
EVOLUTION AND REVALUATION OF DEEMED MAJORITY IN JUVENILE JUSTICE ACT

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ABSTRACT

The torrential downpour of cases where the apex court has called for guidelines to subject undertrial juveniles as adults is plentiful. This kindled fire which reignited the already prevalent debate regarding the rights of juveniles and if deemed majority has positive applicability. Opinions keep pouring in that assessments that are preliminary in nature cannot be a basis of superficial exercises that are undertaken in a routine manner. Moreover, deemed majority concept gets largely intercepted by the absence of an absolute rule or exhaustive list that can lead toward preliminary assessment. Psychological evaluation consequent to which the counselling takes place is meant to be kept confidential and presided over by a counsellor who can make the assessment report. In all, this gives room for wide discretionary powers without any enactment of procedural guidelines. When a Juvenile is considered as a deemed majority one needs to know the intent of the law, which was to get a wide range of experts working with the Juvenile justice system in India. Albeit the requirement of the report for arriving at critical Juvenile related decisions, the number of experts working in the field areas is only a handful who are being accepted at the face value then competence. This paper will shed light on:

- A) Basic concept of Juvenile delinquency and offenses committed by juveniles;
- B) Comparative analysis of the act of 2000 and the amendment of 2015 to the Juvenile Justice Act;
- C) Stringent stances taken by the courts elucidated through case laws with regard to deemed majority concept;
- D) Introduction to the United Nations 10-point plan for Juvenile Justice and guidelines for action on children in the criminal justice system

Keywords: Juvenile, delinquency, deemed majority, Sensitivity, Paradigm-shift

1. INTRODUCTION

The development of a child has been appreciated by Civilization from time immemorial given, they are considered to be the most vulnerable population. Anti-social elements, therefore, district them due to their dependency being quite high. This is not to say that there has been no indulgence of juveniles initiating offenses at all. Whether a child is capable of forming an intention required enough, by law to punish him equivalent to that of an adult is still equivocal. Much to Fame this concept of Juvenile crimes has got attention due to a pronouncement of an Egyptian priest who said 'Our earth has degenerated in these latter days. These are clear signs of the world coming to an end because children are no longer obeying their parents.'¹ Juvenile delinquency intermingled with defiance was also predicted by Socrates some 2000 years ago sighting luxury, bad manners, disliking authoritative control, with debilitating basic mannerisms like greeting an elder upon entering the room were common. Gobbling of dainties and exercising tyranny over teachers reflect the popular finding of the nascent stage of Juvenile Crimes as a concept.² Due to Juvenile delinquency being a major problem it is not deemed to be neglected which if left and checked would block the very vitality of the nation in a long run.³ The term Juvenile carrying with it the nature of being immature, and oblivious to the nature and consequences of the act perpetrated refers to those who have not reached the age of adults or precisely, 18 years for which they will be absolved of the liability for want of age. Alleged to have committed a few acts that are in violation of law the Juvenile Justice Care & Protection Act 2000 says that a Juvenile shall not be treated as an adult for the alleged involvement in any offense for the purpose of facilitating trial or punishment in the court of law.

2. BASIC CONCEPTS OF JUVENILE DELINQUENCY AND OFFENSES COMMITTED BY A JUVENILE

Derived from the Latin term '*juvenis*' meaning young the word delinquency is derived from

¹Quoted by Edward, H. Stulken in his article 'Misconception about Juvenile Delinquency' published in the '*Journal of Criminal Law, Criminology and Police Science*', Vol.46, No.6, 1956 at Pg 883-886

² Quoted by Chakrabarti, Biswarup in his article 'Children in conflict with Law: A study of Children's Rights under the Juvenile Justice (Care and Protection) Act,2000 and the functioning of the Kolkata Juvenile Justice Board', published in the book '*Law and Child*', edited by Chakrabarti, Dr.Nirmal kanti et.al., 2004 at pp.395-396

³ Quoted by Chakrabarti, Biswarup in his article 'Children in conflict with Law: A study of Children's Rights under the Juvenile Justice (Care and Protection) Act,2000 and the functioning of the Kolkata Juvenile Justice Board', published in the book '*Law and Child*', edited by Chakrabarti, Dr.Nirmal kanti et.al., 2004 at pp.395-396

'*delinquer*' which means to omit, the year 1484 witnessed **William Coxton** use the word dealing quint with reference to the establishment of guilt of a person. Commission of mistake especially by teenagers under the age of majority would not be considered an offense deemed fit of punishing a child alike an adult in spite of it being unacceptable by society. Any conduct brought before the court with the question of Jurisdiction whether it can be treated there or by some alternate resources has to be decided with care and caution.⁴ Though the child in conflict with the law may be no different from other offenders at the time when the court takes cognizance of this case Juvenile justice act renders a parity of this child with other juvenile delinquents and not adults.⁵ This is not an allowance to let the child go scot-free but is an omission by a child against the moral conscience of the society that needs to be punished by the legal system. The early part of the 19th century saw the usage of the term Juvenile delinquency for the first time incorporated by the American committee to investigate vagrancy and pauperism. This gave a broader understanding of the term Juvenile delinquency read conjointly to also include children in conflict with the law.⁶ The common problem seen throughout the evolution of this concept has been the social, legal, and economic spheres as to what criteria can we set to judge and at what stage will a specific set of child miscreants be called juvenile delinquents. Coming to the brass tacks, begging, absenting oneself without permission, gambling, and dipsomaniacal attitude alike a menace posed by adults will be coming under the ambit of Juvenile delinquency.⁷ The approach can be broadly segmented into legal and sociological dimensions that are:

