

**HEINOUS OFFENCES COMMITTED BY CHILD IN  
CONFLICT WITH LAW UNDER THE JUVENILE JUSTICE  
SYSTEM - AN ANALYSIS**

S. Sivakumar, Research Scholar, The Tamil Nadu Dr. Ambedakar Law University, Chennai

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Dr.S.K.Ramani Assistant Professor in Sociology, The Tamil Nadu Dr. Ambedakar Law University, Chennai

**ABSTRACT**

*Juvenile Justice System, though was introduced in the year 1850, by way of an enactment in the name of Apprentices Act, it was strengthened by way of legislation enacted in the year 1960 as Central Children Act. The legal terminology Juvenile and Delinquency were introduced and analysed in the year 1985 under Beijing Rules otherwise called as Standard Minimum Rules. During this period a Convention was brought and signed by the various countries, which is called as United Nations Convention of the Right of the Child (UNCRC). India is also a signatory of this convention in the year 1992 and thereby we have enacted an act called as Juvenile Justice (Care and Protection of Children) Act, 2000. This act was welcomed and agreed by all and in that act Juvenile was defined as, "a person who is below the age of 18 years". Meantime in the year 2012 there was a brutal rape committed by a gang in New Delhi upon a girl who is named as Nirbhaya, and one among the accused was a Juvenile and so he was sentenced to Special Home for suffering the sentence period. Under the Juvenile Justice System, no Juvenile can be sent to prison whereas he has to be sent to Special Home not exceeding the period of 3 years. Hence there was an internal problem through agitations by various women groups all over the country to reduce the age of the Juvenile from 18 years. But the age of the Juvenile cannot be reduced because we are one of the signatory of the convention. In this situation to mitigate the agitation as well as to satisfy the women population the age of the Juvenile has to be reduced from 18 years. Hence the new legislation was enacted to overrule the problem in the name of Juvenile Justice (Care and Protection of Children) Act on 31<sup>st</sup> December 2015 which came into force on 15<sup>th</sup> January 2016. In this situation whether this act follow the*

*principles and rights enshrined under Indian Constitution or it may be a provision which is violated under 14, 19 and 21 from the out of sight. But it is deeply noted and analyzed that this paper highlights that this classification is right one and a tool to prevent and reduce the crime committed by the child in conflict with law.*

*Key Words: Juvenile Justice, Offence, Child*

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## **INTRODUCTION**

Juvenile Justice Act has been enacted in the year December 31<sup>st</sup>, 2015 and it came into force on January 15<sup>th</sup>, 2016 only with the impact of Nirbhaya case. In the year 2012, victim girl in the name of Nirbhaya was brutally raped by a gang. One among the member of the gang was a Juvenile who was incarcerated in the special home for a very short period. So there was an internal insurgency by various folk, particularly women folk to take action against the person who is below the age of 18 years committing heinous offences. Hence this act is enacted. Under this new act, the offences have been classified as petty offences, serious offences and heinous offences. One who committed heinous offences between the ages of 16-18 years is specially handled by this act. The procedure had been laid down under Section 15 of this act in the name of preliminary assessment. The law has been enacted by the legislators very critically and intellectually, which is appreciated. Under this act, a person who committed heinous offences in the age of 16-18 years shall be produced before Juvenile Justice Board and in turn the Board will conduct the preliminary inquiry with the assistance of Psychiatrists and Psychologists within the period of 3 months from his first appearance before the Board. If it was found by the Board that the child in conflict with law has committed such offences, by the way of the nature and consequences of the act, he should be forwarded to the Children Court (Mahila Court) with relevant case records. Subsequently the Mahila Court will try the case as per the provisions stipulated under Criminal Procedure Code. Suppose a child in conflict with the law has absconded from the clutches of the law and subsequently secured by the Police officer, how the Juvenile Justice Board conduct the preliminary assessment, what is its value, is a million dollar question raised before the Juvenile Justice System. Under the Section 21 of the same act it has

restricted the punishment pronounced by the Mahila Court, in which the capital punishment and imprisonment for life has been excluded. As well as Section 20 deals with probation and the sentence of Juvenile who is sent to central prison to suffer his sentence, are the innovations of this act no way connected with the previous Juvenile Justice system. So the best interest of the child as well as care and protection are two eyes of Juvenile Justice System and various principles governed by this act which is a boon to the children is not properly extended to the child in conflict with law between the age of 16-18 years.

### **CLASSIFICATION OF THE OFFENCE**

Under this new act, offences are classified in different heads. This is the first time the legislators have classified various offences in different names because the classification of the offences are must in reducing the age of the Juvenile as they approach in a different manner. The offences are classified depending upon the period how long the sentenced Juvenile suffers. Hence the punishment period is basic formula to classify the offence such as where an offence under this act is punishable with imprisonment for a term more than 7 years then such offence shall be cognizable, non-bailable and triable by a Children's Court which is called as heinous offence. Where an offence under this act is punishable with imprisonment for a term of 3 years and above but not more than 7 years then such offence is cognizable, non-bailable and triable by the Magistrate of first class, it is called as heinous offence. Where an offence under this act is punishable with imprisonment for less than 3 years or with fine only then such offence shall be non-cognizable, bailable and triable by any Magistrate.

