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## Significant role of judiciary in juvenile delinquency

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### Abstract

The word juvenile is defined by varying terms including youthful, immature, childish etc. and the juvenile delinquent is defined as a young person who habitually breaks the law, especially somebody repeatedly charged with vandalism or other anti-social behavior. Every region of the world is dealing with a problem of criminality among both children and adults, and juvenile misbehavior or delinquency is seen as a step towards adult crime. Children are the most valuable assets of a nation and civilization, and they are the most treasured resources of the future. It is not an exaggeration to state that a country's future well-being is determined by how its children develop. With this regard, not only juvenile delinquency takes us to sociological aspects but also psychological ones and dealing with one big word 'crime' one cannot deny that there do exist a victim who loses or is deprived of something irretrievable after the crime is committed. Hence, there is always a need for dealing with crime in a lawful society. Tracing the concept of juvenile delinquency as a foundation stone to juvenile justice. Thus, the judiciary plays a very important role in analyzing every situation present and also disposes of cases arising in society. In the present paper the authors have made efforts to explain the significant role played by judiciary in the cases related with juvenile delinquent.

**Keywords:** Juvenile, juvenile delinquent, justice, crime

### Introduction

"To find out what the child is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen"<sup>[1]</sup>.

Law derives its force not only from its formation but its interpretation and application throughout societal changes and variations. The judiciary thus plays a very important role in analyzing every situation present and also disposes of cases arising in society. Juvenile delinquency in India also receives its essence through judicial response at all levels. For years, there was a debate in understanding juvenile delinquency from a legal point of view because of various factors surrounding a strict action. A juvenile on margin line of being an adult could do an act which may call for pure criminal liability if he were an adult but a particular law may profoundly vacuum adult criminal justice administration for him. Such confusions are sorted by judicial bodies only.

### Idiosyncratic aspects of judiciary and juvenile justice

The Juvenile Courts work on the patterns of restorative justice. The best interest of child is taken care of in every aspect as possible. The historical aspects of juvenile courts makes it clear that courts were visualized as *parens patriae* but the juvenile criminal administration being different from adult criminal administration needs a special type of procedure and practice. Adults are charged with 'committing crimes', whereas juveniles are charged with 'delinquent acts'. If the delinquent activities are particularly serious, such as murder or other violent crimes, the court system may elect to charge the juvenile as an adult, in which case they would be tried in the adult criminal justice system. The purpose of the adult criminal justice system is to punish, whereas the purpose of the juvenile justice system is to rehabilitate and do what is best for the youngster. As a result, several alternative sentencing are employed to keep minors out of prison. Probation, diversionary programmes, and parole are some of the options available. The Juvenile Justice (Care and Protection of Children) Act, 2015 is a beneficial piece of legislation and must be given that due interpretation. "The rules of statutory construction are well settled," the Supreme Court stated in *Workmen v. Management of American Express International Banking Corporation*<sup>[2]</sup>. "Words found in liberal statutes such as social welfare and human rights law should not be stuffed into Procrustean beds or shrunk to Lilliputian proportions.

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The imposture of literal construction must be avoided in construing these laws, and the prodigality of their misapplication must be recognized and reduced," in *MSR Leathers v. S. Palaniappan* <sup>[3]</sup>, the importance of giving a purposeful interpretation to a statute provision was recognized when the Court stated: ".....one of the salutary principles of statute interpretation is to adopt an interpretation that promotes and advances the object sought to be achieved by the legislation, rather than an interpretation that defeats such object." It is to be noted that all the cases relating to juvenile must be set on principles of juvenile justice, individualized and contextualized.

### Separate hearing for children's cases

The juvenile courts are exclusively meant for children. These bodies can be distinct in it or be in part with the ordinary courts if provided by law. In India, from Boards to Supreme Court, each level is ascertained with same principles of juvenile justice. In the case of *Raghubir v. State of Haryana* <sup>[4]</sup> it was held that under Section 27 of the CRPC, 1973 it is an enabling provision and doesn't affect any Children's Acts.

The Juvenile Justice (Care and Protection of Children) Act, 2015 provides for Juvenile Justice Board to exclusively deal with Child in Conflict with Law and Child Welfare Committee to deal with Children in Need of Care and Protection.