- a) Stipulated charges to be leveled against Minor children;
- b) Offense should be conclusive rather than persuasive;
- c) Protection should be given against irrelevant and misleading evidence.⁸ According to normative formalism, the impact is also largely sociological in nature. Deviation from norms that are set by the group for which agent status of conduct become important is one of the main reasons for the increase in juvenile crimes. Age of crucial for examining the mental social and chronological stage

⁴ Bajpai, Asha: *Child Rights in India: Law, Policy and Practice*; Second Edition 2006, p.279

⁵ Bajpai, Asha: *Child Rights in India: Law, Policy and Practice*; Second Edition 2006, p.279

⁶ Bajpai, Asha: *Child Rights in India: Law, Policy and Practice*; Second Edition 2006, p.279

⁷ Sol, Rubin: *Crime and Juvenile delinquents*; 1958, Pg. 46

⁸ Ahuja, Ram: *Criminology*; 2000 Pg.102

of an individual. The concept has evolved to be a stage of understanding that a young offender may be a threat to society if different and corrective actions to prevent him from treading the wrong path are not taken into consideration.⁹ A juvenile in the Juvenile Justice (Care & Protection) Act 2000 is defined as one who is alleged to have committed an offense punishable under any law for the time in force. Being in consonance with the maxim *'hullem crimen sine lege'* which translates to there being No Crime without law, the Indian concept is not as broad as the American concept which contains many acts other than just punishments for the violation of statutes. Offenses committed by juveniles are a result of several factors, a few of them being strict disciplinarian parents, parents with criminal antecedents, lower involvement of parent with the child, and family conflicts leading to separation from family.¹⁰ Statistically, people who are school dropouts or those who do not stay committed to academics are also the ones who contribute to the list of Delinquents.¹¹ This can be further understood with Sutherland's differential Association theory. The concept of Differential Association was developed by **Edwin Sutherland** in the vast field of criminology states the influential impact of people on children due to their relationships and attitude imbibed by children from those whom they mingle with. Being an interpersonal approach the most common way through which few techniques are learnt by criminals with an effort to make this absolutely normal, is the basis of this theory.¹² More than tracing the reasons as to why certain individuals become criminals the theory reflects the prevalent process of becoming a criminal. When the balance of definitions for law-abiding factors becomes less than law-breaking factors, a chance to learn more definitions conducive to criminality is seen to be a more viable method of Investigation of Juvenile crimes than others.¹³ Introduced by Sutherland in the year 1939 it focuses on the process of learning and the content that is learnt resulting in criminal behavior. Ranging from learning criminal behavior to interaction with persons with intimate social groups, in case of complex crimes -techniques to swiftly achieve results are learnt, rationalizations, and attitudes for the commission of crimes for acting in favor of being a criminal that results in frustration and formation of reaction are a few examples worth quoting as common characteristics

⁹ Ahuja, Ram: *Criminology*; 2000 Pg.102

¹⁰ Rolf, Loeber and Farrington, David (Eds): *Serious and Violent Juvenile Offenders*;1998

¹¹ Bajpai, Asha: *Child Rights in India: Law, Policy and Practice*; Second Edition 2006, p.280

¹² Lainer, M.M. and Henry, S: *Essential Criminology*; Second Edition, 2004

¹³ Vold. G.B. and Bernard, T.J. : *Theoretical Criminology*; Third Edition, 1986

of Juvenile delinquents.¹⁴ Logical proofs of a person becoming delinquent due to excess definitions favorable than unfavorable to violation of the law are plentiful.

Similar to the mechanism of any other learning, the process of learning criminal behavior in association with criminals and anti-criminal patterns involves frequency, priority, and intensity of its occurrence. Often, a few become vulnerable to the commission of certain criminal acts for want of needs which cannot be an explanation of alibi for the same, since non-criminal behavior is also another way of achieving these wants and needs.¹⁵ This brings us to a conclusive idea that behavior that is learnt includes both dexterities required to commit those acts and the non-conformist attitude necessary to commit criminal activity.¹⁶ This theory firmly propounds that vulnerability may be the cause and behavior of criminal nature maybe in further ends of those needs but needs may not necessarily describe the crime and cannot qualify as an excuse. The distinction that criminals are different from law-abiding citizens was rejected by Sutherland and his associate Cressey. Normalizing the learning of techniques of commission of crime they depicted how easy it is to learn the same as any other behavior. Hence differential Association theory does not try to underscore how different these criminals are from the law-abiding citizens but the fact that they have got absorbed in the pro-criminal definitions and gang culture is the crux of the matter. General observation has been that the emerging delinquents try to mix up more with each other or people of similar nature for greater relatability factor than the gang itself, being the primary causal factor of turning new leaves in the venture of criminal activities.¹⁷ This can be analyzed with Cohen's delinquent subculture theory. The working-class boys were targeted and analysis of delinquent subculture therein was studied. Due to rising concern about delinquency among juveniles in 1950s, this study attempted to check how gangs substituted normative values of the society with that of their own subculture. They tend to join gangs since it gives them a status and distinct self-esteem which would be unavailable otherwise due to the value practiced by the middle class having an upper hand. They perceived it as a solution to the problem of adjustment encountered by them.¹⁸ The study revolves around the cultural values of the middle class, non-utilitarian delinquency,

