



**JUVENILE DELINQUENCY IN INDIA  
WITH SPECIAL REFERENCE TO THE  
JUVENILE JUSTICE (CARE AND  
PROTECTION OF CHILDREN) ACT,  
2015**

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**INTRODUCTION**

General attitude of public towards children is to behave obediently, show respect towards others and absorb behaviour having high moral values. However, due to various reasons and circumstances children are being diverted from social and general norms. “Children now are Luxury, have bad manners, contempt authority, show disrespect to elders, they contradict their parents and cross their legs and tyrannies over their teachers” These are the words uttered by Socrates before 2400 years back regarding only to the behaviour of the children. Even from that time onwards entire society is facing the menace of deviant behaviour of juveniles, problems of children.

<sup>1</sup> Recently, Juvenile Delinquency has become an important aspect of criminal Justice System. Juveniles have got serious forms of delinquent behaviour which may hamper the stability of the society. The word “*delinquency*” has its origin from the Latin word “*delinquere*” meaning ‘away’ and “*linquere*” means to leave or to abandon. Primarily, the word was applied to

abandoned and neglected children. In later days, even in present days, it is applicable to all children who are involved in illegal activities.<sup>2</sup> Whereas, “*Juvenile*” or a “*Child*” is considered to be a person below the age of 18 years. The term ‘juvenile’ is also defined under Section. 2 (35) of Juvenile Justice (Care and Protection of Children) Act 2015. under the Act., Juvenile means a child below the age of eighteen years. Moreover, the issue regarding ‘Claim of Juvenility’ is also prevalent before the courts.

The terms Juvenile delinquency denotes anti-social behaviour by a minor; especially, behaviour that would be criminally punishable if the actor were an adult. The child offender is known as a “Juvenile Delinquent”. Juvenile delinquency is, by and large, a product of social and economic mal-adjustment. Even if it is found that these juveniles have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the Jail. Moreover, the object of punishment being reformation, social objective cannot be gained by sending juveniles to Jails where they would come into contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments. That is the reason why Children Acts are enacted by States all over the country. [*Munna vs State of UP*, AIR 1982 SC 806].<sup>3</sup>

Various Legislations and International Instruments speak about the eradication of

<sup>1</sup>A.Vijayalakshmi, *An Analytical View Of Juvenile Justice And Rehabilitation Measures In India*, 4 MLJ CrI 37, Madras Law Journal - Criminal (Journal Article), (2011).

Available at <https://advance.lexis.com/document/?pdmfid>. Last accessed on March 01, 2021.

<sup>2</sup>Dr. D. Balakrishna, *Criminology and Restorative Justice*, NALSAR University of Law Hyderabad, 49 (2019).

<sup>3</sup> Justice M.L. Singhal, *RP Kathuria: Supreme Court on Criminal Law (1950-2018)*, Volume 5 (10th Ed, 2019).



the evil of Juvenile Delinquency or preventive measures to be adopted so that the role of Children in Crime is gradually lowered down to the levels cherished to be attained. Before we touch this aspect, it is incumbent to probe the circumstances and causes that forced the children to embrace stigmatized avocations. In general, poverty, uncongenial atmosphere, broken houses, maltreatment etc., are the causes that lay at the root but in particular, those forces which compel the children to become undesirable from social vision can be visualized.<sup>4</sup> Children or Juveniles are nowadays prone to committing even the heinous of crimes due to these factors. Criminologist and sociologists have worked for years to better understanding and explanations of complex nature and origin of crime and deviance. The number of theories has tried to explain the delinquency causes.

In India, the present Law which governs the Juveniles and primarily the ones in “*conflict with law*” and “*in need of care and Protection*” is the Juvenile Justice (Care and Protection of Children) Act 2015. The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes, care institutions or neglected juveniles and special homes for delinquent or neglected juveniles.<sup>5</sup> The Juvenile Justice (Care and Protection of Children) Act 2015 replaced the Juvenile Justice (Care and

Protection of Children) Act, 2000, after the 2012 Nirbhaya Gang Rape Case which involved a Juvenile offender. The government reviewed the juvenile law and the subsequent Act of 2015 was enacted which tried its best to address the shortcomings of the JJ Act, 2000.

