

JUVENILE JUSTICE AND CARE IN INDIA: AN INSIGHT INTO THE LAW

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Abstract

When we consider children as future citizens of the country, it imposes a certain degree of responsibility upon our legal system to cater to their requirements and to provide for their justice. It becomes a duty to protect their rights and to examine whether their rehabilitation is being carried out in the most suitable manner possible. The main agenda is to abide by the Constitution, which has provided for extensive rights of children through Fundamental Rights and Directive Principles of State Policy. Articles 23, 24, 39 and 41 take children into their ambit, thus protecting them from every possible adversity. As such, Citizens of India and 'persons' as mentioned in the Constitution, also includes children, therefore ascertaining their rights against discrimination, survival rights, cultural rights and developmental rights as to religion, education, freedom of thought and conscience, and also rights against exploitation and abuse. It is likewise the obligation of the state to guarantee the general well-being and prosperity of the kids, both delinquents and others. The Juvenile Justice (Care and Protection of Children) Act authorized on 7 May 2015 has expanded the skylines which have brought about a change in perspective, but, it is imperative to look into the theories related to juvenile justice and the evolution of law into its present form, carefully constructed in order to protect their interests. At the same time, it is also essential to look into the current challenges faced and inadequacies fraught by the juvenile justice system and examine loopholes in it, as the law has to keep up with new challenges of modern times. This particular paper aims at appreciating the features and transformation of Juvenile Justice. (Care and Protection of Children) Act and more importantly investigates the current challenges and shortcomings in the law after a detailed study of the theories that have played an essential role in the formulation of this law and tracing the evolution of the same.

Keywords

Juvenile, Justice, Rehabilitation, Protection, Rights, Legislation, Law

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INTRODUCTION

The expression 'juvenile justice' developed from the Latin term '*juvenis*' meaning 'young', and therefore a juvenile justice system is the one that is specially established for the young. The Juvenile Justice (Care and Protection of Children) Act¹ claims to be child-friendly legislation and providing for their rehabilitation, social re-integration, proper care, protection and development. It also claims to be in consonance with the duties imposed on the State through the Constitution. Juvenile delinquents are those who have not attained the age of adulthood as prescribed by law

However, they act in a manner which is prohibited by law. The term 'delinquency' is not usually preferred in discourses regarding juvenile justice, and thus the Act identifies a juvenile delinquent as a 'child in conflict with law'[CCL]. The new law of 2015 postulates several principles for overall well-being and safety of the 'child in conflict with law'. The Juvenile Justice Act was initially enacted in 2000, amended in 2006 and finally replaced by the present Act of 2015. As per the said Act, a child and a juvenile, both have been defined as persons who have not attained the age of 18 years and CCL is defined as "a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence"². The Act also recognises children in

need of care and protection as it is deemed that there can be a number of factors that can endanger their lives and lead them astray.

METHODOLOGY

The author has made use of the doctrinal method of research in this study.

LIMITATION OF THE STUDY

This research study is not exhaustive and tends to focus only on the facts relevant to reach a

plausible conclusion regarding the prominent issues and developments. It does not intend to give value judgments and only aims to be descriptive and analytical in nature. It concentrates more on juvenile delinquency while also considering the position of children in need of care and protection. Judicial trends in India have been discussed in the research study, and comparisons with International standards and Conventions also have been made at a minor level.

THEORIES ON JUVENILE DELINQUENCY AND JUVENILE JUSTICE

Several theories exist on the system that should be adopted in the prosecution and justice of juveniles. These theories become essential while discussing the law as they provide the necessary insight and reasons as to why the law is formed in such a manner and what factors have been taken into account during the formulation of the particular legislation. The earliest theory is the classical school propounded by Cesar Beccaria. The main idea behind this theory was that people do what they do because they derive pleasure

¹ Juvenile Justice (Care and Protection of Children) Act, 2015.

² Juvenile Justice (Care and Protection of Children) Act 2015 § 2(13).

out of it. “The classical theory is one of the first that was widely accepted, which took the utilitarian approach to criminality. In the past, the idea of an ‘eye for an eye, a tooth for a tooth’ was often the foundation of punishment. This type of justice system is retributive, which means it essentially creates the opportunity for a victim to take revenge on their perpetrator. The utilitarian model promotes punishment contributing to the general ‘happiness’ of the world, encouraging rehabilitation whenever possible to stop repetitive crime.”³

“Two main concepts propounded under this theory were ‘free will’ and ‘rational choice’.

