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Juvenile Delinquency: Understanding the Constitutional and Criminal Jurisprudence in Light of the Changes Incorporated in the Recent Amendments

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ABSTRACT

Our society has undergone vast changes in terms of its principles, perspectives and its moral and ethical standards. What was regarded as immoral ten years ago is no more considered the same. The aspirations for a good life and better opportunities have paved a way for developments and these aspirations have led us further to a fast-moving life. Such changes in the lifestyle have affected children, especially juveniles, the most. They are now more vulnerable to this evolving competition and stress with the expectations of attaining better performance in each field that in turn becomes a root cause for their deviant behavior.

In recent years, the juveniles due to their zero-tolerance attitude have perpetrated some of the highest proportions of crimes. Juvenile Delinquency has caused some of the serious offences and is a disaster to the social order of any country. Indian societies have also seen inclination towards similar trends of increasing rate of violent crimes committed by the juveniles, which indeed needs a serious solution. To address the problems faced by our society, the lawmakers have, repeatedly, made changes to the laws/enactments pertaining to juvenile delinquents in India. The provisions covering the crimes relating to juvenile delinquents after undergoing various amendments have been incorporated in what is today The Juvenile Justice (Care and Protection of Children) Act, 2015, wherein specific provisions have been included which now allow for a child to be tried as an adult.

This paper attempts to address the root causes of juvenile delinquency amongst millennials, the causalities of which include parental neglect, society's apathy towards children and the evolving changes in the society and the impact of electronics and social media.

Keywords: *Delinquency; Juvenile Justice System; Juvenile Justice Act; Juvenile Justice Board*

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I. INTRODUCTION

A child is a person who is going to carry on what you have started.... He will assume control of your cities, States, and nations. He is going to move in and take over your churches, schools, universities, and corporations ... the fate of humanity is in his hands.

- Abraham Lincoln²

A Child is a wet clay; one can mould them in any shape or in any forms. It is clay in a potter's hand. From the time immemorial, the concept of 'Age' has always been an unexplored topic in the theoretical aspect of a child in relation to his criminal responsibility. Recognizing the rightful place of a child from a need-based approach to a right-based approach was an apogee in the past years. Child-centric human rights jurisprudence has become one of the vital issues under the plethora of laws in the chauvinist society of today. In present times, there are alarming growths, impatience, intolerance and other negative vibes can be found in a child, which needs a holistic development.

Juvenile Delinquency has become a reason of societal anxiety all over the world. Perhaps, there is no society who will be silent as far as misbehavior or crime by younger ones are concerned. The nature of human behavior is such that breaking of standards or principles of behavioral issues or events are sometimes hardly kept intact, in tune with that of norms, values, regulations, code of conduct etc. of the regular society. The difficulty of human misconduct has been observed throughout the time and space and felt all through human world and at all levels of civilized society.

India has had a marked its history with regard to the determination of the 'age' of juveniles in conflict with law. The Children Act, 1960 ('1960 Act') was the initial central legislation post- independence that aimed at conceptualizing a system, separate from the criminal justice system under the Code of Criminal Procedure, 1973, for the treatment of juvenile delinquents. It defined a "child" to be a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years³. However, during this period, each state was allowed to frame its own laws on the subject as the 1960 Act extended only to the Union Territories. This resulted in similar cases of juvenile delinquency being dealt with differently by courts of each state, thereby leading to discrepancy in judicial practice⁴.

² Wroblewski, M., Henry (2000) an introduction to law enforcement and criminal justice, Thomson learning, USA, pp-540-541

³ Gauri Pillai and Shrikrishna Upadhyay, *Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India*, SCC Online (2017) 10 NUJS L Rev 49

⁴ *Sheela Barse v. Union of India*, (1986) 3 SCC 596: AIR 1986 SC 1773 (per Bhagwati J.: "[...] we would

But the brutal assault and rape incident of 16th December 2012 in Delhi, in which one of the accused was alleged to be a juvenile, augmented a fresh debate on reducing the age of criminal responsibility of juveniles in India. Consequently, the JJ Act, 2000 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter the JJ Act, 2015)⁵ ironically prepared by the Ministry of Women and Child Development. The JJ Act, 2015 lays down different procedural rules for “petty offences”⁶, “serious offences”⁷ seeking to try delinquent juveniles (falling in the age group of sixteen to eighteen years) as adults⁸ if they have allegedly committed “heinous offences” with a possibility that a delinquent juvenile in this age group may be given any punishment except death penalty or non-remissive life imprisonment⁹.

