

“Exploring the Ethics and implications of trying Juvenile as Adults for heinous crimes in the Indian Juvenile Justice System: A Critical Study with Special references to Lucknow, Hardoi, and Lalitpur of legal frameworks and case studies”

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD
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CERTIFICATE

This is to certify that the dissertation titled, “Exploring the Ethics and implications of trying Juvenile as Adults for heinous crimes in the Indian Juvenile Justice System: A Critical Study with Special references to Lucknow, Hardoi, and Lalitpur of legal frameworks and case studies” is the work done by Himanshu Singh under my guidance and supervision for the partial fulfilment of the requirement for the Degree of Master of Laws in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

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DECLARATION

Title of Dissertation “Exploring the Ethics and implications of trying Juvenile as Adults for Heinous crimes in the Indian Juvenile Justice System: A Critical Study with Special references to Lucknow, Hardoi, and Lalitpur of legal frameworks and case studies”.

I understand what plagiarism is and am aware of the University’s policy in this regard.

Himanshu Singh

I declare that

(a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of Master of Laws.

(b) I declare that this DISSERTATION is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.

(c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

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ABBREVIATION

SJPU	Special Juvenile Police Unit
CCI	Child Care Institution
CJM	Chief Judicial Magistrate
CMM	Chief Metropolitan Magistrate
Cr. Pc	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
CWPO	Child Welfare Police Officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
FIR	First Information Report
IPC	Indian Penal Code, 1860
JJB	Juvenile Justice Board
JMFC	Judicial Magistrate of First Class
NGO	Non-governmental organization
OH	Observation Home
PJU	Police Juvenile Unit
PO	Probation Officer
POCSO Act	Protection of Children from Sexual Offences Act
SJPU	Special Juvenile Police Unit
SLSA	State Legal Services Authority
DLSA	District Legal Services Authority
JJ Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015

SR no.	Table of case
1	Arnit Das v. State of Bihar, AIR 2000 SC 2264: (2000) (2) JCC(SC)545
2	B.C. Deva v. State of Karnataka”, (2007) 12 SCC 122
3	Bhola Bhagat v. State of Bihar
4	Gopinath Ghosh vs. State of West Bengal
5	Hariom v. State of U.P
6	Jabar Singh Vs, Dinesh & Anr.
7	K. Venkateshwarlu Vs State of A.P., (2012) 8 SCC 732012) 8 SCC 73,
8	Emperor v. Wall Mohd. & another
9	Madan Pradhan v. State of West Bengal
10	Mohan Mali & Anr. Vs. State of M. P42
11	Pratap Singh v. State of Jharkhand and another
12	Poulush Pahan v. State of Jharkhand and Another
13	Malda Dada v. State of Gujarat
14	Santo and others v. State of U.P. 152
15	State of M.P Versus Najab Khan and Others”, 2013 CrL LJ 3951 (SC
16	“Shiv Chand Pran Bansode v. State of Maharashtra”, (Bombay) (Nagpur Bench)
17	State of Himachal Pradesh v. Sanjay Kumar alias Sunny (2017) 2 SCC 51
18	State of Punjab Versus Gurmit Singh & Others”, AIR 1996 SC 1393
19	Sanjeev Kumar v. State (UT Administration)”, 2019 (1) RCR (Criminal) 726
20	State of U.P. v. Krishna Master & OR’s.”, 2010(3) R.C.R.(Criminal) 843
21	Ravi S/o Ashok Ghumare Versus State of Maharashtra”, 2019 AIR SC 5170
22	Sushil Kumar v. State of UP
23	Krishna Bhagwan v State of Bihar
24	Umesh Chandra v State of Rajasthan
25	Sheela Barse v. Union of India, (1986) 3 SCC 596: AIR 1986 SC 1773
26	Shantanu Mitra v. State of West Bengal
27	Rajinder Kumar Versus State of Himachal Pradesh”, 2019 Cr. LJ 2839
28	Ravi S/o Ashok Ghumare Versus State of Maharashtra
29	Baron Chandra Thakur Vs Master Bhola, 2022

CHAPTER I:INTRODUCTION

The treatment of juvenile delinquents has been a much-debated issue in India as the society prepares itself to come to terms with the rising graph in juvenile delinquency. While there is no denying the fact that delinquent juveniles lack mental maturity and are often driven by their passion.

Developing a just, effective juvenile justice system has been proven a herculean task. Policymakers were struggling with the challenge of balancing two opposing themes—the welfare of child offenders and public safety.

Since the past century, juvenile justice policy has swung like a pendulum from one theme to the other. Finally, on Dec 22, 2015 the Juvenile Justice (Care and Protection of Children) Act, 2015 (here in after referred as Juvenile Justice Act, 2015) received parliamentary approval. The government justified the law as a measure that would have a deterrent effect on potential juvenile offenders. However, the opponents argue that the law would defeat the objective of having the separate juvenile justice system, and would not serve the goal of deterrence. This study has evaluated the potency of the counter claim which proposes that the existing law be better implemented, and thereby examine the necessity for the introduction of a new approach governing juvenile policy in India.

Children constitute about 41% of India 's total population.

Over 2462 children, mostly between the age group of 16 to 18 years, have been apprehended for crimes like rape and murder across the country in 2016, the highest in last decade.

As many as 44171 such cases were registered in 2016 as compared to 21088 cases in 2006.

According to NCRB data, ¹37444 of the totals of juveniles apprehended in 2021. Over 1816 children, mostly age group of 16 to 18 years, have been apprehended for crimes like Rape and murder in country.

According to NCRB Data 2020², 35352 of the total of juveniles apprehended.

Over 1617 children age group of 16-18 years, have been apprehended for rape and

¹<https://ncrb.gov.in/en/Crime-in-India-2021>

²<https://ncrb.gov.in/en/Crime-in-India-2020>

murder.

According to NCRB ,38685 of the total of juveniles apprehended in 2019³. Over 1808, children age group of 16-18 years, have been apprehended for rape and murder

It is pertinent to mention here two highly gruesome gang rape cases that shook the public conscience. One occurred in Delhi on 12 December 2012 and another happened in South Mumbai in July 2013. On conviction, the court awarded the death penalty and life imprisonment to the adult offenders as per the magnitude of their role in the crime. However, the maximum penalty available to the Juvenile Justice Board for the minors involved in the crimes were three years in juvenile homes.

In Pradyumna Murder Case (Ryan international school, Gurugram) in 2017, 16 years student old accused to be treated as adult.

Judicial board has come to decision by trained judicial person not police.

Overview of the Indian juvenile justice system

Ancient system

In ancient India, no system of juvenile justice system. However, one can find scattered, provision. one thing was that a child below 5 years of age was presumed to not have committed any offences and such no punishment could be imposed. However, child of age group was suffering from certain disease then in case of such the criminal sanction was to be reduced to half of Normal Punishment.

Ancient Indian law basically focused on welfare of children. A mother, leading an immoral life, lost her right of guardianship over her child. further, if a mother was negligent or committed cruelty towards a child, she lost custody of child. Cases have been reported wherein child committing heinous crime was outcasted.

Yagna Valka explains that the Raj dharma provided that a juvenile who had committed a crime would not be treated as a part of family if such delinquent juvenile was still kept by family then king would order excommunication of entire family, any delinquent action of a juvenile brought punishment for entire family.

³<https://ncrb.gov.in/en/crime-india-2019-0>

British system

History starts with 1843, when Dr. Buist Established ragged school for orphans and street children, a school at Bombay known as David Sassoon Industrial School.

The school was established to take care of the juvenile delinquents arrested by police and make them worthy when they come out of school. there were series of Prison reports from 1860-63, suggesting separate jails or separate provisions for keeping the juveniles.

JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

The Juvenile Justice Act, 2015 got the **assent of the President on 31stDecember, 2015**.

There after it become law and published in the Gazette of India.1 Asper the section 1(2) the JJA 2015 is extended by the parliament for the State of Jammuand Kashmir, it means juvenile of Jammu and Kashmir will continue to governedby the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act,2013, till then legislature of the State of Jammu and Kashmir not makes its own newlaw.

DEFINITIONS

Juvenile Justice Act, 2015 defines all the important terms in a very rational manner some of the definitions brought in new angles within their meaning. The JJ Act, 2000 contained only twenty-five definitions under Section.2 but in Juvenile Justice Act, 2015 have been given sixty definitions. One of the most vibrant Definitions is “child” and “juvenile”. ⁴Definition of child was a matter of litigation but JJ Act, 2015 tries to define the term child in a very rational way.

Child and Juvenile

As per the provision under section.2 (12) of the JJA 2015 the word ‘child’ means, “a person who has not completed eighteen years of age”. It also includes the

⁴Juvenile Justice Act, 2015

definition of 'juvenile' as "a child below the age of eighteen years".

There is no reason for inclusion of this definition or rationale for the differential formulation and must be ignored as it has no bearing on any matter relating to the JJA 2015. As we know different Acts have different criteria for determination of the age of children.

Child in conflict with Law

In juvenile justice Act, 2015 enough stress has been given to define the term

"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."

In this context The Juvenile Justice Act, 2015 is different to Juvenile Justice Act, 2000 in reference to definition following two differences is between two these acts. There are two differences in this definition compared to the corresponding definition in the JJA 2000.

In the juvenile justice act 2000 the word child was mention but Juvenilejustice act 2015 replace the word 'juvenile' with 'child' In the juvenile justice act2000 only children alleged to have committed an offence' was mention but thejuvenile justice act 2015 not only include the children alleged to have committed anoffence but also children found to have committed an offence. So, we can say thatambit of juvenile justice act 2015 is broader than the ambit of juvenile justice act2000.

Child in need of care and protection

The definition of "child in need of care and protection"has retained many of the clauses from the JJA 2000 but with some deletions, additions and modifications in the clauses.

It contains twelve clauses.

I. Clause (I) includes a child "who is found without any home or settled place of abode and without any ostensible means of subsistence". This definition is the same as in the JJA 2000 and includes children found without any home or settled place of abode and without any ostensible means of subsistence.

ii. Clause (ii) includes a child “who is found working in contravention of labour laws for the time being in force or is found begging or living on the street.” However, it includes only those children who are working in violation of the labour laws and does not cover all working children.

iii. Clause (iii) includes a child who resides with a person (whether a guardian of the child or not) and such person—

a. has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of the child;
or

b. has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

c. has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person.

iv. Clause (iv) covers a child “who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so, by the Board or the Committee”. Surely the State has the obligation to provide care and protection to all children who have no one to support or look after them. This is more so when such a child is also mentally ill or mentally or physically challenged or suffering from terminal or incurable disease.

v. Clause (v) covers a child “who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child”. Read in the light of Section 76(2), the word ‘unfit’ in this clause refers to a parent or guardian who knowingly abuses and exploits the child for illegal purposes.

Incapacitated, however, is not necessarily a blameworthy condition and this incapacity may arise due to physical or mental illness or incapacity of the parent, or incarceration of the parent.

vi. Clause (vi) refers to a child “who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him”. This definition needs to be read in conjunction with the analyses of the definitions of abandoned child and orphan child.

vii. Clause (vii) includes a child “who is missing or run-away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed”. This clause includes a new category of children within the definition of children in need of care and protection. The ‘missing’ child in this clause presents the peculiar problem of not being present or traceable. A child can be said to be ‘missing’ only till he or she is found. Once they are found, they are no more missing. For the purposes of this Act, no action can be taken by anybody under this Act till the child is found. Perhaps the intention was to refer to children who are lost as distinguished from children who run away from home. A missing child as understood in the sense of a lost child, will need to be treated as a child in need of care and protection if their parents cannot be found after reasonable inquiry.

viii. Clause (xi) includes a child “who is victim of or affected by any armed conflict, civil unrest or natural calamity”. This clause is also similar to the earlier clause in the JJA 2000 except that it has substituted ‘civil unrest’ in the place of ‘civil commotion’.

x. Clause (xii) of Section 2(14) includes a child “who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for

solemnization of such marriage”. This is a completely new category included within the definition of children in need of care and protection and reflects the recognition the malaise of child marriage.

Best interest of the child and child friendly

The word best interest of the child ⁵has been defined under section 2(9) in the juvenile justice act 2015. The word means and includes “decisions taken regarding the child in order to ensure the basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

The term child friendly contained in section 2(15) deals with humane behaviour, attitude, treatment, practice and environment. These factors are very important because it determines the character of human being. In this context we can say that Juvenile justice Act, 2015 is wider and rational as compare to Juvenile justice Act, 2000 undoubtedly, we are in a position to say that the juvenile justice act 2015 is more children friendly. These things have been **reflected in rule 2 (d) of the juvenile justice model rules 2007.**

CLASSIFICATION OF OFFENCES

The JJ Act, 2015, has classified the offence in to three categories namely, petty, serious and heinous. Section 2 of the JJ Act, 2015 contains the definitions of petty, serious, and heinous offences. Section -2 of the JJ Act, 2015 define the term petty, serious and heinous offences as follows:

- a. ‘Petty offences’ includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.
- b. ‘Serious offences’ includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force is imprisonment between three to seven years.
- c. ‘Heinous offences’ ⁶includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.

⁵Juvenile Justice Act, 2015

⁶ heinous offences ‘definition Juvenile Justice Act, 2015

The definition of petty offences is quite clear as it includes only those offences that are punishable with maximum imprisonment of three years, but under the Indian Penal Code Sec. 95 discuss about that matters which matters settle outside the court between themselves called petty matters. Sec. 95 I.P.C. is intend to prevent penalization of negligible wrongs, or offences of trivial nature. The section provides an exception from criminal liability in respect of those acts which, though they fall within the latter of the law, are yet not within its spirit, and is considered as innocent. The definition of petty offence given under I.P.C can be also taken in respect to juvenile justice for presumption of innocence. The JJ Act, 2015 also discuss about petty offences where the juvenile will be presumed innocent in such cases the juvenile should be treated as having no mensrea. The qualifying words in this definition are maximum imprisonment of three years. Hence, despite inclusion of offences punishable with three years of imprisonment in the category of serious offences, this definition will need to be read as referring to offences punishable with imprisonment of more than three years.

The second problem posed by the definition of serious offences is that it includes offences punishable with imprisonment up to seven years. Due to this limitation included in the definition of serious offence; all offences punishable with more than seven years of imprisonment are not serious offences. For any offence to be classified as a heinous offence, it must be punishable with minimum imprisonment of seven years or more. The consequence of classification of an offence as heinous under the JJA 2015 is that if it is alleged to have been committed by a child between the age of 16-18 years, it exposes the child to the possibility of being tried as an adult and thereby expanding their criminal liability. Hence, it is impermissible to include offences punishable with more than seven years of imprisonment but not providing for imposition of mandatory minimum imprisonment of seven years within the category of heinous offences.

CHILD CARE INSTITUTION

The term “child care institution” refers to a range of places where children may be kept and it means “Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency and a fit facility recognized under this Act for providing care and protection to children, who are in need of such services”.

In relation to Observation Home, Special Home and Observation Home, the JJ Act, 2015 follows the same pattern as prescribed in the JJ Act, 2000. Children in conflict with the law may be kept in an observation home¹⁴ during adjudication of their case by the Board when not released on bail. An observation home means a home established and maintained by the government or a home run by an NGO registered as an observation home under the JJA.

FOSTER CARE

The word ‘Foster care’ has been defined under the JJ Act, 2015 “means placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child’s biological family, that has been selected, qualified, approved and supervised for providing such care”.

The main aim of foster care is to provide family like care to the child grow up as a member of the family.

ADOPTION

The term ‘adoption’ has been defined in the JJ Act, 2015⁷, that is quite different from the definition given by the JJ Act, 2000. The JJ Act, 2000 define the term adopted child legitimate child of the person those who adopted the child. But the definition in the JJ Act, 2015 is different; it describes such child as the lawful child. The replacement of the word legitimate means lawful child, and make a difference with ‘illegitimate child’. Further the word orphan child has been defined under section 2(42) of the JJA, 2015 ‘orphan’ means a child: As children without biological or adoptive parents or legal guardian; or the legal guardian of children when refuse to take care, or not capable of taking care of the child.

⁷The term ‘adoption’ has been defined

From the above-mentioned definition of the term orphan, it is clear that a child who has neither the natural or legal nor the adoptive parents. The same preposition is applicable in the case of a child who has parents but them incapable of taking care of the child and due to in capacity the parents force to surrender the child.

This part of the JJ Act, 2015 is very important for Central government, State government, and the JJ board and other agencies, while implementing the provisions of this Act. The provisions laid down under adoption are similar to the directive principle of the state policy in the constitution of India.

CHILDREN’S HOME

The term ‘Children’s Home’ means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organization, and is registered as such for the purposes specified in section 50.

SPECIAL JUVENILE POLICE UNIT

The term ‘special juvenile police unit’ means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107⁸.

SPECIAL HOME

The term ‘special home’ means an institution established by a State Government or by a voluntary or non-governmental organization, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board.

PROVISIONS FOR EFFECTIVE IMPLEMENTATION OF THE JUVENILE JUSTICE ACT

⁸JJ Act, 2015

In order to implement the provisions of JJ Act, 2015 in effective manner, the JJ Act, 2015 recommended for establishment of State Child Protection Society, District Child Protection Unit, Special Juvenile Police Unit, and the Commissions for Protection of Child Rights. In order to protect the interest of children additional responsibilities have been given to the commission for protection of child right. The Act also provides for evaluation of functioning of various structures under the Act. State Child Protection Society and District Child Protection Unit important bodies and have the most significant role in the implementation of the JJ Act, 2015. As per Section 106 the SCPS and DCPU will consist of all such officers and other employees as are appointed by the government to take up all matters relating to children in the implementation of the Act. These matters include establishment and maintenance of institutions under the Act, notification of competent authorities relating to children, rehabilitation of children and co-ordination among various stakeholders. Under this act, responsibility has been given to the National Commission for protection of child rights and the state commission for protection of child rights for monitoring the implementation of the Act. These Commissions are specifically responsible for monitoring the implementation of the Act under Section 109 of the JJ Act, 2015.

SPECIAL JUVENILE POLICE UNIT AND CHILD WELFARE POLICE OFFICER

Section-107⁹ of JJ Act 2015, discussed about the special juvenile police unit and welfare police officer. It laid down the following provision:

- a. A Special Juvenile Police Unit is established in each district which will consist of the Child Welfare Police Officers from each police station in the district, and
- b. Two social workers, one of whom must be a woman.

Its function is to co-ordinate all functions of the police relating to children.

These police unit has a cardinal role in the JJ Act, 2015 All police officers of the Special Juvenile Police Units shall be provided special training, especially at

⁹ special juvenile police unit and welfare police officer

induction as child welfare police officer to enable them to perform their functions more effectively. In the special juvenile police unit at least one officer, not below the rank of assistant sub-inspector, with appropriate training, aptitude and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and nongovernmental organizations.

EVALUATION OF FUNCTIONING OF STRUCTURES

The JJ Act, 2015 empowers the Central and State Government to freely assess the functioning of various institutions which include the Board, the Committee, special juvenile police units, registered institutions; the evaluation process which has been left on the discretion of the government. In such case independent evaluation is conducted by both the government and it lies down that in such cases the evaluation made by the Central Government will prevail.

CONSTITUTION OF THE JUVENILE JUSTICE BOARD

The JJ Act, 2000 brought a land mark change in the constitution the juvenile court, which renamed as the juvenile justice board consisting of three members viz.,

- a. One magistrate, designated as the Principle Magistrate, and
- b. Two social workers as members of the Board vested with the powers of the magistrate. Similar provisions have been made in the JJA, 2015 also.

The same provision also adopted in JJ Act, 2015. Chapters 3rd and 4th of JJ Act, 2015, specifically deals with constitution, procedure, powers and function of the board when the board dealing with a child conflict with law. Section 4 specially deals with the constitution of the board and it instructs that at least one Juvenile Justice Board¹⁰ shall be constituted for every district for exercising the powers and discharging its functions relating to children in conflict with law.

- a. Section.4 (2) laid down the following conditions to be fulfilled for appointment as the member of the Board:

¹⁰Section 4 of JJ act 2015

I. One Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate having experience of at least three years. He is to be referred as the Principal Magistrate.

ii. Two social workers selected in the manner to be prescribed under the rules. At least one of the social workers must be a woman.

b. Sub-section (3) of Section 4 lays down the qualification for appointment of social workers as a member of the Board. It provides for appointment of social workers from two categories of persons:

I. Those who are actively involved in health, education, or welfare activities pertaining to children for at least seven years;

ii. Those who are practicing professionals with a degree in child psychology, psychiatry, sociology, or law.

c. Section 4(4) the following four categories of persons cannot be appointed as a member of the Board:

I. Who has any past record of violation of human rights or child rights;

ii. have been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

iii. have been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government

or a State Government;

iv. Have ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

Functions, Powers and Responsibilities of the Board

a. Under Section-8 along with Section 1(4) clearly provides that all offences alleged by a child below the age of 18 years on the date of offence are to be dealt with the board. As per the Section 8(2), similar powers may be exercised by the High Courts and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise.

b. Further Section 8(3) provides the functions and responsibilities of the board

but these functions and responsibilities are not exhaustive and any additional function may be added.

It includes to ensure:

- I. Participation of the child's parent or guardian in every step of the process;
- ii. Right of child's are protected in the process of inquiry, aftercare and rehabilitation;
- iii. Availability of legal aid by the counsel;
- iv. The Board shall provide interpreter if he could not understand the language used in the proceedings;
- v. Directing the Probation Officer, if not available then Child Welfare Officer or a social worker, to undertake for a social investigation and submit a report within 15 days from first production before the Board to investigate those circumstances in which the alleged offence was committed;
- vi. Adjudicate and dispose of cases of children in conflict with law in according to process of inquiry specified in Section 14;
- vii. Transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognizing that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
- viii. Disposing the matter and passing a final order that includes individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the D.C.P.U. or a member of a non-governmental organization, as may be required;
- ix. Board Conduct an inquiry for declaring a fit persons regarding care;
- x. conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the district Child Protection Unit and the State Government;
- xi. Order to police for registration of F.I.R. for offences committed against any child in conflict with law,
- xii. Order to police for registration of F.I.R. for offences committed against any child in need of care and protection;
- xiii. Conduct the regular inspection of jails meant for adults to check if anychild is lodged in

such jails and take immediate measures for transfer of such a child to the observation home;

xiv. Any other function as may be prescribed.

Duties of the Board

As per the Section 8(3) (a) provisions laid down in JJ Act, 2015, the duties of the board are to ensure the participation of the child and their parent or guardian at all levels of the proceeding the board has to protect the child from harm at every stage assuring inquiry, aftercare and rehabilitation. As per the Section 8(3) (c) the board also ensures free legal aid to children (Children conflict with law) by the advocate or law practitioners.

Powers of the Board

It is the power of the board ¹¹to direct the probation officer or social worker to prepare and submit the report within 15 days from the first prosecution of the child before it. The report must contain the circumstances in which the child committed offence. It has the power to direct the probation officer, or a social worker to prepare and submit it within fifteen days from the first production of the child before it.

Clause (c) provides that this report should contain the circumstances in which the alleged offence was committed. It must be clearly understood that the phrase “Circumstances in which the alleged was committed” has a different meaning in relation to the social investigation report compared to police investigation report.

While the latter is aimed to find out if the offence was committed or not, the former is focused on the social circumstances in which the child was living when he was alleged to have committed the offence.

RESPONSIBILITIES AND FUNCTIONS OF POLICE

Under the JJ Act, 2015 every police station is required to have a police officer specially designated and trained to function as the child welfare police officer to deal with all matters relating to children. The police officer those who working as child welfare police officer must not be below the rank of assistant sub inspector and he must be chosen due to their attitude of child friendly approach. The child welfare

¹¹ Section.6 of JJ Act 2015.

police officer should be given training and orientation to be able to co-ordinate with police and different NGO's. Further, if the obligation of the state to established special juvenile police. Section 10 of the JJ Act, 2015 provides that whenever there is apprehension of an offence committed by the police, such child, shall be handed over to the special juvenile police specially known as CWPO.

Further, Section 13 of the JJ Act, 2015, clearly states about the functions of special juvenile police unit in the case of commission of an offence, it is the duty of the SJPU. To inform the parents or guardian of the child, if they can be found, the SJPU must inform to the board when the child is produced before it.

Placements during Proceedings

Section 5 of the JJ Act, 2015, clearly states that a child who at the time of initiation of proceeding was below the age of 18 years but attained the age of 18 years during the pendency, then he must be treated as a child. **Section 6** also runs at same line. It means children who are produced before the Board for the first time after attaining the age of 18 years for an offence committed before attaining the age of 18 years. In such instances too, the person is to be treated as a child for the purposes of inquiry.

Bail to Children in Conflict with law

All children having Conflict with law when arrested must be released on bail except in the following three circumstances:

- a. When it is in the mind that release will bring the child in contact with criminals.
- b. When there is apprehension of moral, physical or sociological danger.
- c. When there is apprehension that release will defeat the justice.

Procedure to be followed by board

Juvenile Justice Act, 2015, Section 7 deals with the procedure to be followed by a board and Section 9¹² deals with the course of action to be followed by a magistrate not empowered to deal with a child in conflict with law.

- a. Section 7¹³ specially deals with the provision under which the board has to meet

¹²Procedure to be followed by a magistrate who has not empowered under this act.

as often as prescribed and followed the rules as laid down for the transaction of the business at its meeting.

b. Section 16 specially provides for submission of reports regarding pendency of cases by the Board to the Chief Judicial Magistrate, or the Chief Metropolitan Magistrate, the District Magistrate in every three months. The CJM & CMM will review these reports. It is obligatory for the board to hold its setting at a venue that is not intimidating and it must not resemble a regular court in the absence of the sitting of the board child may be produced before an individual member of the board. Even a single member of the board may conduct proceeding and pass order.

c. Section 14(4) clearly states that if the inquiry in petty offences is not completed within six month the proceeding shall stand terminated, the proceedings stand terminated even if no such order is passed by the Board. As per the provision laid down in JJ Act, 2015, different procedure to be followed in petty, serious and heinous offences under section 14(5), (d), (e) and (f).