Free Will represents individual responsibility for behaviour. This does not mean that the person would always accept accountability. Rational choice means criminal activity is motivated by the principles of gratification of pleasure and avoidance of pain, and this is a decisive or rationale to choose to commit crimes. People who commit are also aware of the potential consequences of the same. Beccaria brought forward the abolition of the death penalty or capital punishment and also emphasised that punishments should only minimally exceed the level of damage done to society. Punishment, however, must be sure and swift to make a lasting impression on the criminal and to deter others. Beccaria urged for separate justice system for juveniles as ‘free will’ was much dependent upon ‘age’. In the Indian context,

the juvenile justice system is based on the principles of treatment, rehabilitation, prevention which emphasis on corrections. The timeless debate on the need to treat a juvenile committing severe offence can be understood from the Classical school concept of free will and rational choice. The thought being that a juvenile capable of committing a heinous offence does so with an intent which is of free will and thus a rational choice and so should be held accountable for the same. Several countries do have the legal provision of transferring the juvenile to the adult system based on the severity of the offence committed. India adopted the system in 2016, providing for treatment of juveniles as adults depending on the severity of the crime.

Deterrence theory was the outcome of the broader Classical theory. Deterrence is the use of punishment as a threat to prevent people from the offending and reoffending. Criminals would choose to violate laws only after considering the repercussions and rewards of their acts. Hence, the notion of free will, rational choice and punishment are applied. The tragic incident that happened in 2013 (Delhi Rape Case) that included a juvenile as one of the convicts led to a public outburst demanding more stringent provisions for juveniles and making them more penal so as to send a more vital message to the society and children in particular. Under the deterrence theory, two kinds of deterrence are discussed: General and Specific. The public opinion regarding the 2013 incident about discouraging others who may be inclined towards committing crimes or

³*Cesare Beccaria Classical Theory Explained*, HEALTH RESEARCH FUNDING (Aug 30, 2020, 01:58 PM), <https://healthresearchfunding.org/cesare-beccaria-classical-theory-explained/>.

similar offence is an example of general deterrence. Specific deterrence is a sentence intended at discouraging the **accused** specifically from committing the offence again.”⁴

“Jeremy Bentham was the proponent of the **Positive School** and explicated the same in his book

‘Principles of Morals and Legislation’. The principle of utility, as mentioned by him, means that actions of humans should be judged moral or immoral based on their effect on the harmony and peace of the community. The primary function of the legislature is to make laws aimed at maximising pleasure and minimizing pain in society. The positive school believed deviance to be a result of multiple causes or a series of event/ situation occurring over time. The positive school lays focus on the offender and not on the offence, his/her distinctive situation and multiple factors that lead an individual to be an offender. Thus, Positivism emerged as a dominant school of thought by creating a way for treatment and rehabilitation for correcting the circumstances of an individual. The Juvenile Justice System in India can be comprehended in this regard, as it focuses on the causes of delinquency and seeks ways to correct behaviour causing delinquency too. In numerous ways, classicism drives the criminal justice system, whereas the positivist school governs the juvenile justice system.

⁴ K.P. Asha Mukundan, *Theories on Juvenile Justice Part 1*, VIDYA-MITRA (Sept 01, 2020, 09:45 PM), https://www.youtube.com/watch?v=9BqiTs6_v8w&t=539s.

A much-debated theory is the **rational choice theory**. In India, debates on treating above 16 years having committed a heinous crime, be given punishment in par with an adult saw two groups. Those in support of this move proposed ‘deterrent model’ and those resisting the same user the ‘rational choice’ model to state if these young children were rational human beings, they would not have committed the act or crime in the first place. Cesare Lombroso, regarded as the father of modern criminology based his ideas on Charles Darwin’s theory of the survival of species and viewed criminals as throwbacks to an earlier state of human existence. This gave birth to **biological** and **sociobiological** theories. The biological theory said that people who commit crimes had inherited biochemical and genetical factors that impel them to do the same. Genetic materials and hormones regularly interact with social factors to form anti-social behaviour.”⁵