The Criminal Law in India defines, a ‘Crime’ as a conduct or an action that is defined and codified in law as a crime. (*‘nullum crimen sine lege’ – no crime exists unless it is so defined by the law*). Although crime and delinquency are basically similar concepts, they differ with respect to the ‘age’ which has always been an unexplored topic in the theoretical aspect of a child in relation to his criminal responsibility¹⁰. Since decades, the concept of ‘Age’ has always been an unexplored topic in the theoretical aspect of a child in relation to his criminal responsibility. When a juvenile, below the specified age as per the statute behaves, which may prove to be dangerous to society he may be called a Juvenile delinquent. Juvenile delinquents include both boys and girls who are below the age of majority.

A report of UNICEF in 2005 on the state of world's children under the title “*Child under Threat*”, spoke regarding India, mentioning that millions of Indian children are equally deprived their right of survival, health, nutrition, education and safe drinking water¹¹. This is what is actually happening to the most of the young children who, if properly taken care of, would shine the future of the country. The statements like “Children are supremely important national asset¹²” and the greatest gift of humanity, in the present scenario appears

suggest that instead of each State having its own Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country.”)

⁵ The JJ Act, 2015 came into force from January 15, 2016

⁶ See Section 2(45), JJ Act, 2015: Offences punishable with imprisonment up to three years.

⁷ See Section 2(54), JJ Act, 2015: Offences punishable with imprisonment between three to seven years

⁸ Id. Sections 15 and 19

⁹ Id. Section 21

¹⁰ *Laxmikant Pandey vs. Union of India*, 1984(2) SC 244, 249

¹¹ *Agarwal Shraddha*, Juvenile Justice Act: A Socio-legal Study: <https://www.lawctopus.com/academike/juvenile/>

¹² Apex Court observes that children are 'supremely important national asset' <https://hrln.org/apex-court->

to be hollow from the grass root level.

Statistical data's have proved that in almost all parts of the world except United States, rates of youth crime rose in 1990s. These countries in transition had witnessed a drastic rise in delinquency rates; since 1995, juvenile crime levels in many Commonwealth Countries of Independent States have increased by more than 30 per cent. With reference to India, the share of INDIAN PENAL CODE crimes committed by juveniles to total IPC crimes 2003-2005 remained static at 1.0% which marginally increased to 1.1% in 2006 and remained static in 2007. This share increased marginally to 1.2% in 2008 thereafter decreased to 1.1% in 2009. This has further decreased to 1.0% in 2010 and thereafter marginally increased to 1.1% in 2011 and 1.2% in 2012 and remained static at 1.2% in 2013.¹³

However a maximum number of cases under juveniles in conflict with law were reported in Madhya Pradesh 20.6% (7,369 cases) followed by Maharashtra 18.4% (6,606 cases) and Delhi UT 7.0% (2,499 cases) during 2016 and majority of juveniles in conflict with law apprehended under IPC & SLL crimes were in the age group of 16 years to 18 years (73.8%) (32,577 out of 44,171) during 2016 and Majority of juveniles in conflict with law apprehended under IPC & SLL crimes were in the age group of 16 yrs. to 18 years (73.7%) (6,881 out of 9,341) during 2016¹⁴.

Recognizing the rightful place of a child from a need-based approach to a right-based approach was an apogee in the past years. Therefore, if we can control juvenile delinquency, then we can control the future criminals in committing further crimes. The future development of a society depend totally on the quality of its children. Children being the most venerable group in any population are in need of great social care. On account of their venerability, they can be exploited, ill-treated and directed into undesirable channels by anti- social element in the community. The state has to difference of affording proper care and protection to children at all times.¹⁵

In *Bandhua Mukti Morcha's case*¹⁶ the importance of a child as being enlightened, observing that children is the lights to the society as a whole. *If children are deprived of their childhood socially, economically, mentally, the nation's get deprived of the potential*

observed- that-children-are-quot supremely-important-national-assetquot/

¹³ "National Crime Record Bureau Report of 2013" <http://ncrb.nic.in/CD-CII2013/compendium%202013.pdf> (Accessed on 12 Sept. 2017)

¹⁴ "National Crime Record Bureau Report of 2016" [ncrb.gov.in > StatPublications > CII > CII2016 > pdfs > Crime Statistics- 2016](http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/CrimeStatistics-2016)

¹⁵ See, Object and Reasons of the Appended to the Children Act, 1960

¹⁶ *Bandhua Mukti Morcha vs. Union of India*, AIR 1997 SC 2218, page 2220

human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

II. DEFINITION OF CHILD:

Describing the age of a child is an unfaltering common contention in the India. The Census of India considers adolescents to be any person underneath the age of 14, as do most government activities.