### Child friendly hearings

The proceedings in juvenile courts are characterized by child friendly and simple environment. Unlike adult courts, where proceedings are purely legal, the juvenile courts tend to inherit a conference like and not so over-powering surrounding. The UNCRC stipulates the right of every child to freely express her or his opinions in all situations affecting her or him, as well as the right for those opinions to be given due weight, in accordance with the child's age and maturity. The child can express her or his opinions without being pressured, and she or he can choose whether or not to exercise her or his right to be heard; the child must not be manipulated or subjected to undue influence/pressure; and it is inextricably linked to the child's "own" perspective: the child has the right to express her or his own opinions, not those of others." The speedy administration of justice can be achieved in an informal setting like this. The informal nature does not mean that the general principles of criminal law will not be taken care of. In India general principles of evidence and burden of proof shall be applied.

### Protective mechanism

As compared to criminal courts for adults, in juvenile courts, only those persons who are directly concerned with the case are to be present inside court.

The persons concerned may include the judge, parties, judicial authorities, Probation Officers, parents, police officer etc.

### Protection against stigma

The general principles of Juvenile Justice (Care and Protection of Children) Act, 2015 specifically provides that dignity and worth of the child has to be upheld. There shall be right to privacy and thus nothing in the walls of court shall make a child disable to integrate or continue his life in society.

### Appeals

Under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 the appeals are provided. It simply means that every tier has a responsibility to adjudicate the case on lines of justice but the aggrieved person can also appeal from the decision to higher authority.

### Non-penal sanctions

The basic objective of juvenile justice mechanism is to provide rehabilitation to the young offenders. Thus, in such rehabilitative philosophy there is no space for penal sanctions. But, it is not a doctrine for juvenile justice. The difficult decision in this is to decide whether to send the juvenile to parents or special homes. The judicial spectrum seems to be somewhat ambivalent and there have been dynamic changes down the ages from judicial decisions of various courts to even legislative amendments in laws.

### Age of juvenility

Courts play a significant role in the progress of the juvenile justice system in India. They are the actual interpreters of the juvenile delinquency laws. At primary stages, the cases of the juvenile delinquency are apportioned by the lower courts or authorities but their judgments had not any kind of mandatory effects on the other courts. Hence, the trends of the judicial approach towards Child in Conflict with Law are reflected by the judgments of HC and Supreme Court is being examined. In *G. C. Bhowmick V. The State of West Bengal* <sup>[5]</sup>, the focal issue which came up for attention before the court was about the relevant date for determination of age of child. The question was whether it was the date when a person was brought before the court or when the offence was committed by him? The petitioner along with 2 other persons was charged under Section 304 and Section 34, IPC, 1860, and under Section 27 of the Arms Act, 1959. The petitioner alleged that he was 17 years and 5 months when the alleged offence was committed. An affidavit was later shown by the father of the petitioner to support this contention. It was held by the court that whether a person is a child or not has to be determined with reference to the date when he is brought before the court.

In *Ganga Paharia v. State of Bihar* <sup>[6]</sup>, there was a committal of the case and in the meantime the accused had crossed the age of juvenility. The court held that the accused was denied the benefits due to own fault for prolonging the proceedings. In *Mehmood Khan v. State* <sup>[7]</sup>, the court came up with a view that determination of the age of juvenile delinquent must be done in totality. In this case, two sets of school certificates, two ration cards, voting list and medical reports were produced showing different dates. Court found that the age of offender was not below 16 on a total analysis of circumstances.

In *Man Jyoti v. State* <sup>[8]</sup>, the incident took place on April 23, 1997 and F.I.R. was registered on April 24, 1997 under Section 302 IPC. Much after that an application was filed that the accused was born October 2, 1981 and he is juvenile. The juvenile court did not place any dependence on the given birth certificate. Other material records were considered and he was held not to be a juvenile. In *Munshi Khan v. State of Rajasthan* <sup>[9]</sup>, the court held that when an application is filed as to the person is juvenile, it depends upon court to enquire upon it and call for records. In *Surinder Singh v. State of Uttar Pradesh* <sup>[10]</sup>, the Supreme Court held that if no claim is made by accused that he is a

child then question of court entertaining a doubt does not arise. In *Lal Mohd. v. State* <sup>[11]</sup>, the petitioner accused was involved in the offence of kidnapping and murder. He filed an application in the court for treating him as juvenile. The school certificate was suspicious of date of birth and there was no other proof than the plea of father. The court rejected the claim on the basis of medical report.

