DELINEATING JUVENILE DELINQUENCY: AMBIGUOUS CATEGORIZATION OF OFFENCES

Mayank Dwivedi, Lloyd Law College

ABSTRACT

A child being the most sensitive and vulnerable part of the society needs utmost care and affection in social as well as personal aspects. Juvenile being of immature age has slighter exposure to the real world and this is the reason that they get influenced by external factors for their behavioural changes and character building. Legislatures hence developed Juvenile Justice System for delinquent juveniles. This system evolved and adopted worldly changes with time and eras. From year 1986 to current times, Indian laws and legal system worked and enhanced their approach to juvenile delinquency. According to International law, a 'Child' or 'Juvenile' is that person who has not yet completed the age of eighteen years. Indian laws decided to call a person 'Juvenile', if it is a boy with less than sixteen years of age and a girl with below eighteen years of age. Taking into consideration various amendments regarding lowering down the age for juvenile in case of heinous offences clears the intention of judiciary and legislature of intolerance against sinful and higher degree of criminal offences in order to protect the society from any evil harm. And in such heinous cases, juveniles shall also be tried as adult. But in order to execute such actions, legislatures needed to clearly define the boundaries of categories of various offences, which legislature failed and resulted in creating a new muddle and chaos. Ambiguous categorization of offences into petty, serious and heinous offences were the sole reason behind this confusion against which, with intention to clear the ambiguity, judiciary in various cases examined the legislative intent and settled and clarified the specific definition for each category of offence in Juvenile Justice (Care and Protection of Children) Act, 2015.

INTRODUCTION:

A Child is the unit of a society in which he takes birth, grows, lives and dies. When he gains age, he is influenced by the environment and social structure around him. "Juvenile" or "Child" is a person who is young and not yet old enough to be regarded as an adult. Going by the definition from International Law, a 'Child' means every human being below eighteen years of age[1]. This is an invariably agreed definition of a child which was settled in the United Nations Convention on the Rights of the Child (UNCRC). Going by the Indian legal context, Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 states "juvenile" or "child" as a person who has not completed eighteen years of age.[2] The legal framework which defines justice for juveniles in the constitution of India supports and gives special approaches towards prevention, deterrence, avoidance and treatment of juvenile delinquency is the Juvenile Justice.[3]

Juvenile justice system in India is largely governed by the constitutional mandate given under Article 15 that guarantees special attention to children through necessary and special laws and policies that safeguard their rights.[4] The policy for juvenile justice is based on the constitutional guarantees of right to equality, protection of life and personal liberty and the right against exploitation (enshrined in Articles 14, 15, 16, 21, 23 and 24). The Indian Constitution stresses on the duty of the State to protect children from exploitation, and to promote their welfare.

DEVELOPMENT OF JUVENILE JUSTICE SYSTEM:

The United Nations General Assembly accepted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice on 29th November, 1985. These rules are also mentioned to as the Beijing Rules. Clause 4.1 of the rules states as follows:

> "In the legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too

[1] United Convention on the Rights of Child, 1989, Article 1.
[2] Juvenile Justice (Care & Protection of Children) Act, 2000, Section 2(k).
[3] Dr. Ratnaprava Barik and Dr. Jayanta Kumar Dash, 2018. "Juvenile Justice in India: A Historical Outline", International Journal of Current Research, 10, (09), 73445-73449.
[4] Bajpai, G.S. (2006). „Making it Work: Juvenile Justice in India', Paper presented at the National Seminar on Care & Protection of Disadvantaged Children in Urban India at RCUS, 17-18 Nov.2006, Lucknow, available at http://www.forensic.to/webhome/drgsbajpai/lcwseminar.pdf, accessed 18 July 2012, pp. 1

> low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." [5]

As is evident, the rules did not define any specific age and left it upon each member country to frame their domestic laws, keeping in view the various relevant doctrines. India adopted the Beijing Rules and then enacted the Juvenile Justice Act, 1986 (hereinafter 'the Act'). In the Act, word 'juvenile' was demarcated under Section 2(h) as a boy who has not reached the age of 16 years or a girl who has not reached the age of 18 years.[6] This Act made such a juvenile entitled to various protections from the State which were consistent irrespective of the nature of the crime committed. Satisfying the need of further development, parliament comes with the enactment of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the Act of 2000) which repealed the Juvenile Justice Act, 1986. Under the Act of 2000 also, a juvenile was defined as person who has not completed the age of eighteen years.

