



Salient features of juvenile justice act 2015: Comparative study with UK

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Abstract

The Juvenile Delinquency problem involves millions of youth. The prevailing problem in modern societies is the deterioration of moral character among the youth. It has been observed that the tendency among youth people to commit crime and indulge in anti-social activities is increasing. Juvenile Delinquency involves wrong doing by a child or a young person who is under an age specified by statute. Delinquency is simply the first step on the road to adult crimes or it is a gateway to adult criminality. In India, the concept is confined to the violation of ordinary penal law of the country so far as the jurisdiction of the Juvenile Court is concerned. Under Section 82, upto 7 years of age there is an absolute irrefutable presumption that the child is 'Doli incapax'. This immunity is granted to the children below 7 years on the pragmatic approach of the state that children below seven years are not capable hence they do not have the capacity to have the requisite "mens-rea".

Under Section 83, if the child does not attain maturity of mind the burden of proof lies with the child. To make them liable they must attain maturity of mind and this is called "mischiefous discretion" under English law. The children of this age will have to prove that there was no maturity of mind when the act committed and therefore, no mens-rea.

In UK, the first court set up in Chicago in 1899 to address the issue of juvenile crimes and punishments. It peaked in 1994. In 2002, 2.3 million juveniles were arrested for committing crimes. The 1908 Children Act created a separate and distinct system of justice board in the juvenile court. The 1993 Children and Young Persons Act formally required the court to take account of welfare consideration in all cases involving child offenders and the 1969 Children and Young Persons Act advocated the phasing out of criminal in favour of civil proceedings.

A child under the age of 10 years should not be arrested according to Section 16 of Children and Young Person Act, if a juvenile arrested and later he turns out to be below the age of 10 years he should be released immediately according to Section 34(2) of Police and Criminal Evidence Act.

A Child may be only kept in police custody for 72 hours and as soon as possible the constable should make arrangements for the investigations to take place.

Keywords: child in conflict with law, child care and protection, bail procedure, age ascertainment, adoption

Introduction

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated. Contemporary World has seen increase in the rate of crime committed by juveniles which is a very serious problem especially in India as these juveniles are the future of their respective countries. More and more children are moving towards the pathway of crime to lead their life. Various factors are responsible for this approach of juveniles.

Change is the natural phenomenon and this phenomenon applies in every sphere of life so the law cannot be an exception to this. In the same way, the laws relating to child, having its seeds right from enactment of the Constitution of India in the form of fundamental rights under Article 15(3) read with Directive Principles of State Policy under Article

39(e) & (f) along with fundamental duties under Article 51A, was the need of the society. The laws relating to the child was also expedient to be enacted due to accession by the Government of India to the Convention on the rights of the child, 1992, the standards set in UN rules for the administration of justice, 1985, UN rules for protection of juveniles deprived of their liberty, 1990 and Hague Convention on Adoption, 1993.

And therefore, the law was enacted in the year 1986 in form of Juvenile Justice Act and the same was, as per the above said natural phenomenon of changes, changed time to time accordingly Le. Juvenile Justice (Care and Protection) Act, 2000 and Juvenile Justice Act, 2015.

The frightful incident of "*Nirbhaya Delhi Gang Rape Case*"^[1], on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as " Juvenile Justice (Care and Protection), 2015. In

other words, the present Act is the result of post Nirbhaya's incident development. In this backdrop, the present Act has to be analysed and discussed.

The present Act places its reliance on following principles which have also been enumerated in Act itself: principle of presumption of innocence; principle of dignity and worth; principle of participation' principle of best' principle of family responsibility' principle of safety' Positive measures' Principle of non-stigmatising semantics' Principle of non-waiver of rights' Principle of equality and non-discrimination' Principle of right of privacy and confidentiality'. Principle of institutionalisation as a measure of last resort' Principle of non-stigmatising semantics' Principle of repatriation and restoration' Principle of fresh start' Principle of diversion and Principle of natural justice.

