

**LEGAL LOCK JOURNAL**  
**2583-0384**

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**VOLUME 2 || ISSUE 3**

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**2023**

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## FAIR TRIAL RIGHTS OF JUVENILE OFFENDERS

Gunjan Modi<sup>1</sup>

### I. INTRODUCTION

For the longest time, whenever the topic of Juvenile Justice is brought up, there has been two sides of the argument; 1. Who believe that Juveniles offenders are threatening to the tranquillity of the society and can cause harm to the innocent. Thus, they have to be punished as any other criminal and 2. Who believe that juvenile offenders cannot be put through the same treatment as adult offenders as children do not have the mental capacity to understand the repercussions of their actions in the same way as an adult would. Thus, they need to be treated differently, in a more reformatory and rehabilitative manner to integrate them back into the society without any stigma of the past attached to them. The former is generally considered to be the conservative outlook whereas the latter is considered to be the modern outlook. The modern outlook is based on the reasoning that children do not have the free-will and control over their actions, as famous philosopher John Locke puts it. The vital regions of their brain aren't developed completely to understand and interpret their actions and are also highly influenced by their surroundings i.e. family conditions, friends, societal conditions, education etc. Several International Conventions has also been adopted by nations across the globe to promote juvenile rights and ensure that no child under the age of 18 years is punished in the same way as an adult would. These conventions also focus on stating that any child below the age of 18 years shouldn't be given death sentence. Thus, it can be seen that the reformatory, rehabilitative, protective and welfare motive of criminal justice system is highlighted through them. In India, there has been a series of legalisations which tend to follow the modern outlook of juvenile justice system. As per section 82 of the Indian Penal Code, 1960, no child under the age of seven years can be punished for a crime and as per section 83, children in the age group of 7-12 years are considered to not have the maturity to understand their actions. Further, Juvenile Justice (Care and Protection of Children) Act, 2015 is the current law governing the area of juvenile justice system in India. Though, this Act has been able to recognise the various aspects required to form an efficient juvenile justice system, there are certain parts of it which takes away the reformatory aspect of juvenile justice from it which will affect the fair trial proceedings of the juveniles. This paper aims to look at the history of juvenile justice

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<sup>1</sup> The author is a student at the National Law School of India University, Bangalore.

legislations in India to understand the development of this field and analyses the Juvenile Justice (Care and Protection of Children) Act, 2015.

## **II. HISTORY OF JUVENILE PROTECTION LEGISLATIONS IN INDIA.**

The History of juvenile acts in India began with the recommendations of All India Jail Committee 1919-1920 according to which children's offenders should be treated differently from adult offenders. It also recommended establishment of separate child courts for the trails of child offenders to create a totally different and child-friendly environment for them. As juvenile offenders came under the ambit of 'State list' previously, many states passed their own legislations for the matters of child offenders following the recommendations of the All-India Jail Committee. This created a lot of ambiguity as different acts had different provisions and age-limits as to who was to be rendered as a 'child'. To lay down a frame for uniformity purposes, the centre passed Children Act, 1960, which was only applicable in the Union Territories. Later, Juvenile Justice Act, 1986 was passed which aimed to further bring in uniformity in the juvenile system of India and was applicable throughout the country (except Jammu and Kashmir). This act failed to serve its purpose as the welfare aspect it offered was far away from what was being achieved. The aim was to protect child offenders and rehabilitate them into the society but in reality, there was gross violation of their rights due to misuse of provisions and loopholes. Thus, to correct this, Juvenile Justice (Care and Protection of Children) Act, 2000 was passed by the centre which took into consideration the fall outs of the 1986 Act and attempted to correct it through this act. The 2000 Act aimed at establishing a proper juvenile justice system and increased the age of juveniles to 18 years, for both, girls and boys. Under the 1986 Act, the age of male juveniles was 16 years whereas 18 years for female juveniles. The much-needed separation between 'children in need of protection and care' and 'children in conflict with law' was highlighted. This was important as these are two very different aspects to be dealt with and cannot be equated. The former requires focus on the welfare, upbringing and overall development of the child whereas the latter deals with setting out a right set of procedures to deal with children who have violated the law of land and ensure that they are not treated as adult offenders which will owe to violation of their constitutional as well as human rights. Another important aspect of this act was that it considered the age of the juvenile at the time of offence. This ensures that delay in trial procedures doesn't affect the juvenile status of