‘Under the category of structural functionalism, the first theory propounded was the **anomie the theory** which is based on Durkheim’s concept of ‘anomie’ that means an absence of social regulation or normlessness. Robert Merton used this concept in explaining delinquency, especially in adolescents. Merton stresses on ‘culturally defined goals’ and the ‘acceptable means’ of achieving them to explain that success goals are common but the opportunities to achieve them are insufficient which ultimately leads people to adopt illegitimate means to achieve the same. Next, is the **subcultural theory** through which

⁵ *Ibid.*

Cohen explains delinquency as a result of 'status frustration' owing to the delinquents being members of the underclass or of a delinquent subculture. The result is a delinquent subculture, which in Cohen's words are 'non-utilitarian, malicious and negativistic'. **Social Disorganisation theory** maintains that delinquency can also be a result of the absence of social bonds at the community level. The earliest North American effort in explicating delinquency noticed a growth in delinquency where neighbourhoods were disorganised, lacking cohesion and constraint in order to regulate crime. Later in the 1920s, Clifford Shaw and Henry McKay studied neighbourhoods and concluded that poverty, high residential mobility, and ethnic heterogeneity lead to weaker social bonds and control, which led to high crime rates. Hirschi, in his **control theory**, mentions the reason for delinquency as the absence of controls and belief in principles and values.

Finally, under symbolic interactionism, **differential association theory** is one of the earliest theories promulgated. Under this specific theory, Edwin Sutherland believed that violation of laws take place when people consider it to be acceptable and develop an explicit connection between themselves and their ideas and definitions. Sykes and Matza listed four neutralization techniques in their **neutralization theory** which were: (i) denial of responsibility (blaming others and their upbringing), (ii) denial of injury (believing that the victim deserved it), (iii) condemnation of condemners (calling their condemnation

prejudiced), (iv) appeal to higher loyalties (citing loyalty to friends and kins as the cause). A widely discussed theory is the **labelling theory** which suggests that such behaviour is not inherent, but it is an identification with the label given by the society. It considered that first contact with the law is the 'dramatization of evil', and it separates the child from his/her peers.⁶

EVOLUTION OF JUVENILE LAW

Evolution of Idea

International standards have emphasized time and again on the importance of prevention and rehabilitation in delinquency. They recognize that "the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth"⁷. Article 15 of the Indian Constitution largely governs the juvenile justice system in India and guarantees special attention to children through necessary and special laws and policies that safeguard their rights and also by the International standards. The policy is also founded on the Constitutional mandate for the right to equality, protection of life and personal liberty and the rights against exploitation as enshrined under Articles 14, 15, 16, 21 and 24. 'Until the last century, children were prosecuted and punished in adult criminal courts and jailed

⁶ *Juvenile Delinquency, Theories of*, ENCYCLOPEDIA.COM (Sept 04, 2020, 11:27 PM), <https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/juvenile-delinquency-theories>.

⁷ Art. 40 cl. 1, United Nations Convention on the Rights of the Child (1990).

along with adults. It is only by the end of the previous century that a consciousness regarding juvenile welfare started taking shape. There are numerous reasons why juveniles and adults should not be treated alike. It is a fundamental principle in law that if unequal are brought on one platform and treated in the same manner, that will result in inequality, not equality. Children are differently situated from adults. Children are one of the most unprotected sections of the society and are victims of exploitation and abuse by parents, guardians and the larger society. Hence, it calls for a humane approach towards them, instead of law and order approach or a retributive approach to justice. Children who live on streets and are exploited or made to work in harsh conditions require utmost protection from the State and society. A major reason for delinquency is the abuse and neglect meted out by society towards these children. Putting them in jail with adults would not help them reform or reintegrate with society but would cause them to become toughened criminals. Children are often not aware of the consequences of the acts they commit due to their tender age, and hence if those acts are punishable offences, they ought to be treated differently from adults who are presumed to know the consequences of the acts they do.⁸

Evolution of Legislations

“In 1850, the Apprentices Act was passed to keep juveniles out of jails and subsequently, by the

Report of the All India jail Committee (1919-1920), children were segregated from the prevalent criminal justice system. This period saw passing of specific legislation concerning children, the first of which that provided a special status to juveniles was the Apprentices Act, 1850. Children who were vagabonds and committed petty offences in the age group of 10-18 years were made to undergo their sentence as apprentices. The objective of the same was to channelize the energy of children and divest their minds, from the influence of any criminal atmosphere and make them work so that after reaching majority they can earn a living. Indian Penal Code, 1860 fixed age limitations for criminal culpability of a juvenile is under Section 82 & 83. The said sections provided protection to children from criminal prosecution until they had developed cognitive faculties to understand the nature of their actions. Code of Criminal Procedure (1861 & 1898) prescribed for a separate trial for persons below 15 years of age and it is also required that they should be confined in reformatories rather than in adult prisons. With a noticeable increment in the crime rate, the government passed the Whipping Act, 1864 with the aim of deterring children from committing crimes in the future, by whipping them for certain crimes, which in consequence