The J.J. Act, 2015 provides provisions for both children in need of care and protection and children in conflict with law. Some key provisions include: across the Act to remove the negative connotation associated with the word "juvenile"; inclusion of several new definitions such as orphaned, abandoned and surrendered children' and petty, serious and heinous offences committed by children' clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) Child Welfare Committee (CWC): clear time lines for inquiry by Juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year: separate new chapter on "adoption" to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions. This article, mainly focus on the provisions related to Juvenile in conflict with law.

The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

Definition of child and juvenile under the juvenile justice act, 2015 and other various laws

Generally, a "child" mean a person who has not attain the age of 18 years and is not mature to understand that what is right and wrong. In modern era, the penal laws of most countries have adopted the principle of '*doli incapax*'^[2], which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act.

According to sub- section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a "child" means a person who has not completed eighteen years of age. The Act classifies the term "Child" into two categories: –

- "Child in conflict with law"^[3], and
- "Child in need of care and protection"^[4].

The child who has committed an offence and he or she is under the age of 18 years on the date of commission of the offence is basically called as "child in conflict with law". The second sub – category is "child in need of care and protection"

means a child ad defined under Section 14 of the Act.

- **Children Act, 1960:** Section 2(e) of the Act states "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years^[5].
- **United Nations Convention:** The UN Convention on the Rights of Child, 1989 defines that "child" means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier^[6].

Difference between Juvenile and Child

A person under the age of full legal obligation and responsibility is a minor or a person who is below the legal age of eighteen years is minor. A child being accused of a crime is not tried as an adult and is sent to Child Care Centre whereas juvenile is a person between the age group of sixteen and eighteen years. A young person who is been accused of crime is a juvenile offender and is tried as adult in court proceedings.

In general sense both the term has same meaning but however difference lies in context of implications in the eyes of law. Minor implies young and teen persons whereas juvenile either indicates immature person or young offenders.

International concerns for juvenile

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribe a set of standard to be adhered to by all the States parties in securing the best interest of the child^[7]. The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse^[8]. The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child.

Following are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children

1. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
2. UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
3. UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)
4. Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

Juvenile Justice and Constitution of India

The Constitution of India is consider as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided Directive Principles of State Policies (DPSP) which acts as general guidelines in framing government policies. Constitution has provided some basic rights and provisions especially for the welfare of children. Like.

1. Right to free and compulsory elementary education for all the children under the age of 6 to 14 years.(Article 21A)

2. Right to be protected from any hazardous employment under the age of fourteen age.(Article 24)
3. Right to be protected from being abused in any form by an adult. (Article 39(e)).
4. Right to be protected from human trafficking and forced bonded labour system.(Article (Article 39)
5. Right to be provided with good nutrition and proper standard of living.(Article 47)
6. Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has consider all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

History of juvenile justice system in India

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., U.S.A. This movement has been started around the 18th century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as “The Juvenile Justice (Care and Protection of Children) Act, 2000.

The Juvenile Justice, 1986 which repealed the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985^[9]. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of Jammu and Kashmir. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:-

1. The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile.
2. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Juvenile Justice Act, 2000

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended

twice – first in the year of 2006 and later in year of 2011. The amendment was made to address the gap and loopholes in the implementation.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “Delhi Gang Rape Case” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by The Juvenile Justice (Care and Protection) Act, 2015.

Present Juvenile Justice System in India

Like the other countries, India had also made legal provisions that especially and specifically deals with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency. The Juvenile Justice System in India is made on the basis of three main assumptions:-

1. Young offenders should not be tried in courts, rather they should be corrected in all the best possible ways,
2. They should not be punished by the courts, but they should get a chance to reform
3. Trial for child in conflict with law^[10] should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes^[11] and Special Homes^[12].

Juvenile Justice Act, 2015

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care & protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions.

The most important subjects of the Act are as follows

Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. The Board had to consider Rule 12 of the Juvenile Justice Rules, 2007 in order to determine the claim of juvenility. In case of *Kulai Ibrahim v. State of Coimbatore*^[13] it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh*^[14] the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

Again in the case of *Satbir Singh & others v. State of Haryana*,^[15] Supreme Court again reiterated that for the purpose of

determination whether accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of *Krishna Bhagwan v. State of Bihar* ^[16] the court stated that for the purpose of trial under Juvenile Justice Board the relevant date for the considering the age of juvenile should be on which the offence has been committed.