According to UNCRC 'a youth means every individual underneath the age of eighteen years'¹⁷ unless, under the law pertinent to the child, the overwhelming part is accomplished some time recently'¹⁸. This significance of a youth considers solitary countries to choose as showed by the own alert the age uttermost compasses of a child in their own specific laws. In any case, in India, diverse laws related to youths portray children in different age limits¹⁹. The Indian Penal Code (IPC) 1860 states that no child underneath the age of seven may be considered criminally ²⁰in charge of advancement (Sec 82 IPC). By uprightness of mental impediment or frailty to fathom the after effects of one's exercises the criminal obligation age is raised to twelve years (Sec 83 IPC). A young woman must be not be under sixteen years to give sexual consent, unless she is hitched, in which case the reinforced age is no less that fifteen.²¹

However, under Article 21 (A) of the Indian Constitution, "*the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*" Article 45 of the Act, states that "*the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*". Lastly, Article 51 (A)(k) states "*who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years*"²².

According to The Child Labor (Prohibition and Regulation) Act, 1986, a child as a man who has not completed fourteen years of age²³.

¹⁷ Venudhar Routiya, A Critical Study of Children Under Juvenile Justice System in India' IOSR Journal of Electronics and Communication Engineering (IOSR-JECE) e-ISSN: 2278-2834,p- ISSN: 2278-8735. Volume 11, Issue 4, Ver. III (Jul.-Aug .2016), PP 81-86 www.iosrjournals.org

¹⁸ 'Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict' <https://www.cypcs.org.uk/rights/uncrc/optional-protocols/armed-conflict>

¹⁹ ibid

²⁰ ibid

²¹ Section 82 and 83 of the Indian Penal Code, 1860

²² Article 21-A, Article 45 and Article 51-A (g) of the Constitution of India, The Constitution (86th Amendment) Act, 2002, 12th December, 2002

²³ The Child Labour (Prohibition and Regulation) Act, 1986, Act No. 61 of 1986, 23th December, 1986

The Factories Act, 1948 and Plantation Labor Act 1951 states that a child is one who has not completed fifteen years of age and a juvenile is one who has completed fifteen years of age yet has not completed eighteen years of age.

The Motor Transport Workers Act 1961, and The Beedi and Cigar Workers (Conditions of Employment) Act 1966, both portrays a child as a man who has not completed fifteenth years and fourteenth years of age respectively²⁴. The Merchant Shipping Act 1958 and Apprentices Act 1961 don't describe a youth, yet in acquirements of The Prohibition of Child Marriage Act, 2006 states that a male shall not be considered to be a major until he is twenty-one years of age and a female has not capable larger part until she is eighteen years of age²⁵.

The Indian Majority Act, 1875 was supported to make a clearing noteworthiness of a minor for such goes about as the Guardians and Wards Act of 1890. Under the Indian Majority Act, 1875 a man has not refined greater part until he or she is of eighteen years of age²⁶.

III. DEFINITION OF JUVENILE DELINQUENCY

Juvenile delinquency is a worldwide problem. In most of the contemporary societies, developed as well developing, this problem is stupendous and growing. Nevertheless, there are divergences in magnitude of the problem consistent with socio-cultural and politico-economic differences within and between countries.

The term 'Juvenile justice' was used for the first time by the state of Illinois, USA, in 1899, while passing the Juvenile Court Act. The approach under laying this law was that juvenile offenders should not be meted out the same punitive and retaliatory treatment as adults but rather given individual attention for their own protection as well as that of the society. Thus, the word 'Juvenile' has been derived from Latin term '*juvenis*' meaning thereby *Young*.