⁸ Saumya Uma, *Evolution of Juvenile Justice System - Part 1*, VIDYA-MITRA (Sept 02, 2020, 03:45 PM), <https://www.youtube.com/watch?v=3mIEFwhFeGE&t=317s>.

would save the government of the investment, to establish reformatories for the juveniles.”⁹

‘The Juvenile Justice Act, 1986 was the first-ever Act aimed solely at streamlining and formulating a specific law for juveniles in India. It defined a juvenile as a child up to 16 years for boys and 18 years of age for girls. Children were classified as ‘Juvenile delinquents’(children falling under the said age and committing an offence) and ‘Neglected juveniles’(children in need of care and protection from the State and State institutions. The Act provided for both the categories of children to be kept in an Observation Home together during the pendency of the inquiry/proceedings. The Act prohibited an arrested child from being detained in police custody or in jail under any circumstances. The bail was to be granted to a child as a matter of right unless there were reasonable grounds for believing that if the juvenile were released he/she would come into contact with any known criminal or if the juvenile would be exposed to mortal danger or if the release may result in defeating the ends of justice. The institutional mechanisms established to address the two categories of children were different – the Juvenile Welfare Board for addressing the needs of neglected juveniles and the juvenile court for dealing with and adjudicating upon juvenile delinquents. Once the proceedings were completed, the neglected juveniles were sent to Juvenile Homes while juvenile delinquents were kept in Special Homes, for a prescribed period of time.

⁹ *Ibid.*

The Juvenile Justice (Care and Protection of Children) Act, 2000 marked a paradigm shift. Since

India had ratified the UN Convention on the Rights of the Child in 1992, and it had to structure the domestic law in conformity with the International standards that India had agreed to be bound by. Under the Act of 2000, a child was defined as a person who has not completed the age of eighteen years, and the gender imbalance in the definition of child/juvenile in the 1986 Act was rectified. A ‘Child in conflict with law’ meant a juvenile who is alleged to have committed an offence, while ‘children in need of care’ and protection included those who were being grossly abandoned, subject to abuse, torture, or exploitation for the purpose of sexual abuse or illegal act.

During the pendency of the proceeding, the categories of children were not to be kept together

as in the 1986 Act. The Act also mandated the creation of separate homes for different age groups of children in order to separate young offenders from the relatively mature ones which were in consonance with the United Nations Minimum Rules for Administration of Juvenile Justice, 1985. The Act provides for remand homes, juvenile justice boards and child welfare committees in every district and provides for four types of courts for Juveniles: (i) observation homes, (ii) special homes, (iii) children’s homes and (iv) shelter homes and in addition, after-care organisations. The Act

includes a provision stating the child's right to participate in proceedings pertaining to him/her (Section 12). The Act also acknowledges that civil society has to be engaged significantly if real justice is to be catered to all child delinquents. The Juvenile Justice (Care and Protection of Children) Rules, 2007 forms a model of the rules-based on which each state is to prepare its own rules that are necessary to detail further the way the Act would be implemented. The Act also provides for a Special Juvenile Police Unit for effectively handling juveniles and for every police station or Child Welfare Officer, who is supposed to be trained and oriented to treating juveniles with care.

The 'children in need of care and protection' covered child victims of armed conflicts, natural calamities, civil commotion and related issues, a child who is found vulnerable and likely to be inducted into drug abuse among others. While this may be desirable in itself, this provision has come under criticism as the system remains mostly custodial in nature, hence how beneficial would it be for a wider gamut of children to be brought under the law.