In the case of petty offences, the board follows summary trial proceeding as provided by the CrPC. In the case of serious offence by any juvenile or heinous offences by the juvenile below the age of 16 years the board follows summons trial procedures, and in the case of above the age of 16 years who is alleged to have committed a heinous offense. Board has to start initial assessment to decide whether to transfer or not. But it is very unfortunate that JJ Act, 2015 is silent about the procedure to be followed by the children's court when it decides to tried the juvenile as an adult.

SPECIAL PROCEDURES

The JJ Act, 2015, like the earlier legislations, prohibits joint trial of children in conflict with law with any other person who is not a juvenile. This principle is not only applicable against board but also extends to proceeding before the children's court. It is mentioned in **Section 23(2)** but provisions laid down under Section 23(2) is not crystal clear, under this section the board is required to determine the age of the persons brought before it at the very initial stage and the age once determined is presumed to be the true age of the person for the purposes of the Act.

¹³ Procedure in relation to board.

INQUIRIES BY THE BOARD IN RELATION TO CHILDREN IN CONFLICT WITH LAW¹⁴

It is the duty of the Board to start initial two inquiries in relation to children in conflict with law. The first issue before the court is to determine whether the child alleged to be in conflict with law before it is below the age of 18 years on the date of offence. In this context, if the answer is positive then the Board is required to conduct the second inquiry to find out if the child has committed the offence as alleged and to pass the appropriate order in relation to that child.

Age determination

As per the provision laid down under **Section 94¹⁵ of the JJ Act, 2015** provisions relating to age determination in all cases by the Board and the Committee has been discussed. It has been laid down in detail in chapter - 5 containing provisions which apply both to the Board and the Committee.

Provisions which apply both to the Board and the Committee

The moot question is to determine the offence alleged to have been committed by a child is heinous or not, if the answer is positive, then to determine whether the child is on the borderline of 16 years or not. It is not worthy that that the time frame for determination of age of a child is fifteen days from the date of first production under the JJ Act, 2015 **compared to one month given under the JJ Act, 2000** in context of age determination of a child, school certificate or the birth certificate from another state has been given preference.

Final disposal

After the completion of inquiry under Section 17 and 37 provides that if the Board satisfies that the child has not committed the offence, the Board has to record that finding while disposing the case finally. It is the duty of the board to record to all the findings “notwithstanding anything contrary contained in any other law for the time being in force” as no law can provide anything contrary to what has

¹⁴ Section-14 of JJ Act, 2015.

¹⁵ Presumption and age determination

been provided in this Section. The order passed by the board in context of acquittal, is not appealable when the child acquitted was alleged to have committed a heinous offence and was between the ages of 16-18 years of age on the date of commission of offence. When the child acquitted was alleged to have committed a heinous offence and was between the ages of 16-18 years of age on the date of commission of offence. If the Board comes to a conclusion the child has committed the alleged offence, then it may pass any of the orders mentioned under Section 18.

As per the legislative intent of the act, is based on reformatory actions. It is clear from the object of the act, which is to give the child another chance in life by providing opportunities for development, reformation, and rehabilitation and not to punish; the order of the board is to be made by reference to the following factors:

- a. Nature of offence,
- b. Specific need for supervision or intervention,
- c. Circumstances as brought out in the social investigation report, and
- d. Past conduct of the child.

The above mentioned factors are to be coupled together and all of them have to be considered together while picking the most suitable order in each case.

As per the provision, **the first order mentioned under section 18** is of allowing the child to go home after advice or admonition after counselling to the child and their parent or guardian.

The second order empowers the board to instruct group counselling and similar activities. But the group that needs to be counselled under this section has not been identified and the boards have little understanding of when and how to implement this order.

The third order of the board deals with community service under guidance of an organization or institution or a person specified, although this is an important order that has been on the statute

book but used only exceptionally and without much knowledge about its scope or purpose.

These sections specially empower the boards to send the children to parks, hospitals, temples, or mosques to help keep these places clean such engagement had no link with the offences

committed by them. The terms and conditions of such orders do not allow the child to pursue any other activity during the period of community service.

The fourth order mentioned under Section 18 specially deals with fine payable either by the child or their parent or guardian. It is necessary to stressed that under the Indian penal code the fine is listed among the punishment but it is not applicable in the case of Section 18 of JJ Act, 2015.

The board is further empowered to release a child on probation of good conduct and placed under the care of parent, guardian, or fit person which mention under clause (e) of section 18 of the JJ Act, 2015: after the release of children on probation, the parent, guardian, or fit person is under compulsion to furnish a bond for the good behaviour and well-being of the child. The period of probation cannot be exceedingly more than three years.

The last order mentioned under 18 specially deals with special homes.

The special home means a home obliged to provide reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the stay in the special home.

Some of the additional list has been mentioned under section 18(2) that may be passed in addition to those passed under section 18(1) (a) to (g), the additional orders must be based on the following subjects:

- a. Attend school; or
- b. Attend a vocational training centre; or
- c. Attend a therapeutic centre; or
- d. Prohibit the child from visiting, frequenting or appearing at a specified place; or
- e. Undergo a de-addiction programme.

PROCEDURE IN RELATION TO 16-18 YEARS OLD CHILDREN IN CONFLICT WITH LAW

Section 15 of the JJ Act, 2015 specifically deals with the procedure to be

followed in case of a 16-18 years old child alleged to have committed a heinous offence. It instructs the Board to initiate an initial assessment in case of a 16-18 years old child alleged to have committed a heinous offence to determine if the child should be transferred to the Children's Court to be tried as an adult. In order to take that decision, the Board has to follow some preliminary steps. First of all, the Board must conclusively determine that the child in conflict with law before it was above the age of 16 years but below the age of 18 years on the date of offence.

In such case if the board satisfy that the child before it was 16 years or above but below the age of 18 years on the date of offence, then the Board moves further to determine whether the offence alleged to have been committed by the child is a heinous offence or not.

If board found that offence is heinous nature, then the board follows three simple following steps:

- a. At first the Board shall examine that whether in which section child has been alleged to have committed the offence and prescribes any mandatory minimum period of imprisonment for the offence?
- b. If results found yes, then examine whether the offence is punishable with minimum imprisonment of seven years or more? and;
- c. If the offence is punishable with minimum imprisonment of seven years of more, proceed to conduct the preliminary assessment.

If not, follow the procedure prescribed for dealing with serious offences by children.

The JJ Act, 2015 obligates that the initial assessment to determine suitability of transfer of the 16–18-year-old child should be completed within three months by the JJBs. This timeline poses serious questions about not only the legality of the procedure but also practicality of the time frame. This timeframe does not require that the assessment should be done after the police file its final report in the case confirming that prima facie a case of heinous offence has been made against the child.

CHILDREN'S COURT

As per the provision laid down in JJ Act, 2015, Children's Court means a special court established to deal with children committing offences. The logic behind the establishment of

Children's Court was the philosophy of care, protection, development, and rehabilitation of children. Section 19¹⁶ of the JJ Act, 2015 specifically laid down the procedure to be followed by the children's court after receiving the case from the board. Further, it is important to note that the main purpose of children's court is to look after the needs of the children and maintaining child friendly environment. That is why Section 19 does not direct the children's court to impose the punishment as prescribed for the offence.

In the conclusion it can be said that children's court is a special criminal court chaired by a session judge dealing with adult offenders committing offences against children. But the provisions as mentioned, or misleading and mischievous because there are no directions in the provisions about the basis on which the children's court should take decision, so there is always possibility for the children's court to decide the cases in an arbitrary manner.

Disposal by the Children's Court

In context of disposal by the children's court, it is important to note the intention laid down under Section 19(1) (i) of the JJ Act, 2015, as per the provision if the children's court decides that there is need to try the child as an adult, it is obligatory for children's court to pass appropriate orders after trial subject to the provisions of Section 19(1)(i). Further the court has to assess the special needs of the child, the fabric of fair trial and child friendly atmosphere.

As Section 19 does not instruct the children's court to impose the punishment as prescribe for the offence in the IPC or any other laws enforce. These provisions have been inserted to fulfil the provisions of the convention on the rights of the child.

For this purpose, Section 19 of the JJ Act, 2015, includes four instructions for the children's court in context of the passing the final order.

It shall deport the child to the place of safety however, Section 19 failed to specify the period.

Further, instruction has been given to the court to ensure that there formative services in educational services, skill development, and alternative therapy such as counselling, behaviour

modification therapy, and psychiatric support are provided to the child during the period of his stay in the place of safety. The duty has been assigned to the children's court to direct the

¹⁶ Powers of Children's court.

Probation Officer or the District Child Protection Unit or a social worker, as necessary “to assess the progress of the child in the place of safety and to ensure that there is no ill-treatment

to the child in any form” Section 19 of the JJA 2015, provides that children’s court shall send the children to the jail after attaining of the 21 years.

CONSTITUTION OF THE CHILD WELFARE COMMITTEE

Section 27 of the Juvenile Justice Act, 2015 puts an obligation on the establishment of child welfare committee¹⁷; in each district for the purpose children in need of care and protection. This committee will consist of five members including one chairperson and four other members. There is provision for inducing training for all members of committee from the date of notification of the committee. There will be at least one woman and one expert on children affairs.

Power, Functions and Responsibilities of the Committee

Section 29 of the Act has the provision for the powers of committee. The committee has exclusive power to deal with children in need of care and protection. Such power should be used keeping in mind the protection, treatment, development, rehabilitation of children in need of care and protection.

Procedure of the committee relating to children in need of care and protection

Section 28 says the provisions for at least one meeting in twenty-one days to check the function of institution and wellbeing of children. A child can be produced. Before a single member of

the Committee event though the committee is not sitting.

The committee is entitled pass order and function in the absence of any member. The decision of committee will be taken by majority but in absence of majority, the chairperson shall be binding.

Inquiry

The committee has two responsibilities in respect of inquiry;

one inquiry is about for age determination of child and

¹⁷ . section 27 of JJ Act, 2015.

second is to ascertain whether the child is need and inquiry.

The age determination of juvenile will be in accordance of section94 of the Act.

Orders

The committee has obligation to pass interim and final orders for production of children during the pendency of inquiry, if the committee is satisfied that the child is in need of care and protection it may pass interim orders if the child is below six years it may send the child to Specialized Adoption Agency and in other cases, it may direct the child to be kept in the children's home or a fit facility or a fit person or a foster family till suitable means for permanent rehabilitation of the child are found or till the child attains the age of eighteen years.

ADOPTION

“Adoption” under the act means “the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.”

Section 63 specifies the effect of adoption in the following words:

After the adoption the adoptive father will be the parents of child. The child will be treated as the child had been born to the adoptive parents for all purposes including intestacy with effect from the date on which the adoption order takes effect and from the date of adoption all the ties

of the child in the family of his or her birth shall stand severed and replaced by those created by adoption. that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject

to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.

Inapplicability of the Hindu adoptions and maintenance act

Section 56 of the Act says the provisions of Hindu Adoptions and Maintenance Act 1956 **will not apply to Juvenile Justice Act, 2015**. This means that Hindu may choose either under Hindu Adoption and Maintenance Act or Juvenile Justice Act. It does not mean that Hindus are

barred to adopt child under this Act.HAMA prohibits the adoption of a child of same sex if the

adoptive parents has already a natural born child but the JJA has no such limitation, under this Act the adoptive parents are free to adopt the child of same sex if they have already a natural born child of same sex. Under the JJA if the interest of child is best protected by the adoption.

Declaring orphan, surrendered and abandoned children free for adoption

The Act has three categorizing of children who are legally fit to be declared as for adoption. These are:

- a. **Orphan:** orphan includes not only those children who do not have the parents abut also those parents who are not capable to take care of their children.
- b. **Surrendered:** A child whose parents are unwilling to take care of the child suggests that the parents are traceable. No child may be taken away from them parents without getting the parents declared as unfit but no such procedure has been provided under the Act.
- c. **Abandoned:** if the parents of the children are traceable but they do not want to take care of them, they will be treated as abandoned.

Section 38 and 35 of the Act has the provision for the abandoned children and surrendered children.

Eligibility of prospective adoptive parents

Section 57 of the JJA has the provisions for eligible to become future adoptive parents¹⁸. These are as:

- a. The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.
- b. In case of a couple, the consent of both the spouses for the adoption shall be required.
- c. A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

¹⁸https://laddashboard.legislative.gov.in/sites/default/files/A2016-2_0.pdf

- d. A single male is not eligible to adopt a girl child.
- e. Any other criteria that may be specified in the adoption regulations framed by the Authority.

Procedure for adoption¹⁹

The adoption of children under the JJA is of three kinds:

- a. In country adoption: the adoption took place between Indians.
- b. Inter-Country adoption by NRI: the adoption is taking place between Indian and Non-resident Indian.
- c. Inter-Country adoption by Foreigner: The adoption is taken place between Indian and foreigner.

There is no bar to religion in regard to religion.

RESIDENTIAL CARE

The JJA has included a various category of residential care under the JJA.

These residential options may broadly be divided in two broad categories. The first category includes all the 'Homes', namely, observation homes, special homes, place of safety, and children's homes established and run to provide institutional care either during pendency of proceedings before the Board or the Committee or pursuant to the order of the Board or the Committee for keeping them there.

The second category includes open shelters, fit facility, and fit person who are to provide community based residential care to them.

Compulsory registration of child care institutions

All the child care institutions are required to be compulsorily registered under the JJA 2015 within six months of the JJA 2015 having been enforced.

All institutions which are housing children in need of care and protection or children in by the government or by a voluntary organisation or by a non-government organization.

OFFENCES AGAINST CHILDREN²⁰

The problem of offences against children has been recognised for long but

¹⁹https://ltdashboard.legislative.gov.in/sites/default/files/A2016-2_0.pdf

²⁰CHAPTER IX of JJ Act 2015, OTHER OFFENCES AGAINST CHILDREN

offences against children have been increasing at an alarming rate. Reporting of offences under the JJA 2000 have been miniscule even after all offences included in the JJA 2000 were made cognizable recognising the problem of initiating action as child victims rarely had the familial support to file complaints before the Courts. Section 89 clearly states that if any offence against children included in Chapter IX of the JJA 2015 is committed by another child, that child is considered as child in conflict with law. It would have been better if a clarifying clause was added to this section specifically stating that all such children in conflict with law will be dealt with by the Board as per the scheme of the Act.

Punishment for cruelty to child

Section 75 of the Act has the provisions for the punishment for cruelty against child. Cruelty includes Cruelty within the meaning of this section includes assault, abandonment of child, abuse, exposure or neglect of a child in a manner that is likely to cause unnecessary mental or physical suffering to the child. Any person who has the actual charge or control over the child is punishable for this offence. However, biological parents who abandon their child are exempt from any criminal action and the liability prescribed under this section.

Employment of child for begging

the employment of child for begging is made a punishable offence by virtue **section 76 of the Act**. This act is punishable with five years' imprisonment and fine which may extend up to one lacs rupee.

Giving intoxicating liquor or narcotic drug or psychotropic substance to a child

Giving intoxicating, liquor or narcotic drugs are punishable offence. It is cognizable and non-bailable offence punished with seven years' imprisonment and fine up to one lacs rupee.

Use of children for vending, peddling etc., of liquor, narcotic drug or psychotropic substance

Section 78 makes a new offence as cognizable and non-bailable offence. It

prohibits use children for vending, peddling of liquor narcotic drugs etc. This act is punishable with seven years' imprisonment and one lac fine.

Exploitation of child employee

Section 79 make a cognizable and non-bailable offence for exploitation of child employee. This provision is in accordance with Article 23 and 24 of the Indian Constitution.

Corporal punishment

Physical torture is very common practice against children living in child care institutions. Section 82 of the JJ Act make it punishable.

Scope and limitation of Study

It has been shown that delinquency may be a significant issue in India and around the world. There is no denying that a delinquent youngster, if not properly handled, will grow up to break the law. There needs to be a mechanism to manage delinquency.

among young people before they develop into a serious menace to society. Information provided by many authorities today shows a rising trend in the frequency of adolescent offences. It is necessary to conduct a thorough investigation into the factors that lead to lawlessness, disturbances of the peace, conflicts between children and adults, and vagrancy, as well as to respond to the problem of protecting and rehabilitating delinquent children. The study aims to re-evaluate the juvenile justice system in India.

The proposed study intends to analyse ethics and implication for trying juvenile as an adult for heinous crime the Indian juvenile justice system.

This work attempts a judicial, executive, Legislative, and historical process 's micro-level examination regarding the Indian juvenile justice system. This study also aims to seek out causes of delinquency and to discuss the problem of delinquency in criminological perspective, to seek out the prevailing provisions and policies.

The —Juvenile justice (care and Protection of Children) Act 2015 is the most vital as well as progressive legislation piece within the field of juvenile justice since independence. The study aims to spot the issues which are encountered within the effective administration of Act and to discuss the children 's age determination in conflict with law. The study mainly aims to suggest the measures necessary for the juvenile justice system 's effective administration.

Research Questions

Considering the object of the study the research shall be commenced depending on following questions:

1. Do you know about Juvenile Justice Act?
2. Do you think that only reformation should be given or punishment in heinous crimes?
3. Do you agree that number of children coming in conflict with law is committing heinous offences day by day?
4. Have you heard heinous offences like Rape or murder committed by child?
5. As per act, who is a child?
6. At what age a person should make criminally liable?
7. Do you think that the social-economic conditions in society are the breeding ground of juvenile delinquency for committing heinous crime in India?
8. Do you think that children alleged to be involved in heinous crime should be punished for their crime same as adults as per section -15?
9. Do you agree that child alleged to be in conflict with law (Apprehended for committing a crime) should be placed in police lock up?
10. Do you think that now a days, children are misusing the Juvenil Justice act?
11. Do you think that after committing a non-bailable offence, child is apprehended or detained by the police, he should be release on bail?
12. Do you agree that after releasing on bail, juvenile can start studying or not?
13. Do you agree that children should be sentenced to death or for life imprisonment without the possibility of release for heinous offences like rape with murder, etc?
14. Do you think that children should be given exemption from criminal responsibility in heinous crime?
15. Do you think that only reformation should be given or punishment in heinous crimes?
16. Do you think the present act is adequate for handling the juvenile delinquency 's issue in India after Nirbhaya case?

REVIEW OF LITERATURE

1.REVIEW OF ARTICLES: -

RICHARD E. REDDING,²¹ in his article discusses the research on the general and specific deterrent effect of transferring juveniles for trial in adult criminal court; through his article, he provides various study reports involving all three types of transfer laws (automatic, judicial and prosecutorial). He raises these points in his study: –

- 1) Whether the transfer laws proved an effective measure to deter and prevent youth offence?
- 2) How far transfer laws have deterrent effects on youth offence?
- 3) Do transfer laws decrease offender 's recidivism?
- 4) Why do juveniles tried as adults have higher recidivism?

Through his study, he produced the conclusion that transferred youth who were incarcerated for longer periods had a lower recidivism rate upon release in comparison to those incarcerated for shorter periods. He further compared transferred and non-transferred juvenile offender and found higher recidivism rates among those transferred. He tentatively concludes that trying and sentencing juveniles as adults does not further the penal goals for which it was intended, particularly the goal of specific deterrence.

VICTORIA STACHON²², analyses the persisting conflict between the welfare and justice principles of punishment, within the juvenile justice system.

She pleaded that the retributive and deterrent theory cannot be applicable on juvenile as the required guilty intent for the commission of crime is presumed to be absent in case of juvenile.

She also focuses on the Crime and Disorder Act 1998. This Act sought to resolve the persistent conflict between the welfare and justice principle of punishment.

She argues that despite the recent reforms, the conflict continues and a single coherent

²¹ . Dr. Ved Kumari, *The Juvenile Justice (Care and Protection) Act 2015: Critical Analyses*, 2017, Lexis Nexis Publication, Gurgaon Haryana

²²Victoria Stachon |The principle of punishment applied to children with in the juvenile justice system. | 2007 UCL Jurisprudence Review 53.

philosophy has not been achieved. Instead in practice, the justice principle of punishment dominates the juvenile justice system.

(ii) **REVIEW OF BOOKS:**

VED KUMARI,²³ focuses on the conceptual foundation of the Juvenile Justice System and the shift from welfare to rights. The author draws together various strands of complex and different issues where substantive and procedural loopholes relating to Juvenile Justice System is discussed and measures suggested.

The book provides a comparative analysis of provisions of earlier enactment for developing a comprehensive and coherent Juvenile Justice System in view of the vision and concerns of the lawmakers as also the procedure of implementation under the earlier legislation.

It also highlights the important structural changes introduced in the criminal justice system in other leading countries for implementing the concept. In her concluding part, she has tried to justify the policy shift in the juvenile justice system from welfare to rights.

(iii) **REVIEW OF JUDGMENT:**

Baron Chandra Thakur Vs Master Bhola, 2022

Supreme Court explain circumstances of a child to be tried as an adult and section 15 of proviso

convert into mandatory.

Background of the case

In this case prince was found dead in the school bathroom, upon investigation it was found that

bhalu was involved in the incident. Since he was 16 years old, so should be treated as an adult

issues concerned

can a child be treated like an adult if he is an offender?

How fair is the current system when a child b/w the age of 16-18 years may be treated as an adult when he/she has committed a heinous offence?

²³ Dr. Ved Kumari, The Juvenile Justice (Care and Protection) Act 2015: Critical Analyses, 2017, Lexis Nexis Publication, Gurgaon Haryana.

Is it mandatory for the JJB to take opinions or assistance from experts before passing any preliminary order?

OBJECTIVES OF STUDY

The aims and objectives of this research are:

1. To investigate the legal framework and procedural guidelines for trying juveniles as adults in the Indian Juvenile Justice system.
2. To identify the factors that influences the decision to try juveniles as adults for heinous crimes in Lucknow, Hardoi, Lalitpur in the state of Uttar Pradesh.
3. To assess the impact of trying juveniles as adults on the overall juvenile justice system with regard to trying juveniles as adults for heinous crimes.
4. To propose recommendations for reforming the Indian juvenile justice system with regard to trying juveniles as adults for heinous crimes.

HYPOTHESIS

The researcher has formulated the following hypothesis for the purpose of this research:

1. Whether trying juveniles as adults for heinous crimes in the Indian juvenile justice system raises significant ethical concerns and may violate the principles of juvenile justice.
2. Whether legal framework and procedural guidelines for trying juveniles as adults in the Indian juvenile justice system may be insufficient to protect the rights of juveniles.
3. Whether decision to try juveniles as adults for heinous crimes in Lucknow, Hardoi and Lalitpur is influenced by factors such as the severity of the crime, public perception, and political pressure.
4. Whether trying juvenile as adults for heinous crimes may have negative consequences for the overall juvenile justice system in India, including perpetuating a culture of retribution and rehabilitation. And undermining rehabilitation efforts.

RESEARCH METHODOLOGY

Research is defined as the systematic investigation into the study of materials and sources in order to establish facts and reach new conclusions.

Research methodology is the systematic plan for conducting research. This section clearly defines the research methods used to conduct the study.

The researcher explains how the necessary data and information to address the research objectives were collected. Presented and analysed. Reasons and justifications for data collection techniques, research models, and data analysis techniques is given.

A. SOURCES OF DATA COLLECTION

a. Primary Source

b. Secondary Source

In the present research, the researcher has used primary as well as secondary sources of data collection. Researcher has collected data through Textbooks, Articles, Reports, Reference Books, and Websites and question-answer and opinion from advocates who are practicing in this area, in different district court of Uttar Pradesh etc.

STATEMENT OF PROBLEM:

Statistical data show that there has been an increase in juvenile delinquency both qualitatively and quantitatively.

The number of delinquent juveniles is increasing every year and these juveniles are indulging in violent and heinous crimes. Even after the implementation of JJ Act, 2015, no significant downfall has been seen in juvenile crime rate.

Therefore, a serious re-look is required in the existing juvenile justice system to explore the inadequacies and flaws so that it could control the problem of the child delinquency and represent the popular will of people.

The UN Rule for juvenile justice (Beijing Rules) states, “punishment shall be in proportion to circumstances and gravity of offence as well as the circumstances and needs of juvenile as well as the needs of the society.

The state has not been subjected to the necessary organised pressure, either from the system's beneficiaries or from any other group, to implement the juvenile justice system's (JJS) policy or operations. The JJS's benefits include children. The majority of those kids are from underprivileged socioeconomic, racial, and educational backgrounds. Additionally, neither

their development on a physical or mental level, nor their standing in the community, gives them the freedom to organise themselves or make a clear case for the defence of their interests.

There isn't any dearth of evidence within the field of juvenile justice of the large-scale unawareness of the law itself among the very personnel of the states who are imagined to operate and perform thereunder. the necessity for orientation, in-service training, and periodical refresher courses for them in these circumstances can never be overemphasized.

The Act requires change within the policy from piecemeal implementation of law to the complete implementation of the JJ (C&P) Act. Cooperation of many agencies involved within the system and coordination of their activities is critical for ensuring care, protection, and developmental opportunities to any or all children as envisaged within the Act.