Juvenile is a child who not like an adult person, having not earned prescribed age, cannot be control accountable for his criminal act. The age criteria for being a juvenile vary from country to country, state to state. In ancient India, a parent was supposed to not penalize a toddler who is underneath five years elderly for any offence. As per the law then prevailing, a child of such tender age ought to be nursed and educated amorously and affectionateness solely. Once the age of five, penalty could also be given in some appropriate kind like

²⁴ Section 2 (c) of the the Motor Transport Workers Act 1961 and Section 2 (b) of the Beedi and Cigar Workers (Conditions of Employment) Act 1966

²⁵ Section 2 (a) of the Prohibition of Child Marriage Act, 2006

²⁶ Section 3 and 4 of the Indian Majority Act, 1875

physical chastisement or rebuke by the parents, towards the latter half of the childhood, penalty ought to be gradually withdrawn and replaced by recommendation.

Delinquency on the other hand, is an act or conduct of a juvenile, which is socially undesirable. The word Delinquency is derived from the Latin word '*Delinquere*' meaning '*de*' (away from) and '*linquere*' (to leave). Thus, in earliest sense according to Latin infinitive '*delinquere*' means 'to omit'. In Latin, literature it did not apply to child behavior, but it was used with reference to the parents who neglected and abandoned their children²⁷.

Juvenile delinquency generally means the failure of children to meet certain obligations expected of them by the society. Juvenile delinquency is expression of an unsatisfied urge in the juvenile delinquent²⁸. Whether a particular act or conduct of the child would be deviant or not will depend on various factors and vary in different States, Cities and time to time. The juvenile delinquent has even been defined as "a child trying to act like a grown up".

Hence, there is no precise meaning of juvenile delinquency. However, various attempts have been made to define it. Different penologists have differently interpreted the word "Juvenile Delinquency"

According to *Robinson*, 'Delinquency is simply the first step on the road to adult crime or it is gateway to adult criminality. It concerns us because it is 'sign post of danger'

In *Encyclopaedia of Crime and Justice* Juvenile Delinquent has been defined as, "Such a conduct by children which is either violative of prohibitions of the criminal law or is otherwise regarded as deviant and inappropriate in the social context".

According to *Gibbons & Krohn*, Juvenile delinquents consists of the acts of infractions, which are prohibited in the statutes of the individual states, juvenile delinquents are the youth who commit one or more of these infractions²⁹.

According to Juvenile Justice Act, 1986 a boy under sixteen years of age and a young woman child as underneath eighteen years of age. The Juvenile Justice (Care and Protection of Children) Act, 2000 has changed the integral part of adolescent to any person who has not completed eighteen years of age. However, the new change as per the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for a child in conflict with the law who is age group 16-18 years of age to be decided as adults for heinous offenses such as rape and

²⁷ Shilwant, S.S., "Role of Correctional Institution, Child welfare Board, Police, Juvenile Court, and Social agencies in prevention and control of the global problem of Juvenile Delinquency", *MDU Law Journal*, (7) 2002 at 251-59.

²⁸ 'JUVENILE DELINQUENCY- DEFINITION AND TYPES': <http://www.vkmaheshwari.com/WP/?p=2291>

²⁹ See, "*Delinquent Behaviours*" by Don C. Gibbons & Marvin D. Krons

murder and other 21 types of crimes. Heinous offenses are those which are punishable by imprisonment of seven years or more³⁰.

IV. REASONS FOR JUVENILE DELINQUENCY:

1) Individual Risk Factors: There are several risk factors are identified with juvenile delinquency. A minor who has not receive a proper education is more prone to become involved in delinquent conduct. Other risk factors include impulsive behaviour, uncontrolled aggression and an inability to delay gratification. In many instances, multiple individual risk factors can be identified as contributing to a juvenile& involvement in harmful, destructive and illegal activities.

2) Family Risk Factors: Family play a very crucial role in the growth of a child. Thus such risk factors include a lack of proper parental supervision, ongoing parental conflict, and neglect and abuse (emotional, psychological or physical). Finally, those children that display the weakest attachment to their parents and families are precisely the same juveniles who engage in inappropriate activities, including delinquent conduct.

3) Mental Health Risk Factors: Mental factor of a juvenile is yet another contributing reason for a child to indulge in juvenile crimes. It is important to keep in mind that personality disorders, which are the precursors of these conditions, can end up in oozing out the delinquent behavior in a child at a very early age. One of the prime example is Conduct disorder which is defined as disregards towards societal norms

4) Substance Abuse Risk Factors: Substance abuse is considered the prima facie cause of juvenile delinquency. In this respect two essential traits are identified:

First: Juveniles are using more powerful drugs today than it were before.