The criticisms of this Act are that it is violative of existing human rights standards, which have been evolved by the states at the International level, even though its Preamble indicates that the law attempts to be in conformity with the same and incorporate the International standards into domestic law. The 2000 Act is still weighed heavily in favour of custody in institutions, and by expanding the powers of

the police, the law facilitates re-criminalization rather than de-criminalization. The 'best interest principle' incorporated in the Act had a protectionist approach where authorities under the Act determine and decide upon the best interest of the child using their own value framework and belief system. Such a system may have the support of the community, but it may not be *in tandem* with the evolving perspective on child rights. The best interest principle contradicts the 'right to participation' principle which is also incorporated in the Act, leading to confusion as to whether or not a child's opinion on his/her best interests can override adult imposition of the same through the law.¹⁰

The 2000 Act was amended which gave way to The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. A total of twenty-six amendments were made to the parent Act. The Delhi rape case of 2012 led to a public outcry for modifications in Juvenile laws. The Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted with extensive rights and protection for children both 'in conflict with law' and in 'need of care and support'. In the case of heinous offences, seven years of imprisonment is awarded, in the case of serious offences, it can be between 3 to 7 years. Petty offences attract three years of imprisonment. No child can be awarded life imprisonment or capital punishment. The Act mandates the

¹⁰ Saumya Uma, *Evolution of Juvenile Justice – Part 2*, VIDYA-MITRA (Sept 02,2020, 08:30 PM), <https://www.youtube.com/watch?v=abBF6joRjY&t=889s>.

establishment of Juvenile Justice Boards in each district area with a metropolitan magistrate and two social workers; wherein one is supposed to be a woman. The Boards would direct a preliminary inquiry of an offence perpetrated by a juvenile within a specific time-frame and thereafter decides if the juvenile ought to be sent to a rehabilitation centre or a Children's court to be tried as any other adult. The Board may take aid and advise from the psychologists and psycho-social volunteers and different specialists before coming to a conclusion. Keeping up obscurity about the child delinquent consistently by the media has been made mandatory. "With respect to 'children in need of care and protection', Child Welfare Committees would be set up in every district with one chairperson and four other members having experience in dealing with children. Stress has been laid on adoption as well, and the Central Adoption Resource Agency would frame rules for the adoption of orphaned children. Inter-country adoption has been permitted in case no Indian adoptive parents are found/available within 30 days of the child being declared open for adoption. Essential conditions for adoptive parents have also been laid down, i.e., adoptive parents should be sound (both financially and physically), a single male may not adopt a girl child and specially-abled children would be given priority for adoption. Children can be allowed to be placed under foster care based on the mandate of CWC, and the selection of foster family would be made on the basis of ability, intent, capacity and prior experience of

handling children. The Sale and Purchase of children are prohibited and invites imprisonment up to 7 years. Corporal punishment to children in child-care institutions is punishable. The juvenile justice law tries to protect the juveniles from every potential risk."¹¹

POTENTIAL RISKS

The risks that can push a child towards delinquency can be classified as (i) individual risk, (ii) family risk, (iii) mental health risk and (iv) substance abuse risk. According to the statistics put forward by **National Crime Records Bureau**, the ratio of IPC crimes recorded against juveniles to total IPC crimes recorded in the country in 2005 was at 1.0% that slightly elevated to 1.1% in 2015. It was also noticed that the boys were disproportionately higher than girls among juveniles in conflict with the law. In 2015, the ratio of girls to boys who were apprehended for offences under the Indian Penal Code was 1:45. In 2015, the most significant number of cases registered against juveniles were registered under the crime head of 'theft'(19.2%), criminal trespass/burglary (8.3%), 'rape'(5.4%), kidnapping and abduction (5.2%) and causing injuries under rash driving/road rage(4.9%). These five crime heads have together accounted for 43.0% of the total 31,396 IPC cases of juveniles in conflict with the law.

BASIS OF CURRENT LAW

¹¹ *Juvenile Justice (Care and Protection of Children) Act 2015*, GKTODAY (Sept 04, 2020, 11:33 PM), <https://www.gktoday.in/gk/juvenile-justice-care-and-protection-of-children-act-2015/>.

In the case of **Gaurav Jain**¹², while dealing writ petition under Art. 32 of the Indian Constitution pertaining to the predicament of prostitutes and their progeny, threw light on the Preamble of the Constitution and noted that the children have the right to equality and the opportunity for general well-being, dignity and care, for the proper protection and rehabilitation by the society to make them onto the particular means of social life without any dent based on them for no-fault and that it is an integral part of the Indian Constitution. In **Laxmikant Pandey v. UOI**,¹³ the Hon'ble Court of India opined that every juvenile has a right to proper care, assistance and affection, and of morality and proper security and this is only claimable only when the juveniles will be brought up in a proper family and right environment.¹⁴ In **Subramanian Swamy v. Raju**¹⁵, it remarked that if the legislature has adopted a constitutionally admissible demarcation between child delinquents and adults by fixing the age of eighteen years, the probe by the courts must be curbed. It again maintained that there exists a sizeable mass of global outlook that all minors need to be considered as children, and different treatment ought to be devised for their well-being. It additionally specified that affirmed subject was to guarantee their re-integration in society and to facilitate the young delinquents to

become functional members of society in future.