The JJ Act, to invoke the image of its long title, is an Act providing ‘for proper care, protection and treatment (of children) by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.’ It must be noticed at the outset that the Act does not cater to all children, it is for two categories of children only, i.e., ‘juveniles in conflict with law’ and ‘children in need of care and protection.’ In other words, something must happen to children before they come within the purview of the Act. In the case of juveniles, they come within the purview of the law when they commit an offence and in case of children when any of the conditions mentioned in section 2 (d) occurs. For example, when a child is without any home, or living with a person who threatens to kill or injure, or whose parents are not willing to take care of the child and so on.<sup>6</sup> This in a way or the other, limits the scope and applicability of the Act.

The question that further arises is whether the Juvenile Delinquents should be restored into the society or they should be treated as an adult offender. This is a highly debatable

<sup>4</sup> Suman Nalwa and Hari Dev Kohli, *Commentary on the Juvenile Justice Act*, Lexis Nexis India, 9, (2nd Ed., 2017).

<sup>5</sup> *Childline India Foundation vs Allan John Waters*, [AIR 2011 SCW 1966]

<sup>6</sup> Shubanker Dam, *F4\_01\_2006*, Volume 48, Journal of Indian Law Institute (JILI), (2006). Available at <https://advance.lexis.com/document/?pdmfid>. Last accessed on February 28, 2021.



issue and opinions on the same are immensely diverse. Moreover, the Courts have shown a remarkable Activism on the issue of Juvenile Delinquency in India. In the case of *Sheela Barse v. Union of India*,<sup>7</sup> the Supreme Court observed, “It is a matter of great regret that despite statutory provisions and frequent exhortations by social scientists there are still a large number of children in jails in the country, it is the atmosphere of the jail which has a highly injurious effect on the mind of the child estranging him from the society and breeding in him aversion bordering on hatred against a system which kept him in jail, on no account should the children be kept in jail”.

## CHAPTER II

### JUDICIAL INTERVENTION VIS-A-VIS PURPOSE AND OBJECTIVE OF THE JUVENILE JUSTICE ACT, 2015: HOW FAR EFFICIENT?

The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizen and non-citizens alike. The true nature and scope of the function of the court has since long been a matter of debate almost in all the countries regulated by written Constitution. In this modern era Judicial Activism emerged as tool for protecting Rights of the Children even when the Child is a Juvenile offender. The Indian Judiciary has time and again made interventions to ensure that constitutional,

legal and human rights of a child do not get violated.

The Juvenile Justice (Care and Protection) Act, 2000 is enacted as human rights legislation and it is now in force in all states uniformly, repealing the entire Children's Act enacted by states individually. This legislation deals with the two types of juveniles. “*child in conflict with law*” as defined under Section 2(13) and “*child in need of care and protection*” as defined under Section 2 (14).<sup>8</sup> A juvenile or a child as defined under Section 2 (12) is a person who has not attained the age of 18 years. The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

In *Sheela Barse vs Union of India*,<sup>9</sup> Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The court urged the setting up of remand and juvenile homes for children in jails. In *Sheela Barse vs Secretary*

<sup>7</sup> AIR 1986 SC 1773

<sup>8</sup> Ved Kumari, *The Juvenile Justice Act 2015-Critical Understanding*, Vol. 58, No. 1 Journal of the Indian Law Institute, January - March 2016 83-103, (2016).

Available at <https://www.jstor.org/stable/45163062>, Last accessed on April 18, 2021.

<sup>9</sup> AIR 1986 SC 1773



*Children Aid Society*<sup>10</sup> the Supreme court came forward to protect the rights of the children in the observation homes.