But later in case of *Arnit Das v. State of Bihar* ^[17], the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.

Child Ascertainment

Issue of the Child is one of the most vexed and critical issue in implementation of the Act. The crucial date for determining the claim of child is the date of commission of the offence and not the date of arrest or production of juvenile before the Juvenile Justice Board ^[18].

As per Section 9 of the New Act, the Magistrate who is not empowered to exercise the power of Juvenile Justice Board under this Section, is of the opinion that a person brought or appearing before him with allegations of having committed any offence is a juvenile, then he shall without any delay, and without waiting for such person to raise claim of juvenility, ascertain the age of that person and record its opinion and forward the juvenile along with record to the Juvenile Justice Board, having jurisdiction over the proceeding.

In *Hari Ram v. State of Rajasthan and Anr* ^[19] Hon'ble Supreme Court of India took the view that the Constitution Bench judgment in *Pratap Singh* case was no longer relevant since it was rendered under the unamended Act. In *Hari Ram* while examining the scope of Section 7A of the Act, it is held that the claim of juvenility can be raised before any court at any stage and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed there under, even if the juvenile had ceased to be so on or before the date of commencement of the Act ^[20].

Further, it was also held that on a conjoint reading of sections 2(k), 2(l), 7A, 20 and 49 r/w Rules 12 and 98 ^[21] places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1.4.2001 would be treated as juveniles even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. In *Dharambir v. State (NCT of Delhi) and Anr* ^[22] The Appellant was not a juvenile within the meaning of 1986 Act, when the offences were committed but had not completed 18 years of age on that date.

Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the Court, while maintaining the conviction to set aside the sentence imposed and forward the case to the J.J. Board concerned for passing sentence in accordance with the provisions of the 2000 Act.

Age Determination

While determining the age, as observed by the Honourable Apex Court in *Rajinder Chandra Vs. State of Chhatisgarh* ^[23], the approach of the Courts or Juvenile Justice Board should

not be hyper technical.

It obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code.

Section 9 & 94 has also used certain expressions which are also to be borne in mind. It uses the expression "on the basis of appearance. Further, the age determination inquiry has to be completed and age to be determined within fifteen days which is also an indication of the manner in which the inquiry has to be conducted and completed.

"Age determination inquiry" contemplated under section 94 of the Act enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

Bail grant to juvenile

In normal course, a juvenile is entitled to bail, notwithstanding gravity of the crime. His bail can be refused only when there are reasonable grounds for believing that his release is likely to bring into association with any known criminal or expose his moral, physical or psychological danger or that his release would defeat the ends of justice.

The language in Section 12 of the Act that "notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force" mandates that this Section is having overriding effect and the juvenile accused shall be released.

Since the juvenile in conflict with law is entitled to be released on bail, he is also entitled to get interim bail. It may be pointed out that the Hon'ble Supreme Court has held in the case of *Sukhwant Sing & ors. Vs. State of Punjab* ^[24]. That when there is power to grant bail, there is inherent power to the court concerned to grant interim bail to the person, pending final disposal of the bail application and it is in the discretion of the concerned Court to grant interim bail. The same is applicable to the Juvenile Justice Board. When pending final disposal of the application, juvenile may be released on interim bail.

Juvenile Justice Board

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law ^[25].

The Board shall consist of Principal Magistrate and two social

workers, among whom one should be a women ^[26]. The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final ^[27].

1. Special Procedure of Juvenile Justice Board: The Act has provided the procedure against the juvenile offender. Following are the main special procedure.
2. The proceedings cannot be initiated on a complaint registered by the police or citizen.
3. The hearing must be informal and should be strictly confidential.
4. The offenders should be kept under Observation Home after detention.
5. The trial of juvenile in conflict with law shall be conducted by lady Magistrate.
6. A child in conflict with law may be produced before an individual member of the Board, when Board is not sitting ^[28].

Changes brought after Nirbhaya's case

New Act classifies offences. A 'heinous offence' is offence with minimum punishment of seven years of imprisonment or more. A 'serious offence' are offences with three to seven years of imprisonment and a 'petty offence' is with a less than three year imprisonment.

