

**PRACTICAL APPLICABILITY OF THE RECENT AMENDMENTS FOR
JUVENILES**

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ABSTRACT

The maturity which common people define is that the juvenile should be enough conscious to understand the consequences of the crimes or the incident. The law defines the maturity of the juvenile in socio-legal perspective. If a juvenile doesn't have the sense to refer a particular event as the offensive or criminal act, he will not be considered as an adult in such case.

The purpose of juvenile justice act is first to provide proper care and protection of the juvenile and then, reformation of the juveniles.

The crimes done by the juveniles in the past were neither highlighted nor proper justice to the victims was provided. The laws for the punishment of the juveniles were very light which never created the fear of law in the minds of the juveniles. But after the Nirbhaya case, many amendments were made related to juveniles. The topic in this scenario is about "The recent amendments related to juveniles".

Law is the cement of the society and an essential medium of social change. Law operates not in the vacuum but in social perspective and maintaining the reformatory justice for the juveniles, which is becoming one of the concerning issues of the day. The article highlights about the recent amendments which have been made in view of juveniles. It further focuses on whether the amendments will practically be successful in achieving its goal.

Keywords: Juveniles, offenders, reformation, criminal liability, amendments.

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Introduction

Starting with the definition of “juvenile” - a person who has not completed the eighteenth year of age² . A body at mother’s breast obviously cannot be posted with criminal liability however hard it may bite at the nipple of its mother’s breast. It is a very difficult task to mark out different ages of criminal liability or innocence. The maturity which common people defines is that the juvenile should be enough conscious to understand the consequences of the crimes or the incidents. The law defines the maturity of the juvenile in socio-legal perspective. If a juvenile doesn’t have the sense to refer a particular event as an offensive or criminal act, he will not be considered as the adult in such case. With growing population, the number of crimes is increasing rapidly. People of all age groups commit various types of offenses from petty crimes such as theft and robbery to heinous ones such as murder and rape. Not only grownups, both educated and uneducated, poor and well to do commit crimes, but also minors as old as 10 years of age commit crimes. Less education, growing exposure, less responsibility on parts of parents or guardians are few of the many factors that lead to juvenile crimes. According to the police, a review of offenses involving minors in the age group of 13 to 16 years has revealed that a lot of children were found involved in crimes such as rape, murder, house break-ins, and theft, robbery, dacoit and body offenses.

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Recent amendments made for juveniles

The Indian Cabinet recently suggested a far-reaching change in juvenile law. Juvenile Justice (Care and Protection of Children) Act, 2015 of Ministry of Women and Child Development came into force on 15th January 2016. This is an Act to consolidate and amend the law relating to children in need of care and protection, by catering to their basic needs through development, treatment, and social re-integration, by adopting a child-friendly approach. The Juvenile Justice (Care and Protection of Children) Bill passed by the Parliament allows for juveniles between the ages of 16 to 18 years to be tried in adult courts if they are found to commit any heinous crimes. The bill was passed despite reservation by the standing committee, which was overruled by the government. The bill aims to "consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by

² Section 2 (k) , the Juvenile Justice (Care and Protection of Children) Act,2000

adopting a child-friendly approach." The amendments which are made by the passing of the bill are as follows:

- 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 by imprisonment of seven years or more.
- The Juvenile Justice Committee will determine the age of the child within 30 days from the date of submission of application.
- Wherever medical opinion is required, same will be sought from a duly constituted medical board for which all government hospitals will constitute medical boards on the permanent basis.
- Where medical boards give a range of age, the age of the child on lower side will be considered in order to give benefit to the child.
- No child between 16 and 18 years of age in conflict with the law will be handcuffed or sent to jail or lock-up.
- Proper medical and legal aid will be provided to juvenile criminals and their parents and guardians will be duly informed.
- Every state government is required to set up at least one 'place of safety' for the rehabilitation of such children.
- Extensive services to be provided to such children through regular monitoring.
- The bill mandates setting up Juvenile Justice Boards and Child Welfare Committees in every district. Both must have at least one woman member each.
- The decision to try a juvenile 16 years or older as an adult will be taken by the Juvenile Justice Board, which will have a judicial magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation.
- The Child Welfare Committees will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children.
- It aims at adjudicating and disposing of cases dealing with juveniles keeping in mind "the best interest of the children and their rehabilitation."