The noble objective of the Act had been suffering a severe blow because of infrastructural impediments which appear to act as a setback within the operation of the Act

Objective of the study

Tentative Chapters

CHAPTER I: Introduction

Background of the study
Overview of the Indian juvenile justice system
The concept of juvenile delinquency
Statement of the problem
Research questions
Objectives of the study
Scope and limitations of the study

CHAPTER II – Legislative Provisions related to Juvenile Justice

The Juvenile Justice (Care and Protection of children) Act, 2015
The Code of Criminal Procedure, 1973
The Protection of Children from Sexual Offences Act, 2012

CHAPTER III – Factors influencing the decision to try Juvenile as Adult

Factors affecting judicial system
Role of public opinion, media, and political pressure
Perspectives to key stakeholders (judges, lawyers, police, probation officers, social workers, families)

CHAPTER IV-Implications for Juvenile Justice Policy and Practice and human rights

Ethical and human rights concerns
 Impact on the juvenile justice system
 Comparison of juvenile and adults for heinous crimes
Analysis of ethical and human rights concerns
 Comparison of juvenile and adult trials for heinous crimes
 Recommendations for reforming the Indian juvenile justice system

CHAPTER V – Judicial Trends towards Juvenile Justice in India

**CHAPTER VI – The empirical study on the research topic with special references
Hardoi, Lucknow and Lalitpur**

CHAPTER VII- Conclusion and Suggestions

Summary of key findings and contributions

Implications for scholarship and practice

Limitations and suggestion for future research

Conclusion and final remarks

CHAPTER -II

Legislative Provisions related to Juvenile Justice

The Juvenile Justice (Care and Protection of children) Act, 2015

1. A Study on selective provisions of Juvenile justice (Care and Protection of children) Act,2015

The care and protection aspects in the Juvenile Justice Act are largely based on the doctrine of Parens Patriae. The Juvenile Acts have been enacted to meet the international standards prescribed in the Convention on Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985, United Nations Rules for Protection of Juveniles Deprived of the Liberty, 1990. The juvenile Act, 2015 or we can say that the Juvenile Justice (care and protection of children) Act, 2015 finally came into force from 15th January 2016.

JUVENILE JUSTICE BOARD:

The Board shall consist of a MM or JMJC and two social workers. The Board has exclusive jurisdiction to deal with all the proceedings relating to juvenile in conflict with law. The power conferred on the Board may also be exercised by the High Court, Children's Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise. The Board shall meet at such time and observe such rule of provision in regard to the transaction of business at its meeting, as may be prescribed. A child in conflict with law may be produced before an individual member of the Board when the Board is not sitting. There shall be at least two members including the Principal Magistrate at the time of final disposal of the case or at the time of passing any order under Section 18(3) of JJ Act, 2015. The opinion of majority shall prevail in the event of any difference of opinion among the members of the Board in the interim or final disposition of the case, but where there is no such majority, the opinion of Principal Magistrate shall prevail.

MANNER OF ENQUIRY:

Every youngster must be given the benefit of the doubt regarding any malicious or illegal intent. Every youngster has the right to speak up and take part. All decisions involving the kid

must be made with the child's best interests as their first priority.

to aid in the child's overall development. Every kid has the right to have his or her privacy and confidentiality protected. When a kid who is in trouble with the law is apprehended, the responsible officer must notify the child's parents or guardians. The investigation will be carried out using the judicial process for summons cases.

The investigation must be finished within four months of the child's initial delivery date.

PRELIMINARY ASSESSMENT INTO HEINOUS OFFENCES BY THE BOARD:

According to the Juvenile Justice Act's most recent modifications, crimes are divided into three categories: minor offences, severe offences, and heinous offences. The phrase "Heinous offences" comprises offences for which the minimum penalty under the IPC or any other legislation now in effect is imprisonment for seven years or more, according to section 2(33) of the JJ Act, 2015. The word "serious offences" encompasses offences that carry a sentence of three to seven years in jail, therefore the legislature intentionally left this grey area.

Therefore, crimes for which the minimum sentence is less than seven years and can be increased to more than seven years do not come under any of the term "heinous offence" or "Serious offence," respectively.

In accordance with the precise meaning to be given to the JJ Act of 2015's definition of a heinous offence set forth in section 2(33), and taking into account how advantageous the Act is to young people, only the offences listed infor which a juvenile should be tried as an adult, "heinous offences" are those for which the minimum sentence is seven years or more. The juvenile's age at the time the offence was committed is the second component of the preliminary evaluation. If a kid has committed a "heinous offence," only those who have reached the age of 16 can be transferred to the Children's Court for additional proceedings.

The Board shall make the preliminary assessment with regard to-

- (i) The mental and physical capacity of the child to commit the offence;
- (ii) His ability to understand the consequences of the offence;
- (iii) The circumstances in which the child allegedly committed the offence:

To make the preliminary assessment, the Board may take the assistance of experienced

psychologist or psycho-social workers or other experts. The order of preliminary assessment is

appeal-able under section 101(2) of the Act, 2015. The preliminary assessment shall be made within three months from the date of first production of the child before the Board.

After making the preliminary assessment, the Board is required to pass an order under section 18(3) of Act, 2015 to the effect as to whether there is need of trial of such child as an adult by the Children's Court or the child is to be tried by the Board only.

POWER OF CHILDREN'S COURT²⁴

After receipt of preliminary assessment from the Board, the Children's Court may decide as to whether there is need of trial of a child as an adult or not. If the Children's Court decides that there is no need of trial of the child as an adult, it may conduct an enquiry as a Board. In case, the Children's Court chooses to act as a Board, it can pass any dispositional order in accordance with the provision of Section 18. In that case, it shall follow the procedure for trial in summon cases.

In case, it chooses to try the child as an adult, it shall conduct the trial by adhering with tenets of fair trial and maintaining a child friendly atmosphere. As per rule 13(8)(i), the Children's Court shall follow the procedure prescribed of trial by Sessions while maintaining a child friendly atmosphere. The only rider imposed by section 21 is that the child cannot be sentenced to death or for life imprisonment without the possibility of release. The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of 21 years and thereafter, the person can be transferred to a jail. The Children's Court or the Court of Session can also take the assistance of experienced psychologist and medical specialist other than those whose assistance has been obtained by the Board in making the preliminary assessment while entertaining an appeal under **section 101 (2) of Act, 2015. Where** an appeal has been filed under section 101(2) of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal as per rule 13 of the Act. The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

²⁴ Section-19 of JJ Act 2015

FINAL DISPOSITIONAL ORDER:

When the Board finds that a child has committed the offence, it can pass the following orders:

- (i) It can allow the child to go home after advice or admonish him by following appropriate enquiry and counselling to such child and his parents or the guardian;
- (ii) Direct the child to participate in group counselling and similar activities;
- (iii) Order the child to perform community service under the supervision of a specified person or institution;
- (iv) Order the child or parents or the guardian of the child to pay fine provided that, in case the child is working, it may be ensured the provision of any labour law for the time being enforce is not violated;
- (v) Direct the child to be released on probation of good conduct and placed him under the care of parents/guardian/fit person on executing a bond by the said parents/guardian/fit person, with or without surety, for any period not exceeding three years;
- (vi) Direct the child to be sent to a special home for such period not exceeding three years for providing re-formative services including education, skill development etc to the child. If the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety. All dispositional orders shall necessarily include an individual care plan to be prepared by a Probationer Officer or Child Welfare Officer or a recognized voluntary organization on the basis of interaction of the child or his family.

SPECIAL PROVISIONS FOR THE CHILD AFTER CONCLUSION OF INQUIRY:

1. Proceedings under Chapter VIII of Cr. Pc i.e., security for keeping the peace and good behaviour (running from section 106 to 124 Cr. Pc) cannot be initiated against a child.
2. The child cannot be jointly tried with a person who is not a child in any proceeding.
3. No disqualification shall attach with a child who is found to have committed any offence. However, the child who has completed the age of 16 years and found guilty by

the Children's Court under Section 19(1)(i), the privilege of removal of disqualification will not be available to him.

4. The record of conviction shall be destroyed after expiry of period of appeal or after a period of seven years by the person-in-charge or Board or Children's Court except in case of a heinous offence where the child has been convicted by the Children's Court under Section 19(1)(i).

DO AND DON'T:

The youngster cannot ever be kept in a prison or a police cell. The minor cannot be handcuffed under any circumstances. The employee must definitely refrain from using hostile, accusing language.

such as an accusation, a charge sheet, a trial, a prosecution, a warrant, a summons, a conviction, a prisoner, a delinquent, a victim of neglect, custody, or incarceration in proceedings involving a child or adolescent who has broken the law.

Before the Board, the police officer may not appear in police garb. The Board's business cannot be undertaken while the members are seated at the dais. The environment must be child-friendly. If the youngster is to be questioned or recovered at his or her request, he may be transferred into a guardian's custody.

CHILD CARE INSTITUTIONS:

1. Section 47- Observation Homes- These homes are used to keep the child during pendency of enquiry under the Act.

2. Section 48. Special homes-The State Government may establish and maintain either by itself or through voluntary or non-governmental organizations, special homes, which shall be registered as such, in the manner as may be prescribed, in every district or a group of districts, as may be required for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board made under section 18.

3. Section 49- Place of safety- The State of Government shall set up at least one place of safety in a State. At this place, the person above the age of 18 years or the child in conflict with law, who is between the age of 16 to 18 years and is facing enquiry or convicted for

committing a heinous offence can be placed.

The State Government may, by rules, provide for the management and monitoring of special Homes, including the standards and various types of services to be provided by them which are necessary for social re-integration of a child, and the circumstances under which, and the manner in which, the registration of a special home may be granted or withdrawn.

The rules made under sub-section (2) may also provide for the segregation and separation of children found to be in conflict with law on the basis of age, gender, the nature of offence committed by them and the child's mental and physical status.

APPEAL:

Any decision of acquittal given by the Board in regards to a child accused of committing an act other than the heinous offence by a child who has reached the age of 16 or older will not be subject to appeal. Any Court of Sessions order issued in an appeal is not subject to a second appeal. **Within 30 days of the order's date**, the Court of Sessions will hear appeals **for any other Board orders. The High Court is now hearing the appeal on the Children's Court order.**

The Protection of Children from Sexual Offences Act, 2012

Introduction: -

Parliament with a view to provide more deterrent effect on the offenders of sexual offences, legislated a new Act called Protection of Children from Sexual Offences Act ²⁵ in the year 2012 which came into effect from 14.11.2012. The POCSO Act 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child friendly mechanism for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. Goa Children's Act 2003 was the only specific piece of child abuse legislation before the Act of 2012. This Act is gender neutral law wherein the law takes cognizance of Sexual Crimes committed against both girls and boys under the age of 18 years.

Definition of Child: -

²⁵ which came into effect from 14.11.2012.

The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. The Hon'ble Apex Court has interpreted section 2(d) with respect to "mental age" of victim in case titled Ms. Eera through Dr. Manjula Krippendorf Vs. State (Govt. NCT of Delhi) and Anr. Law finder Doc. Id#882075, the Hon'ble Apex Court has held that a child would be a person who is physically under the age of 18 years and not a person who is mentally under the age of 18 years. The Hon'ble Apex Court has observed – "A reading of the Act as a whole in the light of the statement of objects and reasons thus makes it clear that the intention of the legislator was to focus on children, as commonly understood i.e., person who are physically under the age of 18 years".

Purpose/Object of this Act: -

- (I) To provide protection to all children from the offences of sexual assault, sexual harassment and pornography.
- (ii) To provide for establishment of Special Court for trial of offences under this Act.

Corresponding Provisions under Indian Penal Code (IPC): -

- (a) Rape²⁶-Sec. 376, 376A to 376 E IPC
- (b) Molestation-Sec. 354, 354A to 354D IPC
- (c) Sexual Harassment-Sec. 509 IPC

Punishments: -

This Act prescribes stringent punishments, as envisaged in Sections 4, 6, 8, 10 & 12, graded as per the gravity of the offence, ranging from three years with fine, as prescribed under Section 12 of the Act, with death even, as prescribed under Section 6 of the Act.

Section 33 of the Act, pertaining to Procedure and Powers of Special Court, in particular Section 33 (7) of the Act: -

It envisages that Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for the reasons to be recorded in writing, the Special Court may permit such

²⁶ IPC, 1860

disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation – For the purpose of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood, or any other information by which the identity of the child may be revealed.

If the aforesaid language of the said sub-section is perused, in which the words 'at any time during the course of investigation' are written, then it is also the duty of the Court of Magistrate dealing with the first remand of the accused that the said particulars of victim are not revealed anywhere. It is the duty of the Court to ensure that the investigating officer has hidden all the said particulars of the victim in the remand papers, so that the same are not disclosed publicly.

The Court of Magistrate shall also ensure that while recording statement of child ²⁷ under Section 164 Cr.Pc full name of victim etc. is not mentioned.

Section 25, Recording of statement of a child by Magistrate: -

(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (Herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to subsection (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

So, **Section 25 of POCSO Act** lays down the procedure of recording statement of a child by a Magistrate. The language of section 25, POCSO Act lays down a further qualification applicable to the statements recorded under Section 164 Cr.P.C. in relation to the child victims under the POCSO Act. It mandates that the statement of the child would be recorded as 'spoken by the child'.

During the common procedure and working of the courts, it is found that some Magistrates

²⁷ Section 164 Cr.Pc by Magistrate

record the statement of the child either in English or any language of their own diction to express what the child has said. This modification in approach by the Magistrate carries a risk of changing the very originality of the statement as was given by the child. Sometimes Magistrates may feel that language used by a child in his statement is not a perfect form of language or it is rather a slang than being the standardized form of the language. So, in order to bring the level of sophistication in the statements, the Magistrates are lured to edit the syntax of the sentences used by the child. They also use standardized synonyms for the specific words used by the child in his statement. This change of syntax and the words may sometime help the defence to take a stand that the statement was a modification from the original statement and that the original statement was not available on record and that this modified statement, as recorded by the Magistrate, is an improved version of the description given by the child.

The Hon'ble Supreme Court in **R. Shaji Vs. State of Kerala**, delivered on 4 February, 2013 (2013) 14 SCC-266 summed up the entire law on this point. It has been held:

“Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statement under Section 164 Cr.P.C. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case”.

Section 26, Additional provisions regarding statement to be recorded: -

- (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

So, Section 26 of POCSO Act makes special provisions for the recording of statement of the child if it is recorded by a Magistrate or a police officer vis-a-vis ; that the same should be recorded as it is spoken by the child in presence of his parents or any other person in whom the child has trust or confidence; that whenever there is a problem of medium of conversation then a Magistrate or the police officer can take assistance of a translator or an interpreter to get the meaning of the statement of the child and in such a situation the translator or the interpreter must be having such qualification and experience as are necessary for translating or interpreting the statement of the child correctly and properly; that in case a child is found suffering from any mental or physical disability, may be an acute or a chronic one, then in that case the Magistrate or the police officer may seek assistance of a special educator or any other person who is acquainted with such manner of communication as it is required to be established; that the Magistrate or the police officer would ensure the recording of such statement of a child through audio-video electronic means.

Section 33 of the Act, sub-sections (1) to (6), (8) & (9) pertaining to

Procedure and Powers of Special Court: -

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

- (3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.
- (4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
- (5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.
- (6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
- (7) ----- .
- (8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
- (9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

Section 34 of the Act, Procedure in case of commission of offence by child and determination of age by Special Court ²⁸:-

- (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of 1 [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].
- (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
- (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person determined by it under sub-section (2) was not the correct age of that person.

²⁸ Section 35

Section 35 of the Act, Period for recording of evidence of child and disposal of case: -

(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

12. Section 36 of the Act, Child not to see accused at the time of testifying: -

(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

Section 37 of the Act, Trials to be conducted in camera: -

The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 38 of the Act, Assistance of interpreter or expert while recording evidence of child: -

(1) wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

Rule 7 of the Act (Compensation): -

- (1) To be paid by Central or State Govt. on recommendation of Special Court on its own or application of victim/parents/guardian.
- (2) Interim compensation ordered by Special Court to meet immediate needs of relief/rehabilitation at any stage after registration of FIR to adjust against final compensation.
- (3) Compensation may be recommended for award on conviction or discharge or acquittal of accused/accused not traced or identified, when Special Court opines that child has suffered loss/injury due to offence.
- (4) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

Factors for consideration for compensation: -

- (1) Type and gravity of abuse and harm/injury suffered.
- (2) Expenditure likely/incurred on medical treatment.
- (3) Loss of educational opportunity/employment suffered.
- (4) Relationship of child to offender.
- (5) Single instance of abuse/abuse over a period of time.
- (6) Whether child contracted STD/HIV/AIDS due to offence.
- (7) Disability suffered due to offence
- (8) Financial condition of victim/victim's family to determine rehabilitation.
- (9) Any other relevant factor.

17. Compensation under various schemes, as per the date on which the case is reported: -
As per the letter No.5259-5335(LO)/2020/MS/HALSA dated 27.07.2020 written by The Learned Member Secretary, Haryana State

Legal Service Authority to all the District & Sessions Judges-cum Chairpersons DLSA, all the Chief Judicial Magistrates-cum-Secretaries DLSA and all the Additional Civil Judges cum-Chairpersons SDLSA, the cases reported between 02.10.2018 to 31.05.2020 shall be dealt with in the light of order dated 05.09.2018 passed by the Hon'ble Supreme Court of India in W.P. (C) No. 565 of 2012 titled as 'Nipun Saxena & Anr. Vs. Union of India' and the cases reported on or after 01.06.2020 shall be dealt in accordance with the newly Victim Compensation Scheme, 2020 (Part-I & Part-II).

In "Nipun Saxena & Anr. Vs. Union of India & Ors. Writ Petition (C) No.565 of 2012",

Hon'ble Supreme Court of India observed in order dated 5.9.2018 that still no provision has been made to prescribe the amount of compensation and as such made the NALSA Scheme applicable to POCSO Act cases w.e.f. 2.10.2018.

In Clause 7 of the National Legal Services Authority's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2018 (in short "NALSA's Compensation Scheme 2018"), it has been stated that SLSA (State Legal Services Authority) or DLSA (District Legal Services Authority) may award compensation to the victim or her dependents to the extent as specified in the Schedule attached hereto. In Clause 9 (3) of the aforesaid NALSA's Compensation Scheme-2018, it is stated that in case the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to this chapter. In the said appended Schedule of the aforesaid NALSA's Compensation Scheme-2018, at Sr.No.3 it is stated that in case of rape, minimum limit of compensation is Rs.4 Lakh and the upper limit of compensation is 7 Lakh. In Clause 8 (1) to (13) of the aforesaid NALSA's Compensation Scheme-2018, the relevant factors to be considered while awarding compensation by the Special Court or by SLSA or DLSA have been defined in detail.

Important Judgments: -

(i) "**State of U.P. v. Krishna Master & Ors.**", 2010(3)R.C.R.(Criminal) 843, in which the Hon'ble Supreme Court held that "there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future.

In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the Court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the Court that something had gone wrong between the date of incident and recording of evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature."

In the same decision, the Supreme Court further held that "the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there are no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition"

(ii) "**Sanjeev Kumar v. State (UT Administration)**", 2019(1) RCR (Criminal) 726²⁹, in which the Hon'ble Punjab and Haryana High Court in para no.9 held that "Furthermore, it is well settled golden principle of criminal jurisprudence that mere delay in lodging of criminal proceedings are not taken to be fatal and the Court needs to lift the veil to see the very reason how it has come about and whether it was justified on the part of the victim side and not an outcome of embellished account for a motivated cause. Learned counsel for the petitioner could not even live his arguments to support his submissions and therefore, this submission as such is brushed aside"

(iii) "State of Punjab Versus Gurmit Singh & Others", AIR 1996 SC 1393, which is..... "The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix which are not of a fatal nature, to throw out an otherwise reliable prosecution case.

If evidence of the victim inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with case involving sexual molestations."

(iv) "State of Himachal Pradesh v. Sanjay Kumar alias Sunny", ³⁰(2017) 2 SCC 51, in paragraph 31 observed that "By now it is well settled that the testimony of a victim

²⁹"Sanjeev Kumar v. State (UT Administration)",

³⁰(2017) 2 SCC 51

in cases of sexual offences is vital and unless there are compelling reasons, which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime.

Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

(v) "**Jabbar v. State**", ³¹2018 (3) RCR (Criminal) 396, in which the Hon'ble Delhi High Court (DB) held that "C. Protection of Children from Sexual Offences Act, 2012 Sections 6 and 29 Sodomy - Conviction - Testimony of victim consistent in all material particulars – ASJ satisfied herself regarding credibility and competence of victim by putting leading questions to him and eliciting answer thereto - In his cross-examination Victim specifically denied suggestion of being tutored by police or parents - Deposition of victim stood corroborated by his parents - Fact of sodomy stood proved by MLC which contained comments of three doctors - Conviction of accused upheld"

(vi) "**B.C. Deva v. State of Karnataka**", (2007) 12 SCC 122³², in spite of the fact that no injuries

were found on person of the victim, yet finding her version to be reliable and trustworthy,

³¹2018 (3) RCR (Criminal) 396,

³² "B.C. Deva v. State of Karnataka",

upheld the conviction of the accused, by observing that “13. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

(vii) “Shiv Chand Pran Bansode v. State of Maharashtra”, (Bombay) (Nagpur Bench): Law Finder Doc Id # 1697615, 2020 (1) AIR Bomber (Cri.) 702, in which in para no.27, it has been

held that “27. On scrutiny of the entire prosecution case, I am of the opinion that merely because the corroborative piece of evidence i.e., Chemical Analyser’s reports are not positive, that will not permit the Court to disbelieve the entire prosecution case, especially when the evidence of the victim girl is found to be trustworthy, inspiring confidence and is well supported by the medical evidence”.

(viii) Manoj Tyagi @ Monu v. State (Govt. of NCT, Delhi), Law Finder Doc Id # 1697718, D/d 25.02.2020, in which the Hon’ble Delhi High Court held that..... “Protection of Children from Sexual Offences Act - A. Protection of Children from Sexual Offences Act, 2012 Section 12 Sexual assault on minor child - Seemingly contradictory subsequent Account to a statement made initially by the minor child is not a reason in itself to disbelieve both the initial or the subsequent statement of the child victim - Contention that variant testimonies of the minor child set at naught the prosecution version and that the possibility of the minor child having been tutored cannot be accepted - Conviction upheld”.

(ix) “Pashupati Mukhiya v. State”, Law Finder Doc Id # 1717919, 2020 (2) RCR (Criminal) 858, in which the Hon’ble Delhi High Court held that..... “A. Protection of Children from Sexual Offences Act, 2012 Sections 8 and 10 Minor victim - If an omission or discrepancy goes to the root of the matter then the same needs to be taken into account - Every omission cannot take place of a material omission – Minor contradictions and inconsistencies in the

testimony of the witnesses should not be a ground to plead the case of the prosecution. B. Protection of Children from Sexual Offences Act, 2012 Sections 8 and 10 Minor victim – Victim nine-year-old throughout maintained that she was sexually assaulted – Some discrepancies naturally creep in the statement of the witnesses when they are recorded at different point of time and days rather years after the incident -Witness may not narrate the incident in greater detail at one stage and in brevity at some other stage and may give more emphasis to some part of her testimony on different occasions when her statements are recorded – Minor discrepancies or inconsistencies in the statement of the victim which do not go to the root of the prosecution case are immaterial”

(x) “Kamakhya Roy v. State of Assam”, Law Finder Doc Id #1028677, 2018 (1) NEJ, wherein the Hon’ble Gauhati High Court held that..... “B. Indian Penal Code, 1860 Sections 448 and 376 Protection of Children from Sexual Offences Act, 2012 Section 4 Evidence Act, 1872 Section 6 Sexual Assault - Victim was 13 years old at time of occurrence - Her testimony found to be reliable - Victim as well as the informant disclosed the incident to their neighbours immediately after the occurrence - Although the evidence of prosecution witnesses were not eye witnesses to the occurrence but their evidence has much relevancy to the fact in issue and their evidence could be regarded as res - gestae under Section 6 of the Evidence Act - Exclamations, statements and complaints of an injured or complaint of a raped woman immediately before, during or after the occurrence are relevant and their evidence will be admissible in terms of section 6 of the Act”

(xi) “**Bansari Lal v. State of Himachal Pradesh**”, Law Finder Doc Id # 882073, 2016 (4) ILR H.P.) 281, in which the Hon’ble Himachal Pradesh High Court (DB) held that..... “D. Protection of Children from Sexual Offences Act, 2012 Section 4 Offence under POCSO - Examination of witnesses - non-association of independent witnesses, whether fatal to prosecution case - No contradiction found in testimonies of prosecution witnesses who were victim herself and her mother and sister - In cross-examination Court did not find her testimony to have been shattered or rendered uninspiring in confidence - In fact she was clear, categorical and her testimony consistent with her version so disclosed to the Police and

her statement recorded before the Magistrate - Therefore, non-association of independent witnesses would also not render the testimony of the prosecution witnesses to be doubtful”

(xii) “**State of NCT of Delhi v. Dharmender**”, Law Finder DocId # 1032683, 2018 (249) DLT 736, in which the Hon’ble Delhi High Court (DB) held that..... “Criminal Procedure Code, 1973 Section 378 Indian Penal Code, 1860, Section 377 - Protection of Children from Sexual Offences Act, 2012 Sections 3, 6, 5(m), 29 and 30 Appeal against acquittal – Allegation of threatening victim with an intention to commit unnatural offence - The statement of the victim was duly corroborated by his parents both of whom testified that when the victim returned to the house in the night, he narrated the incident of them, where after the accused was located and police was called - The statement of the victim is also corroborated by the medical evidence - Thus, not only there was corroboration of the statement of the child victim by his parents, but also by independent medical evidence - The parents of the child victim do not cease to be independent and competent witness, merely on account of their relationship with the victim - non-detection of blood stain in the forensic examination of the jeans worn by the victim does not destroy the case of the prosecution - The medical examination of the victim did find a tear/abrasion present over the left inguinal region - Thus, there was no scope for doubting the injury suffered by the victim in the anal region, merely because blood was not detected in the jeans of the victim - The doctor opined that there was nothing to suggest that the accused was incapable to perform sexual assault under normal circumstances - Order of acquittal is set aside – Appellant convicted - Appeal allowed”.