### **PRELIMINARY ASSESSMENT INTO THE HEINOUS OFFENCES BY BOARD**

In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 years, the board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order that if the child found physically and mentally develop the offence then

the Board will sent him to the children court with all records relating to the commission of the offence for trial, but not otherwise such child will be retained by the Board and competent for inquire the offence. This is the innovation introduced by the legislators for the first time through this act. For the purpose of Preliminary Assessment, the Board may take the assistance of experienced Psychologist or Psycho- Social workers or other experts. The introduction of this procedure is highly welcome as it is newly one.

### **ORDERS REGARDING THE CHILD FOUND TO BE IN CONFLICT WITH LAW**

Where the child in conflict with law between the age of 16 to 18 years, committed heinous offence after the completion of Preliminary Assessment, if the Board satisfies that the child shall be inquired by the Board itself then it can conduct elaborate inquiry and subsequently found guilty the Board will pass sentence according to Section 18 of Juvenile Justice Act which will not be a serious one. There are seven kinds of punishments enlisted under Section 18, one among which is the greater, which direct the child to be sent to a Special Home, such period, not exceeding 3 years. Hence this is the toppest punishment to the child in conflict with law under Juvenile Justice System even though the offence committed by the child is heinous one.

### **ORDERS PASSED BY THE CHILDREN COURT**

The child in conflict with law committed heinous offence, after satisfying the Preliminary Assessment produced before the Board, the Children Court will receive the child and conduct the trial and if found guilty any order may be passed by the Children Court subject to the restriction of Section 21 of this Act. Section 21 of Juvenile Justice Act stipulates that, "No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this act or under the provisions of the Indian Penal Code or any other law for the time being in force". Hence the death sentence and imprisonment for life shall not be given to the child. This is also an advantage and protection as well as the safeguard to the children who committed heinous offences which nothing but a reformatory method.

Where a child between the age of 16 to 18 years committed heinous offence who is tried by the Children Court found guilty then the child may be sentenced to go for any imprisonment except under section 21 of this act. Another advantage as well as meritorious procedure has been given to the child which is called as Place of Safety. If the child found guilty who has completed 18 years then he is sentenced to suffer the period of imprisonment in the Place of Safety up to the age of 21 years, if the child found to complete his remaining sentence pronounced by the Children Court then such child will be sent to prison for the remaining period.

When the child in conflict with law attains the age of 21 years and is yet to complete the term of stay, the Children Court shall provide for a follow up by the Probation Officer or the District Child Protection Unit or a Social Worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be contributing member of the society and for this purpose the progress record of the child will be sent to the Children Court. Then the Children Court may (I) decide to release the child on such conditions as it deems fit which includes appointment of the Monitoring Authority for the remainder of the prescribed term of stay. (II) decide that the child shall complete the remainder of his term in a jail. The jail is a word which did not connect with the Juvenile Justice System so far whereas this act has newly introduced the jail system through the procedure followed by the Children Court. It is the impact of the Nirbhaya's Case followed by the agitation of the women folk.

## **JUVENILE JUSTICE AND SUSTAINABLE DEVELOPMENT**

Children are wealth and health of our nation. The growths of the children are responsible as well as cause for the development of the country. Where a country consists of intellectual and intelligent children will become developed nation. The children are said to be an asset, property and highly precious to a nation. Hence a country needs a sustainable development in future relating to the knowledge, experience, aptitude, attitude and conduct of the children. If, the country concentrates on the activities and wellbeing of the children then Why the children will become the child in conflict with law? To answering this question we have to go through the various problems encounter by the children in the society. As highlighted in the above

discussions that the problems are in various forms like socio, legal, environmental, pathological, biological and psychological. Hence, it is the duty imposed upon the nation to find out the exact problem of the child and shall be eradicated from the root itself. Each and every child psychologically differs from others. So various criminologist endeavour to solve this problems to submitting their theories such as Group Conflict theory, Differential Association theory, Drift and Anomie theory etc. So it is suggested the state should concentrate on the development of the children from its childhood and providing education and other basic needs. And it should also formulate a plan for future course of action to produce and develop the growth of the children which is appreciated by all.

## **CONCLUSION**

Now it is the right time to decide whether the classification of the offence as well as the classification of age is violation of Fundamental Right? In our India for recent past crimes are reported enormously and particularly the crimes committed by a child are found frequently. To prevent and curb it the State Police and other allied departments are trying hard day by day. Reducing the age of the child from 18 to 16 years are recommended by the various communities and societies as well as public at large. This is the internal problem to the rulers to reduce the age of Juvenile. And it is a complicate one because we are the signatory of the United Nations Convention. Hence no other option to the government except to enact this as an Act. Preliminary Assessment and sentence procedure of this act is to remove the disqualities and disparities between the children. The Place of Safety and Probation in good conduct are boon to the child in conflict with law which will remove the disqualities and inequalities. This is the right legislation and not violating the Fundamental Rights of the child or anyone that has come into force in right time and appreciated by all.

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