*Pratap Singh v. State of Jharkhand* <sup>[12]</sup> is a leading case of juvenile justice. In this case two important cases were discussed *viz.*, a three-judge Bench decision of Supreme Court in the case of *Umesh Chandra v. State of Rajasthan* <sup>[13]</sup>, in which it was held that the appropriate date for applicability of the Act relating to age of accused is the date of occurrence of the crime and not the date of trial; and in *Arnit Das v. State of Bihar* <sup>[14]</sup>, it was held that the crucial date of determining the question whether a person is a juvenile is the date when he is brought before the competent authority. In the case of *Pratap Singh's Case*, it was therefore held that the 2000 Act would only so apply if person was below 18 years of age on April 1, 2001, on this date the Act came into force and the trial is pending. In the recent case of *Satya Deo v. State of Uttar Pradesh* <sup>[15]</sup>, the Court noticed that in light of Section 6 of the General Clauses Act read with Section 25 of the 2015 Act, an accused cannot be deprived of his right to be treated as a juvenile when he was less than 18 years of age when the offence was committed, and has fructified under the Juvenile Justice (Care and Protection of Children) Act, 2000, even if the offence was committed prior to the coming in force of the Juvenile Justice (Care and Protection of Children) Act, 2000.

In *State v. Ram Singh and another* <sup>[16]</sup>, the defendant, Mohammad Afroz also known by his alias "Raju" was declared as 17 years and 6 months old on the day of the crime by the Juvenile Justice Board which relied on his birth certificate and school documents. The Juvenile Justice Board rejected a police request for an ossification test for a positive documentation of his age. On January 28, 2013, the Juvenile Justice Board determined that he would not be tried as an adult. A petition was moved by president which sought the prosecution of the minor as an adult owing to the awfully violent nature of his alleged crime was rejected by the Juvenile Justice Board. Later the minor was tried separately in a Juvenile Court. A verdict in the case was scheduled to be announced on July 25, 2013 but was deferred until August 5, 2013 and then deferred again to August 19, 2013. On the 31st, he was convicted of rape and murder under the Juvenile Justice (Care and Protection of Children) Act, 2000 and was given the maximum sentence of 3 years' imprisonment in a reform facility as provided by the Act, it included the 8 months he spent in remand during the trial of the case. The juvenile was released on December 20, 2015 and later certain rehabilitative measures were there. This case was a forming ground for the new Juvenile Justice (Care and Protection of Children) Act, 2015 which dealt more functionally with crime typology and seriousness of a crime even committed by a juvenile.

In *Darga Ram v. State of Rajasthan* <sup>[17]</sup>, the appellant filed an application saying that he was juvenile during the commission of the offence and he should have the benefit of juvenility. The court ordered medical college authority to conduct a medical examination to determine the age of the person because there was no birth certificate of any document. The appellant was deaf and dumb. Now the

determination of age was to be decided on the basis of medical report and he was declared to be about 30 to 36 years of age. On this basis it was determined that during the occurrence of crime he was around 17 years of age, thus, a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000. The Medical Board was not able to give an exact age so under Rule 12(3) (b) of Model Rules, 2007 it was supposed to be shifted on the lower side. In totality of circumstances, the Court was persuaded by the estimation of age as given by Medical Authority. The offence committed by him was heinous but the Court ended up by saying that the fact of him being in jail for 14 years is now a cold step to declare him juvenile under the Act for committing rape of a young girl-child.

There is no possible conclusion as to determination of age based on records available. In *Dayachand v. Sahib Singh* <sup>[19]</sup>, the court laid down that in the dilemma of admissibility of age mentioned in a school certificate or medical board, the medical report shall be considered. Years later Supreme Court in *Sikander Mahto v. Tunna* <sup>[19]</sup> coherently observed that where there is a conflict between school certificate and medical board records, the age given in school certificate will be considered valid for the purpose of determining juvenility.