### 2.1 'PLEA OF JUVENILITY', 'DETERMINATION OF AGE' AND 'PER INCURIAM JUDGMENTS'.

Under the JJ Act, 2015 any person who has not completed eighteen years of age is a juvenile or child.<sup>11</sup> The Act deals with two categories of children: 'child in conflict with law' and 'child in need of care and protection.' 'Child in conflict with law' means a juvenile is alleged to have committed an offence. In contrast, 'child in need of care and protection' is a malleable category and broadly refers to any child suffering from social or physical vulnerability. All children below 18 years of age are to be brought under the protection of the Juvenile Justice System. It is not only for applicability of the JJ Act 2015; determination of age is important for all child-related legislations. Section 94<sup>12</sup> of the JJ Act provides for Presumption and procedure for determination of age. This procedure is to be followed for children in conflict with law, and children in need of care and protection. This procedure should be also followed to ascertain age under other child-related legislations.

The definition of a juvenile, i.e., a 'person who has not completed eighteen years of age and is alleged to have committed an offence'

on the face of it seems clear and satisfactory. The clarity, however, is only apparent and the definition has posed persistent problems in its application. What is the relevant date for determining whether a person is a juvenile or not? Is the relevant date that on which the alleged commission was committed? Or is the relevant date that on which the alleged offender is produced before a competent authority.<sup>13</sup>

This matter has been agitated in the Supreme Court on three different occasions and the court has vacillated in its opinion. *Umesh Chandra vs State of Rajasthan*,<sup>14</sup> *Arnit Das vs State of Bihar*<sup>15</sup> and more recently in *Pratap Singh vs State of Jharkhand and Another*,<sup>16</sup> the court was called upon to put its mind to the matter. On each occasion a different view was suggested and the views could in principle be correct. The decision of the Supreme Court in *Pratap Singh*<sup>17</sup> is erroneous and that *Arnit Das*<sup>18</sup> lays down the correct position of law. The JJ Act has specific purposes and the court's erroneous conclusion in *Pratap Singh*<sup>19</sup> was abetted by its inadequate understanding of the JJ Act. The issue may be of limited interest but its effects are drastic and have far reaching impact. There is a lot at stake, a declaration of a 'juvenile' status would radically alter the nature of rights an accused may claim.<sup>20</sup>

### 2.2 PER INCURIAM JUDGMENTS

<sup>10</sup> AIR 1987 SC 656

<sup>11</sup> Section 2 (12), Juvenile Justice (Care and Protection of Children) Act 2015.

<sup>12</sup> Section 94, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>13</sup> Shubanker Dam, *Juvenile At Eighty!*, Vol. 48, No. 2, Journal of the Indian Law Institute, 232-256 (2006) Available at <https://www.jstor.org/stable/43952034> . Last accessed on April 17, 2021.

<sup>14</sup> (1982) 2 SCC 202

<sup>15</sup> (2000) 5 SCC 488

<sup>16</sup> (2005) 3 SCC 551

<sup>17</sup> *Ibid.*

<sup>18</sup> *Supra* 15.

<sup>19</sup> *Supra* 17.

<sup>20</sup> (1982) 2 SCC 202



Oliver Wendell Holmes, Jr., one of the greatest Justices of US Supreme Court, famously wrote that “the life of law has not been logic; it has been experience.” Holmes essentially argued that changes in law, at least judge-made law, were not due to logic or pre-existing law; instead, policy preferences or personal experiences of judges mattered more.<sup>21</sup> Holmes also famously stated in his dissenting opinion that “general propositions do not decide concrete cases”.