(xiii) “**Rinku @ Ram Prasad v. State**”, Law Finder Doc Id# 1598974, 2019 (4) JCC 3757, in which in para no. 18, the Hon’ble Delhi High Court held that..... “18. As regards the contention that had been raised on behalf of the prosecutrix that Ms. Z mentioned in the statement of the mother of the prosecutrix i.e., the counsellor had not been cited as a witness nor examined by the Investigating Agency, it is essential to observe that as answered vide the CRL.REF. No.2/2016 in response to question no.1, which reads to the effect: -

"Q.No. 1: What is the legality of recording a statement or version of the incident enumerated by a victim of sexual offence by an NGO or a private counsellor and filing of such statement or counselling report along with a charge-sheet before the trial court under Section 173 of the

Cr.P.C.?

(i) A statement under the POCSO Act can be made only to a police officer or a magistrate, and;
(ii) Provisions of the POCSO Act or the JJ Act do not contemplate any report to be made by a counsellor. It further makes it explicitly clear that counselling report/notes of the counsellor (as well as any person or expert recognized under the POCSO Act and Rules of 2012 and the JJ Act) are confidential in nature and the same cannot be made a part of the charge-sheet or otherwise on the trial court record.", it is thus apparent that the counselling report/notes of the counsellor is confidential in nature and cannot be made a part of the charge sheet or otherwise in the Trial Court Record and thus, in these circumstances, the non-production of the counsellor as a prosecution witness does not detract from the veracity of the prosecution version”

(xiv) “P. Prakash v. State”, Law Finder Doc Id # 1610448, wherein it has been held by the Hon’ble Madras High Court that..... “D. Indian Penal Code, 1860 Section 366 The Protection of Children from Sexual Offences Act, 2012 Section 6 read with Section 18 Sexual abuse on minor girl -
Plea of false implication - No iota of evidence furnished to show that he was falsely implicated in case owing to previous enmity and a mother cannot play with life of her daughter in order to gain financially or any other thing”

(xv) “K. Venkateshwarlu Vs State of A.P., (2012) 8 SCC 732012) 8 SCC 73, wherein it is held that the evidence of the child witness has to be subjected to closest scrutiny. To quote “9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion.

Evidence of a child witness can be relied upon if the court, with its expertise and ability to

evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it”.

(xvi) “Shiv Chand Pran Bansode v. State of Maharashtra”, (Bombay) (Nagpur Bench): Law Finder Doc Id # 1697615, 2020 (1) AIR Bom.R (Cri.) 702, in which in para no.27, it has been held that ... “27. On scrutiny of the entire prosecution case, I am of the opinion that merely because the corroborative piece of evidence i.e., Chemical Analyser’s reports are not positive, that will not permit the Court to disbelieve the entire prosecution case, especially when the evidence of the victim girl is found to be trustworthy, inspiring confidence and is well supported by the medical evidence”.

(xvii) “State of M.P Versus Najab Khan and Others”, 2013 CrLJ 3951 (SC) held that..... “In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and the given circumstances in each case, nature of crime, the manner in which it was planned and committed, the motive for commission of crime, the conduct of the accused, the nature of the weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration, undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficiency of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime, but also the society at large while considering the imposition of appropriate punishment”.

(xviii) “Ravi S/o Ashok Ghumare Versus State of Maharashtra”,³³ 2019 AIR SC 5170, describing the sentencing policy, in paras no. 50-52, emphasized that..... “50. It is noteworthy that the object and purpose of determining quantum of sentence has to be 'society centric' without being influenced by a 'judge's' own views, for society is the biggest stake holder in the administration of criminal justice system. A civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment that commensurate(s) with the gravity of offence. 51. Equally important is the stand-point of a 'victim' which includes his/her guardian or legal heirs as defined in Section 2(wa), Cr.P.C. For long, the criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim'- the de facto sufferer of a crime had no say in the adjudicatory process and was made to sit outside the court as a mute spectator. The ethos of criminal justice dispensation to prevent and punish 'crime' would surreptitiously turn its back on the 'victim' of such crime whose cries went unheard for centuries in the long corridors of the conventional apparatus. A few limited rights, including to participate in the trial have now been bestowed on a 'victim' in India by the Act No. 5 of 2009 whereby some pragmatic changes in Cr.P.C. have been made. 52. The Sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. Where the Court is satisfied that there is no possibility of reforming the offender, the punishments before all things, must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent. There is no gainsaying that the punishment is a reflection of societal morals. The subsistence of capital punishment proves that there are certain acts which the society so essentially abhors that they justify the taking of most crucial of the rights - the right to life”.

(xix) “Rajinder Kumar Versus State of Himachal Pradesh”, 2019 Cr. LJ 2839³⁴, wherein in para no. 27 the Hon’ble Himachal Pradesh High Court (DB) held that.....

³³2019 AIR SC 5170

³⁴Rajinder Kumar Versus State of Himachal Pradesh

“27. No doubt, the prosecutrix and her mother PW-2 Meeran Devi turned hostile to the prosecution, however, as per the legal position well settled at this stage, that part of the statement of a hostile witness which supports the prosecution case if inspires confidence can be relied upon. Since in the case in hand, the prosecutrix has admitted her signature on the identification memo Ext. PW-1/A and also that the statement Ext. PW-1/B was made and signed by her in the Court, lead to the only conclusion that she has supported the prosecution case on all material aspects and also that she has been subjected to sexual intercourse by the accused because it is so recorded in both the documents referred to hereinabove. Learned trial Judge, as such, has rightly concluded that the hostile statement of the prosecutrix and her mother cannot be taken as ground to disbelieve the prosecution story especially when the scientific investigation and the link evidence available on record connect the accused with the commission of offence. It is worth mentioning that the evidence as has come on record by way of the testimony of official witnesses supplies necessary links in support of the prosecution case, because PW-5 HC Mohinder Singh, the then MHC, Police Station Ghumarwin has supported the prosecution case qua the case property deposited with him and The same later on was forwarded by him to FSL. There is nothing to disbelieve his version as has come on record. PW-4 HHC Dinesh Chandhas supported the prosecution case qua the case property i.e., one vialduly sealed in a parcel deposited by him in RFSL at Mandi vide RC No.103/14. PW- 6 LC Anita Devi has deposed that the samples preserved bythe doctor and handed over to her were given by her to ASI Sita Ram. She remained on duty with the prosecutrix during her hospitalization on 8/9.6.2014 in the hospital at Bilaspur. The case property was handed over to PW-7 Const. Suneel Kumar vide RC No. 226/14 and as per his statement, he deposited the same in safe condition in SFSL, Junga. PW-13SI Mehar Singh has obtained the extract of birth register Ext. PW-3/A and the date of birth certificate Ext. PW- 3/B from PW-3 Ravinder Kumar, Secretary Gram Panchayat, Kothi. PW-19 ASI Kawal Singh has investigated the case. On receipt of the FSL report Ext. PW-9/D from SFSL, Junga, according to which the prosecutrix and the accused were found to be the biological mother and father of the still born child, the accused was arrested by this witness after interrogation. He has also prepared the memo Ext. PW- 1/A on identification of the room where the prosecutrix was subjected to sexual intercourse by the accused thrice on the identification

given by her. It is he who moved to the Medical Officer for conducting medical examination of the accused and obtained the MLC Ext. PW-8/B as per which the accused was found to be capable of committing sexual intercourse. PW-26 Minakshi Kanwar has made the application to the police”.

Factors influencing the decision to try Juvenile as Adult

Legal frame work and procedural guidelines

Factors affecting judicial system

No co-operation between agency and board.

1. Probation Report timely not comes.
2. Judiciary and Executive not cooperating so much
3. Failure after Bail Juvenile cannot restart continue studying.
4. occupation Task, Program

Role of public opinion, media, and political pressure

Public opinion- victims want justice and society also effected

Like Ryan International School (boy – Pradyumna) Murder case

Father satisfied, tried as adult, and yes according to crime punishment court deal.

Media opinion- in case of Nirbhaya, the mother don't know age, school certificate is genuine recording for genuine age.

Adopt the American system, where a Juvenile court can have a waiver and it can be either a superior higher-level court like high court and supreme court can call the experts and ask the opinion weather this person knew what he was doing weather what the was not mature enough.

Role of stakeholders in dealing with child in conflict with law

1. Role of police {Rule 8, Juvenile Justice (Care and Protection of Children) Act, Model Rules, 2016:

- First inform his parent/guardian about the apprehension and of the offence allegedly committed by the child
- Inform the Probation officer, so that he can gather information on social background and circumstances under which the offence was committed
- Inform special juvenile police unit or the child welfare police officer to record the information regarding the offence in the general daily diary. No FIR will be registered except

in case of heinous crimes

- A child will be apprehended only in case of heinous crime or when apprehension is in best interest of the child. After apprehension, the child will be produced before Juvenile Justice Board (JJB) within 24 hours
- In petty or serious offence where apprehension is not required, child welfare police officer has to inform the juvenile justice board about the offence allegedly committed by the child and also submit the social background report
- The child cannot be hand cuffed or kept in jail. The child has to be kept in observation home/fit facility or with fit person till the time of first production before the juvenile justice board
- The child cannot be asked to sign on any document or statement and in case of FIR being registered; the copy of the same has to be given to the child or to his parents or guardian.
- The SJPU/CWPO cannot compel the child to confess guilt or use force. The child's parents/guardians can also be allowed to be present during the interview.
- Special juvenile police unit or the child welfare police officer has to prepare the social background report of the child in Form 1 and circumstances under which the child was apprehended and submit it to the juvenile justice board during first hearing.
- Special juvenile police unit or the child welfare police officer has to inform the parents or guardian of the child as to when the child is to be produced for hearing before the Board
- Police officer/SJPU/CWPO has to provide immediate medical assistance to the child if needed
- Assistance of interpreter or a special educator if needed should be provided during interviewing the child. It is mandatory for the CWPO to be in plain clothes during interviewing the child.
- Special juvenile police unit or the child welfare police officer has to produce the child before JJB within 24 hours excluding the time of travel.
- Police officer has to inform the district legal services authority for providing free legal aid to the child.
- A list of all designated child welfare police officers, child welfare officers, probation

officers, para legal volunteers, district legal services authorities and registered voluntary and non-governmental organisations in a district, principal magistrate and members of the board, members of special juvenile police unit and child line services.

with contact details will have to be prominently displayed in every police station

- In case of heinous offence being allegedly committed by a child who is over 16 years, then the CWPO has to produce statement of witnesses and other documents as far as possible within one month and also give a copy of the same to parents/guardians of the child.
- In case of petty/serious offence allegedly committed by a child, the final report is to be submitted before the JJB at the earliest and not beyond two months.

2. Role of juvenile justice board {Rule 10, Juvenile Justice (Care and Protection of Children) Act, Model Rules, 2016:

- Any child apprehended by police for allegedly committing an offence has to be produced before JJB within 24 hours of apprehension along with a report explaining the reason and circumstances of the child being apprehended. Board will consider the report and take necessary action.
- In case the Board is not sitting, and a child is apprehended, then the child has to be produced before a single member of the Board, and the order given by the single member will have to be ratified in the next sitting of the Board.
- If the JJB is of the opinion that the child produced before it falls under the category of a child who has been employed by a militant group or any circumstances as mentioned in Sec 83, the Board can decide to consider such a child as one in need of care and protection and transfer the child to child welfare committee.
- When a child is not apprehended but information of the offence allegedly committed by the child is given to the board, then the board will direct the child to appear before it at the earliest.
- On production of a child, the Board has to review the report containing the social background report (SBR), circumstances of apprehension, and offences allegedly committed and then pass orders in relation to the child.
- The Board can dispose the case if it is of the opinion that the allegation is unfounded or is a petty offence.

- Refer the child to CWC if Board feels that the child is need of care and protection.
- Release the child under supervision of fit per/fit facility/probation officer through an order in Form three with directions to present the child for inquiry on next given date.
- The Board can pass orders for keeping the child in a child care institution, if it thinks this option to be in the best interest of the child.
- In all cases where release in pending during inquiry, Board has to give the next date of hearing not later than 15 days.
- If the child in conflict with law fails to appear before the Board, after being granted bail, the Board has to issue directions to CWPO for the production of the child
- If CWPO fails to produce the child even after directions from the Board, the Board will have to pass orders as per Section 26 of the Act.
- When witness is produced before JJB for examination in an inquiry relating to a child in conflict with law, it is the responsibility of the Board to ensure that inquiry is not conducted in spirit of strict adversarial proceedings.
- The Board is supposed to address the child in child friendly manner.
- Board has to take into account the report containing circumstances of apprehending the child and the offence committed along with the social investigation report before arriving at a conclusion.
- The Board has to determine the age at the first instance when the child is produced, in case of unavailability of age proof, the Board will pass orders for age determination as per section 94 of the Act.
- For conducting preliminary assessment in case of a heinous crime allegedly committed by a child who is over 16 years of age, the Board may take assistance of psychologists/counsellors
- After preliminary inquiry, if the Board is of the opinion that the offence was committed with an adult like mind, and the child should be treated as an adult, Board shall assign reason for the same, share a copy of that report with the child or parents/guardians of the child and transfer the case to children's court.
- After preliminary assessment, the Board can pass any of the following:
 - o Order the child to be kept in a place of safety
 - o Decide to release the child after advice and admonition and ask the child to participate in group activity or community service and ask district child protection unit (DCPU) to arrange

for proper counselling

- o If the Board decides to release the child on probation and place him under the supervision of a parent/guardian/fit person, then the custodian will submit a written undertaking
- o Order release on personal bond
- o Order to be placed under supervision of a probation officer for a maximum period of three years
- If the Board finds that the child is not complying with the probation conditions, the Board can then decide to send the child to a special home or place of safety for the remaining time of probation
- Board has to maintain case monitoring sheet and every case and every child as per Form No 11.
- Board has to submit a quarterly report in Form 12 about the pendency of cases, visits to Special Homes etc and share the report with Chief Judicial Magistrate or Chief Metropolitan Magistrate and District Magistrate
- The Board has to ensure that no person unconnected with the case is present in the room during case inquiry
- The Board will have to hold sittings in a child friendly manner and not use harsh language for the child
- The Board is not supposed to sit on a raised platform
- The Board has to sit on all working days for at least six hours
- The Board has to issue rehabilitation card as per Form 14 and monitor the progress of the Child
- The Board has to pass appropriate orders for re-admission or continuation of studies of the child
- The Board has to ensure that District Child Protection Unit (DCPU) extends legal help
- The Board has to review after care and sponsorship programs and recognize fit person/fit Facility.

3. Role of child welfare committee

- In case the Juvenile Justice Board is of the opinion that the child is need of care and protection as under section 83 of the Act, the child welfare committee will have to take decision regarding the child and tray for repatriation or rehabilitation of the child

- CWC has to take care of any child transferred to it by the Board and take proceedings as per the Act

4. Role of district child protection unit {Rule 85: Juvenile Justice (Care and protection of children), Model Rules, 2016

- Maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board
- Arrange for individual or group counselling and community service for children
- Conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence
- Conduct review of the child placed in the place of safety every year and forward the report to the Children's Court.
- Maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children's Court along with bi-annual updates
- Maintain record of run- away children from child care institutions
- Perform periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to JJB from time to time
- Facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children's Court
- Facilitate transfer of children at all levels for their restoration to their families;
- Inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the State Child Protection Society
- Look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action
- Send representative to the management committees within the child care institutions;
- Maintain a database of child care institutions, fit persons and fit facilities, registered after care organisations and institutions etc. at the district level and forward the same to the Boards
- Maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children

with special needs and other such facilities at the district level and forward the same to the Boards

- Maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards
- Organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act
- Submit a monthly report to the State Child Protection Society;
- Notify the State Government about a vacancy in the Board six months before such vacancy arises
- The District Child Protection Officer is the Nodal Officer in the district for the implementation of the Act and the rules

5. Role of NGO

- In case an NGO has resources or capabilities of providing assistance in providing probation, case work, counselling, psychological sessions than it can enrol itself in the Govt panel
- Prepare the individual care plan and submit to Board if directed by the Board to do so (Rule 13, 8 (2)).

Procedure of court:

To understand in common way

1. First, child came in front of juvenile board
2. inquiry regarding age to know, juvenile or not.
3. if juvenile, then Rule 12 applies, certificate or 16-18 years found
4. then Session court send u/s-15,
5. statement of accused, summary trial
6. if considered major then Session court
7. if not considered major, and crime is heinous then POCSO Court special judge, trial as adult will be start.
8. if crime is simple is simple if not death punishment, then Juvenile board.

And punishment will be given under section 16/17/18 or juvenile Board 3 years then send

into Rehabilitation place. And trial will be over.

9. Appeal district court, transfer to POCSO Court listening under section-15

10. summary trial if above 16 then trial Juvenile Board, crime is heinous Session court

If less then juvenile board.

11. Crpc 107-116 not apply on juvenile

Implications for Juvenile Justice Policy and Practice and Human rights

Ethical and human rights concerns

Ethics

1. private uniform juvenile police unit and at once district probation officer, probation on report (sent to court)
2. if prima facie juvenile, then apply section 12
- 3 .no difference between heinous and non-heinous crime.
4. condition given to cancel bail u/s 12. Some judges, considered ground for bail.

Concepts of Human Rights, Rights of Accused and Juvenile Delinquent

The concept of human rights has assumed importance globally during the past few decades. Ever since the proclamation of the Universal Declaration of Human Rights, the term human right has gained currency. Human rights have been the crucial element of philosophical, social and political debates in the second portion of the twentieth century. They will probably also constitute a major discourse of the twenty first century.

While there is increasingly widespread concern for universal respect and observance of human rights, gross violation of internationally recognised norms continue unabated in almost all parts of the world. Countless people around the world suffer hunger, disease and lack of opportunity, there being denied the enjoyment of the most basic economic, social and cultural rights as well as civil and political rights, which is of paramount importance for full realization of human dignity and for the attainment of legitimate aspiration of every individual. The challenge of violation of human rights faces the mankind in its stark nakedness. The challenge is global, concern universal and the issue is basic.

In a developing society such as ours where around 50 per cent of the people are living below poverty line and around 70 per cent of the people are illiterate and large number of men and women are living a life of want and destitution, misery

and suffering, this subject assumes much greater importance. Despite much hype and holloa a vast number of Indian masses continue to live undignified and uncongenial life. Most of the fundamental human rights and fundamental freedoms enshrined in the Indian Constitution have remained paper aspirations, which compel many to rethink about India's commitment and seriousness to these issues.

There is wide gap between rhetoric and reality and sometimes human rights appear more or less a myth in India.

Although, the ideal of human rights may tend to be universal, the response to the issues of human rights vary according to the kind of society and the stage of national development that relates to the system of human right. Further some nation may be genuinely interested about the issue of human rights, for others certainly, it has become useful diplomatic tool. Many leaders from the South feel that issue of human rights has been politically manipulated by the powers of

North especially by the USA, as a means of exercising domination over the Third World countries

Human rights

Although much has been written and pronounced about human rights through the centuries, yet one would still be hard put to define, the term. But again, as one author has aptly remarked---Human rights may be difficult to define but impossible to ignore."

Human rights are a dynamic concept and endeavours to adopt itself to the needs of the day. For this reason, the definition and understanding of the term dependmuch on the condition and opinions prevailing in the given society at a given time andit attains new dimension with the march of history.

Rights of accused

Right to Fair Trail and Fair Hearing

Right To Be Presumed Innocent Until Proved Guilty

Right to Speedy Trial

Right of a Person to be produced before the Magistrate

Right to Counsel

Rights at Trial

Juvenile Delinquency

Juvenile Delinquency can be popularly seen in a developing country like India. kids are the ones who are confronting financial issues, so these kids who are surrendered and penniless. face high danger of sexual misuse, trafficking

For kids in struggling with law the long trial procedure of captures can crush their whole adolescence, as a result, a large number of them are decreased to low odds of restoration and joining into society.

William Coxtton in the year 1484 used the word delinquent to refer a person who was found guilty. Juvenile delinquency means the involvement by the teenagers in an unlawful behaviour who is basically under the age of 18 and commits an act which is considered as a crime. A child is known as a delinquent when he/she perpetrate a mistake which is against the law and is not accepted by the society. A child is known as a delinquent when he/she commits a mistake which is against the law and which is not accepted by the society.

Recommendation for Indian juvenile justice system

- 1 to cooperate between judiciary and executive
2. co-operation required between agency and board.
3. Probation Report timely comes.
- 4.Failure after Bail, Juvenile can restart continue studying.
5. occupation Task, Program will be conducted for juvenile

Comparison of juvenile and adults for heinous crimes

Juvenile vs. Adult Criminal System

The key difference between a juvenile and an adult is the age group. Juvenile is the one who is below the age of 18, while an adult is the one who falls in the age group of 18 and above.

Differences:

1. Juveniles are tried in the juvenile court system, while the adults are tried in the normal court systems such as the district court, session's court, etc. After the Nirbhaya case, if a child of 16 to 18 years of age commits a serious offence, in that case, he or she can be tried as an

adult in the Indian legal system.

2. The crimes committed by the juvenile are known as 'Delinquent acts' instead of 'crimes', which is used in the case of an adult.

3. Juveniles get the bonus of extra care and protection in the juvenile court system, whereas no such advantage is given to an adult.

4. The juvenile court system is informal as compared to the courts in the adult criminal system as the children is in their tender age and are still growing and learning the difference between right and wrong.

5. Last but not the least, while giving the decision in the matter of a juvenile, a judge has to act in the best interest of the juvenile and must follow certain guidelines and rules which are easy on him/her.

The Constitution of India specifically provides for the rights of children³⁵ that are envisaged to safeguard them-

i. Right to free and compulsory elementary education to all children in 6 to 14 years of age group under Article 21A.

ii. Right to be protected from any hazardous employment till the age of 14 years under Article 24.

iii. Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength under Article 39(e).

iv. Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment under Article 39 (f).

v. Right to early childhood care and education to all children until they complete the age of 6 years under Article 45.

vi. Right to equality under Article 14.

vii. Right against discrimination under 15.

viii. Right to personal liberty and due process of law under Article 21.

ix. Right to being protected from being trafficked and forced into bonded labour

³⁵<https://lawcolloquy.com/journals/child-rights-and-juvenile-justice-in-india-medha.pdf>

under Article 23.

x. Right of minorities for the protection of their interests under Article 29.

xi. Right of weaker sections to be protected from social injustice and all forms of exploitation under Article 46.

xii. Right to nutrition and standard of living and improved public health under Article 47.

Legislations envisaged for the protection of children areas –

i. Bonded labour System (Abolition) Act, 1976

ii. Immoral Traffic (Prevention) Act, 1956

iii. Medical Termination of Pregnancy Act, 1971

iv. Mines Act, 1952

v. National Food Security Act, 2013

vi. Juvenile Justice (Care and Protection of Children) Act, 2015

vii. Young Persons (Harmful Publication) Act, 1956

viii. Right of Children to Free and Compulsory Education Act, 2009

ix. Probation of Offenders Act, 1958

x. Protection of Children from Sexual Offences Act, 2012

Several other laws are also there to mitigate the exploitation being faced by the children in various avenues.

The National Plan of Action (NPAC) calls for the equal opportunities of children along with their protection, the recent plan that has come forth is of 2016. The background of such policies dated back to the National Policy for Children envisaged in 1974.

The National Plan of Action, 2016 is based on the principles specified in the NPAC, 2013.

Key Approaches Of NPAC, 2013, which forms the base for NPAC, 2016 as well1. Survival, health and nutrition- ensuring equitable access towards comprehensive and preventive, curative, rehabilitative and promotive health care of the highest standard during and after their birth and throughout the period of their growth to all the children.

2. Education and development along with skill development- securing the right of the child to that of education, knowledge, learning and development opportunity with due

regard to the special needs by providing, promoting the access to the required environment, information, infrastructure, service and support for the development of the child to the fullest.

3. Protection- a creation of a safe, caring and protective environment to prevent them from all forms of vulnerabilities in all situations.
4. Participation – to enable children to get engaged in development and the matters concerning and affecting them.

The NPAC, 2016 is a blend of the previous running schemes or programmes along with the New initiatives introduced therewith with a strategical approach to get the desired outcome. It takes into account the current priorities and challenges for the children in India. It acts as a step to strengthen the national commitments and policies and that of the United Nations Convention On the Rights of The Child, providing a road map for the same. Further, it aims to achieve the outcomes by the year 2021, thereby to attain the Sustainable Development Goals as targeted,

Schemes introduced under the NPAC, 2016 are –

1. Child Protection Service (earlier Integrated Child protection Scheme- ICPS)
2. Mid-Day Meal
3. National Nutrition Mission
4. National Health Mission
5. Integrated Child Development Services (ICDS)
6. Maternity Benefit Programme
7. Janani Shishu Suraksha Karyakram
8. Dindyal Disabled Rehabilitation Scheme
9. Beti Bacvhao Beti Padhao
10. Pradhan Mantri Kaushal Vikas Yojana, etc.

Role of Convention on The Rights of Child: -

The United Nations Convention on the Rights of Child adopted in 1989 is a historical movement in ensuring child rights with the following core principles at hand

1. Right to Non- Discrimination
2. Right to life, survival and development

3. Right to have a child's best interests taken as a primary consideration in all matters affecting them.

4. Right to express views freely.

India ratified the convention in 1992, solely to provide the children in India the basis for their maximum benefit and development and to thereby secure and protect them from exploitation. However, India did not ultimately ratify it but incorporated the provisions according to the country's scenario. This convention applies to the children till the age of 18 years.