It treats all the children below 18 years equally.

Procedure to be followed when claim of juvenility is raised before the court

(Sec 19 of new Act) The Children's Court to Decide the aspect as to whether the child is to be tried as an adult if:-

- Age group of child is 16-18
- Committed heinous crime having minimum imprisonment of more than seven years
- Or, who commits a serious offence, may be tried as an adult if he is apprehended after the age of 21 years.
- The Board on inquiry and assessment of child of his mental and physical capacity to commit such offence, ability to understand consequences of such offence and

Offences under JJ act

circumstances in which he allegedly committed an offence.

The JJBs will conduct a preliminary inquiry of a crime committed by a child within a specified time period and decides whether he should be sent to rehabilitation center or sent to a children's court to be tried as an adult. The board can take the help of psychologists and psycho-social workers and other experts to take the decision.

Such an inquiry is to be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension. If inquiry by the Board for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated. However that for serious or heinous offences, if the Board requires further extension of time for completion of inquiry, the same is to be obtained from the Chief Judicial Magistrate or, the Chief Metropolitan Magistrate, as the case may be.

Procedure of Inquiry and Trial under Juvenile Justice (Care and Protection of Children) Act 2015

Section 14 (d)

- Cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure 1973;
- Inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;
- Inquiry of heinous offences,
 1. For child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause;
 2. For child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Table 1

Sr.	Sec/	Offence.	Penalty
1.	74.	Prohibition on disclosure of identity of children.	Imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both. (JJB or CWC).
2.	77 & 78.	Giving a child any intoxicating liquor/narcotic drug/tobacco/psychotropic substances.	Imprisonment: upto seven years; Fine: upto one lakh rupees.
3.	81.	Selling or buying a child.	Imprisonment: upto five years; fine: one lakh rupees.
4.	75.	Subjecting a child to cruelty.	Imprisonment: upto three years; fine: and/or one lakh rupees.
5.	76.	Employing begging.	Imprisonment: upto five years; fine: one lakh rupees.
6.	79.	Engaging a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes.	Rigorous imprisonment for a term which may extent to five years and shall also be liable to fine of one lakh rupees.
7.	80.	Punitive measures for adoption without following prescribed procedures.	Imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both

Child Welfare Committees

Chapter 5 of the act provides for constitution of a Child Welfare Committee for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitization of all members of the committee is provided within two months from the date of notification.

New welfare institutions established

Sections 43 and 44 provide for the constitution of open shelters and foster homes respectively by the State Government for care and protection of the child.

Section 47 of the act enables the State Government to establish such observation homes in every district as it deems fit for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.

Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children. Section 48 of the act enables the State Government to establish such safety homes in every district as deems fit for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board

Confidentiality

Section 74 prohibits the disclosure of identity of children with respect to their name, address, school or any other particular in newspapers or any other media.

Adoption

Chapter 8 of the act deals with provisions with respect to Eligibility of adoptive parents and the procedure for adoption. To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

Some Shortcomings

- In the new Act the sections 14(1) and (2) are major issues of concern. The first is the ground on which the Juvenile Justice Board will decide if a 16- or 17-year-old is to be tried under the JJ Act or in a normal court. The most contentious aspect of these tests is that almost all, if

decided in the affirmative, would have a presupposition that the child is guilty of having committed the offence. And also the question remains unanswered that on what grounds exactly is the board going to make these determinations within a one-month period and before the actual trial. Under this Act the juveniles between 16 to 18 years of age, who are found guilty of committing heinous offences after going through a preliminary inquiry by the Juvenile Justice Board, will be sent to a children's court that can pronounce the child guilty. Such juveniles can be detained in a 'place of safety' until they reach the age of 21. Even then if they are not found to have been "reformed" by 21, they can be sent to jails housing adults. At present, most states do not have the 'place of safety', also known as 'borstals'.

