

SCOPE OF BEING “A JUVENILE”

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Abstract

Juvenile Justice (Care and Protection) Act, 2000 was repealed by Juvenile Justice (Care and Protection of Children) Act, 2015.¹ It's an Act to consolidate and amend law relating to children alleged and found to be conflict in law and children in need of care and protection.² Various lawyers and organizations called it as an aftermath of *Nirbhaya Delhi Gang Rape* case where one convict was juvenile and he was released after 3 years punishment and in this relation various writ petitions were filled to reduce the age of juvenile from 18 years to 16³ but court gave a descended judgement and called that legislators should relook and revisit the Juvenile Act. In effect with this Juvenile Justice Act, 2015 (hereinafter JJ Act, 2015) was passed but age of juvenility remained unchanged and instead a clause of categorization of offence was inserted where on case to case base in case of heinous offences by juvenile ageing 16-18 years will be dealt by Board under section 15 of JJ, Act 2015 and on basis of this a decision will be taken by juvenile justice board whether he should be treated as an adult or to be protected under the veil of juvenility. This paper mainly focuses on section 15 of JJ Act, 2015 and its constitutionality? ⁴

Who is a juvenile?

Juvenile Justice Act, 2015 (herein after as JJ Act, 2015) defined child in section 2(12) a child means a person who has not completed 18 years of age⁵ and further went ahead to describe another category of child in conflict with law and children in need of care and protection, and this can be made out from seeing the objective of Act which talks about care, protection, development, treatment, social reintegration, by adopting a child friendly approach mechanism in JJ Act, 2015 and a special attention is

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¹ The Gazette of India, Registered No. DL – (N) 04/007/2003-16.

² Objective of Juvenile Justice Act, 2015.

³ Subramanian Swami v. Raju @ Through Members of Juvenile Justice Board and Another, S.L.P(Cr.) No. 1953 of 2013.

⁴ Tehseen Poonawaala v. UOI, (writ is filled and pending before SC).

⁵ (12) “child” means a person who has not completed eighteen years of age.

paid by legislators to adhere all the international conventions which India signed in relation with child.⁶

Section 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. Legislators have clearly described that this Act concerns only with children below 18 years of age at date of commission of crime and in case age is in conflict the presumption will be in favour of juvenility.⁷

With this legislators have cleared all the questions which were raised in famous case of *Salil Bati*⁸ in relation to age of juvenility, but section 15 of this Act raised few eyebrows about the constitutionality of this section and a petition is moved into SC by Tehseen Poonawalla challenging the constitutionality of the JJ Act, 2015 which is still in its early stage, but time wait for no-one and clock never stop its tick tack so let’s see the possible angles on this issue.

Who is Juvenile? Answer lies in section 2(12) of JJ Act, 2015 but section 15 of this Act make reference of preliminary assessment by juvenile justice board into cases of heinous offences by juvenile ageing 16-18 years. First this Act defines juvenile is any person below age of 18 years and then another sub categorization is being made from age 16-18 years in relation to heinous offences by juvenile and there Punishment, so this poses question in relation to constitutionality of this section.

In *Shree Ramkrishna Dalmia v. Justice Tendolkar*⁹, 10 judges constitutional bench laid down principals which need to be look down in case where constitutionality is challenged of any Act. It should be presumed that legislators are aware about the needs of its own people and legislate according to it, that’s why recommendations of treating juvenile in certain cases of heinous offences as an adult was accepted. Moreover the legislature is free to recognize degree of harm and may confine its restriction to those cases where the need is deemed to be clearest.

⁶ Beijing Rules, Hague Convention on Child.

⁷ *Birensarkar v. State of West Bengal and Another*, HC OF Calcutta CrI. 223 of 2005 reference given *Gopinath Ghosh v. State of West Bengal* reported in 1984 Suppl. S.C.C. 228.

⁸ *Salilbali v. UOI*, (2013) 7 S.C.C. 705.

⁹ *Shree Ramkrishna Dalmia v. Justice Tendolkar*, 1958 A.I.R. 538 S.C.