Juvenile Tried as Adult Cases India

- In September 2017, a Class 2 student at a prominent school in Gurugram was found murdered inside the school washroom. The accused was a 16-year-old student at the time of committing the offence.
- In December 2017, the JJB decided to treat the accused as an adult. But the JJB's order was scrapped by the Punjab and Haryana high court and then by the Supreme Court earlier this year.
- The Supreme Court, which found procedural lapses in the JJB's proceedings, had left it to the board to decide if a psychological evaluation would be relevant at this point of time.
- After the reassessment, the JJB ordered for treating the accused juvenile as an adult.

When can a Juvenile Tried as Adult

- According to Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), juveniles charged with heinous crimes and who are between the ages of 16 to 18 years can be tried as adults.
- Under the 2015 Act, the crimes categorized as heinous, serious and petty are:
 - Heinous crime: If attracts minimum penalty of 7 years imprisonment under any existing law.
 - Serious crime: If imprisonment between 3 to 7 years is given.
 - Petty crime: If penalized up to 3 years of imprisonment.
- Age on the date of the offence: For a Child in Conflict with Law (CCL) to be tried as an adult, age on the date of the offence decides whether the accused was an adult or a child.
- Criteria: The Act sets three criteria before the Juvenile Justice Board (JJB) can decide to treat accused as adults:
 - Mental and physical capacity;
 - Ability to understand consequences; and

- The circumstances of the offence.
- The procedure: Prior to deciding if the child should be tried as an adult, the JJB must conduct a preliminary assessment based on the above criteria.

The assessment is required to be done within three months from the date of first production of the child before the JJB.

in this regard, the Supreme Court held that when the JJB does not comprise a practicing professional with a degree in child psychology or child psychiatry, it would have to mandatorily seek the assistance of experts.

Juvenile Tried as Adult: Ordered to be Treated as an Adult?

As soon as the JJB decides in favour of treating a juvenile as an adult, the case is transferred to the children's court.

As per Section 19 of the JJ Act, 2015, the children's court can pass a decision on whether there is a need for trial of the child as an adult, or otherwise.

A children's court has to ensure that the child in conflict with the law is sent to a "place of safety" until he reaches the age of 21 years, and is only then transferred to jail.

The court can also order the conditional release of the child after he attains the age of 21 years.

Two important protections that do not extend to a child who has been tried as an adult:

Protection from disqualification Erasure of conviction record after a reasonable period

If the child is tried as an adult, the sentence can go up to life imprisonment, but if the child is tried by the board as a juvenile, the maximum sentence can only be three years in a special home.

Juvenile Tried as Adult: Juvenile Justice (Care and Protection of Children Act) 2015

About

- It was introduced and passed in Parliament in 2015 to replace the Juvenile Delinquency Law and the Juvenile Justice (Care and Protection of Children Act) 2000.
- The Act seeks to achieve the objectives of the United Nations Convention on the Rights of Children as ratified by India on December 11, 1992.

Background

- The Act was passed after the brutal gang rape and murder of a student in Delhi in December 2012. One of the six accused in the case was 17.

•Following the crime, the Ministry of Child and Development proposed changes to the law to punish juvenile offenders, citing an increase in cases of offenders in that group.

Important provisions

It has allowed the trial of juveniles in conflict with the law in the age group of 16-18 years as adults, in cases where the crimes were to be determined.

The nature of the crime, and whether the juvenile should be tried as a minor or a child, was to be determined by a Juvenile Justice Board.

- The Act streamlined adoption procedures for orphans abandoned and surrendered children.
- The act had introduced foster care in India.
- The existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively.
- The law had also made provision that while adopting a child, priority is given to disabled children and physically and financially incapable children.
- Special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years.
- The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children's Court (Court of Session) after conducting the preliminary assessment.

What are Juvenile Justice Boards

•About: Juveniles accused of a crime or detained for a crime are brought before the Juvenile Justice Board (JJB) under the Juvenile Justice (Care and Protection of Children) Act, 2015.

•Aim: To hold a child culpable for their criminal activity, not through punishment, but counselling the child to understand their actions and persuade them away from criminal activities in the future.

•Structure: The JJB consists of judicial magistrate of the first class and two social workers, at least one of whom should be a woman.

•Tenure: The tenure period for members of the board is 3 years. However, members can also be appointed consecutively for a maximum of two terms.

•Powers: The Bench shall have all the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or a Judicial Magistrate First Class.

•Training for the Members: The onus of sensitizing and providing training to all the Board Members lies on the State Government.

Recommendation for Indian juvenile justice system

- 1 to cooperate between judiciary and executive
2. co-operation required between agency and board.
3. Probation Report timely comes.

4. Failure after Bail, Juvenile can restart continue studying.
5. occupation Task, Program will be conducted for juvenile

Procedure of court:

1. First, child came in front of juvenile board
2. inquiry regarding age to know, juvenile or not.
3. if juvenile, then Rule 12 applies, certificate or 16-18 years found
4. then Session court send u/s-15,
5. statement of accused, summary trial
6. if considered major then Session court
7. if not considered major, and crime is heinous then POCSO Court special judge, trial as adult will be start.
8. if crime is simple is simple if not death punishment, then Juvenile board.
And punishment will be given under section 16/17/18 or juvenile Board 3 years then send into Rehabilitation place. And trial will be over.
9. Appeal district court, transfer to POCSO Court listening under section-15
10. summary trial if above 16 then trial Juvenile Board, crime is heinous Session court
If less then juvenile board.
11. Crpc 107-116 not apply on juvenile

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CHAPTER V

Judicial Trends towards Juvenile Justice in India

Judicial Trends

Judicial trends set by various courts relating to child delinquency can be examined under following heads

- (i) Determination of age of juvenile.
- (ii) Jurisdiction of the Board / Court.
- (iii) Apprehension and production of juvenile.
- (iv) Bail to juvenile.
- (v) Disposition of the juvenile.

1. Determination of Age of Juvenile

It is primary duty and responsibility of the court that before convicting a person it must determine the age of such person whether he is juvenile or not. The courts have held that very young children should not be sent to prison. In **Smt. Prabhati v. Emperor** it was held that as far as possible such young children should be released under the supervision and care of their parents or guardians. The court must have clear evidence of the age of a person before sending him/her to reformatory school. It was clarified that a child could not be sent to a reformatory school unless an order of institutionalization, that is, of imprisonment, was made.

After recognizing the need for segregation of juveniles from the adult offenders not only during

trial but also at the investigation stage, the constant view of the beneficial juvenile legislation and also the judiciary has been to protect the child from hardships of adversarial trial and punishment system which mainly deals with the adult offenders. So, the important point which

requires a determination at the very initial stage is the age of a person charged with commission

of an offence.

A juvenile under Juvenile Justice Act, 1986 means a boy who has not completed the age of 16 years and a girl who has not completed age of 18 years. In Juvenile Justice Act (C & P), 2000, the distinction of age of a male and female child has been done away with and a uniform age pattern has been provided. Section 2(k) of the Act defines a juvenile or a child as a person who has not completed 18 years of age. As per section 2 (1) of the Act juvenile in conflict with

law means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of offence. So, the primary duty and responsibility of the court before convicting a person is to determine the age of such person and decide whether he/she is a juvenile. The Children Act, Juvenile Justice Act, 1986 and Juvenile Justice (Care & Protection of Children) Act, 2000 apply to children and defines who is a child by reference to age. They provide for continuation of enquiry after the child ceases to be a juvenile during its pendency what is the relevant date on which the child should be below the

specified age is a material question. However, the J.J. (C& P) Act, 2000 has now finally set the controversy at rest by referring the child to a person who has not completed the age of 18 years as on date of commission of offence. However, the issue of the relevant time at which the child should be below the age of eighteen has been raised in many decisions and has resulted in a controversy that is likely to continue in future too.

The protective philosophy underlying the special legal provision relating to children has been reiterated by the judiciary on various occasions. Delinquent and neglected children have enjoyed special protection under certain enactments like The Apprentices Act, 1850, the Indian

Penal Code, 1860, The Reformatory Schools Act, 1897, The Code of Criminal Procedure 1898,

The Code of Criminal Procedure 1973 and Borstal Acts. In India the main legislative Acts are The Children Acts, The Juvenile Justice Act, 1986, The Juvenile Justice (C & P) Act, 2000 which are also influenced by the above mentioned Acts. For example, under Section 82 of IPC,

a child below 7 years of age is absolved from any criminal responsibility. Section 83 of I.P.C extends this exemption to children between 7 and 12 years of age improved to be Doli incapax.

The question under the EPC is limited to Mens rea-rea and the age of the child.

In Emperor v. Wall Mohd. & another the Court held that throwing of stone at a train by children of five and eight years would ordinarily be protected under Section 82 and 83 of the IPC and would not be punishable offence. In 1977, the Supreme Court held that the penalty of death should not be imposed on a person below the age of 18. The Children guilty of offences punishable with death or life imprisonment were the focus of attention under Borstal Acts and Reformatory Schools Act. The judicial opinion differed on the issue whether Reformatory Schools Act could be applied to such children. Under Borstal Acts also the judicial response was equally divided. (See Ganga ram Raghunath v State of MP, Daljit Singh v. Emperor; Ram Gopal V. State & Ning Appa Prabhu Sarwad v. State of Mysore)

In Madan Pradhan v. State of West Bengal, a division bench of the West Bengal High Court held the age of the accused at the time of commission of the offence is relevant under the West Bengal Children Act, 1959 (WBCA) while another division bench of the same high court observed provisions of the WBCA clearly required the person to be a child when brought before the court for trial. Due to contrary view of earlier Division Bench, it referred the matter to the Chief Justice for consideration by a full bench. The full bench, however, refused to give an answer that it thought would be of only academic use. The division bench, in the absence of an answer from the full bench, held that the age at the time of trial was decisive of the applicability of the Act. The question again came up for decision in Dilip Saha v State of West Bengal.

The full bench, in this case, gave elaborate reasons for holding that the age at the date of commission of the offence was decisive of the applicability, taking into account the protective nature of the Act. First, it pointed out that attainment of a particular age was no bar to the trial of a child delinquent under the Act. Secondly, the Act had conferred on the child certain rights not enjoyed by adults: release on bail in generally non-bailable cases; prohibition against imposition of death penalty or imprisonment; ban on preventive proceedings; removal of

disqualifications: and so on. "These beneficial provisions are rights vested in a juvenile delinquent on the day the offence is committed. He cannot be denied of them by reason of the fact that at the time of actual trial he has become an adult. Thirdly, the section providing for separate trial of child delinquent from adult offender, did not say 'that if a person was a child at the time of commission of the offence but became an adult at the time of trial, he would be deprived of the benefits conferred by the Act.

The fourth argument was the most forceful of all. The court pointed out that sometimes delay in the trial of an accused may be caused by the investigating officer. In such cases, denial of the benefits of the Act would defeat its whole object and purpose. It will also be against the Constitutional principle. If we interpret Section 28 to mean that it prohibits a joint trial of a child and an adult only when the child is a 'child' at the time of trial, that interpretation would go against the provisions of Article 20(1) of the Constitution which prescribes that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. If therefore, at the time of the commission of the offence a child cannot be sentenced to death or ordinarily imprisoned, he cannot be subjected' to a greater penalty at the time of his trial even if he becomes an adult at the time of trial.

In **Umesh Chandra v State of Rajasthan**, a full bench of the Supreme Court, too, held that the date of commission of offence as the relevant date for applying the Children Act. It observed:

As regards the general applicability of the Act, we are clearly of the view that the relevant date

for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that stage could not be said to be mature for imputing Mens rea as in the case

of an adult. This being the intention of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite

possible that by the time the case comes up for trial, growing in age being an involuntary factor,

the child may have ceased to be a child.

Therefore, ss. 3 and 26 become necessary. Both the sections clearly point in the direction of the

relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for the 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 controversy, however, did not end with the above decision of the Supreme Court. The issue

continued to be raised under the JJA, and at least two High Courts held the age at the date of trial to be decisive of its applicability. These cases were decided in apparent ignorance of the Supreme Court decision mentioned above, as also was the decision in Arnit Das v. State of Bihar by a bench of the Supreme Court when it held that the date of first appearance was the

relevant date for applying the JJA. The bench reasoned that the use of the word 'is' at two places read in conjunction with 'a person brought before it.' Section 32 of the JJA clearly indicated for determination of age when the accused was presented before the court.

Disagreeing with Dilip Saha, it said that the right under Article 20 of the Constitution would not be violated if the applicability of the Act was determined by reference to the date of the commencement of the inquiry or trial. The decision was per in curiam and was subjected to severe criticism. The division bench apparently was not in agreement with the decision of the full bench in Umesh Chandra. However, in the absence of a ruling on the issue from the Constitution bench, Umesh Chandra continues to be the binding law on the issue. It is submitted

that the date of commission of the offence is decisive of the applicability of the Act as decided in Umesh Chandra being a decision of the full bench of the Supreme Court, as also Dilip Sahu for the reasons mentioned in these two cases.

In Malda Dada v. State of Gujarat, it has been held by Gujarat High Court that the word "attained" used in the J.J. Act of 1986 means 'completed'. Therefore, a boy who has not completed the age of sixteen years and a girl who has not completed the age of eighteen years is a juvenile for the purpose

of The Juvenile Justice Act, 1986.

In Gopinath Ghosh vs. State of West Bengal the Supreme Court even after noticing that the contention about age of a convict claiming the benefit of Children Act was being raised for the first time in the Supreme Court allowed the plea of child status being raised before itself in the interest of justice and referred the matter to the lower court for determination of the age.

It observed: ordinarily the Supreme Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the court is equally reluctant to ignore,

overlook or nullify' the beneficial provisions of a very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in the Supreme Court.

To avoid delay in determination of age, it directed that whenever a case is brought before the magistrate and the accused appear to be aged 21 or below, before proceeding with trial or under taking an inquiry must be made about the age of the accused at date of the occurrence. The Supreme Court has permitted the plea of child status to be raised for the first time before it on earlier as well as later occasions. However, this approach of the Supreme Court has neither been incorporated in the statute nor followed consistently by the Supreme Court itself.

In Sushil Kumar v. State of UP the question of age at the time of occurrence was raised.

However, the Supreme Court refused to allow the plea of child status and dismissed the petition

believing the plea to be an afterthought because it was not raised before the trial court or before

the High Court or even in grounds of special leave petition as originally filed. Further, the Supreme Court took into consideration two statements of petitioner made by him relating to deceased being his aunt wanting to adopt him and suspicion of deceased's husband of illicit relation between him and deceased and said that such a stand would not have been taken if it petitioner was a child at the crucial time. The statements of the petitioner were contradictory from point of his being a child. This case was decided after about six months of Gopinath Ghosh's case and follows just opposite approach without any reference to this case.

In Gopinath Ghosh the accused had given his age as much above the cut-off age prescribed

for being a child. However, the court not only allowed the plea of child status to be raised but also referred the matter to the Sessions Judge for determination of the age of the accused who after examination of medical report of the accused, Chief Medical Officer, Radiologist, Orthopaedic Surgeon, the Doctor, mother of the accused and Headmaster of the school certified that the accused was a child on the date of offence.

In Hariom v. State of UP Supreme Court again summarily dismissed the plea of being a child

as no evidence was placed during trial or before the High Court, without making any mention of its own cases holding that it was too late to produce a certificate before Supreme Court.

The question before the Supreme Court in *Amit Das*²⁶ was whether a person is juvenile and crucial date is the date when he is brought before the competent authority and not the date of commission of offence. After considering all the trends and material in this regard, the court held that as far as the present context is concerned the crucial date for determining the question

whether a person is Juvenile, is the date when he is brought before the competent authority. So far as the finding regarding the age of the appellant is concerned, it is based on appreciation of evidence arrived at after taking into consideration of the material on record and valid reasons having been assigned for it.

In case of Shantanu Mitra v. State of West Bengal Shantanu Mitra was arrested under sec.

302 IPC and tried under same section. He raised the plea that he had not attained the age on the

date of commission of the offence i.e., 22-2-98 and was entitled to protection under Juvenile Justice Act, 1986. The plea did not find favour with the lower court. The High Court directed The Magistrate to hold inquiry under sec. 8(1) of Juvenile Justice Act 1986. The Magistrate held inquiry and found that the appellant was born on 19-11-72 and was over 16 years on date of incident. The court did not rely on birth entry in Municipal record, LIC, Matriculation certificate and rejected the same. The High Court also rejected the plea of appellant. However, the appeal was allowed by Supreme Court holding that once an entry is made by an official, the same cannot be doubted on mere argument that it was not confirmed with date of the suggested date of birth of appellant.

In case of Krishan Bhagwan a question arose as to what procedure should be followed where

a child within the meaning of the Children Act is being tried and convicted by the ordinary criminal court and plea regarding bar of his trial by the ordinary court was taken for the first time at the appellate stage. The Bench made reference to the decision of case of Gopinath Ghosh and treated the appellant as juvenile under sec. 3 of the Act and exercising power of Juvenile Court u/s 7(3) of the Act while maintaining the conviction of appellant under sec. 302

IPC the court directed the appellant to be released on probation of good conduct on executing a bond to the satisfaction of the trial court that will keep peace and be of good behaviour for period of three years. It further directed him to pay a sum of Rs. 5000/- as fine, which shall be paid to the widow of deceased. Similarly, in Jayendra's case were accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under S. 2 (4) of U.P. Children Act and sent to an approved school, the accused having crossed the maximum age of detention in an approved school i.e., 18 years the court sustained the conviction of the appellant under all charges framed against him but quashed the sentence awarded to him and directed his release forthwith. The appeal was therefore partly allowed by the Supreme Court. ‘

In Bholu Bhagat v. State of Bihar, it was held that where plea is raised by accused in any court that he was a child at the time of commission of offence it is obligatory for the court to examine the plea and hold enquiry if necessary to determine the age and give a finding in that regard. The court cannot overlook beneficial provisions of Acts on technical grounds. The Patna High Court in Krishna Bhagwan v State of Bihar in complete disregard to the intentment of the JJA for keeping children away from adult offenders even during trial, laid down that in case the plea of child status was taken up in appeal, the appellate court should proceed as if the

JJA did not apply, and record its finding on the charge. Only if it found the accused guilty and prima facie a child on the date of commission of offence, then it should ask for a finding of age from the juvenile court under Section 32 of the JJA.

In Bhoop Ram's Case Supreme Court was confronted with the question whether the appellant

who had been convicted and sentenced along with adult accused should have been treated as a child within the meaning of The U.P. Children Act and sent to the approved school for the detention instead of being sentenced to undergo imprisonment in jail. The court after considering the material on record opined that appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment. The Supreme Court ruled that since the appellant is now aged more than 28 years of age there is no question of appellant now being sent to an approved school under the U.P. Children Act for being detained there.

In Poulush Pahan v. State of Jharkhand and Another it was alleged in the FIR that the petitioner had a love affair with the married daughter of the informant and in course of time, she became pregnant which led to her illness. The petitioner is alleged to have given her some herbal medicine for abortion, which she took and due to which she died. The case was committed to the Court of Session and petitioner was put on trial. On the basis of medical report regarding the age of the petitioner, the matter was referred to the ACJM, for inquiry under the provisions of Section 49 of the J.J. Act, 2000 for determining the age of the petitioner. The petitioner was medically examined by three members Medical Board on 8.12.2003. After physical and radiological examination, the petitioner was found to be 16 years. The ACJM gave much weight to the assessment of the age by the Magistrate at the time of remand of the petitioner, whose age was assessed to be of 20 years and at the time of recording the statement under section 313 of the Cr.P.C. to be 22 years. He also on his own estimation held that the petitioner was not juvenile as he may be aged 20 years on 8.12.2003. The petitioner had challenged the order whereby the ACJM, Khunti in exercise of powers under section 49 of Juvenile Justice (Care and Protection of Children) Act, 2000, determined the age of the petitioner to be more than 18 years and, thereby, held him to be not a juvenile. Revision application was allowed and the order impugned of the ACJM, Khunti was set aside. The Court observed that: "It is a settled law that for declaring a person as juvenile under the J.J. Act 2000, the age of the accused has to be considered on the date of occurrence when the offence was alleged to have been committed and not on any other subsequent date. In the present

case, the petitioner was found to be aged about 16-17 years on 8.12.2003 by the Medical Board consisting of three Doctors who examined the petitioner physically as well as radiologically. In view of this finding of the medical board, the petitioner was aged 14-15 years on 12.2.2002 i.e., on the date of alleged occurrence.

In view this position, the ACJM was held to have committed grave error in not declaring the petitioner to be a juvenile.

The ACJM ought to have held the petitioner on the basis of the report of the three members Medical Board.”

In Pratap Singh v. State of Jharkhand and another, first Information Report was filed charging the appellant for causing the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the Chief Judicial Magistrate (CJM) Chas on 22.11.1999. On production, CJM assessed the age of the appellant to be around 18 years old. On 28.2.2000, a petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence, whereupon the CJM transmitted the case to the juvenile court.

The juvenile court assessed the age of the appellant by appearance to be between 15 and 16 years and directed the Civil Surgeon to constitute a Medical Board for the purpose of assessing

the age of the appellant by scientific examination and submit a report. No such Medical Board was constituted. The parties were therefore, asked to adduce evidence, and on examining the school leaving certificate and marks-sheet of Central Board of Secondary Education, juvenile court came to the finding that the appellant was below 16 years of age as on date of occurrence of crime and he was then released on bail. Aggrieved thereby the informant filed an appeal before the 1st Additional Sessions Judge, who after referring to the judgment *Arnit Das v. State of Bihar* disposed of the appeal holding that the juvenile court had erred in not taking note of the fact that the date of production before the juvenile court was the date relevant for deciding whether the appellant was juvenile or not for the purpose of trial and directed a fresh inquiry to assess the age of the appellant. Aggrieved thereby the appellant moved the High Court by filing Criminal Revision Petition. The High Court while disposing of the Revision followed the decision rendered in *Amit Das* and held that reckoning date is the date of production of the accused before the Court and

not the date of the occurrence of the offence. The High Court also held that for determining the age of juvenile, the provisions of 1986 Act would apply and not 2000 Act. The High Court took the view that the date of birth, as recorded in the school and the school certificate, should be the best evidence for fixing the age of the appellant and any other evidence in proof of age would be of much inferior quality.

Pending the inquiry, the Supreme Court was called upon to decide on conflicting views given by it in *Amit Das v. State of Bihar* and *Umesh Chandra v. State of Rajasthan*.

The Court referred the matter to the Constitution Bench.

The questions which Bench decided were:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

The Court overruled *Amit Das* and restored the position taken in *Umesh Chandra* case thereby holding that the reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

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. It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intention of the legislation.

The legislative intention underlying Sections 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication

thereof. Interpretation of Sections 3 and 26 of the Act are no more res-integra. Sections 3 and 26 of the 1986 Act as quoted above are in pairMateria with sections 3 and 26 of the Rajasthan Children Act, 1970. A three-Judge bench of this Court in Umesh Chandra after considering the preamble, aims and objects and sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. The decision rendered by a three-Judge bench of this Court in Umesh Chandra was not noticed by a two-Judge bench of this court in Amit Das. We are clearly of the view that the law laid down in Umesh Chandra is the correct law and that the decision rendered by a two-Judge bench of this Court in Amit Das cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in Umesh Chandra is the correct law.

Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.

Therefore, the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

The 1986 Act was holding the field till it was eclipsed by the emergence of 2000 Act w.e.f. 1.4.2001, the date on which the said Act came into force by the Notification dated 28.2.2001 in the Official Gazette issued by the Central Government in exercise of the powers conferred by Sub-section (3) of Section 1 of the Act. Section 69(1) of the Act repealed the 1986 Act. Sub-section (2) postulates that anything done or any action taken under the 1986 Act shall be

deemed to have been done or taken under the corresponding provisions of the 2000 Act. Thus, although the 1986 Act was repealed by the 2000 Act, anything done or any action taken under the 1986 Act is saved by Sub-section (2), as if the action has been taken under the provisions of the 2000 Act.

Section 20 of the 2000 Act deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence “Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force” has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years.

The intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e., the date on which the 2000 Act came into force, the person was a “juvenile” within the meaning of the term as defined in the 2000 Act i.e., he/she had not crossed 18 years of age. The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

Justice S.B. Sinha gave his separate and concurrent decision on these questions in which his lordship observed as under: -

Decision on Question (a)

The decisions in Umesh Chandra and Amit Das are in conflict with each other. Whereas in Umesh Chandra, a clear finding has been recorded by this Court that the relevant date for applicability of the Act is the date on which the offence takes place; Amit Das, suggests that the relevant date for finding out the age of juvenile is the date when he is produced before the Board. It was observed that indisputably the definition of juvenile or any other provisions

contained in the Act does not specifically provide the date for reference to which a crime has to be determined so as to find out whether he is or she is a juvenile or not.

In support of the view taken in *Amit Das*, respondent submitted that the Act aims at protection of a juvenile in the sense that he is to be kept in the protective custody and dealt with separately by not sending him to prison or police lock-up which is possible to be directed only when a juvenile is arrested or produced in court and not prior thereto. Similarly, on conviction, he cannot be sentenced and may be directed to be housed in a protective home and, thus, the relevant date would be the one on which the delinquent juvenile is produced before the Board. This argument was not accepted for following reasons:

(I) The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-a-vis the adult criminals.

(ii) Having regard to Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility are also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and where under the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded. In essence, Rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The meaning of the expression 'Juvenile' used in a statute by reason of its very nature has to be assigned with reference to a definite date. The term 'Juvenile' must be given a definite connotation.

A person cannot be a juvenile for one purpose and an adult for other purpose. It was, having regard to the Constitutional and statutory scheme, not necessary for the Parliament to specifically, state that the age of juvenile must be determined as on the date of commission of the offence. The same is in-built in the statutory scheme.

(iii) The statute must be construed having regard to the Scheme and the ordinary state of affairs and consequences flowing therefrom. The modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility, that is, whether a child, by virtue of his or her individual discernment and understanding can be held responsible for essentially

anti-social behaviour.