It was agreed that relatively more attention should be given to rehabilitation rather than punishment. Punishment is not always a constructive response to criminal offences committed by juveniles. Sometimes, punishment, incarceration, isolation from the society, exposure to harassment and torture by State authorities in custodial settings, restrictions in human interactions, naming, shaming, labelling and stigmatization can cause the juvenile to have other deviant behaviour. This is known as 'secondary deviance.' Recent jurisprudence asserts the requirement for a reformatory rather than a retributive justice system.

CURRENT CHALLENGES, LOOPHOLES AND FLAWS IN THE LAW

Limitations

At the outset, there is an ambiguity regarding the nature of remedy that the Juvenile Justice Act provides. If the remedy is said to be of civil nature, a range of protective rights guaranteed by the Constitution in criminal cases will cease to apply, and it would be viewed as legislation intended to ensure only protection and care of juveniles. On the contrary, if it is considered as a punitive remedy for criminal acts, civil rights available to the juveniles would be curbed.¹⁶

¹² Gaurav Jain v. Union of India AIR 1997 SC 3021.

¹³ Laxmikant Pandey v. Union of India and Ors. AIR 1992 SC 118.

¹⁴ Vaibhav, Shruti Katiyar, *Juvenile justice system in India and contemporary challenges*, 4 INTERNATIONAL JOURNAL OF LAW 34, 36 (2018).

¹⁵ Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board (2014) 8 SCC 390.

¹⁶ N.M. Khirale, *Juvenile Justice: Issues and Challenges*, 6 EPRA INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH 51, 53 (2020).

Lamenting upon the poor implementation of the justice system for juveniles across the globe, Gus Martin remarked, “There are many stories describing incompetence, mistreatment, corruption, and cover-ups within dysfunctional juvenile justice systems.” The Hon’ble Supreme Court, which is the apex court, ruled in the case of **Exploitation of Children in Orphanages in State of TN v. Union of India**¹⁷ that “Even if bail is not granted, the child (*in conflict with the law*) cannot be kept in judicial or police custody and has to be kept in an observation home or place of safety”¹⁸. Where the judiciary has tried to ensure safety and security of children, investigations have brought out the disturbing facts of harsh corporal punishments being awarded to juveniles sent to correctional centres which are supposed to provide an environment for holistic development and ensure the transformation of the child. As per the report of a leading newspaper in India, “corporal and coercive punishments have been reported is close to half of 9,500 child care institutions and homes. Hitting, spanking, restrictions on movement, withholding food, rough language and intimidation practised as forms of the chastisement of inmates.”¹⁹

¹⁷ *Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India* 2020 SCC OnLine SC 576.

¹⁸ R. Ashwin, *Child in conflict with law cannot be kept in police custody or Jail: SC*, LAWSISTO.COM (Aug 30, 2020, 09:39 PM), <https://lawsisto.com/legalnewsread/MzUxNQ==/Child-in-conflict-with-law-cannot-be-kept-in-Police-Custody-or-Jail-SC>.

¹⁹ Ambika Pandit, *Corporal Punishment in 50% child homes: Report*, TIMES OF INDIA (Sept 05, 2020, 01:05 PM), <https://timesofindia.indiatimes.com/india/corporal-punishment-in-50-of-child-homes-report/articleshow/67607252.cms>.