Now before we arrive at conclusion that who is juvenile and which juvenile to be treated as an adult let's see the various SC judgements:

- 1) ***Gaurav Kumar v. State of Haryana***¹⁰: In this case juvenile was held guilty of brutal murder of a villager, SC Judges Dipak Misra and Praful C. Pant said there should be a rethinking by the Legislature, it is apt to note here that there can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences but in cases of rape, dacoity, murder which are heinous crimes, it is extremely difficult to conceive that the Juvenile was not aware of the consequences. The issue that emerges is whether in such a situation, can it be conceived by any stretch of imagination that the Petitioner was not aware of the consequences? Or for that matter, was it a crime committed, if proven, with a mind that was not matured enough? Or the life of the victim is totally immaterial, for five people, including a juvenile, think unless somebody pays the debt, he can face his death. The rate of crime and the nature of crime in which the juvenile are getting involved for which the Union of India and the State Governments are compelled to file cases before this Court to which the learned Attorney General does not disagree, have increased. A time has come to think of an effective law to deal with the situation, we would request the learned Attorney General to bring it to the notice of the concerned authorities so that the relevant provisions under the Act can be re-looked, re-scrutinized and re-visited, at least in respect of offences which are heinous in nature.

- 2) ***Subramanian Swamy and Ors. v. Raju Thr. Member Juvenile Justice Board and Anr.***¹¹: The terms of reference to the Justice J.S. Verma Committee were indeed wide and it is correct that the Committee did not recommend reduction of the age of juveniles by an amendment of the provisions of the Act. However, the basis on which the Committee had come to the above conclusion is vastly different from the issues before this Court. The recommendations of the Justice J.S. Verma Committee which included the negative covenant so far as any amendment to the JJ Act is concerned was, therefore, in a

¹⁰ S.L.P. (Crl.) Nos. 2366-2368/2015.

¹¹ Criminal Appeal No. 695 of 2014.

different context though we must hasten to add the views expressed would undoubtedly receive our deepest consideration while dealing with the matter in hand. Classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner, differences inter se and within the under 18 category may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical accuracy will not exist in any categorization. But such precision and accuracy is not what Article 14 contemplates. The above principles have been laid down by this Court in a plethora of judgments and an illustrative reference to some may be made by recalling the decisions in *Murthy Match Works and Ors. v. The Asstt. Collector of Central Excise and Anr.*, (1974) 4 S.C.C. 428; *Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors.*, 1989 Supp. (1) S.C.C. 116; *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C. 569; *Basheer alias N.P. Basheer v. State of Kerala*, (2004) 3 S.C.C. 609; *B. Manmad Reddy and Ors. v. Chandra Prakash Reddy and Ors.*, (2010) 3 S.C.C. 314; *Transport and Dock Workers Union and Ors. v. Mumbai Port Trust and Anr.*, (2011) 2 S.C.C. 575. Constitutionality of Juvenile Justice Act, 2000 was upheld.

- 3) ***Salil Bali v. Union of India (UOI) and Anr.***¹²: India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26th November 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of fourteen years in factories, mines or hazardous

¹² Writ Petition (C) Nos. 10, 14, 42, 85, 90 and 182 of 2013; Writ Petition (Crl.) No. 6 of 2013 and T.C. (C) No. 82 of 2013.

occupations. The Constitution enables the State Governments to make special provisions for children. To prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012. The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.

Article 14 and section 15 of Juvenile Justice Act, 2016 there is no difficulty in understanding the objective of legislation which is care and protection of child in conflict with law and child in need of care and protection. All children below the age of 18 are put in one class/group of Juvenile to provide a separate scheme of investigation, trial, and punishment for offenses committed by them.

In *Sanaboina Satyanarayana v. State of Andhra Pradesh*¹³, the Andhra Pradesh police administration has formulated a scheme for prevention of crime against women's. In prison also prisoners were classify in two categories, first prisoners guilty of crime against women and second prisoners who are not guilty of crime against women's. Prisoners who are guilt of crime against women's challenged the court saying that such decision violates the right to equality. SC held that there is reasonable classification to achieve the objective.

¹³ *Sanaboina Satyanaryan v. State of A.P.*, (2003) 10 S.C.C. 78.

Report by National Crime Record Bureau, Ministry of Home Affairs, 2014

- Offences under which juveniles were apprehended in 2014 include Rape, murder, burglary, theft, other IPC crime. Out of which rape amounts to 5%
- Age group ratio is under 12 years it is 1.87%, 12-16 years it's 23.3% and 16-18 years it's 74.9%.
- If we refer background of juvenile then 58% of children are above primary level education.
- Cases registered against juveniles under IPC crimes during 2004 -2014, and then an increasing graph can be easily carved out. Out of which rape apprehended case comes to 1884 cases where as murder is 1007 in year 2013.