- A new clause on fair trial is added, under which the assessment will look into the special needs of the child, under the tenet of the fair trial under a child-friendly atmosphere.
- The child will not suffer from any disqualification that arises from any conviction under the Act.
- One key provision in the Act changes in nomenclature from 'juvenile' to 'child' or 'child in conflict with law' to remove the negative connotation associated with the word 'juvenile'.
- The records of any conviction will be destroyed after the expiry period of appeal, except in the case of heinous crimes.
- There will now be proper training of special juvenile units in the police force.
- NCPDR 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.
- Several new offences against children included in the Act such as sale and procurement of children for any purpose, corporal punishment in child care institutions, use of a child by militant or adult groups, giving children intoxicating liquor or narcotic drug or psychotropic substance or tobacco products.
- The bill also deals with the adoption of children and lays down the eligibility criteria for adoptive parents. A central adoptive resource agency will frame the rules for adoption, which will be implemented by state and district level agencies.

India is a signatory to the UN Convention on the Rights of the Child which mandates that all children under the age of 18 years be treated equally. The bill was criticized for violation of the Convention.

The issue of age determination

Age consent has been a difficult to catch and ambiguous issue in juvenile justice. A number of cases have been decided by the courts in this regard. In the framework of juvenile legislation in India, a juvenile is a person who has not completed eighteen years of age³. Only children below seven to twelve years of age who are satisfactorily mature to comprehend the repercussions of their approach and children between twelve to eighteen ages of debility can be initiated under Juvenile Justice Act as children below seven years of age have been granted sweeping immunity, as mentioned ahead, by the Indian Penal Code. The serendipity is not to nourish such children as

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adults for their criminal behavior anyhow but to reform and rehabilitate them⁴. The writer assembles the issue of age determination controversial because there is no symmetry on the point. Section 49 (1) of the Juvenile Justice Act, 2000 confers the capability on competent authority to verify whether the person brought heretofore is a juvenile if he/she appears to be so. But the matter of form to verify juvenility of a person cannot be relied on. The two ways to determine the age of the accused are documentary evidence and medical evidence. In *Jaya Mala v. Home Secretary, Government of J&K*⁵ the apex court held that the age as ascertained by medical examination is not the binding benchmark of age. It is a mere opinion of the doctor and an edge of 2 years could be on as a substitute side. In another high-profile case, *Bhoop Ram v. the State of UP*⁶, the court held that in the case of conflict between documentary evidence and medical report, the documentary evidence will be considered to be correct. This leads a well known to the conclusion that generally told that it needs to endorse and convince the court that a criminal is a juvenile is documentary proof. Now the documentary proof is one of the easiest things to produce in our country whether it is to get a license one is legally not entitled to or for furnishing age proof in the court. In such a position, ultimately if we were to propel to medical analysis, which is held not forthcoming hundred percent binding proof by even medicos. By the Allahabad High Court's own admission, a doctor is not always truthful. In *Smt. Kamlesh and Anr v. State of UP*⁷, the court maintained that a professional witness is of a mind to side by the whole of a party that engages his/her services. Thus, a doctor is not infinitely truthful. Now, if age cannot be determined once and for all by using either documentary evidence or medical evidence, what is the substitute for that The apex court in *BablooPassi and Anr. v. State of Jharkhand* held that no rigid norm had been laid down by the Act for the age determination of a person and the request for help of the juvenile must be judged strictly on its own merit. The medical evidence as to the age of a person, though a very convenient guiding component, is not binding and compelled be considered along by the whole of other cogent evidence.