¹⁴ Sutherland, E.H.: *White Collar Crime*; 1949

¹⁵ Scarpitti, F.R., Nielsen, A.L., Miller, J.M.: 'A sociological theory of criminal behaviour', *Crime and criminals contemporary and classic readings in chronology*, 2009 Second Edition page 211

¹⁶ Sutherland, E.H.: *Principles of Criminology*; 1947

¹⁷ Haynie, D.L. and Osgod, W.: 'Reconsidering Peers and Delinquency: How do Peers Matter?' *Social Forces*, December 2005, Vol. 84, No.2, pp. 1109-1131

¹⁸ Cohen, Albert K.: 'Delinquent Boys'; *Encyclopedia of Criminology Theory*, 2010, p.3

strain, self-esteem etc. Two ideologies were given by him. One was inclusive of a set of demography having no parallel between social realities and societal goals leading to them facing any qualities that creates frustration called a status frustration level. This forms the basis of reaction which is the second level. The stage where the replacement of values of the society happens with alternate ones like theft being replaced by earning money through sincere means leads to accepting their exclusion from the society. However, now since it is a shared perspective of a gang it is more collective than individualistic. Juveniles in conflict with the law are increasing in number. They are absolved of the liabilities of the crime due to the very fact that they are juveniles. This results in more gangs employing juveniles, resulting in more unruly behavior that is totally unacceptable in nature. There is no divide when it comes to trends of crime between rural and urban areas. Peer pressure and the increased need of freedom from parents are acting as trendsetters for the worse.¹⁹ Statistically 6280% of adolescents engage in Juvenile offenses with the share of Juvenile crimes being 1.2% in 2013 and 2014. The highest of the cases against juveniles was reported under 20% of theft and 4.7% of crimes involving outraging the modesty of women. There are numerous special and local laws that have increased by 21.8% in 2014 as against 2013. Profiles of apprehended juveniles of the ratio of girls to boys under the offenses of the Indian penal code have been early 3.97 during 2014 with a substantial number of them being in the age group of 16 to 18 years. Out of the total juveniles apprehended 10,530 of them constituted to be illiterate, 15,004 had education up to primary level, 3.4% of the population of children were homeless and contributed significantly to the commission of the crime, 55.6% belongs to poor families with an annual income of Rs.25000. Those hailing from income group of Rs.50,000 to 2 lakh were 19.5%.²⁰

3. WHY A DISTINCTION BETWEEN JUVENILE AND ADULT OFFENDING?

Before delving into the concepts of deemed majority, it becomes important to know that characteristics of Juvenile offenses are very different from offenses committed by adults. One of the major factors for this has been risk-taking and the influence of peer groups. Research has been conducted on adolescent brain development which shows Rapid changes in the area of response

¹⁹ See 'Crimes by Juveniles in India' at <https://timesofindia.indiatimes.com>. See also 'Juvenile Delinquency' at http://en.wikipedia.org/wiki/juvenile_delinquency.

²⁰ National Crime Records Bureau: *Crime in India 2014*, published in July 2015, pp. 128-134

inhibition, calibration of risk, and rewards and regulation systems of emotions. These alterations occur before a competence of decision-making ability is formed. Much before the adolescent develops the ability to control motivation and arousal which has been described as putting a cart before the horse or commencing to operate an engine without a competent driver to ride the same.²¹ The position that adolescents are invincible is not the case now since it has been indicated by research that young people understand and have the calibre to overestimate the risk that is posed to them which means they engage in offenses like sexual activities or drug abuse despite the understanding of the nature and consequences of the act.²² Deccan perceive the cognitively and emotionally by knowing the risk and rewards included in the Act. At the stage of attainment of puberty influence of peers can have a huge impact on the risk-taking behavior of the adolescent.²³ It implies that children start associating with those of similar interests as theirs, due to which they are more vulnerable to mental health issues, alcoholic addictions, and many more. Addiction to alcohol is a huge predictor of recidivism.²⁴ The grasp towards new things is high due to complex psychological and physiological changes as explained by Haign.²⁵ In addition to this, intellectual disability is more common among juveniles under the supervision of the criminal justice system. The study undertaken by Kenny, Frize, and Lennings says that among the indigenous juveniles, one factor that was very common was intellectual disability, those inflicted by this, had a higher risk of recidivism than other juveniles. The survey of '*Young People In Custody Health*' undertaken in the year 2005 in New South Wales found around 88% of young people in custody to have reported moderate to severe psychiatric disorders.²⁶ Disproportionately, not only being perpetrators but also victims of time actually the age group of 15 to 24 years of higher risk of