#### **Rights against inhumane treatment and trial**

In *Vikaram Deo Singh Tomar v. State of Bihar* <sup>[20]</sup>, the Court held that to comply with constitutional criteria recognized by well-accepted concept, the State must provide at least the basic conditions preserving human dignity while assigning women and children to these establishments, euphemistically referred to as 'Care Homes'.

The case of *Munna v. State of Uttar Pradesh* <sup>[21]</sup> presented a heart wrenching situation which dealt with the sexual abuse of children in adult jails. In *Sunil Kumar v. State* <sup>[22]</sup>, it was observed by the Court that the children home is instituted with a purpose to receive neglected children. They should provide the child not only with accommodation, maintenance and facilities for the progress and growth of his character and ability to give him required training for guarding himself against moral dangers and exploitation.

In *Sanatkumarsinha V. State of Bihar* <sup>[23]</sup>, it was held that all unnecessary adjournments which will cause delay in the trial should be avoided in order to lead a speedy trial. Further trials where juveniles are involved should be concluded as early as possible but definitely within one year. It can be seen that Juvenile Justice (Care and Protection of Children) Act, 2015 works on the principle of speedy trial too by assigning time slots and trial type for the type of crime committed.

In *Sanjay Suri v. Delhi Administration* <sup>[24]</sup>, a news report described the ill treatment given to minors in the Tihar Jail in Delhi in the presence of jail staff. The reporter on this issue moved to the Supreme Court seeking the relief on behalf of the child prisoners. The Supreme Court then appointed the District Judge to make an inquiry and report. His report revealed a scandalous state of affairs that the adult prisoners subjected the children to sexual assault. It raised a significant issue and the case needed prompt action. The Court then passed a number of orders based on this report and some juvenile under trial prisoners were ordered to be released immediately. The judgment majorly stressed the need to generate a sense of humanism in jail administration and said that youth shall not be assigned to



same place as regular prisoners and not even their contact. Justice Sarkaria in *Kakoo v. State of Andhra Pradesh* <sup>[25]</sup>, reducing the sentence on humanitarian consideration for a 13 year old boy who committed rape on a small child of two years, observed that an inordinate long imprisonment term is sure to turn juvenile delinquent into obdurate criminal and laid an emphasis that in case of child offender, current penological trends command a more humanitarian approach. In *Khatri v. State of Bihar* <sup>[26]</sup>, Justice P. N. Bhagwati emphasized that there shall be right to free legal aid and be defended by a lawyer. The Supreme Court enunciated this right to be availed by poor children who don't have means and methods in a court case.

It is very clear mandate of the Juvenile Justice (Care and Protection of Children) Act s that there shall be no stigmatization and scandalous treatment of children under the Act. In *Jameel v. State of Maharashtra* <sup>[27]</sup>, the Supreme Court held that the juvenile shall be protected from a stigma because it can cause hurdles in reintegration into the social life. The government has now made it clear that the provision of Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which prohibits disclosure of identify of children, is also applicable in case of disclosure of identify of a deceased minor <sup>[28]</sup>.

#### **Judgments relating to bail in case of juvenile**

In case of *Tajuddin v. State of Uttar Pradesh* <sup>[29]</sup>, the bail was rejected and revision was filed against rejection of bail. The court found that there is a long list of criminal cases in which the juvenile is involved. He was a hardened criminal and had criminal antecedents which clearly indicate that his release would expose him to moral danger thereby defeating the ends of justice. So the bail was rightly rejected in this case.

In *Rahul Mishra v. State of Madhya Pradesh* <sup>[30]</sup>, the expression "ends of justice" was under discussion purview of the Court. This simply means that avoiding any situation that might abscond the jurisdiction and interfere with the criminal justice mechanism.

In *Bholu v. State of Rajasthan* <sup>[31]</sup>, the revision petition was filed against the order of learned Sessions Judge, Alwar. The High Court while dealing with the submissions instated that the juvenile be released on bail if father of juvenile submits a bond of Rs. 25000.