CLASSIFICATION OF OFFENCES:

The infamous case of Delhi gang rape (commonly known as 'Nirbhaya case') triggered significant changes in Indian legal system. Rajya Sabha passed Juvenile Justice Bill, 2014 after strenuous protests by innumerable people against the relaxation in trial of juvenile convict in Nirbhaya Case. On 15th January 2016, Juvenile Justice Act, 2000 got substituted with Juvenile Justice Act, 2015. This distributed the crimes into three major categories which are depicted as petty offences, serious offences and heinous offences. 'Petty offences' have been defined under Section 2(45) stating offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to three years[7]. 'Serious offences' were defined as those offences for which punishment under any law is imprisonment for a term between three to seven years[8]. 'Heinous offences' have been defined to mean offences for which the minimum punishment under any law is imprisonment for a term of seven years or more[9]. One of the major changes was regarding those juveniles who aged between sixteen to eighteen years. The inquiry for serious offences has mandated to be disposed of by going through the procedure for trial as in summons cases under the Code of Criminal Procedure, 1973.

[5] "The Beijing Rules", adopted by General Assembly resolution 40/33 of 29 November 1985.
[6] Juvenile Justice (Care & Protection of Children) Act, 1986, Section 2(h).
[7] Juvenile Justice (Care & Protection of Children) Act, 2015, Section 2(45).
[8] Juvenile Justice (Care & Protection of Children) Act, 2015, Section 2(54).
[9] Juvenile Justice (Care & Protection of Children) Act, 2015, Section 2(33).

As far as heinous offences are concerned, if the child is below the age of sixteen years then the procedure prescribed for serious offences is to be followed, but if the child is above the sixteen years of age then the assessment in accordance with Section 15 has to be made, which reads that: "the Board shall conduct a preliminary assessment with respect to his mental and physical capacity for the commission of such offence, ability to comprehend the magnitudes of the offence and the circumstances in which he allegedly committed the offence"[10], and may pass an order in accordance with the provisions of sub-section (3) of section 18 in which he can be ordered to be tried as an adult. The Board is directed to take the assistance of experienced psychologists or psycho-social workers or other experts for the reason of fair and strong assessment.[11]

In the provided provision, it has been expounded that preliminary assessment is not a trial, but it is to evaluate the capability of such a child to commit and comprehend the consequences of the alleged offence(s). On satisfaction, that the matter should be disposed of by the Board, the given procedure for trial as in summons case under the Code of Criminal Procedure, 1973 (2 of 1974) is to be followed provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101.

It was clear that any of the previous legislations failed to settle a clear boundary between the categories of heinous offences and serious offences and this stresses more the need of alteration in the law,

AMBIGUOUS DEFINITION IN THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

A precise reading of definitions of the offences (petty, serious and heinous) delivers that there is a fourth category of offences that are not demarcated in the Act of 2015. The fourth category of offences are those where the minimum sentence is less than seven years, or when no minimum sentence is provided by the law but the maximum sentence is for a term of more than seven years, for example, abetment to suicide[12], attempt to murder[13], collecting arms to wage a war[14], etc. The Act carries this lacuna in terms of textual reading and logical understanding

[10] Juvenile Justice (Care & Protection of Children) Act, 2015, Section 15.
[11] Juvenile Justice (Care & Protection of Children) Act, 2015, Section 18(3).
[12] The Indian Penal Code, 1860 (Act 45 of 1860), s.306.
[13] The Indian Penal Code, 1860 (Act 45 of 1860), s.307.
[14] The Indian Penal Code, 1860 (Act 45 of 1860), s.122.

and thus it was necessary to present the actual and lucid scheme of things, to avoid errors and anomaly in the judicial orders passed by the High Courts and the District Courts in the juvenile matters, whereby the charge is tagged "heinous". As if the lacuna continues to be unsettled then it could shake the trust of people on justice system.

JUDICIAL CASE ANALYSIS:

In the recent case of **Shilpa Mittal Vs State of NCT of New Delhi**[15], the muddle between the limits of serious offences and heinous offences were elucidated by the Supreme Court of India.

Going by the case facts, a juvenile with age more than sixteen years but less than eighteen years, was alleged to be committed an offence punishable under Section 304 of Indian Penal Code, 1860 which gives a maximum punishment of imprisonment up to ten years and a fine with no minimum sentence prescribed.

The Juvenile Justice Board decided and held the juvenile be tried as an adult for the commission of heinous offence. The decision was then appealed in the Delhi High Court which it overturned and held that juvenile is not liable under 'heinous offence' since no minimum sentence was given for the offence alleged and hence it do not fall within the ambit of Section 2(33) of the Juvenile Justice Act. Then against the decision of the Delhi High Court, the appellant approached the Hon'ble Supreme Court of India to decide this present matter.