a child if he is close by to achieve majority. Thereafter, Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted which amended the 2000 Act. Even though it has been established by the Parliamentary Standing Committee on Human Resource Development that the ministry didn't provide for satisfactory reasons as to why there was a need for amendment to the 2000 Act, it has been a popular belief that such an amendment has been done due to huge public outcry after the 2012 Nirbhaya Rape case in which a prime accused got away with death punishment owing to him being a juvenile at the time of occurrence of the offence. This act, even though it retains a lot of provisions of the 2000 Act, is more of a 'backward modernity' in the field of juvenile justice laws in India due to the inclusion of certain sections which go against the rehabilitative and reformatory aspect of juvenile laws.

### **III. CRITICAL ASSESSMENT OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015.**

Through the preamble of this Act, it is specified that it ensures to provide "*proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established*". There is also express mention of Articles 15(3), 39(f) and 39(e), 45 and 47, which deals with protection of children and promoting their welfare by taking special steps and enacting special legislations for the same, as the constitutional force giving a purpose to this Act. The purpose of the Act is in line with the juveniles' basic human and constitutional rights but the insertion of problematic sections defeats its purpose. To begin with, the very first and most controversial aspect of this Act is the subdivision of juveniles of the age group of 16-18 years conducting heinous crimes to be treated as 'adults' if so is established by the Juvenile Justice Board, through preliminary assessment. Such preliminary assessment involves determining the juvenile's mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he/she allegedly committed the offence. This sub-classification is absurd on four grounds; 1. It is in violation of Article 14, Article 15(3) and Article 21 of the Constitution of India, 2. The presumption of guilt before being proved so, 3. Contravention of international principles and 4. The absurdity in definition of 'heinous crimes' as mentioned in Section 1(33) of the Act. Dealing

with the first ground i.e. the violation of Article 14, it has to be noted that the very reason for treating child offenders differently from that of adult offenders was the lack of maturity and rationality among children to understand or control their actions. There is no scientific evidence to show that children in the age group of 16-18 years develop such sort of maturity which renders them to be equated with that of adult offenders. It is a scientifically laid down fact that below the age of 18 years, the prefrontal cortex of the brain isn't completely developed. It is important to consider this as this section of the brain is responsible for collecting information from different parts of the body, process it and make a rational decision. B.B. Pande, mentions in his paper about the important findings by the scholars of Mac Arthur Foundation Research Network on Adolescent Development which says that the sensation seeking and impulsivity is high in adolescents. It also establishes that presence of bad company and peer pressure can highly influence the decision-making capacity of adolescents. Such scientific findings provide no proper rational nexus to divide juveniles under different categories of age group to determine how they shall be treated before the law. Article 14 permits reasonable classification by determining if there is a reasonable nexus which achieves the purpose for which such classification has been made. Ved Kumari focuses deeply on this point in her paper and says that such a classification between the juveniles based on their age group which not survive the analysis under this nexus test due to the presence of several scientific findings which makes such classification anything but reasonable. Such a classification also goes against Article 15(3) of the constitution which states "*Nothing in this article shall prevent the State from making any special provision for women and children.*" The presence of the word 'for' shows that the State is expected to make provisions which favour the children and their condition in the society, not make laws 'against' them. Such a provision also violates the 'right to life with dignity' aspect of the juveniles as such procedures make trials lengthier which often leads to juveniles being exposed to mental and physical trauma for a longer period of time. There have been instances where the juvenile was unduly kept in jail even before the verdict has been passed proving his/her innocence or guilt. This was noticed in the case of *Darga Ram v. State of Rajasthan* where the accused juvenile had already been in jail for 14 years without any judgment being passed. Secondly, the fact that the preliminary assessment mentioned in Section 15 of the Act is to be done before proving the innocence or guilt of the juvenile goes against the very principle of criminal jurisprudence which considers every accused innocent until proven guilty. Such a provision also goes against the very principles of the Act as mentioned in