In layman’s language, the term *Per incuriam* means when a decision has been rendered carelessly without taking into account certain principles that are binding on the court of law. It will be appropriate at this juncture to quote the lines from the judgment of A.R. Antulay vs R.S. Nayak,<sup>22</sup> rendered by a seven-judge bench explaining the term per incuriam:

*“Per incuriam” are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”*

It is important to clarify that overruling a decision is altogether a separate concept where the decision is considered fundamentally flawed that it cannot stand to be good law in the current state of affairs. In case of per incuriam, you do not consider the decision as inherently wrong but declare the decision as non-binding because it failed to

consider authorities what it ought to for reaching the decision.

In *Umesh Chandra vs State of Rajasthan*<sup>23</sup> the Supreme Court while dealing with a *pari materia* statute, the Rajasthan Children Act, observed:

“The relevant date for applicability of the Act so far as the age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.”

The above categorical ruling of the Supreme Court appears to have missed the attention of the learned counsels in the case as well as the Supreme Court. Thus, being a two-Judge Bench decision, the ruling in *Arnit*<sup>24</sup> is *per incuriam*.

Whereas, in the decision *Arnit Das vs State of Bihar*,<sup>25</sup> Justice R.C. Lahoti (for K.T. Thomas, J. and himself) has ruled as follows:

“We are, therefore, clearly of the opinion that the procedure prescribed by the provisions of the Act has to be adopted only *when the competent authority finds the person brought before it or appearing before it to be under 16 years of age if a boy and under 18 years of age if a girl on the date of being so brought or such appearance first before a competent authority. The date of the commission of offence is irrelevant for finding out whether the person is a juvenile* within the meaning of clause (h) of Section 2 of the Act.”

Apex Court further clarified that the review of judicial opinion shows that the Court should not take a hyper-technical approach

<sup>21</sup> *Supra* 11

<sup>22</sup> (1988) 2 SCC 602

<sup>23</sup> *Supra* 14

<sup>24</sup> *Supra* 15.

<sup>25</sup> *Ibid.*



while appreciating evidence for determination of age of the accused. If two views are possible, the Court should lean in favour of holding the accused to be a juvenile in borderline cases. This approach was further reiterated by this Court in *Rajindra Chandra vs State of Chhatisgarh and Another*<sup>26</sup>, in which it laid down that the standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.

However, After the judgment, the petitioner filed a review petition seeking review of that judgment. In the memorandum of review petition, the only issue raised was to the effect that the two Judge Bench deciding *Arnit Das vs State of Bihar*<sup>27</sup>, while holding that crucial date to determine whether an accused is a juvenile or not under the 1986 Act is the date on which the accused first appears in the Court in inquiry proceedings, has overlooked the earlier view of a three Judge Bench in the case of *Umesh Chandra vs State of Rajasthan*<sup>28</sup> wherein it had been held that crucial date in such cases is the date on which offence was committed and not when the accused first appears before the Court in inquiry proceedings. Thus, being a two-Judge Bench decision, the ruling in *Arnit Das*<sup>29</sup> case is *per incuriam*.

As regards the decisions on juvenile justice the court has been vacillating and has rendered contradictory opinions in *Umesh Chandra*<sup>30</sup> and *Arnit Das*<sup>31</sup> and finally in 2005 in *Pratap Singh vs State of Jharkhand & Others*<sup>32</sup> revisited *Umesh Chandra*<sup>33</sup>

overruling *Arnit Das*.<sup>34</sup> Sema J. delivering the majority opinion of the court extensively quoted from the Statement of Objects and Reasons of the 1986 Act. From a review of the Statement of Objects and Reasons, he concluded that:

“The 'whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles.' The notable distinction, according to the court, "between the definitions of 1986 Act and 2000 Act is that in 1986 Act 'juvenile in conflict with law' was absent." The court added; “The definition of delinquent juvenile in 1986 Act as noticed above is referable to an offence said to have been committed by him. It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority or court, he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have committed. In our view, therefore, what was implicit in 1986 Act has been made explicit in 2000 Act.”

