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“Dharma is to protect the Needy”

Research Article on
PROVISIONS FOR JUVENILE DELINQUENCY LAWS IN
INDIA vis-à-vis JUDICIAL WAIVER SYSTEM: AN ANALYSIS

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ABSTRACT

A child is an exceptionally base of the general public, the general public we live in. Brain of kids are continually developing also; they require sustaining of their conduct and perspective to guarantee their own wellbeing and their future. These days, some truly intolerable violations are being dedicated by kids which portrays flightiness on society's part. Unmistakably, showing that there are no additional means taken for the government assistance of the youngster brain in the general public, they are not being shown right or wrong of the general public. Toward the end when kids don't have the foggiest idea what's going on or right, they cross that dainty line which bifurcates botches from wrongdoings. Law present so far doesn't have a substantial meaning of Age of the juvenile; as far as possible is a problematic strand. Subsequent to fathoming the circumstance, it was showed to layout laws which are valid as it was felt instrumental and was additionally required in this specific segment or laws managing Juveniles. Numerous conventions also, plans by United Nations were procured, which for the majority of the part thought on Juvenile's conduct and combination in the general public to get the confidence laws expressed for Juveniles. Also, in the wake of noticing different changes in the law universally, Juveniles Justice (Care and protection of Children) Act 2015 was presented in India while supplanting The Juvenile Justice (Care and Protection of Children) Act, 2000. In Indian Criminal equity framework, under the Code of Criminal Procedure, there are different areas which stresses upon the juvenile offenders.

KEYWORDS: AGE, CODE OF CRIMINAL PROCEDURE, CHILD, JUVENILE, OFFENDERS, UNITED NATIONS.

INTRODUCTION

“The Children of today will make the India of tomorrow. The way we bring them up will determine the future of the country.”

- Pandit Jawahar Lal Nehru

A child is a very base of the society, the society we live in. Mind of children are always growing and they require nurturing of their behaviour and thought process in order to ensure their own safety and their future. Nowadays, some really heinous crimes are being committed by children which depicts irresponsibility on society's part. Clearly, showing that there are no extra steps taken for the welfare of the children's mind in the society, they are not being taught right or wrong of the society. At the end when children don't know what is wrong or right, they cross that very thin line which bifurcates mistakes from crimes. This blur line is society's responsibility to teach about to these children. These young minds are capable of anything which comprises greater achievements as well as crimes too. For a nation to be developed children plays a vital role in walking that road. Since, there are many instances where we notice that the child who commits the crime does not even know the seriousness of the crime, he or she just commits the crime because they were told to do so and they were never taught about it. Hence, when these crimes are considered (committed by children or juvenile) then it is differently looked upon. The most important thing for a child while growing up is the environment in which he or she lives. It is really necessary to create a safe environment around children. With this, one can actually help in keeping the child's mental health in safe space. It is foremost to see that the child is well educated, since it is an easy and facile task to pollute a child's mind and turn him into a juvenile offender. A child's mind is easily manipulated and manoeuvred. And this is the cognition behind many crimes attempted by juveniles. There are many people out there making these kids commit their crime on their behalf. These people usually prey on children of six to twelve years of age group. There are many factors than can be endorsed for a child's behaviour like parental care, the upbringing environment, sometimes lack of basic education also results in manipulation of the child for bad influence, or some of the major cognitions is financial situation. Many children due to financial crisis in the family becomes easy targets to be part of criminal

activity. The definition of child under law is simply defined as someone who is under the age of eighteen and somebody who is not well aware of rationale reasoning in order to differentiate between wrong or right, black or white and hence this concludes that the person is a child not capable to commit a crime without rationale thinking of mind. The basic principle which is heeded by many countries in juvenile offence cases is “Doli Incapax” which itself suggests that someone without complete apprehension or understanding of crime. Lately crimes are being pulled off by children, and in order to administer such crimes there are not abundant or adequate number of laws or jurisdiction both nationally and Internationally. Law present so far does not have a concrete definition of juveniles; the age limit is a questionable strand. After comprehending the situation, it was manifested to outline laws which are authentic as it was felt instrumental and was also required in this particular section or laws dealing with Juveniles. It was from “Convention on the Rights of the Child”¹ where the inference of the principal strand was taken. The United Nations Rules of the Protection of Juveniles of Deprived of their Liberty (1990) and “The United Nations Standard Minimum Rules for the administration of juveniles Justice, 1952”². Many protocols and arrangements by United Nations were acquired, which for the most of the part concentrated on Juvenile’s behaviour and consolidation in the society in order to bring the faith in laws stated for Juveniles. And after observing various changes in the law internationally, Juveniles Justice (Care and protection of Children) Act 2015 was introduced in India while replacing The Juvenile Justice (Care and Protection of Children) Act, 2000. In Indian Criminal justice system, under the Code of criminal procedure, there are various sections which stresses upon the Juvenile offenders.