Section 3(i) of the Act. Thirdly, in the very start of the Act, it is mentioned that India has acceded to the Convention on the Rights of the Child, adopted by the United Nations in 1992 according to which, every juvenile below the age of 18 years of age has to be treated as a child. Though, such a convention is not binding on Indian laws, it has to be given due consideration while formulating its laws. Lastly, the absurdity attached to the definition of heinous crimes in Section 1(33) of the Act takes away its reformatory attribute to a large extent. It defines heinous crimes as, "*heinous offences include the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more*". The issue with such a definition is that; 1. It is confined not only to the IPC but also 'any other law' and 2. Crimes such as cheating, theft, trafficking, counterfeiting etc also come under offences which have a minimum punishment of seven years attached to them as per the Indian Penal Code, 1860. The reason for this being an issue is in the statistics released by National Crime Records Bureau of India which states that most of the juvenile related crimes consisted of offences such as forced sex and rape. It has been established through various scientific findings that such offences are common in adolescents due to the increased intimacy and sexual drive as a result of their hormonal changes and lack of proper sex education. Thus, putting all the juveniles committing heinous crimes, according to this act, under the assessment to be treated as adults will result in a large number of juveniles being denied proper justice.

Another highly controversial provision of this act is Section 20(2)(ii). Section 20 provides for juveniles turned 21 years of age, having their term of stay in safety place still pending. Under sub-section (2)(ii) of this section, the board can direct the juvenile to complete the pending time of stay in jail if they are convinced that the juvenile has not undergone reformatory changes and deem him/her fit to contribute to the society. Such a provision is in contravention of Article 20 of the Constitution of India which states that no person will be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. On a general overlook, the main issue with this Act is related to the fact that it concentrates more on the 'punishment' aspect than the 'age' aspect. It divides the juveniles on the basis of crimes i.e. petty, serious and heinous crimes and unreasonably puts them under different age groups with the reasoning that the age group of 16-18 years is more probable to committing heinous crimes which can be threatening to the overall safety of the society. Thus, such juveniles have to be treated as adults. This 'punishment' based assessment takes away the reformatory and rehabilitative

outcomes which the Act promises to provide. Such a step has also been criticised for being based on wrongly interpreted data related to juvenile offenders, released by National Crime Record Bureau of India, which states that juvenile offenders make up for 1.2% of the total number of offenders. The Ministry stated that the percentage of juvenile offenders has been increasing over the years, especially by the juveniles of the age group of 16-18 years. But, on the overall look of it, the number of juvenile offenders has increased only by a meagre percentage in ratio to the population of children between the age group of 16-18 years.

#### IV. CONCLUSION.

By analysing the Act, it has been shown through this paper that the classification of juvenile offenders on the basis of punishment and placing the juveniles in the age group of 16 - 18 years in a vulnerable position to be treated as adults not only takes away their right to fair trial and other constitutional rights, but it also goes against the very reformatory principle of juvenile justice system. The provision providing for juveniles to stay in jails upon reaching the age of 21 years is again a violation of their right to fair trial as it exposes them to greater punishment than the one at the time the offence was committed. There has to be due consideration given to such provisions of the Act as this puts the juvenile offenders under a worse position which will lead to the stigma of their past stick with them throughout their lives and this will disable them to put themselves in a position where they feel like a part of the society and contribute to it. Rather than harsher punishments, education and sensitisation programmes can be one of the best tools to reform and rehabilitate them. Statistics have proved that lack of education is the biggest reason for most of the offences committed by juveniles. Also, many at times, the family background of these juveniles is such that they cannot provide for their education or well-being. Thus, the state should take active role in these matters and provide for their basic needs which will not only be useful to rehabilitate them but also make them a useful human resource for the country.

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