²¹ Steinberg, L.: Cognitive and affective development in adolescence; *Trends in Cognitive Sciences*, Vol. 9(2), 2005, pp.69-74. See also Romer, D. and Hennessy, M.: A biosocial-affect model of adolescent sensation seeking: The role of affect evaluation and peer group influence in adolescent drug use; *Prevention Science*, Vol.8,2007, pp.89-101

²² Boyer, T.: The development of risk-taking: A multi-perspective review; *Developmental Review*, Vol.26, 2006, pp.291-345. See also Steinberg, L.: Cognitive and affective development in adolescence; *Trends in Cognitive Sciences*, Vol. 9(2), 2005, pp.69-74

²³ Steinberg, L.: Cognitive and affective development in adolescence; *Trends in Cognitive Sciences*, Vol. 9(2), 2005, pp.69-74. See also Romer, D. and Hennessy, M.: A biosocial-affect model of adolescent sensation seeking: The role of affect evaluation and peer group influence in adolescent drug use; *Prevention Science*, Vol.8,2007, pp.89-101

²⁴ Cottle, C.,Lee, R. and Heilbrun, K. : The prediction of Criminal Recidivism in Juveniles: A meta-Analysis; *Criminal Justice and Behavior*; Vol.28(3), 2001, pp.367-394

²⁵ Haign, Y.: 2009. Desistance from crime: Reflection of transitional experiences of young people with a history of offending; *Journal of Youth Studies* , Vol. 12(3), 2009, pp-307-322

²⁶ Human Rights and Equal opportunity Commission (HREOC): *Indigenous young people with cognitive disabilities and Australian Juvenile Systems*: A report, 2005.

assault, and 15 to 19 years have more chance of doing robbery and being blamed for offenses committed by other juveniles.²⁷ There is no truncated version of Juveniles offenders and victims. More or less, they become the same without blurred vision according to the research undertaken by Dally.²⁸ A safer community will only be built if more juveniles become desisters than recidivists, given the incumbent status does not look so positive because of the increased number of them growing out of proportion in the. Though crimes committed by juveniles are less serious or less expensive than that of adult offenders, juveniles are in need of certain intensive interventions than offenders who are adults, for a range of reasons as will be discussed further is observed that juveniles have more complex requirements than adult offenders and were more susceptible to succumb to emotional social or physical issues around them due to their psychosocial immaturity. Those who are in detention are provided with *loco parentis* which means parents as guardians provided by the state due to which Juvenile justice supervision can be highly resource incentive.²⁹ A promising fact, however, is that juveniles may over a period of time grow out of crime when they become adults who have good contact with Juvenile Justice system. At the initial stages when juveniles are not interested fully in the system, early fostering about safety and guidance for a good lifestyle can improve the condition. In furtherance of this intention of the majority of the countries is to strive to protect them than to punish them. An example of this can be a simple offense committed by a Juvenile, say, vandalism may be ordered with a small fine coupled with an apology letter. Social and legal dictum becomes a problem to be followed which anguishes the society due to heinousness of the crime that is committed by these juveniles. Society should consider Juveniles upbringing as their own responsibility so that they are brought to a legal mainstream. That is the reason for this act to have the term ‘**care and protection**’ so that it is followed in letter in spirit while dealing with cases involving juveniles.

4. A COMPARATIVE ANALYSIS OF THE JUVENILE JUSTICE ACT 2000 AND 2015- A CLOSER LOOK AT THE EVOLUTION OF THE JUVENILE JUSTICE

²⁷ Frize, M., Kenny, D. and Lennings, C.: The relationship between intellectual disability, Indigenous status and risk of reoffending in juvenile offenders on community orders; *Journal of Intellectual Disability Research*, Vol. 52(6), 2008, pp.510-519.

²⁸ Daly, K. : Girls peer violence, and restorative justice, *Australian and New Zealand Journal of Criminology*, Vol. 41(1), 2008, pp. 109-137

²⁹ New Economics foundation: *Punishing costs: How locking up children is making Britain less safe*;2010

ACT AND LEGISLATION PRIOR TO THESE

A system that provides adequate opportunities to Juveniles to prove their innocence is the ideal system where a Juvenile aspires to become a normal citizen. It is believed that a child in conflict with the law should be treated like any other citizen of the country according to the Latin maxim '*parents patriae*', since this society strives to work for the welfare of mankind.³⁰ The state as a guardian has every authority to guard and protect those who demonstrate and are in need of such care and protection.³¹ This is with an assumption that children are *doli incapax* that is, they are incapable of committing any offense. Even the IPC provides for a provision that No act is an offense that is committed by a child who is below 7 years of age.³² This is due to the fact that children are incapable of forming an intent which is an essential prerequisite for constituting a crime. This calls for the formation of the special procedure for trial and punishment to restore the situations of social maladjustments.³³ According to different legislations, protection has been conferred upon Juvenile offenders which include the following:

1) **The Apprentices act 1850:** covers children in the age group of 10 to 18 years which was one of the first legislations to provide for vocational training to children. The lacunae was the absence of provisions where it was binding on the magistrates to act as a guardian when it comes to destitutes. The act could make it necessary for the child to learn trade, employment, or craft.