- The new juvenile laws have extended its definition of heinous offences beyond rape and murder. Heinous offences include all offences that are punishable with 7 years or more of imprisonment. Experts have analyzed the law, and have enumerated various offences for which children can be tried as adults. These include offences related to drugs, waging war, trafficking, abetment of crimes, allowing one's premises to be used, and many others.
- As per the new Juvenile Justice Act there is a provision of availing experts in around 600 above districts in the country to provide their inputs to the JJBs Based on their analysis it is to be decided whether or not a child committing a crime is in a 'child-like' frame of mind or not. This idea may appear sound on paper, or in a parliamentary debate, but in reality it is highly subjective. It places too much liability on the Juvenile Justice Board which may end up succumbing to the public outcry and consequently would lead to the children being transferred to the adult criminal justice system.
- This law becomes contentious also because of the rising phenomenon of teenagers eloping and consensual sex among teenagers. The boys can now face trials for rape. Under the Protection of Children from Sexual Offences Act (POCSO), a child cannot consent to a sexual act until the age of 18, so any act of sex, even consensual, is considered to be rape.

It reverses commitments to the UN, flowing from several conventions and guidelines to which India is a signatory, particularly recommendations 79 and 80 of the UN Committee on the Rights of the Child, which specifically desire India to "ensure that persons under 18 are not tried as adults, in accordance with the principle of non-discrimination contained in Article 2 of the Convention.

Juvenile Justice System in U.K.

In United Kingdom there is Youth justice it comprises the organs and processes that are used to prosecute, convict and punish persons under 18 years of age who commit criminal offences. For the first time in 1908 Juvenile Courts were established in England under the Children Act, 1908. The primary duty of these courts was to provide proper care and protection to child and young offenders and take all the necessary steps to remove all undesirable surroundings around

the offenders and to ensure reformation of the offenders by providing education and training.

1. The Children and Young Offenders Act, 1933 confers the civil powers on the Juvenile Courts in certain important cases to look into matter. The Act also provides that any child ^[29] and young person ^[30] who have committed the crime should be tried in Juvenile Courts only. The Act also provides the establishment of Remand Homes ^[31].
2. UK Legislation also came with the new Act that also deals with Rights of Juvenile Offenders. The Act came to know as The Criminal Justice Act, 1948, the act provides certain class of security to young offenders by sending them to remand homes.

A number of Acts, dating back to 1933, provide for the system of juvenile justice in England and Wales and attempt to ensure that a fair trial and fair treatment is given to children accused of crimes. The minimum age of criminal responsibility in England and Wales is currently ten years old ^[32]. Those below this age are considered *doli incapax* and thus incapable of forming criminal intent ^[33].

Children arrested for crimes in England and Wales and held in custody must be separated from the adult population of the jail. Their guardians must be notified as soon as reasonably practicable and informed of the charges brought against the child and the child's place of detention ^[34]. During any court proceedings involving the child under the age of sixteen the law requires the attendance of the child's guardian during all proceedings, unless this is unreasonable in the circumstances of the case. The general principle for children charged with crimes is that they should not be held in police custody but instead taken care of by social services in Local Authority accommodations. The principle is considered to be of such importance that police custody officers have a statutory duty to release juveniles to local authority accommodations unless they can certify that specific circumstances make it impracticable for this to occur, or for children aged twelve or over no secure accommodation is available, and no other local authority accommodation is adequate to protect the public from the serious harm posed by the child ^[35].

The principal aim of the juvenile justice system is to "prevent offending by children and young people ^[36]. To achieve this aim, the juvenile justice system in England and Wales progresses through a series of steps ^[37]. The first two, which apply only to less serious crimes, aim at preventing the child from entering the juvenile justice system through a series of behavioural contracts and other methods designed to correct the child's behaviour to prevent him or her from re-offending or committing a serious offense. For example, a system of cautioning has been developed for young offenders through reprimands and warnings that are given to those who admit guilt to the police for their crimes and for whom there is sufficient evidence that any prosecution for the offence would be successful ^[38]. Upon receiving the reprimand or warning the young offender is then referred to the Youth Justice Board who arranges for the youth's participation in a rehabilitation programme.