Second, they are using such drugs at a very tender age. Children in elementary schools are found to be using powerful illegal drugs and such drugs illegally motivates them to commit crimes in order to obtain money for such obnoxious consumption.

V. SOCIAL MEDIA AND JUVENILES IN CONFLICT WITH LAW:

The excessive exposure to violence not only desensitizes us as a society, but for those in under the age of 18, these influences seem to have a number of serious effects. Some of the effects include:

Aggressive behavior: media violence teaches children to be more aggressive so they tend to

³⁰ Section 15 of the Juvenile Justice Act, 2015

be less sensitive to pain and suffering;

Fearful attitudes: Media violence causes children to be more fearful of the world around them; and

Cold blooded: media violence desensitizes children to real-life and fantasy violence, making it seem a normal part of everyday life. Exposure to media violence also increase a child's desire to see more violence in real life and in entertainment, influencing them to view violence as an acceptable way to handle conflicts.

Thus, a crucial problem such as juvenile delinquency cannot be solved by means of legislation and government efforts alone. As far as India is concerned in many of the states. Children Acts have not been effectively enforced rather they have certain loopholes which needed to be amended to control this problem. More importantly, the public attitude towards these Juvenile delinquents must also change. A juvenile delinquent is a product of unwholesome environment congenial for the development of his faculties in conformity with social expectations.

VI. ON WHO'S INTEREST?

How to determine what is the best interest for a child who has always been in a matter of controversy. The content of the best interest principle Article 3 of the United Nations Convention either will depend on the belief systems of the society, as represented in the administrators, or on what the child perceives to be in his or her best interest. In addition, these two contexts can clash. No child, for example, would consider in his or her best interest to be institutionalized, yet all over the world, it is done supposedly for the child's own good. The amended rules of the JJCPA 2000 say, the principle of best interest of the juvenile or juvenile in conflict with law or child shall mean for instance that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice. The principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety, well- being and permanence for each child and thus enable each child to survive and reach his or her full potential

John Eekelaar says that best interest can be interpreted through the lens of participation. Since best interest are determined by the child using the principle of dynamic self-determination, Article 3 should be read with Article 12 or Right to Participation of the CRC, which says the child has the right to "express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity

of the child”³¹

This is one of the central provisions in the CRC, a new vision of children’s rights. It means that right from the point of arrest, to adjudication before the CWC or JJB, assessment by the authority, placement and to everyday living within the institutions, the child’s opinion should be heard and taken into consideration as per his or her age and maturity. When asked several people in the JJS what in their opinion were “the best interests of the child”? The diversity of their replies is an indicator of the confusion that still prevails, perhaps rightly, over the issue.

At present there are 14 countries known to permit the sentencing of juveniles for life without a possibility of release: *Antigua and Barbuda, Australia, Brunei, Burkina Faso, Cuba, Dominica, Israel, Kenya, Saint Vincent and the Grenadines, the Solomon Islands, South Africa, Sri Lanka, Tanzania and the United States*³². Outside of the US, there are believed to be no more than 12 child offenders serving life sentence. In Iran and Saudi Arabia, child offenders may be sentenced to death. The United States of America celebrated the centenary of the JJS ten years ago-the first juvenile court was established in Illinois in 1899 but towards the end of the last century, it started moving towards adult-oriented criminal law jurisprudence.

VII. LOOPHOLES IN JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

The Act regarding the protection and care of juveniles was first passed in 1986, then in 2000 and finally the amendment to the Act was passed in 2006. However, progressive changes have been made through the years but still there are a number of loopholes. The fact is that any legislation needs to be in pace with the society and the changes taking place throughout the world. This is exactly where the Act failed. On the face of it the Act is a well-intended legislation but, it has not followed a holistic approach.

