of a child, whether in conflict with law or in need of care & protection.

Most of the amendments or inclusions in the Act, in the category of child in conflict with law, concerns teenagers in the age group of 16-18 years. The reason for this is that the society has been witnessing a massive jump in crimes committed by children in this age group in recent years. JJ Act, 2000, mandated a maximum punishment of three years for juveniles, and this was debated vociferously by various stakeholders who were of a strong opinion that such lenient penalty does not work as a deterrent against crimes like rape or murder.

⁴ W.P.(C) 1308/2013

Thus, the provision introduced in this Act mandates that a child aged between 16 to 18 years, who has committed a heinous crime, can be tried in adult courts, as an adult.

This was the direct impact of the ‘Nirbhaya’ rape case, that triggered a tsunami of emotions and compelled the government to revamp the present justice system! A lot of hue and cry was made by human rights groups and child protection groups, but eventually the bill was passed despite reservation by the standing committee, which was overruled by the government.

In the other category, i.e. child in need of care and protection, a whole lot of new definitions, provisions have been introduced, The Act works positively towards streamlining the adoption process, which was a major concern for all.

Although the framework of the Act is commendable, yet it is not effective! There is a massive gap in how things should be, and how they actually are! Especially when we witness orphans, destitute, disabled, abandoned children in most horrifying conditions, we are flabbergasted!

Being a country with a mammoth population, there are umpteen reasons for children being deprived of a decent life. Poverty undoubtedly is the biggest culprit followed by illiteracy, but psychological pressures are also a major reason and are responsible for crimes committed by juveniles.

The child is the most invaluable and irreplaceable asset of any society and it is on them, that the future of a nation rests. Hence, it is the obligation of the entire society to provide a healthy atmosphere for a balanced development of all the children. A nutritional diet, hygienic environment, free education, access to healthcare, love and care; all are basic needs of a child, and the absence of any of these may lead to a child who becomes anti-social or anti-establishment as he grows up!