For children to whom these preventive methods do not apply, for example, due to the seriousness of the offense, or who have exhausted them, the juvenile justice system then operates

in the form of a Youth Court, which hears cases of ten to eighteen year olds ^[39]. This youth court was established to prevent children and young people from entering into contact or associating with adult suspects during any phase of a trial ^[40]. The public are excluded from these courts; further, reporting restrictions may be placed on what the media may publish from these proceedings. There are also laws that protect the anonymity of children appearing before the court ^[41]. The Youth Court is a specialized magistrates' court that is comprised of justices of the peace, with three normally present for each case ^[42]. The court has a range of different sentences for young offenders ^[43], for example, supervision orders ^[44] that can have a variety of conditions attached to them or an Action Plan Order, an intensive, three month long community-based programme. More serious custodial methods of punishment are detention and training orders. These orders are normally given to children representing a "high level of risk [to the public], have a significant offending history or are persistent offenders and where no other sentence will manage their risks effectively ^[45]. They apply for a minimum period of four months to a maximum period of two years, with half of the sentence being served in custody and the remainder in the community supervised by a "youth offending" team. Only those offenders over the age of fifteen may be sentenced to detention in a young offenders' institution, although this latter restriction does not apply to children aged ten and over convicted of murder ^[46].

For very serious offenses, children are prosecuted in the Crown Court. A practice direction issued by the Lord Chief Justice of England and Wales in respect to Crown Court prosecutions of children requires that the "trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress. All possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should so far as necessary be adapted to meet those ends ^[47].

The Children and Young Persons Act 1933 requires that the welfare of the defendant should be regarded during any criminal proceedings ^[48], and the practice direction requires that breaks be frequently taken, that the formal court attire of robes and wigs not be worn, and that there be no recognizable police presence in court without good cause. The Crown Court is the only court that is permitted to follow these rules for sentencing children between ten and eighteen years old that have committed an offense that is punishable by fourteen or more years' imprisonment for adult offenders, children that have committed murder, or certain sexual offenses, may be sentenced for up to the adult maximum for the same offense ^[49]. The young offenders are not placed in prisons alongside adults, but can be placed in secure training centres, secure children's homes, or young offenders' institutions.

Comparative analysis between the Indian and British model

- The Indian law that governs Juvenile justice system is The Juvenile Justice (Care and Protection of Children) Act, 2015.
- The United kingdom law which governs Juvenile justice system is Crime and Disorder Act 1998.

1. Criminal Responsibility India

- Under the Juvenile Justice (Care & Protection of Children) Act, 2015 which provides the criminal responsibility, the age of criminal majority starts from the age of 16 to 18 years whosoever commits a serious offence. Thus, also attracts a minimum 7 years of imprisonment. Also, no child under the Juvenile Justice (Care & Protection of Children) Act, 2015 can be awarded a Death Penalty & Life Imprisonment
- The law defines a “juvenile or child” as a person who has not completed their 18th year of age.

United Kingdom.

- In England and Wales Now, children aged 10 and 17 are capable of committing offences and it is not possible for a child to avoid liability by showing he does not know the difference between right and wrong.

2. Judicial Process India

- Under this act children are not to be taken to a regular criminal court.
- The purpose of a separate court is that its purpose is socio-legal rehabilitation and reformation, not punishment.
- The aim is to hold a child culpable for their criminal activity, not through punishment, but counselling the child to understand their actions and persuade them away from criminal activities in the future.
- The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman.
- JJB are meant to resolve cases within a four month period.

United Kingdom

- When a young person is charged with an offence, they will appear before the youth court.
- If a young person pleads not guilty, a date will be set for the trial when the magistrates will hear all the evidence and decide whether or not the young person is guilty.
- If the decision is guilty, they will then decide on the most appropriate sentence.
- If the case is very serious, the youth court will send the case to the Crown Court for trial and or sentence.

3. Penalties And Restoration India

Orders regarding child found to be in conflict with law. Section 18

1. Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

- a. allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the 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 organisation or institution, or a specified person, persons or group of persons identified by the Board;
- d. order the child or parents or the guardian of the child to pay fine;
- e. Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;
- f. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;
- g. direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;
- h. direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home.

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

2. If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

1. Attend school, or
2. Attend a vocational training centre; or
3. Attend a therapeutic centre; or
4. Prohibit the child from visiting, frequenting or appearing at a specified place; or
5. Undergo a de-addiction programme.

3. Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

United Kingdom

Juvenile courts have a wide range of sentencing options that they can impose on juveniles or youth offenders.

• Incarcerating Juvenile Delinquents

- After a child is held delinquent a JJ Court may order incarceration as a penalty. But this incarceration is different from those used in adult criminal justice system. Some common ways that the judges can order confinement for a juvenile who has been found delinquent:
- **Home confinement:** The judge can order the minor to remain at home, with exceptions (attend school, work,

counselling, and so on).

- **Placement with someone other than a parent or guardian:** The judge can require that the minor live with a relative or in a group or.
 - **Juvenile hall/juvenile detention facility:** The judge can send the minor to a juvenile detention facility. These facilities are designed for short-term stays.
 - **Secured juvenile facilities:** These facilities are designed for longer term stays. Juveniles can be sent to secured facilities for months or years.
 - **Juvenile and adult jail:** In some jurisdictions, judges can send delinquent juveniles to a juvenile facility, and then order transfer to an adult facility once the juvenile reaches the age of majority.
- Non-Incarceration Options for Juveniles
 - **Verbal warning:** The sentence for the juvenile can be as simple as a verbal reprimand.
 - **Fine:** The minor may be required to pay a fine to the government or pay compensation to the victim.
 - **Counseling:** Often, judges require juveniles to attend counseling as part of a disposition order.
 - **Community service:** Juveniles may be ordered to work a certain number of hours in service to the local community.
 - **Electronic monitoring:** Juveniles may be required to wear a wrist or ankle bracelet that verifies their location at all times.
- Probation
 - Probation is a program of supervision in which the minor's freedom is limited and activities restricted.
 - Probation is the most common disposition in juvenile cases that receive a juvenile court sanction. In an average year, about half of all minors judged to be delinquent receive probation as the most restrictive sentence.

Conclusion

Every child has a right to joyful, elated and jubilant childhood, the right to grow in a harmless and nurturing environment, the right to be free from the intricacies and convolutions of life etc. but there are some unlucky and doomed children who are deprived of these things and they grow out to be children not wanted for or to term it the other way juvenile delinquents. To deal with these juvenile offenders many legislations are made across the world. In India, The Juvenile Justice (Care and Protection of Children) Act, 2015 is far from being a perfect legislation to protect and promote the rights of children. The mistakes in the earlier law have been replicated in the present enactment. It is still left to the discretion of the respective State governments to set up the mechanism mentioned under the Act, despite a demand that the full implementation of the Act be made mandatory. The juvenile justice system is presently in limbo. Let us hope that respective State governments fill the lacunae by preparing comprehensive rules in consultation with child rights experts and non-governmental organizations. The Central government is empowered under Section 70 to remove, within two years of the Act having come into force, any difficulty that hampers its

effective implementation. Let us put the Juvenile Justice (Care and Protection of Children) Act to test, and make most of this provision to streamline its efficiency, keeping children centre-stage. The Juvenile Justice (Care and Protection of Children) Act, 2015 lays down the primary law for not only the care and protection of the children but also for the adjudication and disposition of matters relating to children in conflict with law. The Juvenile Justice (Care and Protection of Children) Act 2015, provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law', across the Act to remove the negative connotation associated with the word "juvenile"

JJ Act, 2015, has brought the drastic change in the Juvenile Justice Act, 2000, in the area of treatments of juvenile, the functioning of the Juvenile Justice Board, and Child Welfare Committee, the forum of appeal against the order of Juvenile Justice Board and Child Welfare Committee, as well as in the area of intercountry adoption and aftercare of the children.

The Act is a beneficial piece of legislation and therefore, must be interpreted and understood to advance the cause of legislation and to confer the benefits of the provisions thereof to the categories of persons from whom the legislation has been made.

The Juvenile Justice System is limited in its application to the children committing offences and others in need of care and protection. The term youth justice encompasses all aspects of the complex system involving the treatment of children and young people who commit offences. The parallel strands of the law relating to police investigation, diversion from prosecution, the pre-trial; process, bail, remands and the use of secure accommodation, the youth court, the youth offending teams, trials, sentences and post-sentence supervision all come under the youth justice umbrella.