2) **The Reformatory schools act 1897:** This was one of the maiden legislations dealing with Juvenile crimes issued at a Pan-India level which provided for children below 15 years if found guilty of an offense may at the discretion of the code be detained from 3-7 years (therefrom, emerged the concept of deemed majority) in a reformatory school. This is mainly enforced in areas where there is an absence of any other legislation and is the beginning of rehabilitative techniques for Juvenile offenders.

³⁰ Singh, Surendra and Chauhan, Balraj : Juvenile Justice in India, published in the book '*Children in India*', edited by Bhatia S.C., 1990, p.92.

³¹ Singh, Surendra and Chauhan, Balraj : Juvenile Justice in India, published in the book '*Children in India*', edited by Bhatia S.C., 1990, p.92.

³² Section 82 of India Penal Code, 1860.

³³ Singh, Surendra and Chauhan, Balraj : Juvenile Justice in India, published in the book '*Children in India*', edited by Bhatia S.C., 1990, p.93.

3) **The Indian Jails Committee Report:** Provisions relating to separate trials and treatment of Juvenile offenders were introduced in this report. The committee focused on commitment to clarifying if the conviction is contrary to public policy or made illegal in England. This was complementary by different states and acting acts for children in Madras, Bombay, and Bengal in 1920, 1924, and 1922 respectively. Though it became subject to a thorough amendment post-independence it gave rise to the Indian Jails Committee report that paved the way for a separate Juvenile system in India.

4) **Vagrancy Act, 1943:** This provided for Care training of children below 14 years of age who lived on begging and developed habits of paying frequent visits to prostitutes. Another important piece of legislation was the Probation of Offenders Act, of 1958 which was enacted to prevent the conversion of offenders to undergo imprisonment in jail and prevent their Association with hardened criminals. It also provides for cases where offenders satisfy the period of probation and further that they should not be subject to disqualification attached to a conviction. Similarly, The Children Act of 1960 was an act to establish child welfare boards and Juvenile courts in the country to handle destitute and delinquent children to facilitate the maintenance of institutional discipline.

The Juvenile Justice Act 2000, was enacted to consolidate and make beneficial amendments to the law concerning children in conflict with the law reiterating that such children need care and protection. It is important, therefore, to adopt a child-friendly approach to take proper cognizance of the matter and focus on the rehabilitation of children. It was in the year 1992 that the Indian government felt a need to enact a specific law to combat the problems of Juvenile crimes. The world gradually saw more and more juveniles accustomed to crimes heinous in nature like murder, outraging the modesty of women, rape, etc. This led to the introduction of a new law in the year 2015. This will be further discussed to check the comparison between the previous and the current law and the efficiency of the latter to curb the offenses that are committed by juveniles in India. The applicability of the act of 2000 could be seen in the case of *Jameel vs. State of Maharashtra*.³⁴ This case revolved around unnatural intercourse having been committed in the year 1989 without denying that the appellant had completed 16 years of age. However back then Juvenile Justice Act,

³⁴ Appeal (crl.) 173 of 2006

of 2000 was applicable. The act of 1986 helped in reassuring that the boy had not attained the age of 16 years and the girl had not attained the age of 18 years. This was also envisioned with the fact that the accused had completed 16 years of age and the Juvenile Justice Act 2000 was not categorically applicable. It was held in the case of *Raj Singh vs. State of Haryana* that legislation dealing with juveniles shall reign the supreme court irrespective of the nature of the offense committed.³⁵ Juveniles in conflict with the law who faced pendency of inquiry were sent to observation homes where they found temporary reception with rehabilitation where their physical and mental health was taken care of. The process ordained complete prohibition of lodging a juvenile in police lock-up or jail upon receiving a report under Sec-32 which was previously possible by any police officer of the Juvenile police unit to send a child to a children's home. The inquiry shall be completed before the expiration of 4 months from the date of receipt of the order, the submission of the report of the inquiry of which may be determined by the committee from time to time. The Act provided for the state government to establish and maintain voluntary organizations for children, especially those who are ostensible destitute for imparting education training and rehabilitation. The most important of all is the Juvenile justice bill of 2014 which classified offenses of certain nature as very serious where due consideration was taken into account of the fact of the seriousness of crimes committed by juveniles belonging to the age group of 16 to 18 y recognizing rights of victims as equally important as that of juveniles. This was when idea of deemed majority framework started growing. The bill proposed that when a crime of heinous nature is committed by a person from the age group of 16 to 18 years it will be examined to check if it was committed as a child or as an adult. This will be done by a board presided over by psychological and social experts according to the assessment of which trial of the juveniles will take place as two-stage-either as adults or as juveniles. According to the child development ministry, there is a two-stage trial that draws at park rights of the child and consciousness to deter crimes committed by a child. Further, protection is provided to juveniles from disqualification when Juvenile is tried and convicted under the adult system. The stupendous contribution of this act has been the procedure for adoption that has largely become streamlined providing for **Child Adoption resource authority (CARA)** with proper registration of each one of the parents who proposes a will to adopt. This bill was then referred to the parliamentary standing committee which was followed by recommendations to support the bill. The undertaking of making requisite