The issue in the Hon'ble Supreme Court was regarding the scope of 'Heinous Offences' under section 2(33) of the Juvenile Justice Act, 2015 that whether this section extends to those offences prescribing either no minimum punishment of imprisonment of less than seven years but states clearly the maximum punishment of more than seven years.

The rule applied in this case were section 2(33), 14, 15 and 19 of Juvenile Justice (Care and Protection of Children) Act, 2015.

ARGUMENTS SUBMITTED BY COUNSELS:

In this present case, appellant counsel contended about the legislature's failure in recognizing the "fourth category" of offences in the ambit of 'Heinous offences' as raised in the issue. Thus the appellant counsel emphasized a wide scheme of such offences falling under this "fourth

[15] (2020) 2 SCC 787

category" that has yet to be explicitly acknowledged under Juvenile Justice Act, 2015. The counsel further contended that if the word "minimum" is removed from the definition of 'heinous offences' given under section 2(33) through the effect of the 'doctrine of surplusage' (non-necessary) then all the offences except for the petty and serious offences would naturally fall under the category of 'heinous offences'.

To these submitted contentions, the respondent counsel contended before the Hon'ble Supreme Court by reminding the Court's constitutional limit to rewrite a law based on the sole basis of an existing lacuna in the Act. Counsel further suggested that the statute could only be corrected by the Legislature itself. Additionally, counsel also submitted that on the sole basis of leaving out cognizance of a category of offences through this Act in question, the intention of the Legislature cannot be made out.

CASES DISCUSSED BY COURT:

While deciding the above mentioned case, Hon'ble Supreme Court also discussed a few cases for the better understanding and legal view point of the present case.

In case of **Sheela Barse (II) and Ors. v. Union Of India (UOI) and Ors.**[16], the court highlighted the developmental history of Juvenile Justice Act in India and also cited the undeniable need for a Central act as a replacement of the State Act of Children's Act to provide uniformity in the subject-matter and that can be binding in entirety.

In case of **Salil Bali v. Union of India (UOI) and Anr.**[17]**,** court delivered a framework of the necessity felt for the transformation of Juvenile Justice Act 2000 after the hefty agitation rampaged across the society post Nirbhaya's case where all culprits were awarded with the death sentence except for the juvenile who was just a few months away from turning eighteen.

In **Subramanian Swamy and Ors. V. Raju Thr. Member Juvenile Justice Board and Anr.**[18] case, the court mentioned how the same court had rejected a petition that challenged the provisions of Juvenile Justice Act of 2000 by reason of the restriction on the court to change and legislate provisions as this power can only be exercised by the legislature.

[16] AIR 1986 SC 1773.
[17] AIR 2013 SC 3743.
[18] AIR 2014 SC 1649.

There were some cases of foreign courts whose precedents were discussed and highlighted in the present case.

In cases of **Grey v. Pearson**[19] and **Salmon v. Duncombe and Ors.**[20]**,** the court referred to House of Lords decision as a backing for the rejection of appellant counsel's contention to remove the term "minimum" from Section 2(33) of the Act that would have settled all the offences with the maximum or minimum imprisonment of more than seven years, naturally under the ambit of 'heinous crimes' provided under section 2(33) of the Act. Going through this, court reasserted that a statute must be interpreted as per its language and intent unless there is absurdity and inconsistency with the wordings[21] or if there is absolute intractability of language used[22], upon which the court could modify the same.

By **McMonagle v. Westminster City Council**[23] and **Vasant Padave v. Anant Mahadev Sawant**[24] cases, the court once again emphasized the power of the court to amend a statute provided only when the objective of the Legislature is clear and unambiguous and when the wordings of the statute in question contradicts the intention of the Legislature.

ANALYSIS IN LIGHT OF THE ABOVE-CITED CASES:

The purpose of the Act of 2015 is to make certain that the children coming in struggle with the law are dealt distinctly and not like adults. This call for the requirement for the trial of a child as an adult thundered through society after the unfortunate instance of **Nirbhaya's case**.

After the court rejected few petitions challenging the provisions of the Juvenile Justice Act of 2000[25], the Legislature anticipated to take account of all offences with the punishment of more than seven years under the category of 'heinous offences' through the Juvenile Justice Act of 2015. Section 2(33) of the Act was clear with the wordings that the proviso aims to do adult trial of a child if and only the minimum punishment of the offence that he/she committed was of seven years and in this case, the apex court was not keen to wish away with the word 'minimum' from the legal provision of this law by the effect of the doctrine of surplusage.