A gap in the legislation in regards to the age factors of a juvenile are supposed to be under the purview of this legislation. This was done obviously to protect the interests of the child but in present scenario, the effect is just the opposite. There have been instances of children committing heinous crimes like murder, sexual assault, rape etc. Blame it on the media exposure, but the fact remains that these individuals cannot and should not be treated with

³¹ The above mentioned words has been note down from Eekelaar, John’s, “*The importance of thinking that children have rights*”, [International Journal of Law, Family and Life, Vol 6 No 1, 1992] <http://lawfam.oxfordjournals.org/cgi/content/abstract/6/1/221>

³² Juvenile Sentencing: ‘Written statement for the 4th session of the Human Rights Council’, 3/2/2007, Child Rights Information Network (CRIN)

leniency and additionally, nor should the amount of punishment be lenient in such cases³³.

The preamble of the Act of 2000 reads that the Act seeks to amend the law relating to juveniles by ‘providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children’. Sadly, none of these aims has been fulfilled because of glaring insufficiencies in the Act itself, which are not very difficult to point out. Both, in procedural as well as substantive portions, there is a lot that needs to be added to the Act in order that it may actually be useful for the purpose for which it has been established.

Moreover, the use of the word ‘may’ as far as the framing of rules by the States is concerned, is a major fallacy because until and unless, the formulation of rules is not made mandatory, the implementation of the Act will remain a dream. Sec. 8 of the Act is an example of the abovementioned problem. According to Sec.8 (3) of the Act, the State may formulate rules and standards for the observation homes that are to be established. Leaving something as important as maintenance of standards to the discretion of the State is a major problem and should be made mandatory for the State to regulate such basic areas.

Even the appointment of inspection committees for the children’s homes has been left to the discretion of the States and they ‘may’ constitute such committees according to Sec. 29. Something as important as after care organizations, to check up on the juveniles who have left the special homes and have been adopted or rehabilitated, has also been left to the discretion of the States according to Sec.44³⁴. There are several places in the Act where the usage of the word ‘may’, will create havoc with the implementation of the Act.

Justice Dipak Misra and U.U. Lalit while hearing a case in 2014, with respect to JJ Act, 2000 that the need for the law is to “satisfy the desire of society”, and the punishment to befit the gravity of the crime. The Bench also pointed out that the JJ Act, 2000 as “far too liberal” and asked the Government to revisit the law. In *Gaurav Kumar v. State of Haryana*³⁵, the Supreme Court opined that the Juvenile Justice Act of 2000 needs a reappraisal as it has failed to deter the juveniles of the country from committing petty³⁶ as well as heinous crimes.

³³ Gupta, Ankita, The Juvenile Justice (Care and Protection) Act, 2000 - A Critique (July 13, 2011). Available at SSRN: <https://ssrn.com/abstract=1884927> or <http://dx.doi.org/10.2139/ssrn.1884927>,

³⁴ Ved Kumari, *Construction of Criminality and Children*, SCRIBD (Jan 18, 2020, 19:44), <http://projects.essex.ac.uk/ehrr/V7N1/Kumari.pdf>

³⁵ (2015) 16 SCC 310

³⁶ S. 2 cl (45) JJ Act, 2015, (45) “petty offences” includes the offences for which the maximum punishment under the Penal Code or any other law for the time being in force is imprisonment up to three years

According to child activist *Yamini Abde*³⁷, peer pressure, desire for easy money, access to internet videos on crimes and pornographic material, increase in sexual activity and aggressions are the major cause for increase in juvenile crimes.

VIII. DEBATES OVER JUVENILE JUSTICE ACT, 2015 IN INDIA

The Juvenile Justice (Care and Protection of Children) Act, 2015 has been criticised for incorporating Section 15³⁸ and Section 18(3)³⁹. It states that if the minor has completed or is above sixteen years and is involved in a heinous crime then on the report of preliminary assessment by the Juvenile Board, the same can be tried in the Children's Court and the minors will be treated as adults and would be subjected to the criminal procedure. This differential treatment of the minors between the age group of 16-18 years ignited the criticism. It was contested that this provision led to the violation of Article 14 i.e. right to equality.

In order to ensure the protection of Article 14, that is, right to equality, among children in conflict with the law who belong to different age group, the Act provides for intelligible differentia. So that children who have committed petty offences and those children who have committed heinous offences are not treated alike and the special needs of each class for reformation and rehabilitation is taken into account.

Notable Changes made in the Juvenile Justice Act, 2015⁴⁰

(1) The bill will allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 should be tried as an adult or not.

(2) The bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption 1993 which were missing in the previous act⁴¹.

