

“Juvenile Justice Act”

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“Every saint has a past, and every sinner has a future.”

explicitly quoted by Oscar Wilde reflecting the objective of the Juvenile Justice system. A child is the one who withholds the future of the nation, who deserves a morally enriched environment to grow up. Every person is born from their mother’s womb with utmost innocence with no malafide intent to overhaul the Laws.

The foundation of Juvenile Justice is mainly based on the two concepts of legal principles viz “mens rea” and “Parens Patriae”. The mental capacity and the socio-economic background of a child together with the physiological and psychological development of the child is the main factors that are to be looked into for the commission of an offense by a Juvenile. The entire scheme of the Act since its legislation is mainly rested upon the above said principles and factors. The controversy regarding age specifications of a juvenile is clarified in the present Juvenile Justice Act 2015. The Juvenile Justice legislation is a social legislation. The ideology of Juvenile Justice has always prevailed right from the oldest laws of the world. Section 185-186 of the Codes of Hammurabi dealt with the punishments for further Juvenile Offenders. It prescribed severe punishment for the juvenile offender; it reads as follows “If a son has struck his father, his hands shall be cut off. The Roman law of the Twelve Table in 450 B.C recognized that the Juvenile has no clear sense of responsibility and hence it is the state that has the collective responsibility to protect the welfare of the Juvenile.¹ Later on, the doctrine of “doli incapax defense” was introduced by the English Common law, that is the incapacity to commit a felony and hence it was considered as child below the age of seven are incapable of committing a crime, further presumption of innocence was extended to the age between seven and thirteen as it was established that they had no sufficient intellect to understand what is right and wrong. Further, Pope Clement XI in 1704 brought up the ideology of the “Instruction of profligate youth in institutional treatment”. The first Juvenile Court was established in 1899 in Chicago, USA.² During the 19th century there was a cosmic increase in juvenile delinquency, which was a result of exploitation of child labour, increase in illegal immigrants and illegitimate births. During the colonial period a series of Acts were enacted vis-a-vis protection of child rights such as the Apprentice Act, 1850; the Reformatory Act, 1876 and the Indian Children Act.

¹ <https://www.educationalresourceproviders.com/historical-overview-of-the-juvenile-justice-system-1-edited-and-republished/>

² <http://thelawbrigade.com/criminal-law/juvenile-justice-in-india/>

Article 15 (3) allows the state to make any special enactments for women and children, it is pertinent to note that under Article 21(A), it mandates the state to provide free and compulsory education to all children of the age of 6 to 14 years in the manner as determined by law. Article 24 prohibits the employment of children below the age of 14 years in factories or any other hazardous employment. Thus, on a combined reading of the Fundamental rights of the children as enshrined in Part III viz Article 15(3), 21 (A) and 24 of the Constitution of India.

The child is seen as the future of this Great Nation and to protect their interest in growth and their holistic development. The framers of the constitution have incorporated these provisions albeit, Article 39 (e) and (f) sets out with pivotal principles that prevents from abuse of children at tender age and aims to provide sufficient opportunities and facilities for the holistic and healthy development of the child together with their freedom and dignity being non-negotiable and protecting their childhood and youth against exploitation and moral and material abandonment. Articles do not stipulate the age to consider as a child or youth. In addition to the above, Article 45 specifies the responsibility to the state to provide early childhood care and education until a child completes the age of 6 years.

From a broad perspective and taking into account various enactments since the year 1850, the children were protected under the framework of Juvenile Justice law in its various forms. After the Nirbhaya incident, the Criminal Law Amendment Act 2013 was passed and the National Crime Records Bureau data showed an increase in the rate of juvenile crimes and predominantly sexual offences.³ Landmark decisions of the Courts in India in Juvenile Justice:

a. Sheela Barse Vs Union of India [1989 3 SCC 596], this was the first judgment of the Hon'ble Supreme Court that paved the way for the Parliament to pass a social legislation for the children namely the Juvenile Justice Act 1986 following the Children's Act of 1960. Specifying the age of the female Juvenile as 18 years and age of male juvenile 16 years and usage of process of criminal law to such juveniles become illegal, the term Juvenile was first incorporated by the passing of this Act in consonances and in tandem with the rules of adopted by the United Nations General Assembly for Juveniles namely United Nations Standard Minimum Rules for the administration of Juvenile Justice 1985. But subsequently, it is pertinent to note that age of both the male and female juveniles were specified uniformly after India became signatory to the United Nations convention on the rights of the Child in 1992.⁴

b. Salil Bali Vs Union of India [2013 7 SCC 705] and Subramanian Swamy Vs. Raju through the Juvenile Justice Board [2013 10 SCC 465].⁵ The Hon'ble Supreme Court has

³ Criminal Law Amendment Act, Justice J.S. Verma Committee, Report of the Committee on Amendment to Criminal Law, January 23, 2013

⁴ [1989 3 SCC 596]