[19] (1857) 6 HLC 61.
[20] (1886) 11 AC 627.
[21] Grey v. Pearson, (1857) 6 HLC 61.
[22] Salmon v. Duncombe and Ors. (1886) 11 AC 627.
[23] (1990) 2 A.C. 716.
[24] 2019 SCC Online SC 1226.
[25] Salil Bali v. Union of India (UOI) and Anr. AIR 2013 SC 3743.

This can be clearly understood from the proclamation of Objects and Reasons in the Bill that this Act is to adjudge and dispense with the case in the best interest of the child. This objective of Legislature has been resonated well throughout the Act of 2015, except for the categorisation of offences under the appellations of petty, serious, and heinous offences.

The purpose of categorising these offences in this Act was to re-affirm the psychological understanding and physical capacity of the delinquent juvenile while committing the offence particularly of those juveniles between the ages of sixteen to eighteen to be tried as adults or which is given under Section 15 of the Juvenile Justice Act. With the assistance of the cases, **McMonagle v. Westminster City Council**[26] and **Vasant Ganpat Padave v. Anant Mahadev Sawant**[27] the court through has rightly said, by way of such a classification of offences enlightened in the statute has unquestionably cast vagueness on the Legislature's intention.

The apex court after interpreting the provisions of Section 14 which instructs and clearly direct the Inquiry Board to conduct a preliminary assessment as per Section 15 in the cases of heinous offences, and the power of the Children's Court under Section 19 enabling the choice to decide if the court finds any need for the trial of a child as an adult or not and most vitally, the proviso commanding the Courts that no child be referred to the jail before attaining the age of twenty one even in the cases where a child is found guilty of heinous offences, the court finds ambiguity on Legislature's intention. When the Appellant Counsel made an effort to steer the Court through the statements made by the Minister over his speech with regards to the substances and explanations and introduction of the Bill, the Court after a comprehensive analysis found that the Minister made reference to the offences like murder, rape, terrorism, for which the minimum punishment is more than seven years and hence by default those offences are roofed through the literal elucidation of Section 2(33) of the Act.

Despite refuting the appellant counsel's first part of contention, the Court has on the other hand agreed to the counsel's submission that the Legislature has committed a undeniable and unacceptably gross error by not taking the trouble to categorize this 'fourth category' of offences but still not become a effective reason for the court to take precedence over its power by legislating.

[26] (1990) 2 A.C. 716.
[27] 2019 SCC Online SC 1226.

The court's reasoning of its power to add or subtract the terms from a statute holds justified only if the intention of the Legislature rests unequivocal is backed by the judicial precedents and even in various other cases[28], it has been underlined that the court cannot add words to a statute or recite words which are not there in it. Even on account of a fault or an omission in the statute, the court cannot correct such defect or fill-up the omission.[29]

COMPARATIVE ANALYSIS:

In the United States of America, juveniles are tried as adults on getting to the age of fourteen years except for some states like Vermont, Indiana, and South Dakota where a child of even ten years can be tried as an adult. On the other hand, constricting down to heinous crimes, even life imprisonment can be approved to a child aged of twelve years as the maximum punishment. In usual scenario, a child of thirteen to fifteen years of age if found guilty of committing a dreadful crime, they are by default tried as adult by shifting them to adult court after putting aside the jurisdiction of juvenile courts.[30]

The Youth Justice System prevailing in the United Kingdom, as a rule puts the juvenile in Youth Court for the trial and will be tried as an adult in a Crown Court for the offences of murder, and other severe crimes. In the United Kingdom, the quantum to decide is whether the youth offender has committed a 'grave crime' that brings to action the applicability of Section 91(1) of the Powers of Criminal Courts (Sentencing) Act, 2000. Such offences include wherein the punishment is of fourteen years or more for an adult; offences of sexual assault including sexual activity with a family member who is a child or inciting a family member who is child of tender age to engage in sexual activity; and last of all any specified offences in relation to ammunition, weapons and firearms.[31]

DECISION AND TAKE OF COURT:

The bench of two judges of the apex court, comprising of J. Deepak Gupta and J. Aniruddha Bose recognised the error of the legislature in mentioning the fourth category of offences. The bench addressed the juvenile's perspective while exercising powers conferred under Article

[28] Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323.
[29] Shyam Kishori Devi v. Patna Municipal Corpn. AIR 1966 SC 1678.
[30] Patrick Griffin, Sean Addie, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, U.S. Department of Justice, (September, 2011) *available at*: https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf
[31] Section 91, Powers of Criminal Courts (Sentencing) Act 2000.