³⁷ Umesh Isalkar, 'When kids turn criminals: Children involved in maximum murder' http://timesofindia.indiatimes.com/articleshow/48636169.cms?utm_source=contentofinterest&utm_medium

³⁸ S. 15(1) JJ Act, 2015, (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-s. (3) of S. 18.

³⁹ S. 18(3) of JJ Act, 2015, (3) Where the Board after preliminary assessment under S. 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

⁴⁰ Sharma Aniket, *Juvenile Justice Care and Protection of Children Act, 2015*: <http://www.legalservicesindia.com/article/1972/Juvenile-Justice-Care-and-Protection-of-Children-Act,-2015.html>

⁴¹ Aniket, *Juvenile Justice Care and Protection of Children Act, 2015*, LEGALSERVICEINDIA (Jan 18, 2020), 19:44, <https://www.scribd.com/document/324755143/Are-Reforms-Really-Needed-in-the-Juvenile-Justice>

(3) The bill also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined.

(4) The bill introduces foster care in India. Families will sign up for foster care and abandoned, orphaned children, or those in conflict with the law will be sent to them. Such families will be monitored and shall receive financial aid from the state. In adoption, disabled children and children of physically and financially incapable will be given priority. Parents giving up their child for adoption will get 3 months to reconsider, compared to the earlier provision of 1 month.

(5) A person giving alcohol or drugs to a child shall be punished with 7 years imprisonment and/or ₹1,00,000 fine. Corporal Punishment will be punishable by ₹10,000 or 3 months of imprisonment. A person selling a child will be fine with ₹1,00,000 and imprisoned for 5 years.

(6) The bill allows for juveniles 16 years or older to be tried as adults for heinous offences like rape and murder. Heinous offences are those which are punishable with imprisonment of seven years or more.

(7) The bill mandates setting up Juvenile Justice Boards and Child Welfare Committees in every district. Both must have at least one-woman member each.

(8) Any child that found committing any crime will now be send for a preliminary assessment for a period of three months, up from the earlier one month. A clarification is added that the preliminary assessment is not a trial, but to assess the child's capacity to commit the crime.

(9) There will now be proper training of special juvenile units in the police force.

(10) NCPCR and SCPCR will be the nodal authorities to be responsible for monitoring implementation, the publicity of the amended act, and to look into cases that arise out of the Act

With reference to the aforementioned analysis it can be understood that many aspects of the provisions of this Act are unsettling and worrisome; one of them being the fact that more juveniles will be incarcerated as it is seen that the Act evidently promotes the adoption of a retributive and punitive stance against them. The presumption of *doli incapax* adopts the process of constructing the concepts of 'children' and 'crime' as opposites⁴². Children are

⁴² The CRC directs that the State Parties should prescribe the 'the minimum age below which children shall be presumed not to have the capacity to infringe the penal law' (Art. 40 (3)(a)) and that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by children below the age of 18 years of age' (Art. 37 (1)).

assumed to be incapable of harboring criminal intent before a certain age, and their actions are not construed as offences despite any resultant harm or injury⁴³. However, the age of *doli incapax* varies from state to state. In India, it is fixed as low as seven and in the UK it is fixed at ten years. However, children above that age face the paradoxical situation of being classified either as children or as criminals. By definition, they cannot be both, unless the relationship of children with crime is reconstructed⁴⁴.

The Hon'ble court in *Lakshmi Kant Pandey v. The Union of India*⁴⁵, held that children are the imperative national asset and the future flourishing of the nation depends upon how its children create and make. From the judgment, it was obvious that it was preferable to Article 21, as the solicitation was under Article 32 and reference to Article 15(3) and 24 were in help thereof. The Court recognized the benefit to a home, a name, and a family as a part of the "right to life". Similarly, the Kerala High Court while discussing the adoption of Christian in *Philips Allred Malvin v. Y.J. Gonsalves*⁴⁶ held that the benefit of the couple to grasp a child is a secured right guaranteed under Article 21 as the right to life combines those things, which make life essential.