Following the same in *Hari Ram vs State of Rajasthan*,<sup>35</sup> the court took note of the various provisions of the Juvenile Justice Act and opined that in case of any ambiguity with regard to the age, Rule 12 framed under the Act had to be taken recourse to in order to arrive at the age. In *Jarnail Singh vs State of*

<sup>26</sup> (2002) 2 SCC 287

<sup>27</sup> *Supra* 15.

<sup>28</sup> *Supra* 14.

<sup>29</sup> *Supra* 15

<sup>30</sup> *Supra* 14

<sup>31</sup> *Supra* 15

<sup>32</sup> *Supra* 16

<sup>33</sup> *Supra* 14

<sup>34</sup> *Supra* 15

<sup>35</sup> (2009) 13 SCC 211



*Haryana*<sup>36</sup>, the court for the first time took a view that although Rule 12 deals with a child in conflict with law but by using the judicial tool of reading is held that the same could be extended to determine the age of the victim also. In *Rajak Mohammad v. State of Himachal Pradesh*<sup>37</sup>, three judges' bench of Supreme Court in case where school certificate regarding age of prosecutrix was found unreliable, considering the medical evidence regarding her age has held as under:

“While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

So, this is how the judgments fail to follow certain authorities and result in a per incuriam judgment later, as happened in *Arnit Das*<sup>38</sup> case.

### **2.3 ROLE OF JUDICIAL INTERVENTION IN GIVING EFFECT TO THE PURPOSE AND OBJECTIVE OF THE JUVENILE JUSTICE ACT, 2015**

The Juvenile Justice (Care And Protection Of Children) Act, 2015 is an Act which aims, as the Preamble speaks, “to protect 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 adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, under the Act and for matters connected therewith or incidental thereto.” Whereas, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected.

Traditionally understood juvenile justice relates to an all-embracing concept that aims at providing, first, an alternative system of justicing, and, second, justice and fairness for the child not only at the trial stage, but also at the investigation, pre-trial custody, bail and remand proceeding stages. However, it appears that the Judicial System is propagating a new vision of juvenile justice. It has frequently intervened and reflected its activism in the Juvenile Justice system, and his has been clearly visible over time considering the judgments it has pronounced regarding the Juvenile Justice and Juvenile Delinquency.<sup>39</sup>

Realizing the importance of proper handling and caution of children, the court obligated upon every generation to bring up children in a proper way. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the government of the day. Every society must, therefore, provide adequate training, education and guidance to the children in order that they may be able to have their

<sup>36</sup> (2013) 7 SCC 263

<sup>37</sup> 2018 (3) SCC (Cri.) 753

<sup>38</sup> *Supra* 15

<sup>39</sup> (2000) 6 SCC (Jour) 1



rightful place in the society when they grow.<sup>40</sup> However, what is required is that the Judicial decision-making process should be just, logical and fair as it impacts the society as a whole. It sets precedents. Judges should be more reasonable while making decisions and uphold the Constitutional and legal values. Free and equal decision making is an imperative element in the justice-dispensation system, which essentially shapes and constrains the core conception of constitutional justice. In succinct, free and equal decision making is central in upholding the Rule of Law. This requires the Judge to continually police the boundary between what is and what is not within his/her power to decide and to decide all cases in a way that never disregards the subjective evaluations of both parties.<sup>41</sup>

Justice Cardozo noted in his celebrated work *The Nature of the Judicial Process* that, virtually every legal precept under which we operate today is in contradiction of a prior rule. Judges bring imagination, good sense, courage, and compassion to their cases, so that the end result can be, and hopefully is shaped by an arc toward justice in the particular circumstances. In the excerpts from the book, Justice Cardozo observes:

“There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their

lives, forces which they do not recognize and cannot name, have been tugging at them--inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense of "the total push and pressure of the cosmos," which, when reasons are nicely balanced, must determine where choice shall fall.”<sup>42</sup>