1.1 RESEARCH QUESTIONS:

I. Whether the main characteristics of the Juvenile Justice system is impactful and what are the main principals of the justice system?

¹ U.N. General Assembly, Official Records, Sess. 61, U.N. document A/RES/44/25, (20/11/1989) available at <http://www.un.org/documents/ga/res/44/a44r025.htm>, last seen on 10/05/2021

² U.N. General Assembly, Official Records, U.N. document A/RES/40/33, (29/11/1985) available at <https://www.ncjrs.gov/pdffiles1/Digitization/145271NCJRS.pdf>, last seen on 10/05/2021

II. What is the procedure followed in order to punish a Juvenile and the protocol followed for the trials under the law defined?

1.2 RESEARCH HYPOTHESIS:

There are many instances where we have observed the lack of efficiency in Juvenile Justice system in the country, the procedure followed for the punishment or the factors considered are not concrete enough. Due to the same reason this gives a negative impact on the society and hence there is requirement for outlining of the laws in order to frame effective laws for the punishment under juvenile justice system.

1.3 RESEARCH METHODOLOGY:

The study has relied on the secondary method of research, also known as armchair research. The secondary method of research is based on the analysis of secondary data. Secondary data is information which has already been collected, compiled, and published by other researchers. This study is based on authentic secondary data collected from various sources, such as books, research papers, and online resources.

- In order to get a better understanding of the Juvenile Justice System in the country the researcher has referred to various online blogs, books and research essays and this was of great contribution in grasping the basics of the justice system.
- Further in order to examine various significant laws and sections the researcher referred to case laws, notes, statutes, the Code of Criminal Procedure, the Juvenile Justice Act, 2015, and research articles.
- Further the researcher tried to give critical analysis over the lack of effective measures of the Juvenile Justice Act, and the procedures and trials and punishments mentioned under the Criminal Code of Procedure. The researcher with various landmark judgments, online research papers and law commission reports got to understand the present status of the justice system for juveniles in the country.

JUVENILE JUSTICE SYSTEM HISTORY AND PRESENT STATUS

Prior to present laws and juvenile justice system there were no effective and concrete laws regarding juvenile offenders not only in our country but throughout the world. At present various developed countries are coming together in unification to start a movement

for the laws regarding children. Before any significant laws were introduced all crimes committed by children were considered as the crimes committed by adults. After the situation was analysed, it was observed that there was a requirement for the distinct approach and convention, hence this when United Nations acquired the Rights of Child in 1989, 20th November. This new protocol adoption encouraged Indian legislation to introduce “The Juvenile Justice (Care and Protection of Children) Act, 2000.

Before the Juvenile Act 2000 was introduced India went through various amendments and changes in the Juvenile Justice system in the country. For instance, Section 24 of the Children Act, 1960 bifurcated children (juveniles) from adults³. “Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, no child shall be charged with or tried for, any offence together with a person who is not a child.”⁴ In the same act it also fixates the age of the juvenile⁵. In *Hirlal Mallick vs. State of Bihar* ⁶ the Apex court was able to observe some loopholes in the Children Act 1960, Justice Ayer examined that a child’s mind is a vulnerable human part, in the state of Bihar the way children were treated made it clear that the Act required to be changed. It was suggested that rather than treating children like murderers they should be treated like children and they should be provided with psych evaluation in order to understand one’s actual state of mind. In *Kario alias Mansingh and others vs. State of Gujarat*⁷, it was stated that the lawyers will be allowed in children’s court with the permission of inter transfer of the cases between the children’s court and the board. There were further added that the participation of the community will be permitted with a panel comprising social worker in order to monitor children’s mental health. These changes led to Children (Amendment) Act, 1978. Further there was enactment of Juvenile justice Act, 1986⁸ which replaced the Children Act, 1960. After the Children Act, 1986 there was adoption of Juvenile Justice (Care and Protection of Children) Act, 2000. According to this Act

³ S. 24 of Children Act 1960, define, No joint trial of child and person not a child

⁴ S. 24(1), Children Act 1960

⁵ S. 32, Children Act 1960.