(iv) The importance of time-bound investigation and a trial in relation to an offence allegedly committed by a Juvenile is explicit as has been dealt with in some details herein before. While making investigation it is expected that the accused would be arrested forthwith. He, upon his arrest; if he appears to be a juvenile cannot be kept in police custody and may be released on bail. If he is not released on bail by the arresting authority, he has to be produced before the competent Court or Board. Once he appears to be juvenile, the competent court and/or board may pass an appropriate order upon releasing him for bail or send him to a protective custody.

(v) An inquiry for the purpose of determination of age of the juvenile need not be resorted to if the person produced is admitted to be a juvenile. An inquiry would be necessary only if a dispute is raised in that behalf. A decision thence is required to be taken by the competent court and/or board having regard to the status of the accused as to whether he is to be released on bail or sent to a protective custody or remanded to police or judicial custody.

(vi) For the said purpose what is necessary would be to find out as to whether on the date of commission of the offence he was a juvenile or not as otherwise the purpose for which the Act was enacted would be defeated. The provisions of the said Act, clearly postulate that the necessary steps in the proceedings are required to be taken not only for the purpose of adopting a special procedure at the initial stage but also for the intermediary and final stage of the proceedings.

(vii) If the person concerned is a juvenile, he cannot be tried along with other adult accused. His trial must be held by the Board separately.

(viii) In the trial, the right of the juvenile as regard his privacy must be protected. He is entitled to be represented by a legal adviser and for free legal aid, if he applies therefor. His parents and/or guardian are also entitled to participate in the proceedings. The Court would be entitled to take into consideration the Social Inquiry Reports wherein the background and the circumstances in which the juvenile was living and the condition in which the offence had been created may be properly investigated so as to facilitate juvenile adjudication of the case by the

competent authority. At all stages, the Court/Board is required to pass an appropriate order expeditiously. Right of a juvenile to get his case disposed of expeditiously is a statutory as also a Constitutional Right.

(ix) Even at the final stage, viz., after he is found to be guilty of commission of an offence, he must be dealt with differently vis-a-vis adult prisoners. Only because his age is to be determined in a case of dispute by the competent court or the board in terms of section 26 of the Act, the same would not mean that the relevant date there for would be the one on which he is produced before the Board. If such an argument is accepted, the same would result in absurdity as, in a given case; it would be open to the police authorities not to produce him before the Board before he ceases to be juvenile. If he is produced after he ceases to be juvenile, it may not be necessary for the Board to send him in the protective custody or release him on bail as a result whereof he would be sent to the judicial or police custody which would defeat the very purpose for which the Act had been enacted. Law cannot be applied in an uncertain position. Furthermore, the right to have a fair trial strictly in terms of the Act which would include procedural safeguard is a Fundamental Right of the juvenile; A proceeding against a juvenile must conform to the provisions of the Act.

(x) The Act not only refers to the obligations of the country to re-enact the existing law relating to juveniles bearing in the mind, the standards prescribed in various conventions but also all other International Instruments. It states that the said Act was enacted inter alia to consolidate and amend the law relating to juveniles. Once the law relates to delinquent juveniles or juveniles in conflict with law, the same would mean both pre- and post-delinquency.

(xi) The definition of 'Juvenile' under the 1986 Act, of course refers to a person who has been found to have committed offence but the same has been clarified in the 2000 Act. The provisions 'of 1986 Act, sought to protect not only those juveniles who have been found to have committed an offence but also those who had been charged therefor. In terms of Section 3 of the 1986 Act as well as 2000 Act when an enquiry has been initiated even if the juvenile has ceased to be so as

he has crossed the age of 16 and 18 as the case may be, the same must be continued in respect of such person as if he had continued to be a juvenile.

Section 3 of the 1986 Act therefore cannot be given effect to if it is held that the same only applied to post delinquency of the juvenile.

(xii) The field covered by the Act includes a situation leading to juvenile delinquency vis-a-vis commission of an offence. In such an event he is to be provided the post delinquency care and for the said purpose the date when delinquency took place would be the relevant date. It must, therefore, be held that the relevant date for determining the age of the juvenile would be one on which the offence has been committed and not when he is produced in court.

A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes 'juvenile' within the purview of the Act of 2000 must be answered having regard to the object and purport thereof.

In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the Act of 2000 takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the board which shall pass orders in accordance with the provisions of the Act as if he has been satisfied on inquiry that a juvenile has committed the offence. A

legal fiction has, thus, been created in the said provision. A legal fiction as is well-known must be given its full effect although it has its limitations.

Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.

However, the Scheme of the 2000 Act is such that such a construction is possible. The same would also be evident from Section 64 which deals with a case where a person has been undergoing a sentence but if he is a juvenile within the meaning of the 2000 Act having not crossed the age of 18, the provisions

thereof would apply as if he had been ordered by the Board to be sent to a special home or the institution, as the case may be.

Section 20 of the Act of 2000 would, therefore, be applicable when a person is below the age of 18 years as on 1.4.2001. For the purpose of attracting Section 20 of the Act, it must be established that: (I) on the date of coming into force the proceedings in which the petitioner was accused was pending; and (ii) on that day he was below the age of 18 years. For the purpose of the said Act, both the aforementioned conditions are required to be fulfilled. By reason of the provisions of the said Act of 2000, the protection granted to a juvenile has only been extended but such extension is not absolute but only a limited one. It would apply strictly when the conditions precedent there for as contained in Section 20 or Section 64 are fulfilled. The said provisions repeatedly refer to the words 'juvenile' or 'delinquent juveniles' specifically. This appears to be the object of the Act and for ascertaining the true intent of the Parliament, the rule of purposive construction must be adopted. The purpose of the Act would stand defeated if a child continues to be in the company of an adult. Thus, the Act of 2000 intends to give the protection only to a juvenile within the meaning of the said Act and not an adult. In other words, although it would apply to a person who is still a juvenile having not attained the age of 18 years but shall not apply to a person who has already attained the age of 18 years on the date of coming into force thereof or who had not attained the age of 18 years on the date of commission of the offence but has since ceased to be a juvenile. The embargo of giving a retrospective effect to a statute arises only when it takes away vested right of a person. By reasons of Section 20 of the Act no vested right in a person has been taken away, but thereby only an additional protection has been provided to a juvenile.

In such situations, the Act should be read in such a fashion so that the extended benefit can be granted even to the juvenile under the 2000 Act. Furthermore, Sub-section (2) of Section 69 provides that all proceedings shall be deemed to have been held under the new Act. This is also suggestive of the fact that the new Act would, to the aforementioned extent apply to a pending

proceeding which was initiated under the 1986 Act. No model rules have been framed in terms

of the provisions of the Act so as to attract the principles that rules validly framed are too, he treated as part of the Act. The age of the delinquent juvenile, therefore, cannot be determined in terms of the model Rules. Any law mandating the court to take into consideration certain documents over others in determining an issue must be provided for only by law.

The Court, therefore, must determine the age of the appellant keeping in view that the relevant date for reckoning the age of the juvenile would be the date of occurrence and not the date on which he was produced before the Board.

Important observations of Justice S.B. Sinha:

1. The purpose of the Juvenile Justice Legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of juvenile justice, the Juvenile Justice Act came into existence in 1986.

2. A review of the working of the then existing Acts both State and Parliamentary would indicate that much greater attention was found necessary to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults could not be considered suitable for being applied to juvenile. There is also need for larger involvement of informal system and community, based welfare agencies in the case, protection, treatment, development and rehabilitation of such juveniles.

3. The provisions of the Juvenile Justice Act, 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000 are required to be construed having regard to the aforementioned Minimum Standards as the same are specifically referred to therein.

4. The Juvenile Justice Act, 1986 aimed at providing for a scheme of uniform juvenile justice system in the country so that a juvenile may not have to be lodged in jail or police lock-up as well as for prevention and treatment of juvenile delinquency for care protection etc. The 1986

Act has been repealed and replaced by the 2000 Act. The 2000 Act has brought about certain changes vis-a vis the 1986 Act. It has obliterated the distinction between a male juvenile and female juvenile. In contrast with the definition of delinquent juvenile in the 1986 Act who was found guilty of commission of an offence, a juvenile in conflict with law is defined in the 2000

Act to mean 'a person who is of below 18 years of age and is alleged to have committed an offence'. Section 3 provides for continuation of inquiry in respect of juvenile who has ceased to be a juvenile.

Hence a legal fiction has been created to treat a juvenile who has ceased to be a juvenile as a person as if he had continued to be a juvenile.

5. Section 20 of the Act permits continuation of proceedings of a juvenile court in any area on the date on which the Act came into force by providing "it shall record such finding and instead

of passing any sentence in respect of that juvenile, shall forward him to the board which shall pass orders in respect of that juvenile in accordance with the provision of this Act as if it has been satisfied on inquiry under this Act that juvenile had committed the offence." Section 68 provides for rule making power of the State Government.

6. The legislation relating to juvenile justice should be construed as a step for resolution of the problem of the juvenile justice which was one of tragic human interest which cuts across national boundaries. The said Act has not only to be read in terms of the Rules but also the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the protection of juveniles. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The International Treaties, Covenants and Conventions although may not be a part of our Municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. The

law has to be understood, therefore, in accordance with the international law. The Constitution of India and the Juvenile Justice Legislations must necessarily be understood in the context of present days scenario and having regard to the International Treaties and Conventions.

In *Jai Kishna @ Jaki Vs. State of Haryana* a juvenile who had not completed eighteen years of age on the date of commission of the offence was also entitled to the benefits of the Juvenile

Justice Act, 2000, as if the provisions of Section 2 (k) had always been in existence even during

the operation of the Juvenile Justice Act, 1986. Appellant Jai Kishna alias Jaki, who was 17 years of age on the day of commission of the alleged offence, i.e., 13.10.1997, was tried by the court of Sessions Judge, Rohtak for the offence under Section 302 IPC, for committing the murder of Subhash, a co-villager. The court of Additional Sessions Judge, Jhajjar, vide its judgment dated 16.8.2001, convicted the appellant under Section 302 IPC. By the time, the appellant was convicted and sentenced, the Juvenile Justice (Care and Protection of Children) Act, 2000 had come into force. Under the Juvenile Justice Act, 2000, a new definition of 'Juvenile in conflict with law' was introduced, which defined a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence, whereas under the Juvenile Justice Act, 1986, the upper age-limit for male children to be considered as juveniles was 16 years. On

13.2.1998, when the appellant was charge sheeted, he was 17 years of age, therefore, he was not treated as a 'juvenile' under the Juvenile Justice Act, 1986, and he was tried by the regular criminal court and not by the Juvenile Justice Board.

The court after considering the authority held the conviction of the appellant recorded by the trial court vide judgment dated 16.8.2001, is upheld. However, the order of sentence passed by the trial court on 18.8.2001, is hereby set aside. Since the appellant is already on bail, therefore, there is no need to issue the release warrant.

In Jabar Singh Vs, Dinesh & Anr. the appellant was father of Prahalad Singh, alleged to have

been murdered by the respondent no. 1. Appeal was against the order of the High Court Rajasthan holding respondent no. 1 to be a juvenile on the date of commission of the offence and directing the matter to be remitted for trial under the Juvenile Justice (Care and Protection of Children) Act, 2000. The relevant facts very briefly are that on 11.07.2004 one Bhoopalam lodged a complaint in Pratap Nagar Police Station, Jodhpur, against the respondent no. 1 and others alleging the offence under Section 302 of the Indian Penal Code along with other offences under the EPC. A criminal case was registered and after investigation, the police filed chargesheet against inter-alia the respondent no. 1 and the case was transferred by the Sessions

Judge to the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jodhpur, for trial. Before The charges could be framed in the case; an application was filed on behalf of respondent no. 1 under Section 49 of the Act, stating therein that the date of birth of respondent no. 1 was 05.10.1988 and, therefore, on 11.07.2004, when the offence is alleged to have committed, the respondent no. 1 was less than 18 years of age and he was, thus, a juvenile and has to be tried separately from the other accused under the Act. The State of Rajasthan, in its reply, stated inter-alia that the respondent no. 1 did not disclose that he was a juvenile at any time during the investigation of the case or during the trial of other criminal cases for which he was being tried and that he has taken this plea for the first time to avoid the trial for the heinous crime and

that the application of respondent no. 1 examined witnesses and produced documents in support

of his claim that he was a juvenile. The State of Rajasthan did not produce any evidence. The trial court, after hearing the parties and considering the evidence, rejected the application of the respondent no. 1 by order dated 14.2.2006. Aggrieved, the respondent no. 1 filed criminal revision petition before the High Court. The High Court allowed the revision petition, set aside

the order dated 14.02.2006 passed by the trial court and remitted the matter to the trial court for trial of the respondent no. 1 treating him to be a juvenile on the date of commission of the alleged offence in accordance with the provisions of the Act. In these facts the Supreme Court of India held that the High Court was not at all right in reversing the findings of the trial court in exercise of its revisional jurisdiction. The entry of date of birth of respondent no. 1 in the admission form, the school records and transfer certificate did not satisfy the conditions laid down in Section 35 of the Evidence Act inasmuch as the entry was not in any public or official

register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and, therefore,

the entry was not relevant under Section 35 of the Evidence Act for the purpose of determining

the age of respondent no. 1 at the time of commission of the alleged offence and resultantly, the appeal was allowed setting aside order dated 18.8.2006 and remit the matter to the trial court

for trial of respondent in accordance with law treating him not to be a juvenile at the time of commission of the offence.

In Mohan Mali & Anr. Vs. State of M.P. 42 the appellants along with two other co-accused, were convicted under Section 302, 326, 324 IPC and sentenced to life imprisonment along with fine of Rs.5,000/- for offence under Section 302 IPC apart from other sentences for the other offences. The relevant facts are that on 17 July, 2009, when the Special Leave Petition came up for admission before Supreme Court, leave was granted and the hearing of the appeal was expedited.

However, the Appellants' prayer for bail was rejected at that stage. When the matter was being heard for grant of leave, appellant no.2, Dhanna Lai, and this Court observed that in the event Dhanna Lai was able to provide proof of his claim that he was a juvenile on the date of the incident, he would be at liberty to apply afresh for grant of bail with such supporting evidence.

Pursuant thereto, afresh bail application was filed on behalf of Dhanna Lai on 27th January, 2010, annexing a copy of the Birth Certificate of Dhanna Lai issued by the Chief Registrar (Birth and Death), Municipal Corporation, Dhar, under Section 12 of the Birth and Death Registration Act, 1969, maintained by the Corporation. From the said certificate it appears that

Dhanna Lai's date of birth was recorded as 12th November, 1976 and was registered on 17th November, 1976, making it a document which was contemporaneous with his birth. Upon due verification, it was confirmed on behalf of the State of Madhya Pradesh that the Appellant no.2,

Dhanna Lai, was a juvenile on the date of commission of the offence.

The Supreme Court observed:

“8. In the facts of this case, we are faced with a situation where the juvenile, Dhanna Lai, had already been tried along with adults and had been convicted under Sections 302/34, 326/34 IPC and was sentenced to life imprisonment, out of which he has already undergone about 9 years of the sentence. Rule 98 of the 2007 Rules, in our view, squarely applies to Appellant No.2 Dhanna " Lai's case. His case is to be considered not only for grant of bail, but also, for release in terms of the said Rule since he has completed more than the maximum

period of sentence as provided under Section 15 of the 2000 Act”.

9. The legal position has been clearly explained in Hari Ram's case

(supra) and does not, therefore, require any further elucidation in this case.

10. Having regard to the fact that the appellant no.2, Dhanna Lai, was a minor on the date of commission of the offence, and has already undergone more than the maximum sentence provided under Section 15 of the 2000 Act, by applying the provisions of Rule 98 of the 2007 Rules read with Sections 15 and 64 of the 2000 Act, we allow the appeal as far as he is concerned and direct that he be released forthwith. The bail application filed on his behalf is also disposed of, accordingly.”

In most of the cases discussed above, the beneficial provisions of the Acts were not applied at earlier stages because no one—the children, then lawyer, the State counsel, or the Magistrates raised the plea of child status. The Supreme Court itself has followed contrary approaches without reference to other cases decided by it. In view of widespread unawareness amongst the persons, it is only reasonable that the children should not be denied the protection of the progressive and beneficial legislation simply for failing to raise the plea of child status at the appropriate time. The majority of children falling within the scope of the JJS are poor, illiterate, and unaware of their rights or obligations of others towards them. They cannot be expected to know that such a law exists for their benefit and that they should ask for its application at the earliest. To ensure the protection of the beneficial legislation to children some flexibility should be adopted in cases where the plea of child status is not raised.

Jurisdiction of the Board/Court.

In Raghubir's Case the question for consideration before Supreme Court in the appeal by special leave was whether a person under 16 years of age and accused of offence under section 302 can get benefit of Haryana Children Act. The undisputed facts are that the appellant along with three others were convicted of the offence of murder and sentenced to imprisonment for life by the Sessions Judge. The appeal was dismissed by the High Court. The appellant then filed an application for special leave to appeal under Article 136 of the Constitution. Leave was granted confined to the question of the applicability of the Act to his

case. It is also not disputed that the appellant was less than 16 years at the time he first appeared before the trial court. He was thus a 'child' within the meaning of that term under Cl. (d) of Section 2 of the Act.

The Supreme Court noticed its earlier decision in another case and held that the trial of a child under the provisions of the Act was not barred. In that case, however, it appears, S. 27 of the Code was not brought to the notice of the Court.

In that view of the matter, the Bench consisting of two members including one of us (Baharul Islam, J.) before whom this appeal came up for hearing referred it to a larger bench, in order to avoid possible conflict of decisions. This is how this appeal came up for hearing before this Bench consisting of three members.

After examining provisions of Section 27 Cr.P.C. and provisions of Haryana Children Act, 1974

allowed the appeal setting aside conviction and sentence upon the appellant and quashed the entire trial and directed that Raghubir shall be dealt with in accordance with the provisions of Haryana Children Act, 1974.

In case of Prabakam, rep by his maternal aunt Nagammal v. State of Tamil Nādu, rep by its Secretary to Government, Home Department. The Deputy Superintendent of Police, 'Q' Branch C.I. D. and The Inspector of Police the court was called upon to answer two questions:

(1) Whether the petitioner is a juvenile in conflict with law? Depending on the answer to this, the further question -

(2) Which of the Acts, POTA or the JJ (C&PC) Act, 2000 will have to be invoked?

The court held the petitioner to be juvenile in conflict with law and it was held that provisions of JJ (C&PC) Act, 2000 will prevail over POTA. It was directed that the petitioner shall be proceeded against only under J. N. Kamal (C & PC) Act, 2000. It was observed that both the Acts

are replete with non-obstinate clauses. In POTA some of the Sections containing non-obstinate clause are Sections 14, 25, 30, 32, 33, 34, 43, 45, 49, 51. In JJ. (C&PC) Act, 2000 Sections 3, 4,

6, 11, 12,16, 17,18,22 & 28 obtains non obstinate clauses. Both Acts. viz. JJC&PC) Act,2000 and thePOTA are special Acts passed by the Parliament. Both contain a surfeit of non obstante clauses having overriding Effect but then juveniles have been given aspecial place in the scheme of things. Our country has been a party to variousInternational Conventions and Agreement and has enacted various Acts with childrenas the prime theme andensured that all their needs are met and their basic human rights are protected. Wehave created greater responsibilities in ourselves when it comes to juveniles in conflict with law. The various sections in J J (C&PC) Act,2000 to vouch for the same. JJ (C&PC) Act,2000 no doubt reached the statute book two years earlier to the POTA. It is possible to argue that at the time POTA was passed Parliament was aware of the presence of (C&PC) Act as law, that still it chose to introduce Sec.56 conferring overriding powers under POTA and that therefore POTA should prevail. JJ (C&PC) Act, 2000 dealing as it does with 'Alpha to Omega' of the problems facing juveniles and juveniles in conflict with law providing as it does for specialised approach towards the prevention and treatment of juvenile delinquency in its full range is a special law and will prevail over POTA which is a mere special law compared to JJ (C&PC) Act, 2000. JJ (C&PC) Act,2000 is the monarch of all that it surveys, in its fields. Both are special but JJ (C&PC) Act,2000 is more special (apologies to George Orwell). May be the offence committed by the juvenile is shocking like murder or rape but the appropriate provision in the Act is quite conscious of such situations. Section 7 of (C&PC) Act, 2000 enjoins the Magistrate, who is not empowered under the Act to exercise the powers of the Board and before whom the juvenile or child is brought, to forward the child to the competent authority. Section 12 provides that if the release of the juvenile on bail is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would, defeat the ends of justice. If a Board is satisfied that a juvenile has committed an offence it may allow the juvenile to go home with an advice or admonition or direct him to participate in group counselling, community service, etc., direct him to be released on probation as also order such directives as it may

think fit. The Board may also make the terms and conditions of supervision and furnish copy to the juvenile, parent- guardian or other person or fit institution. Thus, welfare of the juvenile is the prime concern of the law makers. The legislature had intended that the juvenile should be extended special care, treatment, development and rehabilitation. The Act overwhelmingly contemplates total separation of juveniles from the mainstream offenders. Under no circumstance should the juvenile have anything to do with them.

Apprehension and Production of Juvenile

Juvenile Justice (C & P) Act has defined and imposed special duties on the police keeping in view the sensitivity of the issue of juvenile's apprehension and detention. Broadly the following duties have been imposed on police by the Act. As soon as a 'Juvenile in conflict with law' is apprehended by Police he shall be placed under the charge of the Special Juvenile Police Unit or the designated Police Officer, who shall immediately report the matter to a member of the Juvenile Justice Board. Till the time, such Board is constituted in Chandigarh; the juvenile shall be produced before the concerned Court.

2. Designated Police Officer of the Police Station apart from dealing with the cases of Juvenile crimes shall also be the Nodal Officer for attending the calls from 'Woman & Child Helpline' and for investigating cases relating to Child abuse. 'Woman & Child Helpline' is Building- Telephone No.1091 (toll free). This telephone number should be displayed on the Notice Board of all Police Stations and other Units.
3. SHOs will ensure that the designated officers personally attend cases involving child victims.
4. Juvenile, who is arrested and is not released on bail by Officer In charge of Police Station, shall be kept only in observation home until he can be brought before a Board/Court.
5. Officer-In-charge of Police Station as soon as may be after arrest of a Juvenile

shall inform parent or guardian of the Juvenile and direct him to be present at the board. Officer-in-charge of Police Stations shall inform Probation Officer of such arrest to enable him to obtain information regarding antecedents and family background of the juvenile.

In *Sheela Barse (II) and others v. Union of India and Others*¹¹⁷, this case was follow up of its earlier order made by the court which was not abided by District judges.

The court directed that:

(i) the trial of children must take place in the juvenile courts and not in the regular criminal courts.

(ii) It would be desirable if the Central Government initiates

Parliamentary legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain Mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non-implementation is not placed on ground of lack of finances on the part of the state.

Final Disposition of the Juvenile

In *Kakoo v. State of Kakoo*, aged 13 years, was convicted for committing rape on a child of two years and was sentenced to four years' rigorous imprisonment. His conviction was upheld by the High Court of Himachal Pradesh. Reference was made to the Supreme Court contending that if the main object of punishment is to reform the prisoner and to reclaim him to society, his prolonged detention in the company of hardened criminals would be subversive of that object. Further it was stressed that the best way of reforming child delinquents is to put

him back under the supervision of his father subject to the execution of bond by the latter for his son's good behaviour for a certain period. In the alternative, it was urged, that the sentence be reduced to the imprisonment already undergone, with the imposition, if at all, of a little fine. Reference has also been made to Sections 82 and 83 of the Penal Code to bring out the point that in the matter of crime and punishment, a child offender is not to be treated in the same manner as a mature adult. The State, however, stoutly opposed any reduction in the sentence. Stress has been laid on the grisly manner in which the crime was committed. It was held that the ends of justice will be served by reducing the sentence of the appellant to one year's rigorous imprisonment and a fine of Rs.2000 and in default of payment of fine, to suffer six months' further rigorous imprisonment.

The appellant shall be detained separately from adult prisoners. He should preferably be detained in a reformatory school, if any, for the said period. The fine, if realised, shall be paid as compensation to Shrimati Parmeshwari Devi, the mother of the victim baby.

It was observed that while the sordid features of the case, including the sadistic manner in which the crime was committed by their instinctive reaction tend to steel the heart of law for a sterner sentence, we cannot overlook the stark fact that at the time of commission of offence, the appellant was hardly 13 years of age. An inordinately long prison term is sure to turn him into an obdurate criminal. In the case of child offenders, current penological trends command a more humanitarian approach. Under the Penal Code, an infant under seven is conclusively presumed to be incapable of committing crime. At this age he is not endowed with any discretion to distinguish right from wrong.

Even a child between seven and twelve who may not have attained sufficient maturity of understanding to entertain a criminal intent i.e., *Doli incapax* is presumed to be incapable of committing an offence. In several States of India enactments have been passed to treat juvenile offenders or child delinquents differently in the matter of crime and punishment. We are told that there is no such enactment in force in Himachal Pradesh. It was found that there was a need for reformatory approach in awarding punishment to juvenile delinquent aged 13 found to have committed rape on child of 2 years. Sentence was reduced to one year's rigorous imprisonment and a fine of Rs.2000 were imposed.

In Santo and others v. State of U.P. 152

three boys aged between 10-14 years raped 11-year-old girl and were convicted for an offence under section 376 of the Indian Penal Code. Allahabad High Court affirmed sentence of 2 years imprisonment to be served by detention in an approved school.