In *Bittu v. State* <sup>[31]</sup>, the question arose that whether bail can be refused to the juvenile who has been taken in custody in case of rape? The court held that bail can be rejected on the three grounds mentioned under the Act and if the Court is satisfied that this would not meet the ends of justice it can be dismissed.

The Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 enumerates that the bail can declined on the ground that it would defeat the ends of justice and also if it put him in moral, physical or psychological danger. In recent case of *Vishvas v. State of Punjab* <sup>[32]</sup>, the Punjab & Haryana High Court held that a juvenile has to be released on bail mandatorily unless and until exceptions carved out in proviso to Section 12 (1) of Juvenile Justice (Care and Protection of Children) Act, 2015 itself are made out. In *Sachin v. State of Rajasthan* <sup>[33]</sup>, there was an inquiry done in relation to the age of offender who was accused under Section 8/15 of the NDPS Act. The application of bail was rejected on the grounds that the juvenile might come in association with people who can spoil him.

#### **Rehabilitation and social re-integration**

In *Changua alias Dabasis Das v. State of Orissa* <sup>[34]</sup>, the Court held that the main objective behind the Juvenile Justice Act is to adjust his behaviour to the approved, moral and legal ways of the society and therefore rehabilitation and social reintegration of the child or juvenile offender is very much essential. But while dealing with the children all the authorities must take speedy action. Any action at the end likely to affect a child would be detrimental to the Republic since the child of today is the future of Republic.

In *Vishal Jeet v. Union of India* <sup>[35]</sup>, the Supreme Court issued several directions to the State and Central Govtt. These were issued for eradication of child prostitution in various parts of the country and that for providing adequate and rehabilitative homes which are to be well managed by a qualified trained senior workers, psychiatrist and doctors.

In the recent case *Lallu v. State of Bihar* <sup>[36]</sup>, the Patna High Court beautifully observed the the chronology of juvenile justice philosophy. Dealing with an appeal from the Children's Court under this Act of 2015, Court observed that earlier there was a doctrine of *parens patriae* which meant that the State shall become the protector and care taker of every neglected, mentally or physically disabled child in order to provide him a living and purpose in life. Slowly and gradually the shift was made from this doctrine to rights approach that respects constitutional and procedural laws. Accordingly, the Juvenile Justice Act, 2015 was aimed to rehabilitate and reintegrate the juveniles keeping in account the child's age and constructively serving the society.

#### **The crime typology challenge**

After the occurrence of infamous *Nirbhaya Gang Rape Case*, there was huge hue and cry in the country. The Committee on Amendments to Criminal Laws was headed by Justice J.S. Verma. It was constituted to examine the deficiencies in the existing criminal law regime governing sexual assault against women. The Committee although rejected the thought of lowering down the age of juvenile to 16 years which was popularly called for after the Nirbhaya Case due to grave crime committed by one of the accused who was also a juvenile at that time. Although, the govt. decided to repeal the Juvenile Justice (Care and Protection of Children) Act, 2000 and enacted the Juvenile Justice (Care and Protection of Children) Act, 2015 with more efficacy towards crime typology; thereby setting out twin objective of deterrence for juveniles along with protecting rights of victims. It mandated that juvenile can be tried as adult in case of heinous crimes. It divides the crimes into three different categories *viz.*, petty offence, serious offences and heinous offences. 'Petty offences' are defined under Section 2(45) of Juvenile Justice (Care and Protection of Children) Act, 2015 to mean offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to 3 years. 'Serious offences' are those which have punishment under any law as imprisonment between 3 to 7 years. 'Heinous offences' are defined to mean offences for which the minimum punishment under any law is imprisonment for 7 years or more. One of the foremost changes was regarding juveniles that aged between 16 - 18 years.

As far as the heinous offences are concerned, it is provided that if the child is below 16 years then the procedure prescribed for serious offences is to be followed; but if the

child is above 16 years then assessment in terms of Section 15 has to be made, which reads that, 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 in accordance with the provisions of Section 18 (3) in which he can be ordered to be tried as an adult. The Board may take the assistance of experienced psychologists/ social workers and any other experts.