The Judicial intervention has given effect to the purpose and objective of the Juvenile Justice (Care and Protection of Children) Act, 2015. It has shaped the Juvenile Justice system in a way. It tries to give effect to the aims and aspirations of the JJ Act, 2015 which concisely are

- to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.
- to provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment.
- to spell out the machinery and infrastructure required for the care, protection, treatment, development, rehabilitation and integration of various categories of children coming within the purview of the juvenile justice system.
- to establish norms and standards for the administration of juvenile justice in terms of

<sup>40</sup> Usha Razdan, *Apex Court Towards Humanizing The Administration Of Juvenile Justice*. Vol. 33, No. 3 Journal of the Indian Law Institute 366, 389 (1991). Available at <https://www.jstor.org/stable/43951373> . Last accessed on April 19, 2021.

<sup>41</sup> Mohan Parasaran, *Free and Equal Decision*, 5 SCC, Address to the newly appointed Judges to High Courts organised by National Judicial Academy at Bhopal on

21-11-2015, J-9 (2016). Available at <https://www.scconline.com/Members/NoteView.aspx?citation=SIRYVC0wMDAwMDA2MTYzJiYmJiY0MCMYmJiYmU2VhcmNoJiYmJiZmdWxc2NyZWVu> , Last accessed on April 17, 2021.

<sup>42</sup> Benjamin N. Cardozo, *The Nature of The Judicial Process* 180 (New Haven: Yale University Press. 1921).



investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation.

The Constitution makers being fully conscious of the deficiencies of the tender age provided many concessions to the children under the various provisions of the Constitution. The Supreme Court and High Courts felt the under-current of humanism aimed at rehabilitation and reformation, interpreted the constitutional provisions and other juvenile legislations in their true spirit and content. For instance, in *Hiralal Mallick vs State of Bihar*,<sup>43</sup> the Supreme Court expressed its anguish regarding the lack of children Acts in the state of Bihar. Justice Krishna Iyer observed:

*“Why did this finer consciousness of juvenile justice not dawn on the Bihar legislators and Government? Why did the State not pass a Children Act through its elected members? And one blushes to think that a belated Children Act, passed in 1970 during President's rule, was allowed to lapse.... With all our boasts and all our hopes, our nation can never really be decriminalised until the crime of punishment of young deviants is purged legislatively, administratively and judicative.”*<sup>44</sup>

Following are a few recent judgments that reflect the aim of Judicial intervention in Juvenile Justice Delivery System which is nonetheless, the ascertainment of objects and purposes of Juvenile Justice Act 2015 and safeguarding the rights of child in

conflict with law and child in need of care and protection:

***Pawan Kumar Gupta vs. State of NCT of Delhi***,<sup>45</sup> ***and; Ram Narain v. State of Uttar Pradesh***<sup>46</sup>

Claim of juvenility may be raised at any stage even after final disposal of the case. It may also be raised for the first time even after final disposal of the matter. However, once the Accused has chosen to take the plea of juvenility before the trial court, before the High Court and also before the Supreme Court and the said plea has been rejected, it is not open to the accused to reargue the plea of juvenility by filing the fresh application Under Section 7A of the JJ Act.

***Satya Deo vs. State of Uttar Pradesh***<sup>47</sup>

In light of Section 6 of the General Clauses Act read with Section 25 of the 2015 Act, an Accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a right which he acquired and has fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 01.04.2001. In terms of Section 25 of the 2015 Act, 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced.

***In Re: Contagion of COVID 19 Virus in Children Protection Homes***<sup>48</sup>

In this the Apex Court issued various directions to the Juvenile Justice Board,

<sup>43</sup> A.I.R 1980 S.C. 83

<sup>44</sup> *Supra* 28

<sup>45</sup> AIR 2020 SC 590

<sup>46</sup> (2015) 17 SCC 699

<sup>47</sup> MANU/SC/0740/2020

<sup>48</sup> MANU /SC /03 58/2020



Children's Court and Child Care Institutions considering the COVID-19 situation. The SC directed that the Juvenile Justice Boards/Children's Courts may consider measures to prevent children residing in Observation Homes, Special Homes and Places of Safety from risk of harm arising out of COVID- 19. Further, regarding children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015. Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.