Age of responsibility of understanding the consequences

According to Indian criminal jurisprudence the age of responsibility is fixed at 12 years which commensurate with thinking of other countries such as united states of America, Great Britain, and Canada. In Canada Criminal Justice Delivery System child between the ages of 14- 17 years is treated as adult in certain situations.¹⁴ IPC section 82 reflect that nothing is an offence done by child below 7 years (doliincapax) section 83 mentions that nothing is an offence done by child above 7 years of age and under twelve, who has not attained sufficient maturity Of understanding to judge the nature and consequences of his conduct on a particular occasion. Allowing the perpetrators of heinous crimes like rape and murder to get off with maximum punishment of 3 years as according to Juvenile Justice Act, 2000 (which has been repealed) was not justified and in fact juvenile convicted for heinous crime was almost likely to become a monster in society and pose a great danger to others. Article 14 of constitution of India envisage rule of law¹⁵and it forbids class legislation; it does not forbid reasonable classification¹⁶ of persons as we saw in category of 16-18 years of juvenile justice Act in which section 15 speaks of preliminary assessment by board consisting of experts which decide in case of heinous crime whether child was aware of the consequences of his act or not and accordingly further course of action is prepared based on decision of board, so a classification is created between those having knowledge of their act and those who are innocent. SC in *State of*

¹⁴ Youth Criminal Justice Act, 2003.

¹⁵ Mohammed Hanif Quareshi v. State of Bihar, A.I.R. 1958 S.C. 731.

¹⁶ Madhu Limaye v. Supt. Tihar Jail, Delhi, A.I.R. 1975 S.C. 1505.

Haryana v. Jai Singh, (2003) 9 S.C.C. 114 laid down two test of reasonable classification:-

- (1) It should not be arbitrary, based on intelligible differentia, which distinguish persons or things grouped together in class from others left out.
- (2) The differentia adopted must have a rational or reasonable nexus with the objective sought to be achieved by the legislature.

Article 21 and Juvenile Justice Act, 2015: Art. 21 envisages due procedure of law in order to deprive any life and personal liberty. SC on various instances has pointed out that this due procedure of law should be just, fair and reasonable. It is nowhere in Act defined what is exactly just, fair and reasonable and the reason is because it is subjective in nature which depends upon case to case basis, in relation with section 15 of Juvenile Justice Act, 2016 which laid down that preliminary assessment in case of heinous offences by child in conflict with law aged between 16-18 will be assessed by juvenile board which consist of experts. So no plea can be taken in this matter that since no procedure is established in the Act hence it will amount to arbitrariness.

Section 15 is a double filtration process under its guise no innocent child in conflict with law be undergoing, because at board level an preliminary assessment will be done and board believe that he should be tried as adult then under section 18(3) referred to child's court where again if child's court during trial is of opinion that he is innocence and not to be tried as an adult then court can design a rehabilitation plan for child and send him to special care home as 19(3). Article 21 procedure established by law while depriving person of his personal liberty procedural safeguards given to him under Article 22 is to be taken care of and any law depriving person of his personal liberty must be interpreted in strict sense as held in *Abdul Latif v. B.K. Jha*¹⁷.

The reason behind the whole act is not punitive but reformative.

In *Inderjit Barua v. State of Assam*¹⁸, SC was of view that person's life and liberty is of utmost importance and any statute effecting persons liberty must be construed in large sense because public interest is also kept in mind.

¹⁷ A.I.R. 1987 S.C. 725.

¹⁸ A.I.R. 1983 S.C. 513.

In *Anjuman Abdul Razak Menon v. State of Maharashtra*¹⁹, he was tried under TADA and death punishment. Percentage of all juveniles crime in India amounts to 1.2% of child population. In the absence of strong deterrent law to deal with deviant children, terrorist and other unruly elements will use these children for their ill motive. So with the objective of JJ Act, 2016 a different scheme of trial and punishment is prescribed for juveniles who commit heinous offence, if found guilty they are subject to punishment and even Beijing Convention rule 17 speaks same language. What it prohibits is capital punishment.

Referring *Salil Bali* judgement where it was contended that if there is no categorization of juveniles then it will be extending a blanket immunity to all juvenile in conflict with law and then JJ Act will merely become an escape goat for juvenile offenders and then it amount to unconstitutionality as it will violate Article 21 of victim and society at large.

Whereas SC and various HC through judgement enunciated the need of care and protection of juvenile in conflict with law, even respondent is of same view and that's why Juvenile Justice Act, 2016 recognizes the child in need of care and protection and child in conflict with law.



¹⁹ A.I.R. 2013 S.C. 1728.