⁵ [2013 7 SCC 705], [2013 10 SCC 465]

ceased the Constitutional validity of definition of child and also for minimizing the age for defining a child. The Hon'ble Supreme Court dismissed the above petitions. This Act has the ability to override the Code of Criminal Procedure that has been stated in Section 4(1). The "notwithstanding" clause has been elaborately discussed *Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram* (AIR 1987 SC 117) . It is further noted that the Section 7 of the Juvenile Justice Act 2015, has laid down the procedure and working of the Juvenile Justice Board. This provision has emphasized that the Board has to ensure that the procedures are child-friendly and does not resemble the regular court. Subsequently, if there is a wavering opinion of the board members during the interim or final disposal stage, during such circumstances either the majoritarian opinion prevails, but then there is no such majority then the opinion of the Principal Magistrate shall prevail. When there is an absence of board members the board can continue to function unless all the members are absent.⁶ A regular court cannot try juveniles, and a Juvenile Board can try him only. Hence, the trials of juveniles held by a regular court are improper.⁷

Distinction between the old Act and present Act:

The common feature between the old and the present act is the Social legislation and both are based on the theories of Reformation and Rehabilitation. The present Act of 2015 was passed as a sequel to the Nirbhaya incident. The present Act did not reduce the age of defining a child, who has not completed the age of 18 years but classified the adolescent age group between 16-18 years, who have committed a heinous crime to be tried by an adult criminal court which will be termed as "Children's Court" but will be tried as an adults only. The present Act classifies children into two different definitions namely, "Children in conflict of law" and "Child in need of care and protection". The Juvenile Justice Board is vested with the responsibility to adjudicate the matters relating to both the category of children with a constituting a Judicial Magistrate and two social workers. The Juvenile Justice Board is further vested with a very responsibility to preliminary assess and exercise its Judicial discretion on sound Socio-Legal principles to decide the trial of a child as an adult or as a child. The Board is further vested with a responsibility for a reformation and release of the child once the Juvenile attains the age of 21 years on the basis of periodical review and assessment of the Juvenile during his/her period of stay. The present Act further provides and defines the petty, serious and heinous offences under the relevant provisions of the IPC.

The Juvenile Justice Act 2015 traces its origin since the enactment of Apprentice Act 1850 and the Juvenile Justice System in India is mainly marched on the basis of socio-legal jurisprudence and the Nirbhaya incident, which has now under the present Act has provided a deterrence to the adolescent adults together with Rehabilitative and Reformative measures with utmost aim to foster care and protection to the needy children.

⁶ [2007(2) All Cri R 1987]

⁷ [2005(53) All Cri C 876]

Whether aged based classification is violative of Article 14 of the Constitution of India, the Right to equality under article 14 of the Constitution of India is a non negotiable right available to all persons irrespective of their age or gender, it is also to be noted that Article 15 of the Constitution of India also prohibits any form of discrimination but under sub clause (3) of Article 15, it states that nothing contained in Article 15 shall prevent the state from making any special provisions for women and children. Therefore, a large question arises as to whether the provisions of Juvenile Justice (Care and Protection) Act, 2015 with reference to the determining power of the board to try a case by itself or to transfer it to the Children's court under the regular Criminal proceedings based on its own preliminary assessment of mental and physical capacity of the Juvenile with respect to the circumstances and consequences to the alleged commission of the offence itself is manifestly clear that such powers vested with the Board under the present Act results in violation of right to equality guaranteed under Article 14 of the Constitution of India. The Act does not reasonably classify the Juveniles among their groups. The Juveniles are a classification among themselves and therefore entitled to equality before law and equal protection of law among themselves, it is further pertinent to note that the doctrine of equality is always on a higher pedestal than any other doctrines, be that be doctrine of reasonable classification. Therefore, all persons under the age of 18 being minors are a class onto themselves and recognised as juveniles. Therefore, the powers vested upon by the Juvenile Justice Board to determine the trial of an offence before itself or other court is arbitrary and such arbitrary action is violative of Article 14 of Constitution of India and results in denial of right to fair trial under Article 21 under the classification of juveniles as it results severe and grave prejudice to the trial of law among the class itself.

Conclusion:

The present Act in its present form as said in our earlier discussion, behaves as an efficient and stringent mechanism to check and deter the commission of offences among the juveniles in terms of adolescence, mental and physical assessment. But, on the premise of constitutional validity to the powers of determination of assessment of the mental health capacity, capability, the circumstances and the consequences of the offence vested with the Juvenile Justice Board which primarily lacks any knowledge on the psychological behavior pattern of the child, results the actions of the Board to be violative of Article 14 and 15 of the Constitution of India.

It is therefore suggested that necessary changes and amendments should be brought forth within the scheme and framework of the present Act to include the experts in the field of child psychology, behavioral pattern and neuroscience to preliminarily assess and decide the mental preparedness of the Juvenile to commit the alleged offence. It is worthwhile to mention as a parting shot that the state exercises its parens patriae jurisdiction within the spirit of Constitution for the welfare and protection of the child.