⁶ *Hirlal Mallick vs. State of Bihar*, (1977) 4 SCC 44; (1977) (Cri.) 538

⁷ *Kario alias Mansingh Malu and others vs. State of Gujarat*, 1969, 10 Cri LJ 66.

⁸ Juvenile Justice Act, 1986, available at

http://www.vakilno1.com/bareacts/juvenilejusticeact/juvenilejusticeact.html#1_Short_title_extent_and_commencement, last seen on 10/05/2021

“Juvenile” or “Child” means a person who has not completed 18 years of age.⁹ Further this Act defines the definition of “Juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed the age of 18 years as on the date of commission of an offence¹⁰. In *Reepak Ravindran Case*¹¹, a fifteen years old Boy rapes a seven years old girl due to watching a pornography movie. Since he followed the movie, he was well aware with his actions and the seriousness of the situation. This crime was heinous in nature and Juvenile Court suggested that the matter should be sent to Government¹² for deciding the punishment or detention to juvenile¹³. Now this protocol was taken because the juvenile was well aware with heinous crime, and the seriousness of the situation. He knew what he was doing. This is called a waiver where the child (offender) is considered as an adult due to the crime committed. At last, the Juvenile Act, 2000 was finally replaced with Juvenile Justice (Care and Protection of Children) Act, 2015: Juvenile Justice (Care and Protection of Children) Act, 2015. This Act provides provisions for both Children in need of care and protection and children in conflict with law¹⁴. According to this Act, ‘Child’¹⁵ and ‘Juvenile’ means “a person who has not completed 18 years of age” and ‘child in conflict with law’ means, “a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence”.

This the present Act, enforced in the country. This act basically concentrates on the child’s mental situation. According to this act a child shouldn’t be called a criminal and directly be punished, he or she should be treated with humanity and the main agenda should be to rehabilitate or improve them. Under this act the main focus is the redemption. Under the explanation of the At, it states if the child is from the age group of sixteen to eighteen years, then he or she should be provided with protection till they reach the age of 21.

⁹ S. 2(k), Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁰ S. 2(l), Juvenile Justice (Care and Protection of Children) Act, 2000.

¹¹ *Reepak Ravindran vs state of AP*, (1991) Cri LJ 595 (AP)

¹² *Gulzar Singh v. State of Punjab*, (1979) 91 Punj 477

¹³ *Peter Gill v. State of Punjab*, (1983) Cri LJ 231 (Punj) NOC

¹⁴ Press Information Bureau, Government of India, Ministry of Women and Child development, The *Juvenile Justice (Care and Protection of Children) Act, 2015* come into force from today, 2016, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134513>, last seen on 10/05/2021

¹⁵ S. 2(12), Juvenile Justice (Care and Protection of Children) Act, 2015.

CRIMINAL JUSTICE SYSTEM IN INDIA AND JUDICIAL WAIVER SYSTEM

Under the section 27 of the Code of Criminal Procedure, 1973 talks about the jurisdiction in the cases of juveniles. This section provides with provisions to the offenders with the age less than sixteen years. If a child who is under the age of sixteen years commit the crime which is not amounting to imprisonment of life or punishment with death then the child is presented and tried in from of the court if Chief Judicial Magistrate, or presented in the court which is especially authorized by the Children Act, 1960. The court shall also be entitled to provide required treatment, or training to the juvenile, or rehabilitation to the juvenile offenders.

Under section 318 of the Code of criminal procedure it is directed if the accused is incapable to understand the proceedings or cannot be made to understand the proceedings or the person is sound of mind (not affected with insanity), then the inquiry or the trial should advance rather than in High court, it may proceed in case of a court. The proceedings may be advanced to High court if the consequence of the proceedings is in a sentence or conviction. The proceedings advanced to the High court should be proceeded with a detailed report of the situation of the case. And after this High court can state the order or judgement it may deem fit.