***Re Exploitation of Children in Orphanages in The State of Tamil Nadu vs. Union of India (UOI) and Ors.***<sup>49</sup>

In this case, the court blow down heavenly over non implementation of Section 12<sup>50</sup> of the Act pertaining to Bail to Child in conflict with law. The Court observed as follows:

“All JJBs in the country must follow the letter and spirit of the provisions of the Act. We make it clear that the JJBs are not meant to be silent spectators and pass orders only when a matter comes before them. They can take note of the factual situation if it comes to the knowledge of the JJBs that a child has been detained in prison or police lock up. It is the duty of the JJBs to ensure that the child is immediately granted bail or sent to an observation home or a place of safety. The Act cannot be flouted by anybody, least of all the police.”

<sup>49</sup> 2020(1) RCR (Criminal)1022

<sup>50</sup> Section 12, Juvenile Justice (Care and Protection of Children) Act 2015.

***Shilpa Mittal vs. State of NCT of Delhi and Ors.***<sup>51</sup>

In this the extremely important and interesting issue arises in the case. "Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?"

To this the Apex Court hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence. However, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, in such circumstances they shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

***Sattu Ram vs. State of Rajasthan***<sup>52</sup>

The court held that the petitioners, having crossed the age of 18 years cannot be confined in a special home/fit institution. The orders passed by the Juvenile Justice Board and the Appellate Court in this regard are in total conflict with the specific provisions of the Juvenile Justice Act and the interpretation thereof as done by the Courts in the above

<sup>51</sup> AIR 2020 SC 405

<sup>52</sup> 2016(2) WLN 170(Raj.)



referred judgments and thus, cannot be sustained.

### CONCLUSION

The JJA, 2015 is a major step backward in the progressive and forward-looking philosophy of juvenile justice initiated with the enactment of the Apprentices Act, 1850. By providing for use of prisons in certain circumstances, it has taken India back to 1920 when the initial children Acts provided for exceptional use of prisons for keeping children. The terms Juvenile delinquency denotes anti-social behaviour by a minor; especially, behaviour that would be criminally punishable if the actor were an adult. The child offender is known as a Juvenile Delinquent. Juvenile delinquency is, by and large, a product of social and economic mal-adjustment. Even if it is found that these juveniles have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the Jail. Moreover, the object of punishment being reformation, social objective cannot be gained by sending juveniles to Jails.

The juvenile justice system began and developed as an off shoot of criminal justice system but the scheme of the JJA clearly shows that it has completely severed its ties with the criminal justice system. Recognition of this independent status to the juvenile justice system by all within and outside the system, is a precondition for bringing about any change in formulation and implementation of laws to ensure justice. the judicial process has unwittingly been giving, gives even now, and will continue to give for a while longer an effective alibi to the executive for not implementing the social and economic policies initiated by the legislatures

with full knowledge that it has been so and perhaps in the hope that it will continue to be so. Already strong and strident voices of dissent are heard, their volume is growing, and insistent demands for economic and social equality and security are being made. Traditionally understood juvenile justice relates to an all-embracing concept that aims at providing, first, an alternative system of justicing, and, second, justice and fairness for the child not only at the trial stage, but also at the investigation, pre-trial custody, bail and remand proceeding stages. However, it appears that the Judicial System is propagating a new vision of juvenile justice. It has frequently intervened and reflected its activism in the Juvenile Justice system, and his has been clearly visible over time considering the judgments it has pronounced regarding the Juvenile Justice and Juvenile Delinquency. Realizing the importance of proper handling and caution of children, the court obligated upon every generation to bring up children in a proper way. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the government of the day

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