³⁵ Raj Singh vs. State of Haryana, etc on 23 April, 2015 <<https://indiankanoon.org>>

amendments was then taken up by the Ministry of Women and child development. The major alterations through the amendment include the removal of Clause 7 which talks about trials of individuals above 21 years of each other charged with the commission of a serious crime to also include persons in the age group of 16 to 18 years. To complement this, the period of preliminary inquiry was enhanced by the Juvenile justice board with reconsideration so that the children could be surrendered to their parents and guardians. This was made so strong, implementation wise that the authority to monitor was given to **National Commission For the Protection Of Child Rights**. Questions sprung up by saying that, introducing the concept of deemed majority has made punishment theory more retributive than reformative since it suggests that children found with Commission Of Crime punishable with the term for 7 or more years should be tried as adults but in children's Court, confirm a responsibility on the court to send the child to a place of safety until the attainment of 21 years. In the case of *Pratap Singh vs. state of Jharkhand*, the court underscored rule 4 of the United Nations standard medium rules for the administration of justice saying that while holding the Juvenile guilty due importance has to be attached to the psychological and moral components associated.³⁶ Juveniles committing a crime punishable with imprisonment for more years should be adjudged on the basis of mental or psychological components. Whether the nature and consequences of the act were well understood prior to or at the time of the commission of a crime is poignant. The Glitch here is, it is improper, or in fact against the law to subject a person to a punishment greater than one that is enumerated by the law of land. Under the Juvenile justice act when a person completes the age of 21 years and has not completed his sentence will still be behind for having committed an offense at the time when he was a minor. Critics call it to be a serious infringement of Art 20(1) of the Indian Constitution. There is an active example of the same by Henry David Thoreau '*any fool will make a rule and any fool will mind it.*' Law is a person's creation to be directed towards pulling the strings of many men hence, it cannot be considered as infallible. Law has become susceptible to crevices created by the Imperfection of legislation.

In short with the coming of the new Juvenile justice law passed by the Rajya Sabha post the Delhi gang rape in 2012 major changes were brought in which were absent in the law of 2000. Trying juveniles from 16 to 18 years who have committed heinous offenses as adults, examining whether

³⁶ Appeal (crl.)210 of 2005

the offense was committed as a child or an adult by the Juvenile justice board, tracing the mental and psychological factors by the installation of a Juvenile justice board in every district, the continuation of the legacy of providing vocational training to juveniles from the age of 10 to 18 years (introduced in the year 1850 itself) and provision of trial for juveniles age 16 to 18 years for crimes of Extreme Nature under the law governing adults was passed by the house of the people.³⁷ In *Salil Bali vs. Union of India*, it was unravelled for the first time to reduce the age of juveniles from 18 to 16 years paving the way to try individuals who have committed heinous offenses to be equivalent to that of an adult.³⁸ Do the court still does not consider this to be compatible with the provisions of the Indian Constitution it vindicates its stand by stating examples of the **Rules of Beijing and guidelines of Riyadh** that attach importance to child rights.³⁹ It was in this case of *Mukesh and others versus State of Delhi* known as the Delhi rape case where one of them was a minor, who was granted security in spite of the brutality of the act committed by him leading to his trial as a minor and leading to questions of his punishment being less harsh.⁴⁰ Many call the Juvenile justice bill of 2015 as being driven by emotions than facts whereas a few others considered it to be an aspect capable of influencing deterrence quality in this era where offenses like 17 year old stabbing a 33-year-old due to a feud regarding open defecation, is to be seen in the newspaper. This offense was reported when a girl of 15 years killed her mother with a karate belt and conspired to make it look like a suicide creating questions as to how can a 15-year-old strangle her own mother to death. It was hence decided that it certainly could not be an innocent mind to concoct these things to happen and thereby conspire to happen, hence should be punished. Due to these reasons, changes that were incorporated in 2015 were justified.

5. REHABILITATION AND SOCIAL INTEGRATION- THE CURRENT STATUS

The provisions that deal with rehabilitation and social reintegration are Section 40 and Section 55 respectively:

1) Children's homes, and adoption agencies should have their prime target as reclamation and

³⁷ What changes with the Juvenile Law? *India Today*, Dec 23, 2015.

³⁸ *Salil Bali vs. Union Of India & Anr* on 17 July, 2013 <<https://indiankanoon.org>>

³⁹ Anushka Paliwal, 'Juvenile Justice & it's wake' 15 Aug 2021

⁴⁰ *Mukesh & Anr vs State of NCT Delhi & Ors* on 5 May, 2017 <<https://indiankanoon.org>>

social integration of youngsters for which they should strive to make strides that are viewed essential for social reintegration and rehabilitation where a child is under their insurance or condition;

2) Well equipped with forces, the committee shall be proactive to re-establish any youngster who needs care and protection subsequently deciding the reasonableness of the appropriate authority to deal with the individual. For all intents and purposes, restoration and safety of a child shall mean restoration to signify reclamation to foster and adopt being in the status of parents or guardians of the individual. This is in consonance with the right to be reformed by restorative justice then retributive or punitive one thereby giving an opportunity for juveniles to move on to their normal lifestyle. Section 27 of the code of criminal procedure also clearly mentioned that the law is executed for the treatment rehabilitation and training of youthful offenders in the country Juvenile justice rules 2016 says that it may be a leeway for the youth to get away from the punishment through training, rehabilitation and treatment, reinstating that the form of punishment should be reformatory than punitive so that conscience remains unaffected and Social Justice is promoted and its best.