This section mainly concentrates on the fact that the accused is deaf or dumb, is incapable to understand the proceedings and hence there is requirement of an interpreter. But there are scenarios where the interpreter is not able to make himself understood or the accused is not able to understand him. Where the accused is of unsound mind the court must proceed under Chapter XXV.¹⁶ If the accused is able to understand the proceedings, though he is deaf and dumb, the provisions of this section do not apply¹⁷. Prior to the proceedings and trial, the court should first make arrangements in order to know, how accused usually communicates with his friends and family and if it is significant then the court must collect the evidence¹⁸. Further it was stated that if it is not possible to make the accused (deaf and dumb) understand the proceedings taken against him, then it by default becomes implausible

¹⁶ *Empress v Husen*, (1881), 5 Bom 262

¹⁷ *Alla Dia v Emperor*, (1928) 10 Lah 566; (1943) Kar 326: AIR 1929 Lah 840

¹⁸ *State v Radhamal*, (1960) 62 Bom LR 468

to know that whether the accused was aware of the crime, whether he knew the seriousness of the crime he committed, did he do it with malicious intentions or raising the questions whether he must be acquitted or released from his charges.

For trials and inquiries against the juvenile it clearly stated under Section 104 of the Juvenile Justice Act (Care and Protection), 2015 that the panel or the board should follow the procedure as mentioned under Section 251 to Section 259 of the code of criminal procedure. Section 250 of the code simply lays down the method for the trials of the accused. It is necessary that the accused should have clear statement made to him as to the particulars of the offence which is charged with¹⁹. Omission to state the particulars and to question him if he has any cause to show vitiates the trial ²⁰. The section 251 of the code is a significant section since it mentions the date of cognizance, which is an essential information. Under section 9 of the Juvenile Justice Act, 2015 stated “(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction” ²¹. The question for plea for juvenility was asked when the proceedings or the trial is undergoing the section 9 of Juvenile Justice Act, 2015. In *Ram Narain v. State of Uttar Pradesh*²² it was stated that even after the final allocation of the case the concern and claimant for being a Juvenile can be raised at any point. In cases like *Darga Ram v. State of Rajasthan*²³ and *Kulai Ibrahim v. State of Coimbatore*²⁴ it was stated that under the provision provided under section 9 of the Juvenile Justice Act, 2015 the Juvenile is given right to question at any stage regarding the juvenility of the child. This primarily indicates that the cognizance can be taken if the juvenile is undergoing the proceedings and hence can be prevented from the proceedings.

With respect to the authority conversed to the panel formed under the Juvenile Justice Act, 2015, the majority of the authority is consulted for the trials and enquiry etc. this is

¹⁹ *Acharjee Lall*, (1878) 3 CLR 87; *Chinnaswamy v the state*. 1973 Cr LJ 358.

²⁰ *Gopal Krishna Saha v. Marilal*, (1926) 54 Cal 359; *Purushottam Sabra v State of Orrisa*, 1992 Cr LJ 1417 (Ori)

²¹ Section 9 of the Juvenile Justice Act, 2015

²² *Ram Narain v. State of Uttar Pradesh* (2015) 17 SCC 699

²³ *Darga Ram v. State of Rajasthan* (2015) 2 SCC 775

²⁴ *Kulai Ibrahim v. State of Coimbatore* AIR 2014 SC 2726 (India)

defined under clause 104 of the Juvenile justice Act, 2015 hence the procedure followed under section 27 of the CrPC. After the Amendment was made in Juvenile Justice Act, 2015 the authority provided to section 27 of the CrPC was deprived of.

3.1 PROCEDURE FOR THE RECOGNITION OF JUVENILE IN CONFLICT WITH THE LAW

There is a definitive procedure to be followed when a Juvenile is found under the impression of conflict with law. This special provision is provided under the Juvenile Justice Act, 2015. As mentioned prior to this the part played by Code of Criminal procedure is deprived and the provisions under CrPC are stripped down²⁵. Hence with respect to the Juvenile Delinquency the provisions under CrPC ruled out and there are provisions of Special Laws provided under the Act. To provide for persons through whom any child alleged to be in conflict with law may be produced before the JJB²⁶. There are certain types of orders which have been mentioned under section 21²⁷ which cannot be passed by the Panel. This section provides that no Board shall pass the order of death penalty, life imprisonment in favour of the juvenile for any such crime under the Act or the under the provisions of the IPC or any other law related to these provisions²⁸.

There are some significant steps taken in order to protect the juvenile with defined laws. Under the rules defined by the Chapter VIII of the Criminal Procedure of the code to protect the juveniles' interest section 17 lays down the significant rules for the same. Any order which is interfering with the Juvenile's mental peace or with the good behaviour cannot be taken by the Panel. The section which deals with the peace and good behaviour of the juvenile under the Cr. P.C is from section 106 to section 124. Chapter VIII of the Cr. P.C is concentrated on the proceedings of the juvenile in order to secure his or her mental peace. In *Ram Chandran vs. Inspector of Police, Madras*²⁹ defines that the sense of security cannot be the only ground to treat a juvenile or the child as an adult. This is defined under section 110

²⁵ The Code of Criminal Procedure, 1973.