IX. JUVENILE JUSTICE ACT 2015 AND INTERNATIONAL COMMITMENTS

Justice isn't justice in the event that it isn't simply to the stake of value to all. On the off chance that justice is doled out venturing on the desolation and give up on children, at that point it is no justice. The JJ Act is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations⁴⁷. The basis of fixing of the age until when a person could be treated as a child at 18 years in the JJ Act was Article 1 of the Convention of the Rights of the Child

A three-judge Bench of incumbent Chief Justice Altamas Kabir, and Justices S.S. Nijjar and J. Chelameswar earlier on 18th January, 2013 issued notice to Union government on a public interest litigation petition seeking a direction to amend the Juvenile Justice Act. The bench opined that "... a misunderstanding of the law relating to sentencing of juveniles needed to be corrected. The general understanding, the court further opined, was that a juvenile guilty of

⁴³ Ved Kumari, *Construction of Criminality and Children*, SCRIBD (Jan 18, 20201, 19:44), <http://projects.essex.ac.uk/ehrr/V7N1/Kumari.pdf>

⁴⁴ <https://www.scribd.com/document/175566727/Juvenile-Justice-Act-docx>

⁴⁵ *Lakshmi Kant Pandey v. Union of India*, 1984 AIR 469

⁴⁶ AIR 1999 Ker 187.

⁴⁷ Swastika Akhowri, *Are Reforms Really Needed In The Juvenile Justice (Care and Protection of Children) Amendment Act, 2000*, SCRIBD (Jan 18, 20201, 19:44), <https://www.scribd.com/document/324755143/Are-Reforms-Really-Needed-in-the-Juvenile-Justice>

*a heinous offence could be allowed to go free on his attaining the age of 18 years*⁴⁸”. The Bench made it clear that even if a juvenile attained the age of 18 years within a period of one year, he would still have to undergo a sentence of three years. The Bench pointed out that the essence of the Juvenile Justice Act is “restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the mainstream society⁴⁹.” However, mens rea i.e. a guilty mind is still difficult to be proved. As according to various researchers the human brain keeps developing until the age of 18 years⁵⁰. But the core of understanding the graveness lies in the fact that research also shows that by the age of 5 years human brain cultivates 85% of their personality, skill and intellectual capability is developed, the brain recognizes anti-social behaviour and has developed cognitive faculty⁵¹. Thus, making the JJ Act, 2015 completely justified. Hence neither the international law nor international conventions prohibit India from treating minors as adults under certain situations.

X. CONCLUSION AND SUGGESTION

Ever since the dawn of human civilization, crime has always been one of the crucial problem ever existing. Hardly any society can think without besetting the problem because we human beings are blessed with nature of animal instinct. Therefore, to think about a crimeless society is a mere myth. Today the society is approaching the closing ends of welfare approach towards children and is entering the era of rights approach.

Asha Bajpai writes, *“this shift in focus from the ‘welfare’ to the ‘rights’ approach is significant. Rights are entitlements. They also imply obligations and goals. The rights approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. The achievements of right based approach will depend on sincere performance of corresponding duty performed by the other stakeholders in the society. It has been specially introduced in the Indian Constitution under Art 51 A (k). Upbringing of a child into a healthy adult with regard for social values is indisputably dependent upon the performance of this duty by the parents or guardians. They should try to groom their children*

⁴⁸ Aniruddha Vithal Babar, *The Law for Juvenile Injustice: Critical Analysis of Juvenile Justice (Care and Protection) Act, 2015*, JOURNAL OF LEGAL STUDIES AND RESEARCH (Jan 18, 20201, 19:44), <https://thelawbrigade.com/wp-content/uploads/2019/05/Aniruddha-Babar.pdf>

⁴⁹ SC had settled issue of ‘adult’ in juvenile home : <http://timesofindia.indiatimes.com/articleshow/22197868.cms>

⁵⁰ Sara B. Johnson, Robert W. Blum, Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Jan 18, 20201, 19:44), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>.

⁵¹ David Edie and Deborah Schmid, *Brain Development and Early Learning: Research on Brain Development*, Wisconsin Council on Children and Families, Winter 2007, Vol. 1, https://larrycuban.files.wordpress.com/2013/04/brain_dev_and_early_learning.pdf, last visited on 7-3- 2017.

in such fashion that they do not pick up any trait or habit, which may bring the juvenile into conflict with law situation. ”

Lastly I would conclude with this thought that, *“We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of things we need can wait, the child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer ‘tomorrow’. His name is ‘today’⁵².*

⁵² Quote by: Gabriela Mistral, Nobel Prize winning poet from Chile