The case of *Narottam Singh vs. State of Punjab*, lay down the jurisdiction in the case of juveniles.⁴¹ Cases where punishment is not death penalty or imprisonment for life shall be taken cognizance of and shall be tried in the chief judicial magistrate by any court empowered under the **Children's Act of 1960** or under any law for the time in force providing for treatment, rehabilitation, and training of youthful offenders. In case addicts of alcohol, and drugs matter shall be referred to an integrated rehabilitation Centre with efforts made at every instance to provide assistance and practical vocational training during the process of rehabilitation. Similarly, in the case of *LK Pandey vs. Association of India*, it was held by the apex court that a child has a right to love and affection. It is important to look for a guardian within the country to look after their welfare and security.⁴² Post guardians have been scouted for, a marriage certificate will be asked for with the income records of the individuals who are willing to adopt. Interlocutory guidelines for the benefit of the Government of India were framed with the entrenchment of the Central Adoption Resources Agency which was recommended to be established back in the year 1989.

⁴¹ AIR 1978 SC 1542

⁴² 1987 AIR 232, 1987 SCR (1) 383

The state of minimum age for Juveniles at which he can be liable for an offense in the USA, UK, France, South Africa, and Germany ranges from 6-19 yrs. England, Wales, and Northern Ireland have 13yrs to 17yrs years of age bracket, and 16 years in Scotland. In Canada, the age at which a Juvenile will be treated as an adult is 14 years. Offenses under which they can be tried as adults include sexual abuse, rape, and endangering life and property. Age being an important factor is still intercepted with loopholes in executing plans and its misuse of essential laws. The juveniles are often considered irrelevant requiring no administrative setup at all to be taken care of, in addition to there being no means to gauge the functioning of child welfare committees other than simple manual monitoring. Abandoned children are also facing a great problem of financial property to aid their education or sea employment that is leading to issues of inclining towards entering untoward parts.

6. FEW INTERNATIONAL LEGISLATIONS LEARNING IMPLEMENTATION AND BEYOND

1) **The Vienna Guidelines-** Synonymously called the United Nations resolution on the administration of Juvenile justice, it receives information from governments as to how Juvenile justice is administered in their countries, and the initiative was undertaken by them to draw up National programs for the Welfare of juveniles providing comprehensive list for juveniles adopted by UNESCO in the year 1997.⁴³ In order to enhance Global cooperation in the field of Juvenile Justice and numerating the following becomes essential:

1)Welcome in guidelines for action on children in the criminal justice system and actions to promote the application and implementation of international standards providing for member states to use technical assistance provided to United Nation educational programs in further and its trending infrastructure in the field of Juvenile justice to the enforce convention on the rights relating to children;

2) Invite the crime prevention and Justice division of the secretariat to also call on member states to contribute financial and other resources to assist the use of guidelines. In order to strengthen the guidelines of Juvenile Justice Secretary-General is conferred with the responsibility to make

⁴³ www.juvenilejusticepanel.org/overview.html

essential arrangements for impetus.⁴⁴ This may include the prevention of Juvenile delinquency, disseminating information, the effective perusal of norms, and regulations with their application;

3) Encourages the establishment of a coordination panel on technical advisor assistance in Juvenile justice.⁴⁵

Moreover, it checks on the availability of allocation of budget or extra-budgetary allocation and recruits interested governments having an extra-budgetary allocation to offer assistance through short and long-term projects. Encourages member countries to undertake projects and accordance with Article 44 of the convention. The convention ordains the secretary general to report the commission of the crime to initiate and present a resolution on a biennial basis.

7. GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

1) Guidelines for action on children in the criminal justice system were developed at an expert group meeting that was convened at Vienna post-Economic and Social Council resolution with the support of the Government of Austria. The views that were expressed and submitted by the governments were taken into account;

2) The experts were 29 in number and belong to 11 states in total, designated as representatives of the Centre for Human Rights as well as on-lookers of non-governmental organizations. The guidelines for action are addressed to Secretary General regarding the utilization of minimum rules for the administration of Juvenile justice which is also synonymously called the Beijing rules, United Nations rules for the protection of juveniles deprived of Liberty, which will hereinafter be referred to as standards of norms and Juvenile justice.

8. THE UNITED NATIONS 10 POINT PLAN FOR JUVENILE JUSTICE

Marked as a token of contribution to the **Committee of Rights of Child** at the panel discussion on **State Violence against Children 2006**, this plan focuses on alleviating violence within several

⁴⁴ www.un.org/documents/ecosoc/res/1997/res1997_30.htm.