²⁶ Supra 3, at 348

²⁷ S. 21 of Juvenile Justice (Care and Protection of Children) Act 2015 reads "Order that may not be passed against a child in conflict with law."

²⁸ S. 21 of Juvenile Justice (Care and Protection of Children) Act 2015

²⁹ *Ram Chandran vs. Inspector of Police, Madras*, (1994) Cri. L. J. 3722 (Mar)

of the Cr. P.C. Even it is the provision provided under the section 23³⁰ where in it clearly states that the proceedings of a juvenile cannot be combined with an adult (joint proceedings). There shall be no effect of the provisions mentioned under Section 223 of the Code of criminal procedure, 1973 when it is stated that no juvenile should be proceeded with an adult. Since it was stated under the section 223 of the Cr. P. C about the requirements of the joint proceedings. Thus, in such offences which falls under Section 223 Cr. P. C. and covered under Section 23, the Juvenile Board proceed with the knowledge or notice of offences shall direct for holding the separate trials of juvenile offender and adult³¹.

Though many measures have been taken child in conflict with law is incrementing every year. In *Pratap Singh vs. State of Jharkhand and ors*³², it was of great uncertainty that whether the age of the juvenility be considered when the child is produced before the court or the age when the juvenile committed the crime. In the instant case. It was stated by the Apex court that the age of juvenility which was being considered will be based on the age of the juvenile offender during the crime. Similar, was stated in the case of *Umesh Chandra vs. State of Rajasthan*³³.

Further the provision of the Cr. P. C. provides that order of release on probation of good conduct or after admonition³⁴. This is stated under section 360 of the Code of criminal procedure, 1973. In accordance with the section, if there is commission of any crime with punishment of imprisonment for life or death and the offender is of age less than twenty-one years and the offender is proved without observing his or her prior actions and conditions then it is important to keep in check that why was such action taken by the offender. Was there anything extraordinary to the situation. And rather than punishing the person the court may authorize orders to release the offender on probation for good behaviour and maintaining peace. The example for the case for probation can be taken, *Somabhai vs. State of Gujarat*³⁵, in the instant case provisions of the section 360 of the Cr. P.C was observed, since the

³⁰ See S. 23 of Juvenile Justice (Care and Protection of Children) Act 2015 defines "No joint proceeding of Child in conflict with law and person not a child."

³¹ See S. 23 of Juvenile Justice (Care and Protection of Children) Act 2015 defines "No joint proceeding of Child in conflict with law and person not a child."

³² *Pratap Singh vs State of Jharkhand and ors.*, (2005) 3 SCC 551; (2005) SCC (Cri) 742

³³ *Umesh Chandra vs. State of Rajasthan*, (1982) 2 SCC 202; (1982) SCC (Cri) 369; AIR (1982) SC 1057; (1982) CriLJ 994 (SC)

³⁴ S. 360, The Code of Criminal Procedure, 1973

³⁵ *Somabhai vs. State of Gujarat*, 1989, Cr. L.J. 1945 (Guj)

offender in present case was of age less than twenty-years when the crime was committed (negligence driving amounting to death of a ten years old girl) and there were no prior such actions taken, hence it was stated that the case deemed fit under the vicinity of the case for probation.

At last, some provisions related to children or minor are stated under section 448 of the Cr. P.C. “When the person by any Court, or officer to bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by surety or sureties only.”³⁶

JUVENILE JUSTICE ACT, 2015 AND ITS DISTINCTIVE FEATURES

When we thought there were not enough concrete laws in order to protect juvenile offenders of the country, the Juvenile Justice Act, 2015 was introduced. This act is specially outlined for the juveniles of the country with some extraordinary provisions. There are distinct methods of treating a child offender. There is protocol to proceed the hearing of the child in different court, i.e., the children court. There can be others circumstances too. With such provisions the hearing can be made a private or an informal hearing. The salient feature of the Act is to observe the responsibilities, procedures, functions, proceedings through the provisions provided under the Act. There is formation of a “Juvenile Justice Board” under the very Act, in order to treat cases where the juvenile is in conflict with the law. “Board”³⁷ indicates the establishment of the Juvenile Justice Board under the impression of the Section 4 of the Act and “Committee”³⁸ indicates to the formation of the child welfare committee defined under the section 27 of the Act.