On appeal, the Supreme Court held that the courts below have failed to apply their mind to considerations which are relevant when a youthful offender is sentenced. The U.P. Children Act, 1951 contains two provisions; section 29 and section 30. Section 29 provides that when a child is found to have committed an offence punishable with transportation or imprisonment, the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to an approved school for a stated period. But under section 30 the court may order that the youthful offender to be, instead of committing him to approved school, either discharged after due admonition or released on probation of good conduct and commit him to the care of his parents, etc. Since in this case child has acted on impulse and there is nothing to show the presence of any vicious streak of character, it would be more appropriate to leave him to the care and attention of character, it would be more appropriate to leave him to the care and attention of parental authority rather than to send him to an approved school.

It observed, "that our juvenile justice system still thinks in terms of terror, not cure, of wounding, not healing, and a sort of blind man's buff is the result. This negative approach converts even the culture of juvenile homes into junior jails. From the reformatory angle, the detainees are left to drift, there being no constructive programme for the detainees nor correctional orientation and training for the institutional staff... The state's response to punitive issues relating to juveniles has been stricken with 'illiteracy' and must awaken to a new enlightenment, at least prompted by the International Year of the Child... The mainstream of criminal justice system has not been refined by restorative legislation... The finer focus of sentencing is not furious reaction to the offence but habilitative rescue of the youthful offender from moral-material abandonment and careful reformation by kindling his creative potential. Judicial responsibility is not mechanic but humanistic, and the ritualistic magistrate is a misfit..."

In Umesh Singh and another etc. v. State of Bihar 155

one of the appellant Arvind Singh was convicted under Section 302 IPC read with Section 149 and sentenced for life imprisonment. He was further convicted under Section 324 read with Section 148 IPC and under Section 27 of the Arms Act by the trial court as affirmed by the appellate Court. His only contention put forward before the Supreme Court was that on the date of incident he was hardly 13 years old, and on that basis he was a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with other accused who are not children is not in accordance with law. However, this contention had not been raised either before the trial Court or before the High Court.

The Supreme Court called for report of experts being placed before the Court as to the age of the appellant, Arvind Singh. The report proved that on the date of the incident he was 13 years old. The Court relying on its earlier judgments,¹⁵⁶ while sustaining the conviction of the appellant, set aside further sentence, imposed upon him and he was set at liberty.

CHAPTER VI

The Empirical study on the research topic with special reference HARDOI, LUCKNOW AND LALITPUR

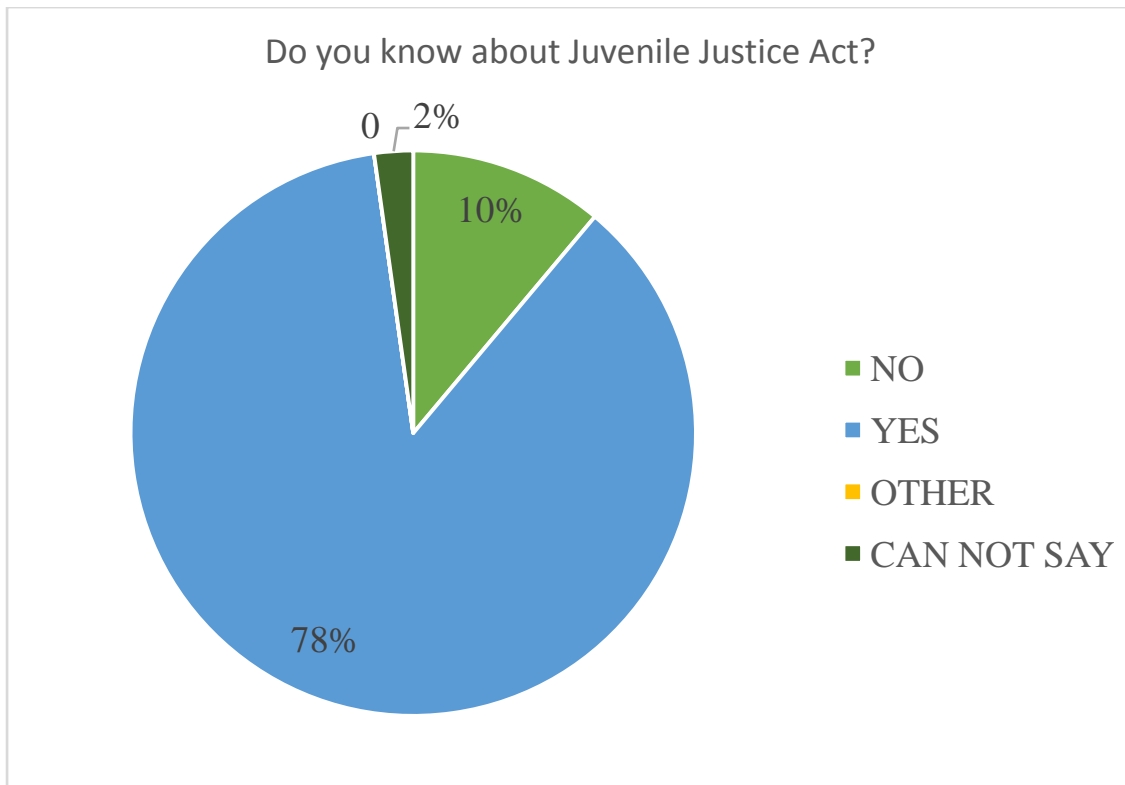
The chapter vi is based on the empirical study on the topic.the researcher has prepared an interview schedule containing objective questions based onheinous offence committed by children and tried as adult.

one to one interaction for collecting public opinion on the issue of rising child delinquency.

This study took 50 respondents from different sector. The respondents were subject to different questions (as annexed)

1. Do you know about Juvenile Justice Act?

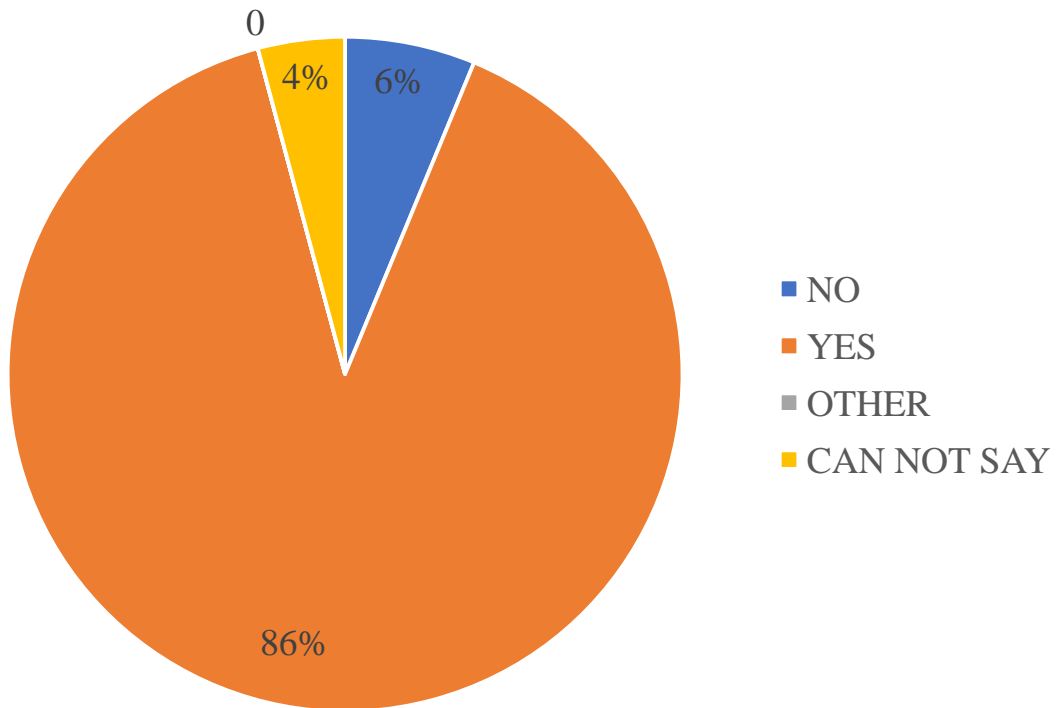
- a. NO
- b. YES
- c. OTHER
- d. CAN NOT SAY



2. Do you agree that number of children coming in conflict with law is committing heinous offences day by day?

- a. No
- b. YES
- c. OTHER
- d. CAN NOT SAY

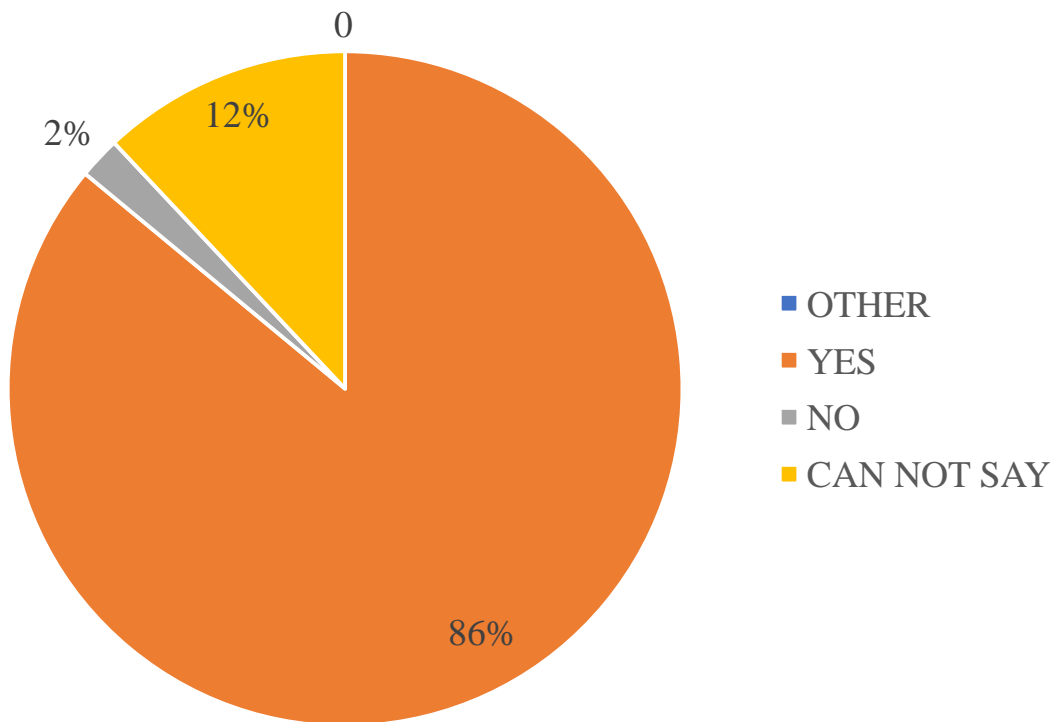
Do you agree that number of children coming in conflict with law is committing heinous offences day by day?



3. Have you heard heinous offences like Rape or murder committed by child?

- a. OTHER
- b. YES
- c. NO
- d. CAN NOT SAY

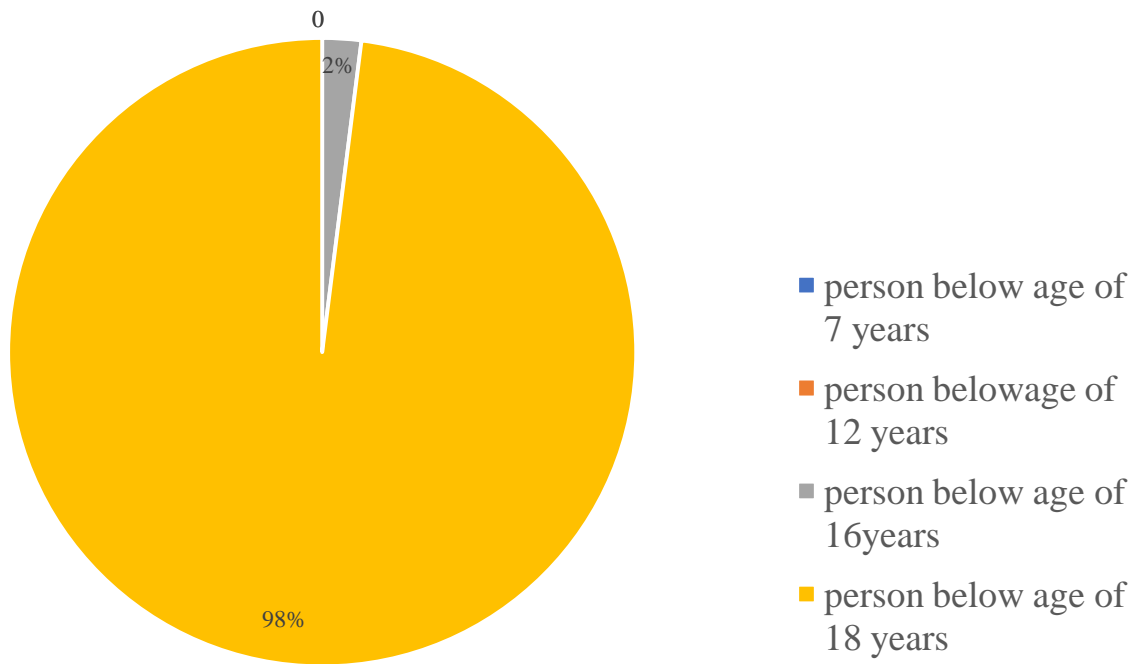
Have you heard heinous offences like rape or murder committed by child?



4. As per act, who is a child?

- a. person below age of 7 years
- b. person below age of 12 years
- c. person below age of 16 years
- d. person below age of 18 years

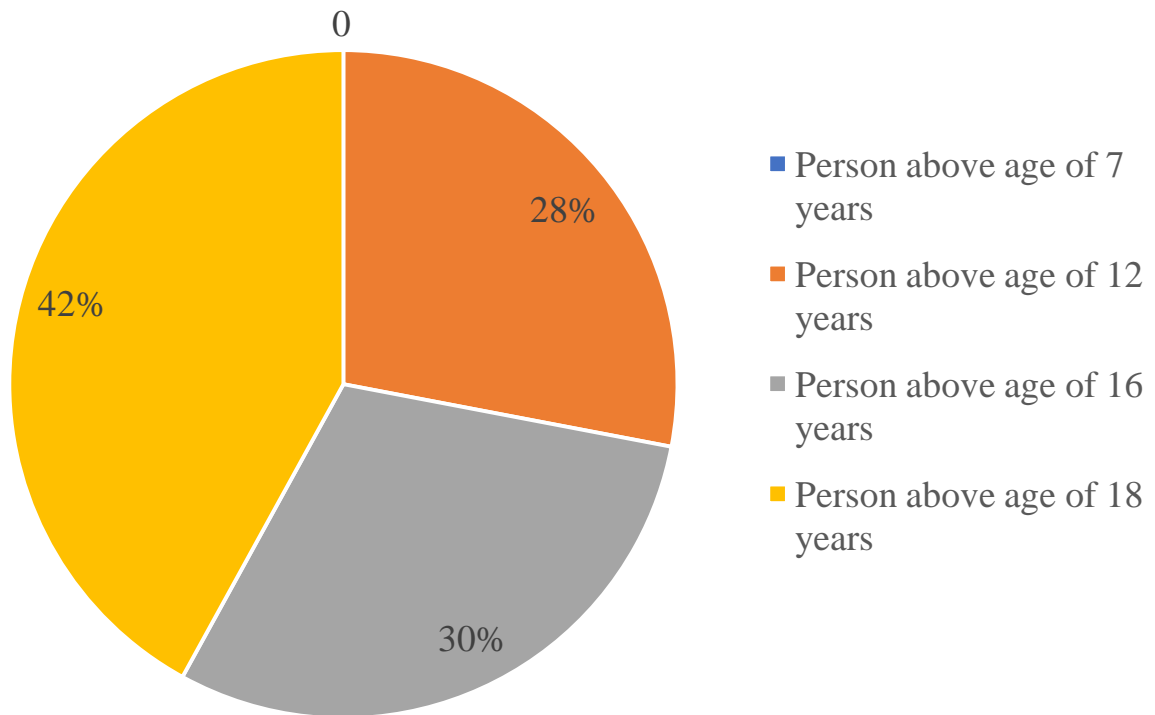
As per act, who is a child?



5. At what age a person should make criminally liable?

- a. Person above age of 7 years
- b. Person above age of 12 years
- c. Person above age of 16 years
- d. Person above age of 18 years

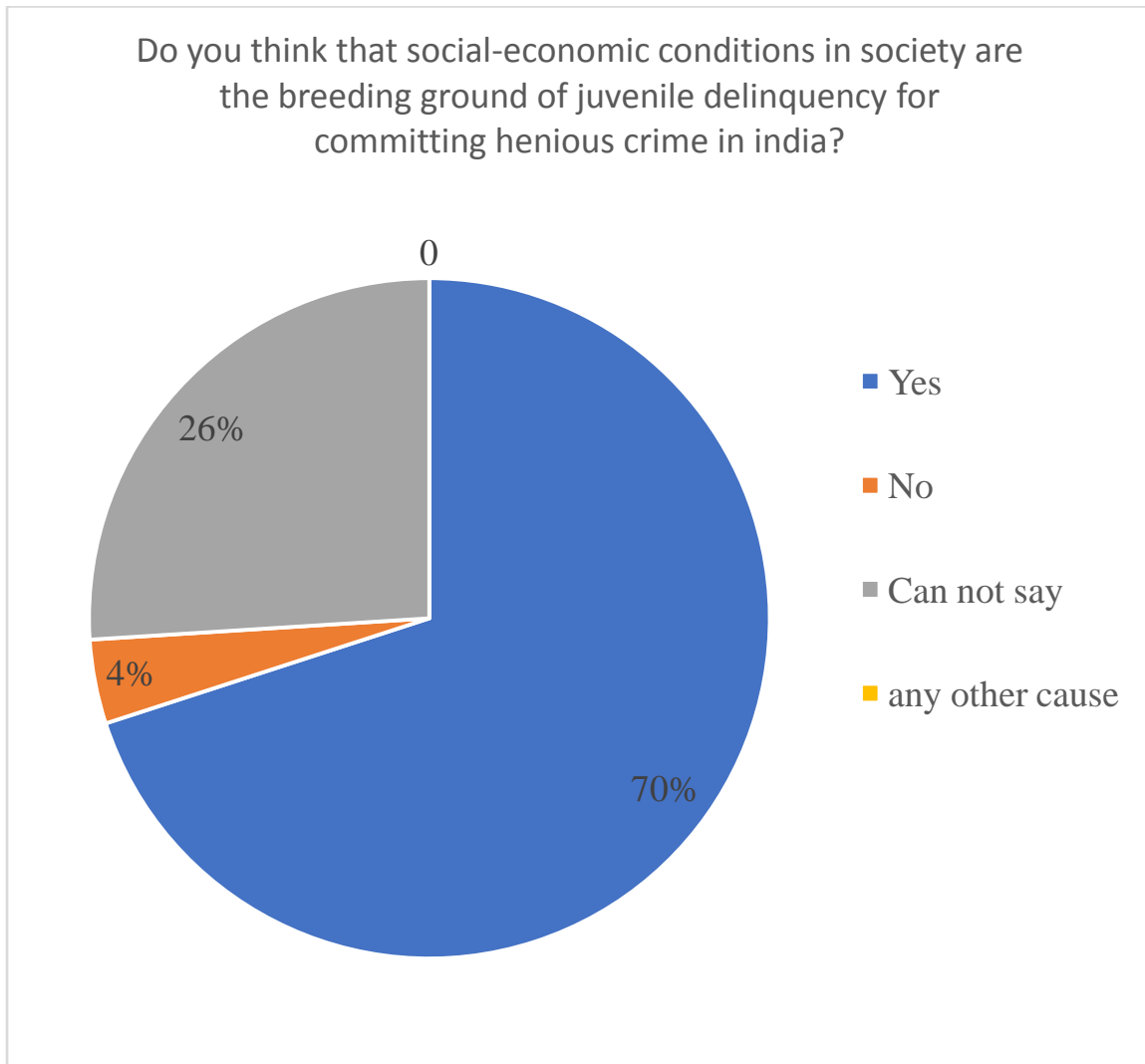
At what age a person should make criminally liable?



6. Do you think that the social-economic conditions in society are the breeding

ground of juvenile delinquency for committing heinous crime in India?

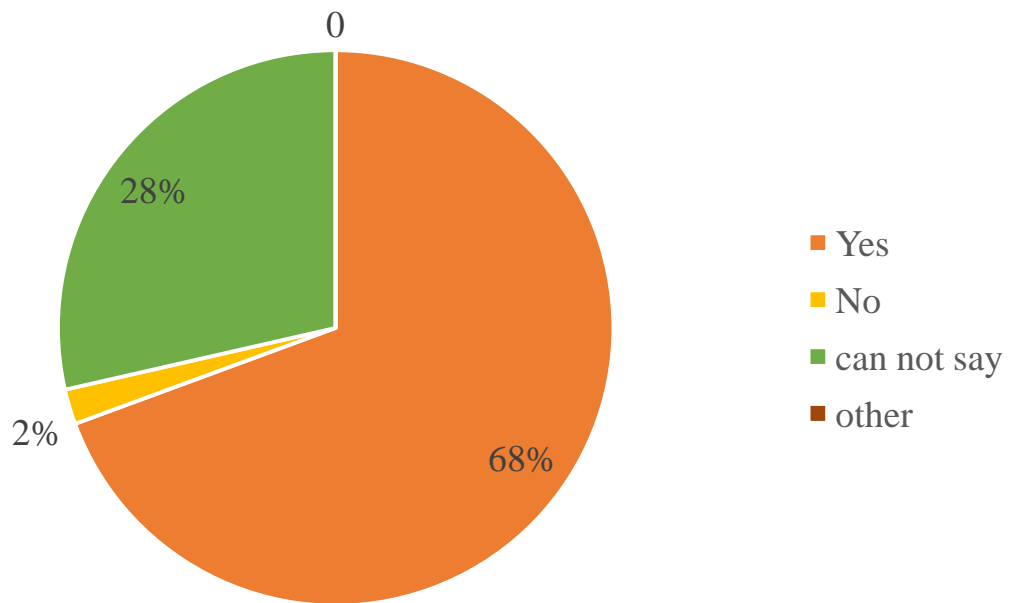
- a. yes
- b. no
- c. cannot say
- d. any other cause.....



7. Do you think that children alleged to be involved in heinous crime should be punished for their crime same as adults as per section -15?

- a. yes
- b. no
- c. can't say
- d. other

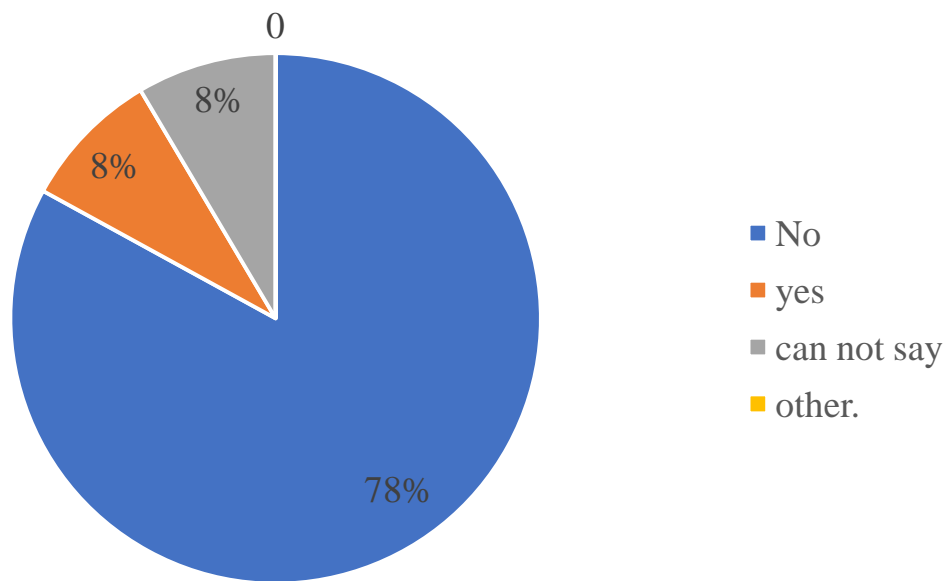
Do you think that children alleged to be involved to be in heinous crime should be punished for their crime same as adults as per section-15?



8. Do you agree that child alleged to be in conflict with law (Apprehended for committing a crime) should be placed in police lock up?

- a. no
- b. yes
- c. can't say
- d. other.

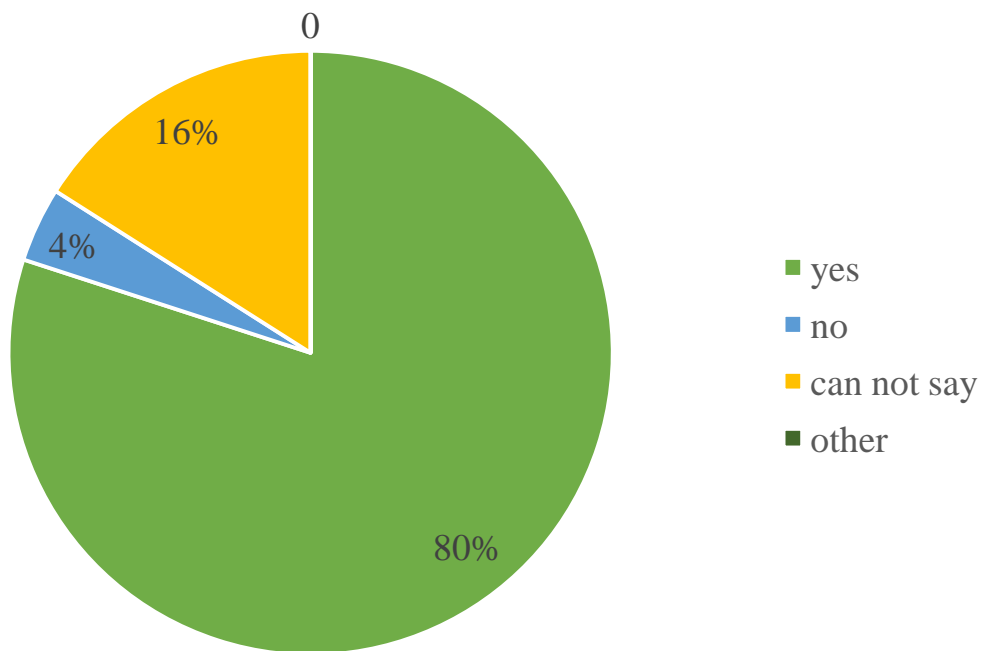
Do you agree that child alleged to be in conflict with law (apprehended for committing a crime) should be placed in police lock up?