⁴⁵ Dr.S.K. Chatterjee, 'Offences Against Children And Juvenile Offence' pp.550-551.

Juvenile justice systems of the world.⁴⁶ It is considered to be the foundation for standard minimum rules for the administration of Juvenile justice. **The Penal Reform International** strongly believes that Juvenile offenses should be kept and dealt with as much as possible outside the criminal justice system. For necessary Care and Reform, proper steps should be taken for the protection of children from violence and abuse. The 10-point plan is depicted below:

1) **Arrest And Interrogation**- arrest should be regarded as the last resort and detention of children in the custody of police if any should not exceed the time frame of 48 hours. Whenever a Bail request is put forth due consideration must be given to it even if it is without a surety. Separation from other convicted persons and keeping the child in child-friendly rooms is always a better option. Interrogation should take place when guardians are parents are around with a General Awareness of the child that he is entitled to those rights is indispensable;

2) **Age Of Criminal Responsibility** - efforts should be made to ascertain a minimum age gap that is as high as possible. Rehabilitation services should be top-notch for children and conflict with the law and children falling below the age bracket should not go through the conventional criminal justice system;

3) **Diversión**- when a confession comes in from a child who has committed an offense, alternatives like caveats should be issued that are coupled with enough arrangements to rectify and mend the untold actions of the child. It is the responsibility of the prosecuting authorities to develop guidelines for incentivizing diversion in lower courts;

4) **Pre-trial detention**- children in conflict with the law should not be kicking their heels awaiting trial and efforts should be made such that they are in their own homes albeit awaiting trial. Other than exceptional circumstances pre-trial detention should be avoided and children should not be exposed to prison establishments. The cut-off period should be fixed, failing to meet, it will lead to the release of the child in conflict with the law on bail. It is imperative to monitor the conditions of children who are pre-trial prisoners;

⁴⁶ www.penalreform.org.

5) **Alternative Sentences**- Emphasis should be on values that emphasize restorative Justice by fostering residential placements with adequate facilities wherever needed;

6) **Youth Courts** - where formal proceedings are not undertaken and holding the same in camera that is private is heralded. Extensive training should be given to judges as far as the application of sanctions is concerned. Legal representation for children should be encouraged in cases where a custodial sentence is a possibility and legal aid should be arranged accordingly.

7) **Custodial Sentence**- Small open facilities with minimal security measures should be developed for kids and custodial confinements should be avoided as much as possible. A balance should be established between relations of children in custody with seeking Atonement of the since committed or accomplishment of objectives of repentance of family and guardians;

8) **Detention Facilities**- units where children are held, and adults should not be deployed as guards. During the shortest period of confinement exposure to constructive like sports education or cultural evening should be maximum. Bullying policy must be very strict so that conflict with other detainees is kept at bay. Seriousness should be attached to serious offenders being separated from lesser serious ones.

9) **Inspection** - scrutiny must be independent and independent elements should be encouraged at the time of lodging the complaint. The Right to privacy, the right to be held in open institutions, and making complaints for safety within the premises, should be ensured with adequate arrangements to uphold the right to health and rehabilitative programs.

10) **Link With The Family**- Efforts should be made as far as possible to encourage the betterment of relations of children with their parents. This is with the objective to push the child in a positive way towards reintegration into normal life and to move freely in society. Their company must be taken care of since getting back to the older pavilion is quite easy. They should move back into society in such a way that they become assets, contributing significantly to societal development.⁴⁷

⁴⁷ <www.penalreform.org>

9. RESEARCH METHODOLOGY

The author would like to give special mention to the book titled '**Offenses against Children and Juvenile Offenses**' penned by **Dr.SK Chatterjee** whose rigorous and comprehensive statistics compiled in the most organized way, aided in writing the paper. Special reports on India Today helped in the descriptive analysis of the paper. Data from National Crime Records Bureau and official websites concerning Juvenile Justice System in India were a driving force and aided in doing a comparative analysis of crimes committed before and after the amendments to the Juvenile Justice Act. Substantive provisions were examined by the author leading to literary observational research that helped arrive at a thorough conclusive stand concerning the general guidelines and major takeaways making the system more conducive for juveniles. Finally, National and international provisions were also understood by the author for chalking out ways of improvement in the field of the Juvenile Justice System.

10. CONCLUSION

Both at National and international levels relentless efforts have been made for the Juvenile justice administration to be more inclined towards the rights of juveniles given the different psychological setup and mental state of these youngsters. However, these provisions are not at all enough for eradication of Juvenile delinquency, just being in letter as the United Nations guidelines and not being incorporated in spirit during implementation. Not stopping at the installation of infrastructure to be achieved at par with or as against competition with international standards, but thorough monitoring of the fact that efficiency does not frail should be the ideal goal.⁴⁸ This is only possible when government heads, and Non-governmental organizations join hands together to work towards the common goal which is the eradication of delinquency through introspection with systematic inspection, and discipline of purpose for a better tomorrow.⁴⁹

⁴⁸ See Art 40(4) of UNCRC

⁴⁹ Ahuja, Ram: Social problems in India; Second Edition (Reprinted), 2002, p. 365.