Practical application of the amendments: An amendment in the existing act was certainly necessary to deny complete clash on the nation. Apart from terrorists taking advantage of the lacuna in the system, serious crimes relish rapes and murders were furthermore going unpunished with the convict wearing the apparel of juvenility. The integral motive of law in any country is the smooth functioning of the country without any disarray and disruption, etc. But, the juvenile act in our country seems anticipated vagrant by this as a matter of fact basic and

⁴Adenwalla, Maharukh, Child Protection and Juvenile Justice System: for Juvenile in Conflict with Law, 13, Childline India Foundation, December 2006

⁵AIR 1982 SC 1297

⁶AIR 1989 SC 1329

⁷2002 CriLJ 3680

prime purpose of law. Giving a punishment of imprisonment for just 3 years and that exclusive of in a special home atmosphere for the heinous and grievous acts, one as of rape and murder, nowhere seems to amount the ends of the justice or the purpose for which this regulation was enacted. The writer completely agrees that an individual is matured enough at the age of 16 as to differentiate between what is right and what is wrong, and as per the writer, having knowledge of right and wrong is enough to punish a juvenile for his acts but according to the writer what is also required is the culpable mind to commit the crime. Acc. to Sridhara, a psychologist, "studies have shown that at 16 a boy/girl attains the clarity to judge between right and wrong and gains notion of his/herself". Based on that argumentation, we can corroborate 16 to be the age of majority. There is nothing wrong with reducing the age of juvenile to 16, as it will be scientifically rational and chaste too. In fact, in more or fewer countries a human is eventual to be a full-blown at the caducity of 16. In the opinion of the writer, the juvenile age must be lowered. Some(not all) juvenile offenses are unpardonable and they should be treated at par by all of the crimes committed by adults. It is unlawful to the country if the perpetrators of well known heinouscrimes are pardoned and let relaxed in the society. These views are only in the light of the Delhi gang-rape incident, but the overall rate at which this trend has multiplied in India. The problem at hand is forthwith gigantic enough to enroll seriously. Juveniles are taking advantage of The Juvenile Justice Act, which is one of the approximately abused grains of salt in the country and minors often consider it to conceal harsher sentences.

Under the Juvenile justice act, the police cannot register an FIR against the accused if the punishment of the crime is less than 7 years. The police are supposed to destroy the records of the juvenile after the completion of his/her sentence, and so juveniles can easily get away without a criminal record. Almost 10 percent juveniles are repeat offenders, exact data cannot be estimated from their records are not protected, as mentioned above. Reforms are consistently worse than the crimes. India has 815 juvenile homes, which are low on sap and overflowing with minors.1.7 million Juveniles need to be sustained counseling Most juveniles do not have in-house counselors and those present, are scared of their temperaments. Usually, juveniles comprise gangs inside the reform homes. Boys are vigorously beaten inside and several have claimed to have been sodomized by other inmates. On multiple occasions, the minors bribe the security guards to bring in drugs. Therefore although the writer feels that the amendments recent amendments restrained for the juveniles are the prefer of the hour it by the same token seems indeed difficult in that these amendments can be practically applied in a counter like India. And one of the main reasons for the application of these amendments being difficult is India is a signatory to three international conventions, UN Beijing Rules, United Nations Convention on

the Rights of the Child (UNCRC), and Riyadh Guidelines. These conventions make it mandatory for juvenile age to be 18.

Conclusion: The writer at the end stands completely in the act as a witness of the apex court decision that reducing the age of the juvenile under the JJ Act is a major step of the solution of the problem.

The writer also agrees with that we should try to wipe out the very root cause of the obstruction i.e. mold our juveniles in such a behavior and provide them all of such an atmosphere that they don't commit crime at the very first step itself. We should not neglect that the fundamentals of the Juvenile Justice Act are "restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law facing the mainstream society." Undoubtedly, juveniles in conflict with law and children in need of care and protection are reliant and they require distinctive protection. The state guarantees distinctive treatment to them through statutory law. However, in practice, they often get victimized by legal and procedural entanglements. They are preferably prone to human rights violations at the hands of state agencies, their own nation, and community in the form of arbitrary detention, cruel punishments, torture, and abuse. The best solution is to provide suited care and help to juveniles so that they don't propel into criminals. The Juvenile Justice Act is broad and if implemented honestly can curb incidents like Delhi gang-rape by providing timely help to juveniles who might turn into criminals. The problem is not with the act but with its implementation.

The need of the hour is to make sure that existing provisions of the act be implemented.