9. Do you think that now a days, children are misusing the Juvenil Justice act?

- a. yes
- b. no
- c. can't say
- d. other

Do you think now a days , children are misusing the juvenile justice act?

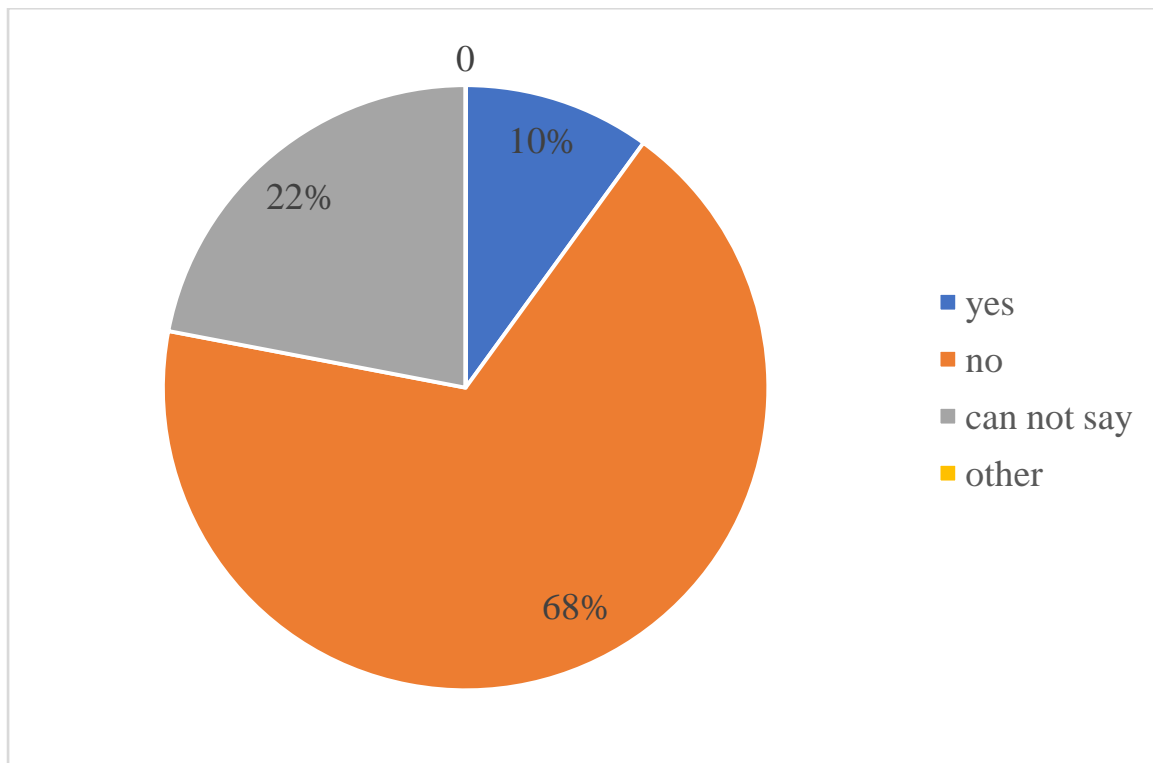


10. Do you think that after committing a non-bailable offence, child is apprehended or detained by the police, he should be release on bail?

- a. yes
- b. no
- c. can't say

d. Other

[]



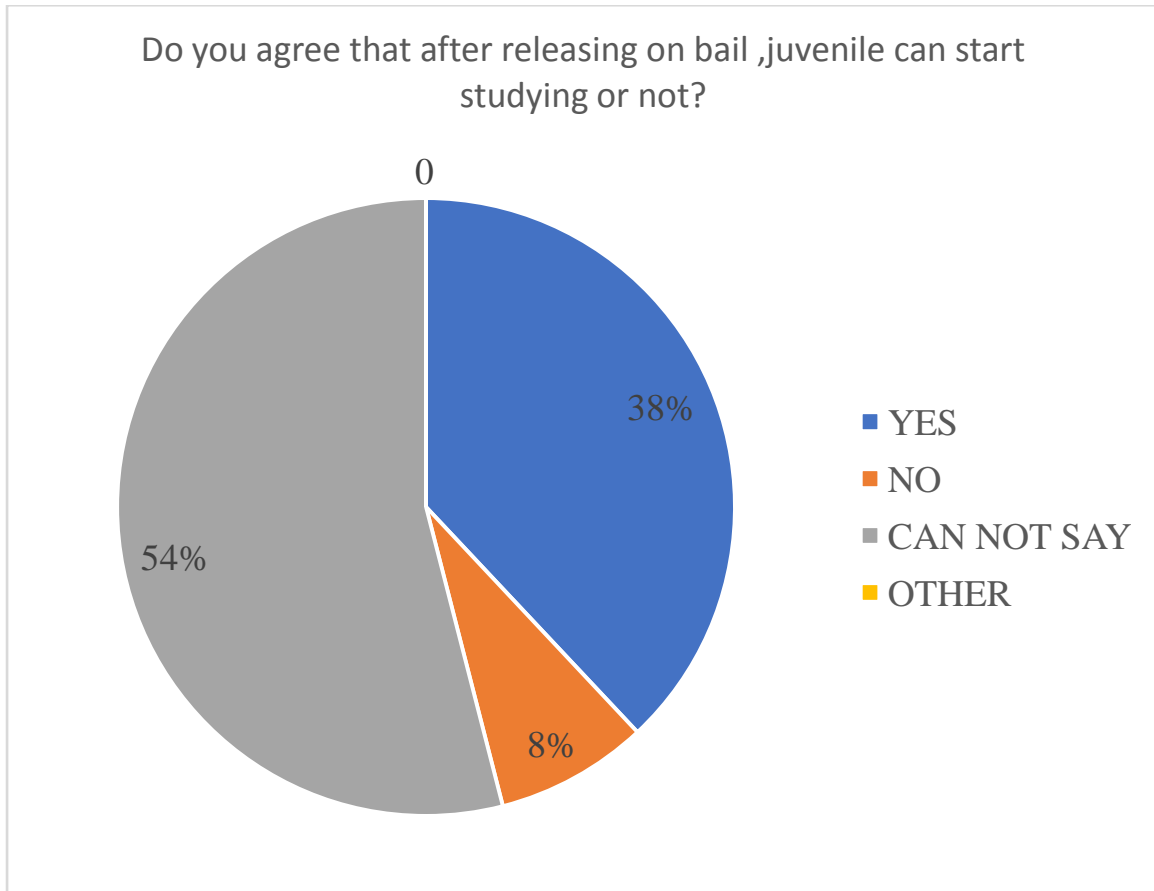
11. Do you agree that after releasing on bail, juvenile can start studying or not?

a. yes []

b. no []

c. can't say []

d. other []



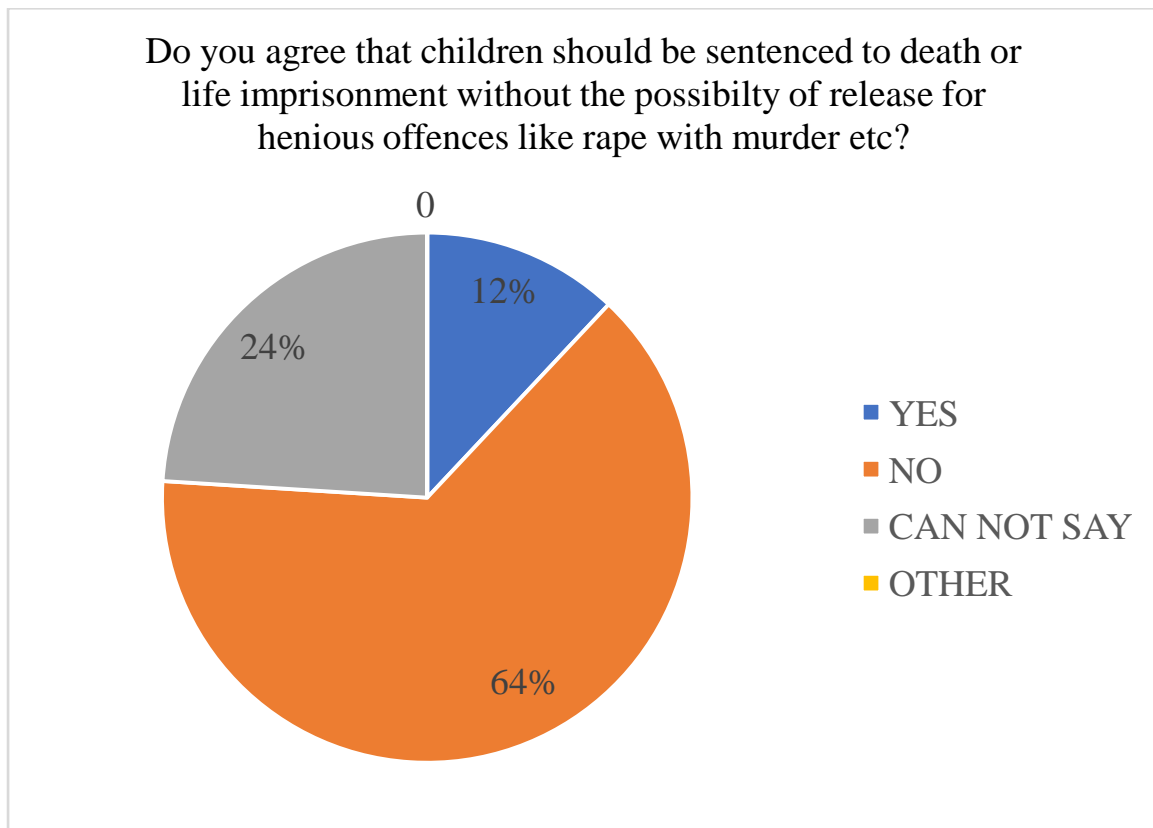
12. Do you agree that children should be sentenced to death or for life imprisonment without the possibility of release for heinous offences like rape with murder, etc?

a. Yes

b. No

c. Can't say

d. Other



13. Do you think that children should be given exemption from criminal responsibility in heinous crime?

a. no

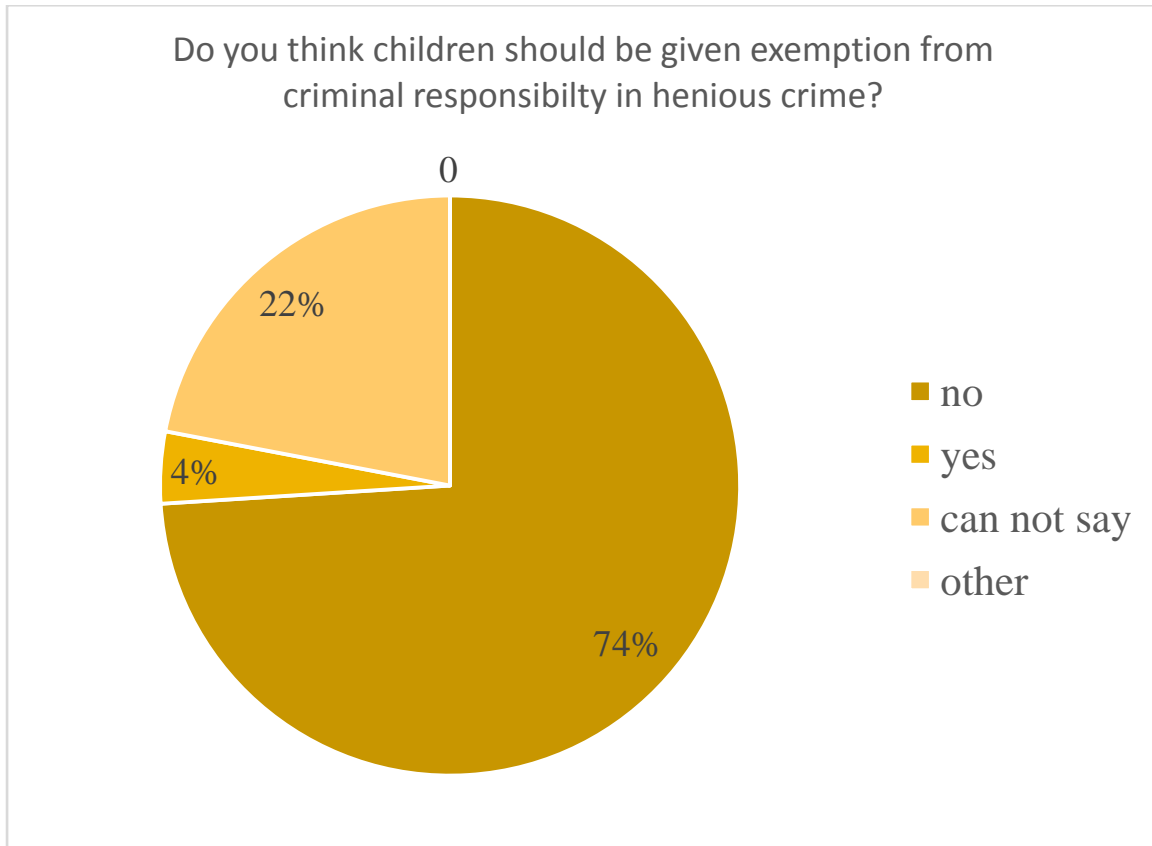
b. yes

c. cannot say

[]

d. other

[]



14. Do you think that only reformation should be given or punishment in heinous crimes?

a. No

[]

b. Yes

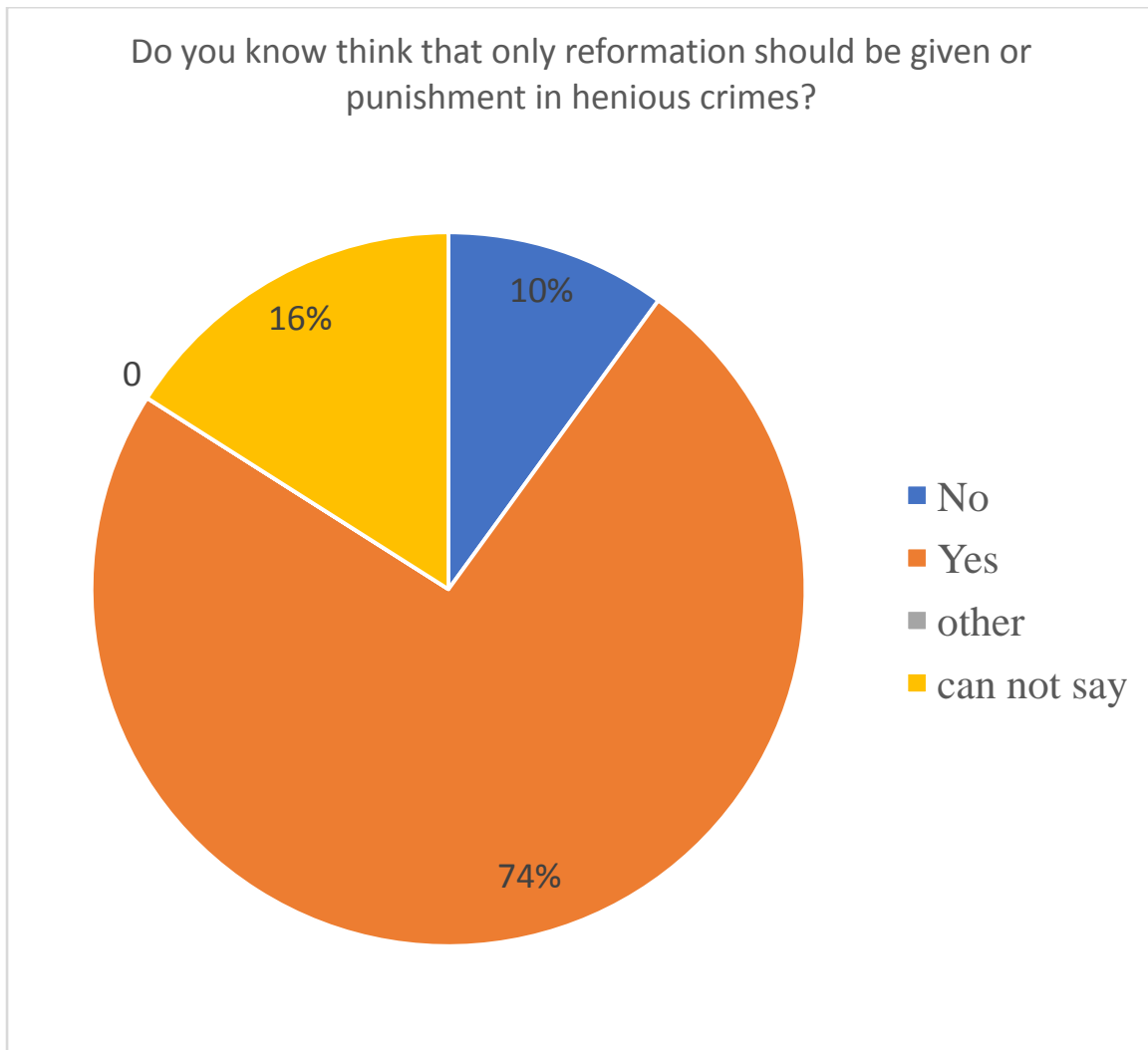
[]

c. other

[]

d. cannot say

[]



15. Do you think the present act is adequate for handling the juvenile delinquency 's issue in India after Nirbhaya case?

a. yes

[]

b. no

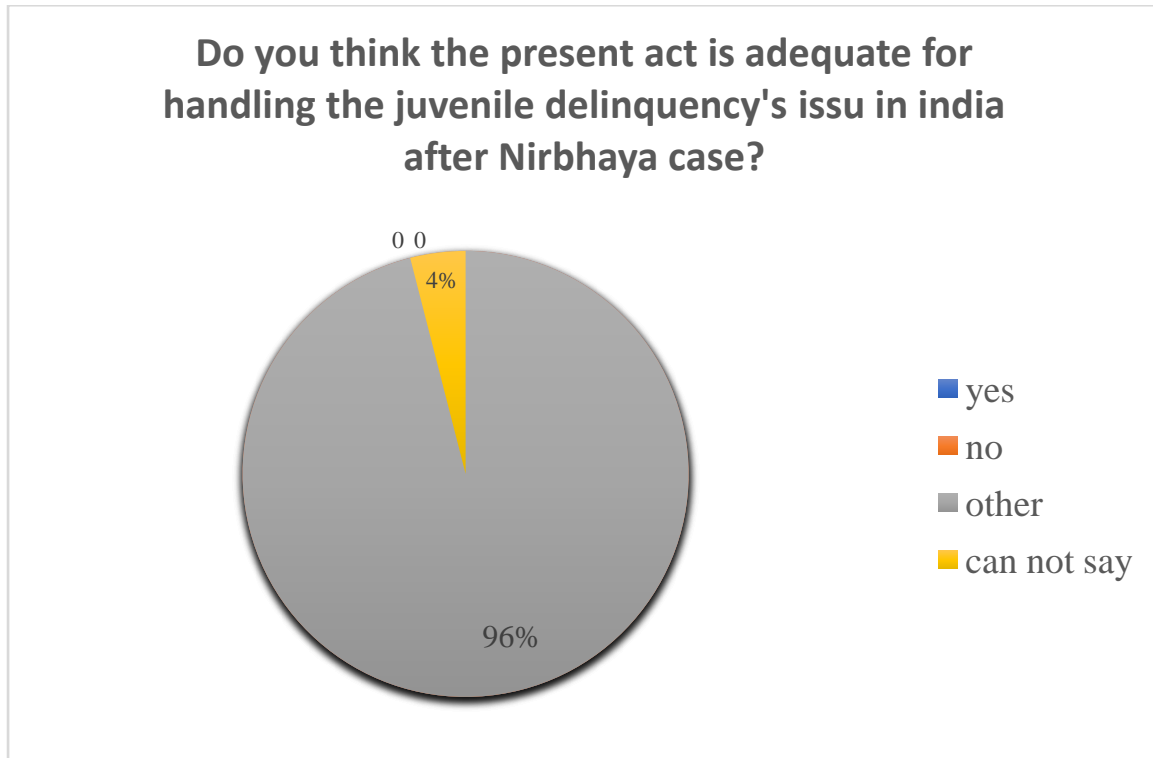
[]

c. other

[]

d. cannot say

[]



CHAPTER -VII

CONCLUSION AND SUGGESTIONS

According to the new Juvenile Justice (Care and Protection of Children) Act, 2015, the juvenile justice system has switched from the welfare model of juvenile justice implemented in 2000 to the criminal control model (as introduced in 2015), but this Act keeps the previous definition of a child in place.

It defines a kid as a person under the age of 18, but it also gives judges the authority to treat 16 to 18-year-old minors accused of committing severe crimes as adults and try them in adult criminal court. Enforcement of this Act forces juveniles into the criminal system since transferring to the adult system leads to more juveniles engaging in criminal activity in later life.

First, there were issues with the Juvenile Justice Act of 2000's implementation and procedural delays, which led to the enforcement of the Juvenile Justice Act of 2015. Additionally, the growing.

According to the National Crime Record Bureau, there were a number of juvenile crimes committed by people between the ages of 16 and 18. However, there are a number of ways that this Act might be critiqued. The first thing is that it "violates the very essence of the juvenile justice Act."

Second, it infringes on a number of basic rights protected by the Indian Constitution.

Third, this Act disregards psychological and social backgrounds when determining punishment.

Fourth, this Act has provided a sword to irate parents who want to stop their kids from eloping, which has increased the frequency of kidnapping and sexual assault cases against the young person. This Act is intended to meet children's fundamental requirements by providing them with the proper care, protection, development, therapy, and social integration; yet, it appears that it is more punitive than reformative.

It is punitive because it has provisions that treat juveniles between the ages of 16 and 18 as adults for serious offences, and it sends juveniles to adult jail for the remainder of their sentences after they turn 21.

However, the Juvenile Justice Board will make all of these judgements. Therefore, it is evident that a juvenile would no longer enjoy the privilege of juvenility if he is found guilty of a terrible act. taking care of the kids

Articles 14, 15(3), and 20 of the Indian Constitution are also broken by treating people between the ages of 16 and 18 differently. The Government is required to provide specific provisions for children's welfare under Article 15(3). While only the kind of offence is given weight in the new Act, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 gave the juvenile in confrontation with the law and circumstances of both the offenders and the offence major importance.

A rehabilitative approach with an indeterminate sentence and restorative principles would be the best way to balance the needs of the young offender with those of the public. By employing a restorative approach, it would also achieve the goals of which deterrence is what the 2015 Act seeks to do. Restorative justice principles must be used in India to construct a comprehensive juvenile justice system, although rehabilitation must still be prioritised as the second essential limb.

Minor should be tried as an adult in heinous crime like rape murder many cases come in media, and some recommendation to cooperate between judiciary and executive co-operation required between agency and board; Probation Report timely comes. Failure after Bail, Juvenile can restart continue studying, occupation Task, Program will be conducted for juvenile.

SUGGESTIONS:

It is clear from the rising number of crimes committed by kids in the 16–18 age range that the Juvenile Justice Act of 2015's present rules and system are not well-suited to deal with combat juvenile criminals in this age range. The National Crime Records Bureau reports a rise in heinous crimes committed by youngsters between the ages of 16 and 18, although this data was based only on the number of FIRs filed and did not include any information regarding later convictions. It is a known truth that a FIR or complaint is just information about the commission of an infraction. Greater reporting of crimes against children in that age range should not automatically imply greater conviction rates for juvenile offenders. The conclusion of the inquiry and the filling out of the police's report must serve as the foundation for a reasonable estimate of the involvement of juveniles in horrific crimes. The judge's decision and the court.

In accordance with the 2015 Juvenile Justice Act, which lowered the criminal responsibility age from 18 to 16 for heinous and embracing crimes, such as rape and kidnapping, the issue of whether or not children involved in consensual relationships are at risk for these crimes has also been raised. As a result of the girl or her furious parents filing a complaint, the young male who engages in a consensual love affair will be accused of rape and kidnapping. The increase in the consent age to 18 makes it only logical that

It is important to set a time limit for the research. Depending on the kind of offence, juvenile police officers who investigate the case must submit the final form within 60 or 90 days after the date of complaint.

A social worker could be involved in the police officer's inquiry. At least one female police officer should be assigned to or posted in the kid jail.

Additionally, the police force is crucial in maintaining kid protection. However, in reality, police officers are ignorant of the JJ Act's requirements. As a result, police station-level awareness campaigns should be held with participation from the Principal Magistrate, members of the Juvenile Justice Board, members of child welfare committees, and NGOs.

Children ought to be able to exercise their right to be heard, and their opinions should be given weight based on their maturity and age. Children shall not be subjected to any form of discrimination based on their gender, caste, race, nationality, language, age, or status, including any form of handicap.

For heinous crimes in the Indian Juvenile Justice System: in Lucknow, Hardoi, and Lalitpur Crimes are increases day by day and juvenile must be tried as an adult for rape and murder. Juvenile involve in high rated crime and influences by high-class white-collar criminal basis. Also know the offence which is committed by juvenile. Juvenile also join gang of such group also and do murder on contract basis, with the help of survey method questionnaire, we reached tried as adult for heinous crime.

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