142 of the Constitution[32] and instructed that from the date when the Act of 2015 came into force, all juveniles who have committed offences falling in this fourth category shall be dealt with in the same manner as juveniles who have committed 'serious offences'. The bench also held that the legislature should take further calls in this matter.[33]

Provided that, we can easily say that any offence which does not amount to a minimum sentence of seven years cannot be denoted as a heinous offence. The apex court, in this case, talked about the sole objective of the legislature behind the law which is to provide favourable conditions to the juvenile who can be rehabilitated with relaxation in actions against him, and hence, observed that the Act does not deal with the fourth category of offences viz., offences where the maximum sentence is more than seven years imprisonment, but finds no minimum sentence or a minimum sentence of fewer than seven years as punishment is stated.

CONCLUSION:

The fundamental aspect that needs to be understood and tagged along with this discussion is that the Act of 2015 accentuates on the point that even if the juvenile has committed a heinous offence, the scheme of Section 14, 15 and 19 of the Act recommends that the Legislative intent must have been to strictly effectuate the detailed study/assessment of the juvenile physical and mental calibre. The Juvenile Justice Board have to conduct an initial assessment with regards to the mental and physical capacity of such child to commit any such offence, the ability of the juvenile to realize the repercussions of the offence and the circumstances in which the said offence was allegedly committed, before the juvenile is treated as an adult and that even if he/she commits a heinous offence, he is not spontaneously to be tried as an adult. The Board is authorized to take the help of experienced psychologists, psycho-social workers or other experts in the field for the sake of good and fair assessment regarding this. The preliminary assessment is to not to go into the merits of the case or the accusations against the child.[34]

In view of this backdrop, it is strongly recommended that the juveniles who commit heinous offences ought to be treated differently from other offenders who committed petty and serious offences, as the former have need of more rigorous treatment than the latter. Therefore, for

[32] The Constitution of India.
[33] Case analysis on Shilpa Mittal v State of NCT Delhi and Ors. (2020) available at: https://www.legalbites.in/case-analysis-on-shilpa-mittal-v-state-of-nct-delhi/
[34] Expounding Juvenile Culpability: Muddling Between Heinous and Serious Crimes, *available at*: https://criminallawstudiesnluj.wordpress.com/2020/09/11/expounding-juvenile-culpability-muddling-between-heinous-and-serious-crimes/

such minors, a model hinging with great pressure on rehabilitative ideals should be looked upon. While 2015 Act treats offenders committing heinous crimes in a different way, such degree of difference in treatment is envisaged solely within the Juvenile Justice System, without an ensuing transfer to the prisons for adult offenders. If we look deeper, similar was the view of Justice D. S. Naidu in the well-known case of **Mohamed Huzaifa Javed Ahmed … Vs State of Maharashtra[35]:**

> "Let us remind ourselves, just because the statute permits a child of 16 years and beyond can stand trial in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subject to adult punishment. It is not a default choice; a conscious, calibrated one…merely on the premise that the offence is heinous and that it lends to the societal volatility of indignation, we are bracing for juvenile recidivism. Retributive approach vis-à-vis juveniles need to be shunned unless there are exceptional circumstances, involving gross moral turpitude and irredeemable proclivity for the crime."

SUGGESTIONS AND RECOMMENDATIONS:

The issue herein is not just about better amalgamation of the 'fourth category' offences in the Juvenile Justice Act of 2015 rather it goes the outlook through this lens. The vagueness created by the Legislature could be browbeaten in future alike cases and circumstances. Failure of the legislature to classify the offences that finds their place in the middle ground of serious and heinous offences could leave the complainant in despair and despond with the justice system for enunciating a judgment that is nowhere close to what he/she had expected out of the justice system.

The court's decision for not modifying the statute with the whys and wherefores cited remains vindicated and the author of this paper cannot reckon on where this fourth category of offences needs to be arranged due to the subjectivity of the terms 'heinous' and 'serious' offences. On the other hand, the author finds that the issue raised in this case would have been evaded had there been a period postulated as the minimum punishment of imprisonment.

[35] CRIMINAL APPEAL NO. 1153 of 2018, Bombay High Court

This brings the author to the highpoint the significance of the statutory guideline for the sentencing policy as suggested by the **Malimath Committee** (Committee on Reforms of Criminal Justice System) in 2003 and as reaffirmed by the Madhava Menon Committee in 2008. For the offences in which only either maximum punishment or minimum punishment is prescribed, the improbability created therein gives away wide freedom of choice to the judges while awarding the punishments which will be exercised as per their own judgment. From this time forth, the implementation of a uniform sentencing policy could be effective to plug the gaps of the issues raised through this case and likewise.