The increasing rates of juvenile crime in India in very concerning issue and need to be focused upon. Although government has laid various legislation and rules to stop the incidents of juvenile crimes but the present laws on juveniles is not creating a deterrent effect on the juveniles and thus the results are not fruitful and legislative intent is not accomplishing.

References

1. 1998 SCC, Del 879 : (1999) 77 DLT 181
2. Section 82 of IPC states that a child below the age of seven years is *doli incapax*
3. Section 13 of The Juvenile Justice (Care and Protection of Children) Act, 2015
4. Section 14 of The Juvenile Justice (Care and Protection of Children) Act, 2015
5. Bare Act, The Children Act, 1960, Universal Publication, 12th Edition
6. Article 1 of the UN Convention on the Rights of Child, 1989.
7. Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 662, Central Law Publications, 17th edition, 2017
8. http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf

9. Prof. N.V. Paranjape, *Criminology, Penology with Victimology*, page no 673, Central Law Publications, 17th edition, 2017.
10. Section 2 (13) of the Juvenile Justice (Care and Protection) Act, 2015
11. Section 47 of the Juvenile Justice (Care and Protection) Act, 2015
12. Section 48 of the Juvenile Justice (Care and Protection) Act, 2015
13. AIR 2014 SC 2726
14. 1997 i0 SCC 525
15. AIR 2005 SC 3549
16. AIR 1989
17. AIR 2000 SC 748
18. Pratap Sing Vs. State of Jharkhand, AIR 2005 SC 2731
19. (2009) 13 SCC 211.
20. proviso to Sec 9 of New Act
21. proviso to Sec 9 of New JJ Act
22. (2010) 5 SCC 344
23. AIR 2002 SC 748,
24. (2009) 7 SCC 559
25. Section 4 of Juvenile Justice (Care and Protection) Act, 2015.
26. Section 4(2) of Juvenile Justice (Care and Protection) Act, 2015.
27. Section 5 of Juvenile Justice (Care and Protection) Act, 2015
28. Section 7(2) Of the Juvenile Justice (Care and Protection) Act, 2015
29. A person under fourteen years of age.
30. A person between the age group of fourteen and seventeen year.
31. Section 77 of the Act.
32. Children and Young Persons Act 1933, 23 & 24 Geo. 5, c. 12, § 60.
33. Legal concepts of childhood, (Julia Fionda, ed., 2001) 85
34. Children and Young Persons Act 1933, 23 & 24 Geo. 5, c. 12, § 34
35. Police and Criminal Evidence Act 1984, c. 60, § 38(6)
36. Crime and Disorder Act 1998, c. 37, § 37
37. An overview of these steps is available online at Youth Justice Board for England and Wales, *Youth Justice System*, <http://www.yjb.gov.uk/en-gb/yjs/TheSystem>
38. Crime and Disorder Act 1998, c. 54, § 65.
39. Criminal Justice Act 1991, c. 53, § 68.
40. Andrew Bainham, *children – the modern LAW 494* (2nd ed. 1998).
41. Children and Young Persons Act 1933, 23 & 24 Geo. 5, c. 12, § 39 and the Youth Justice and Criminal Evidence Act 1999, c. 23, § 44.
42. Andrew Bainham, *children – the modern LAW 494* (2nd ed. 1998).
43. A brief overview of all methods – both sentence based and pre-court methods are summarized online at Youth Justice Board for England and Wales, *Sentences, Orders and Agreements*, <http://www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements>
44. Powers of Criminal Courts (Sentencing) Act 2000, c. 6, §§ 64-67
45. Youth Justice Board for England and Wales, Detention and Training Order, <http://www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements/DTO>
46. Powers of Criminal Courts (Sentencing) Act 2000, c. 6, § 90.
47. Practice Direction, Trial of Children and Young Persons in the Crown Court, Feb. 2000, 3, available at <http://www.hmcourts-service.gov.uk/cms/926.htm>
48. Children and Young Persons Act 1933, 23 & 24 Geo. 5, c. 12, § 44
49. Powers of Criminal Court (Sentencing) Act 2000, c. 6 §§ 90- 91.