“Extensive powers have been conferred on the Juvenile Justice Board as it can mandate the trial of a child (between 16-18 years) as an adult after a preliminary assessment. It has been argued that this provision amounts to coming to a sentencing decision even before the guilt has been proven and it signifies a violation of the presumption of innocence as given under Section 3(i) of the Act, a vital tenet of the criminal justice system. In the case of **Ryan International**²⁰, a boy aged 16 years was initially denied bail and subsequently tried as an adult as per the instruction of the Board. The social investigation and psychological reports on which the Board constructed and decided the matter evidently mentioned various social factors and settings that might have led to his alleged act, but the Board ignored them forthrightly. This implies a trend of many such cases of ‘child (in)justice’ that India might find its children entrapped, and paints a dispiriting picture for the future of juvenile delinquents and juvenile justice.”²¹

“Another significant limitation of the Act is the impracticality of a precise assessment of mental capacity/ maturity for the transfer of the trial of a child to Children’s Court. This would also be fraught with inaccuracies and arbitrariness and would allow inherent preconceptions to determine which child has to be transferred to an adult court. The very presumption that children between 16 and 18 years are competent to stand trial alike adults

²⁰ *Ryan Augustine Pinto v. State of Haryana and Anr.* CRM-M-35002-2017 (O&M).

²¹ Shailesh Kumar, *Shifting Epistemology of Juvenile Justice in India*, 41(1) CONTEXTO INTERNACIONAL 113, 128 (2019).

is also not free of gender bias. The pertinent question is that when the legal system does not permit a child below 18 years to drive, vote, enter into contracts, marry or own property, then subjecting a child to the criminal justice system of the adults would not be acceptable, a point put forth by of the interveners (Thukral and Asthana 2015) and also mentioned by the Hon'ble Supreme Court itself in the **Salil Bali case**²². Parliamentary Standing Committee has also contended that introducing children into the criminal justice system amounts to a violation of Article 21 as the procedures contained therein are not commensurate with the prerequisites of children."²³

Further, the provisions of Section 24(2) that gives sanction the retention of a juvenile's records, is in violation of the right to privacy under Articles 16 and 40(2)(b)(vii) of the Convention on the Rights of the Child (CRC), which pertains to 'all stages of the proceedings' including 'from the initial contact with law enforcement up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty.' Sections 19(3) and 20(2)(ii), which permit the transfer of the child to prison clearly violates Article 37(c) of the CRC, which talks of separation of juveniles from adults and does not mean 'that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns eighteen."²⁴

²² Salil Bali v. Union of India (2013) 7 SCC 705.

²³ Kumar, *supra* note 20.

²⁴ *Ibid.*

Challenges

Another concern to be taken into account is the poor implementation of programmes community-based organizations are mainly owing to the weak oversight by government agencies. The safeguard and elevation of human rights and particularly juvenile rights are not viewed as a subject of significance. Excessive use and misuse of technology is another concern of today's era. The internet has exposed children to a more dangerous world which provoke them to commit crimes or increase their chances of being victims of cyber-crimes. Loopholes of the Act would include the non-inclusion of bail provisions for crimes committed by children under TADA, NDPS or POTA in Section 12.

CONCLUSION

Various theories are given by eminent sociologists, psychologists and other scholars have presented numerous reasons as to why a separate law for juveniles is necessary and what are the various factors that can lead them to delinquency. "Keep a child in a state of terror", says Dr Frank Crane 'and every vicious, heartless and vindictive trait in him grows. It is the surest way to bring up a criminal"²⁵. The law has evolved in such a way, which has the potential to provide care, protection and rehabilitation for children and keep pace with changing or growing requisites of children. The idea of protecting the dignity and worth of a child has attained paramount importance. India is home to almost 440

²⁵ ORISON SWETT MARDEN, THE CONQUEST OF WORRY 154 (Rider & Co., Publication 1924).

billion children who are below 18 years, and it has 19% of the world's child population. Juvenile Justice law has realized the importance of treating child delinquents with care and compassion, it has recognized the significance of treating juveniles unlike adult/hardened criminals, and in the present days, orphaned, destitute or children in need of care and protection and child delinquents are no more placed together, and bail provisions have been made comparatively lenient, and children are not placed under direct police custody. In addition to the specific law on juveniles, Code of Criminal Procedure (CrPC)²⁶ lays down under Section 27 that any person who at the date of appearing before the court is under the age of 16 years would not be awarded death penalty or life imprisonment. Also, Section 318 of CrPC states that where the accused is incapable of understanding the proceedings but evidently not of unsound mind, the court can have trial or inquiry, and if the proceedings end up in a conviction, the proceedings shall be forwarded to the respective High Court. The High Court shall then pass the order as it deems fit. In reference to the current law pertaining to juveniles (JJA 2015), it has its own shortcomings and challenges. There are many questions unanswered and numerous things that need to be given attention.

²⁶ The Code of Criminal Procedure, 1973.