There were so many controversies followed by the Section 15 of this new Act. A bench headed by the then Chief Justice of India T. S. Thakur questioned the locus of the petitioner, Tehaseen Poonawala who filed a PIL against the new law and said that it may be challenged by somebody who is convicted or affected by the new legislation, so the locus of petitioner was in question and not maintainable.

In *Central Bureau of Investigation v. Swapan Roy* [37], the judgment of Calcutta High Court had earlier observed that there is no doubt the instant case had a grave consequence in which nine people died. The main dilemma here is how to assess the juvenility and culpability of the juvenile. In such cases he may have been used as a 'pawn' due to his age. The observation was made in this regard that in case of borderline juvenile delinquents, who are caught up in situations like these due to poverty and insufficient social empowerment and at the behest of malevolent external forces, the Juvenile Justice (Care and Protection of Children) Act, 2015 shall become a balm of justice for them. Hence in this case the person was declared as a Child in Conflict with Law. Then CBI approached Supreme Court because the Calcutta HC did not interfere with the age related issue of juvenile. Mr. Rohtagi drew the attention of the Court towards the increasing number of heinous crimes being committed by juveniles in the 'nation'. The gathering in the village was brutally attacked by lethal weapons from the accused people and one of them was this respondent. The age of juvenile, as the learned counsel Mehta and Rohtagi pointed out was now a controversial topic, and such a grave and inhuman act performed in the veil of juvenility which was supposedly borderline.

The Supreme Court in a Public Interest Litigation decided on March 28, 2014, in *Subramanian Swamy and others v. Raju* [38], denied to read down the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, in order to account for the mental and intellectual competency of a juvenile and refused to obstruct with the age of a juvenile accused in cases where juveniles were found guilty of heinous crimes. It was held by that the provisions of the Act are in acquiescence to the constitutional directives and international instruments. The Court further added that the arrangement of juveniles as a special class is standing the test of Art.14 of the Constitution of India. The baton was passed on to the Parliament to finish the relay race and thereafter the Juvenile Justice (Care and Protection of Children) Act, 2000 was repealed.

In *Gaurav Kumar v. State of Haryana* [39], the special leave petition was preferred under Art. 136 of the Constitution of India. The legal defensibility of the order by High Court was in question and petitioner claimed he was 17 years of age during occurrence of the act. The FIR in this case said that the deceased was liable to pay some amount to accused but he did not, then the accused went with kicks, lathis etc to the deceased's house. Thereafter the deceased was moved to a

hospital, then gave dying declaration and was ended up to death. The Court said that the present Act be re-looked, re-scrutinized and re-visited.

*Shilpa Mittal v. State of NCT Delhi* [40] is the recent case which dealt with the ambiguity created by word 'minimum' in Section 2 (33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 which says that "heinous offences" includes the offences for which the minimum punishment under the IPC, 1860 or any other law for the time being in force is imprisonment for seven years or more. The factual background is that a juvenile was alleged to have committed an offence punishable under Section 304 of the IPC, 1860 which offence is punishable with a maximum punishment of imprisonment for life or up to 10 years and fine in the first part and imprisonment up to 10 years or fine, or both in the second part. No minimum sentence is prescribed. It was contended by appellant that the non-included category would create an absurdity in the application of the Act. The appellant also contended that the word 'includes' in the definition of heinous crime would mean that it can include those things that are not actually mentioned in the provision. The counsel to the respondent clearly denied this contention and said that the appellant is in no position to rewrite a law. It cannot be deciphered only because there are some non-included categories. The Court held that the Court is in no position to alter or defy with the law and that has to be addressed by the Parliament only. So, the appeal was dismissed.

In the backdrop of this case, there was a meeting attended by the Law Minister, Ravi Shankar Prasad; Women and Child Development Minister, Smriti Irani; External Affairs Minister, Jaishankar; Health Minister, Harshvardhan and Food Processing Minister, Harsimrat Singh Badal. The meeting discussed about heinous crimes segregation from pre-meditated with crime conveyed by fit and anger. Considering the amount of workload and pending cases before courts, the Govt. decided to let District Magistrate on the Board of Juvenile Justice Board. The Juvenile Justice (Care and Protection Amendment Bill, 2021 was then formulated which said that such fourth category will be included in serious crimes.

### **Police and juvenile delinquency**

The police has a very significant and sensitive role to play in the juvenile justice system. It demands an entirely different approach as compared to adult criminals. As we have already seen Section 107 of Juvenile Justice (Care and Protection of Children) Act, 2015 provides for a Special Juvenile Police Unit (Section 2(w) Juvenile Justice (Care and Protection of Children) Act, 2015) that is specifically trained and instructed to perform their functions well; there is also atleast one Child Welfare Officer designated in every police station to coordinate with the police in cases of juvenile delinquency.

In the landmark case of *Sampurna Behrua v. Union of India* [47], Supreme Court ordered "the Home Departments and the Director Generals of Police of the states/Union Territories to ensure that Special Juvenile Police Unit comprising of all police officers designated as Child Welfare Officer be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in Section 63(3) of Juvenile Justice (Care and Protection of Children) Act."

In *Yusuf Abdul Aziz v. State of Bombay* [42], a constitutional

bench of Supreme Court observed that Art. 15(3) is not confined to provisions which are beneficial in strict sense but include much more meaning in the phrase “special provisions”. Hence, in Juvenile Justice (Care and Protection of Children) Act, 2015 and Model Rules 2007, even when the police has been vested with a function to apprehend Child in Conflict with Law, the integral special safeguards of Special Juvenile Police Unit and Child Welfare Officer and their functioning as watchdogs of human rights of children are special provisions under Art. 15(3) of the Constitution of India.

There shall be a firm, kind and child friendly attitude of police in dealing with juvenile. Rule 8 of the Model Rules, 2016 says that Special Juvenile Police Unit shall not be in uniform but in plain clothes. He shall not send the child to a police lock-up but without any delay convey him to Child Welfare Officer. There can be no handcuffing or any compulsion to confess. In fact, in Court on its Own Motion v. Govt. of NCT of Delhi<sup>[43]</sup> the Delhi HC had earlier held that there shall be no compulsion by police to any juvenile for signing any statement recorded under Section 161, CRPC even when it corresponds to the discovery of any fact under Section 27 of the IEA.

#### International cases that impacted the world

The Supreme Court of the United States held in Prince v. Massachusetts<sup>[44]</sup> that the government has broad authority to regulate children's actions and treatment. While children have many of the same rights as adults, they are treated differently. While children have many of the same rights as adults, they are exposed to different risks from identical activities.

In early faces of juvenile justice systems, juveniles were not provided due process rights; however due process rights were given by US Supreme Court decision in Re Gault case, where a 15-year-old juvenile criminal was sentenced to a state industrial school until he became 18, whilst an adult was sentenced to a fine of \$50 and two months in prison. The Arizona code was considered to be unconstitutional because it gave the judge unrestricted authority over the punishment of an offence. Arizona maintained that the primary goal of juvenile justice is to keep children out of criminal processes, and that the juvenile's punishment was reformatory rather than punitive. Consequently, juveniles were provided the right to legal counsel, the right against self -incrimination, the right to timely notification of charges and the right to confront witnesses.

T and V v. United Kingdom<sup>[45]</sup>, the European Court of Human Rights found that the applicants' right to fair trial was violated, and a single authority (Secretary of State) cannot decide the basis of trial in the instant case wherein the juveniles were called to be tried as adult in a case of murder and this was ordered by executive for a tariff of 15 years at Her Majesty's pleasure. This was entirely against UNCRC provisions. A punitive measure should be set by the Courts and not by political representatives. Thus the importance of ultra vires doctrine can be ascertained from this decision. In the year 2005, Roper v. Simmons<sup>[46]</sup> case gained much popularity when, the Supreme Court of the United States ruled it unconstitutional for a youth under 18 years of age when the crime occurred to receive death penalty as a sentence of conviction. In 2010, the Supreme Court stated in the case of Graham v. Florida<sup>[47]</sup> that there should be a possibility of parole in non-homicidal cases.

The ruling necessitates that states provide juveniles a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Then came the 2012 case of Miller v. Alabama<sup>[48]</sup> ruling which made it unconstitutional for the juvenile (under 18 years of age) to have life imprisonment without possibility of parole.

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