Chapter III of this Act deals with the ‘Juvenile Justice Board’. Every Juvenile accused is to be produced before juvenile board. The purpose for this separate proceeding is to reform and rehabilitate the juvenile offenders³⁹. It has to be made sure by the Act that there are ample number of Juvenile boards established in almost every district. it is significant to ensure that

³⁶ Section 448, “*Bonds required from minors*”

³⁷ S. 2(10), Juvenile Justice (Care and Protection of Children) Act, 2015

³⁸ S. 2(22), Juvenile Justice (Care and Protection of Children) Act, 2015

³⁹ *Child Protection and Child Right*, available at <http://www.childlineindia.org.in/juvenile-justiceboard-jjb.htm>, last seen on 10/05/2021

the juveniles out there are being watched and cared. The board has the complete authority and the say when it comes to the juvenile offender under the impression of conflict with the law and due to such reason it is essential to have Board established. After the offender is presented before the court or the Magistrate it becomes his responsibility to make sure that the child's mental health is not being affected and hence in order to prevent that there is a social worker present, who directs the condition of the child's mind and also directs that the child should be kept under rehabilitation and reformation according to the circumstances of the case and juvenile behaviour⁴⁰. It is to be noted that the person appointed at the position of the social worker in order to analyse the juvenile's mind should be a person who is active in involvement in the same field and should of qualification with the graduate under the subject child psychology, sociology or law and psychiatry. The person should also be holding an experience of about seven years in the same field⁴¹.

ANTICIPATORY BAIL

There are many instances stated prior to this where the Juvenile Justice Act, prevailed over the Code of criminal procedure provisions after the amendment. When the concept of Anticipatory bail is considered in relation with the Juvenile Justice Act, the court has stated decisions which clearly shows Juvenile Justice Act, has upper hand over the Cr. P.C. Under Section 438 of the Cr. P.C., it talks about the bail of the offender after the examination of the offender is performed. Now when it is read with Juvenile justice Act, 2015 the Cr. P.C does not prevail with the upper hand. In *Krishna Garai Case*⁴² the issue of the anticipatory bail was raised under the Section 438 of the Cr. P.C., where it was read with the Juvenile Justice Act, 2000. Later on, it was stated that the application of the provision under section 438 of the Cr. P.C cannot be applied over the juvenile offenders since there are some extra ordinary provisions provided under the Juvenile Justice Act, there by giving it upper hand over the provisions provided under the Cr. P.C.

In *Tejram Nagrachi Juvenile vs State Of Chhattisgarh*⁴³ it was clearly stated that the provisions and the jurisdiction provided under section 438 of the Cr. P.C., for the anticipatory

⁴⁰ S. 2(22), Juvenile Justice (Care and Protection of Children) Act, 2015

⁴¹ S. 4(3), Juvenile Justice (Care and Protection of Children) Act, 2015

⁴² *An Application for Anticipatory vs Krishna Garai And Others* Bolpur Police Station Case No. 01 of 2016

⁴³ *Tejram Nagrachi v. State of Chhattisgarh*, (2019) MCRC NOS. 8523/2016 & 6724/2016 AFR HIGH COURT OF CHHATTISGARH

bail cannot define the bail for Juvenile offenders or it does not come under the vicinity of provision for the bail of the Juvenile offenders. In order to get the provisions for the bail of the Juvenile it is defines under section 12 (1) of the Juvenile Justice Act, with no jurisdiction of Cr. P. C over the bail of the child. This primarily indicates to the fact that in order to distinct the juvenile offenders from the adults such provisions are provided with no interference of the jurisdiction of the Cr. P.C and this is reason why extraordinary measures and provisions are provided to the Juvenile offenders under the Juvenile justice Act.

Soon after this inference, this decision regarding the jurisdiction of the Juvenile Justice Act was questioned. In *Satendra Sharma vs The State Of Madhya Pradesh*⁴⁴, it was argues in the instance case and then held that the jurisdiction in order to give or get an anticipatory bail in Juvenile offenders case cannot be given on the believe that its jurisdiction is defined under the Juvenile Justice Act. Hence, the application for the bail of the juvenile under the jurisdiction of the juvenile Act was denied by the High Court. Similar decision was observed in the case of *Kamlesh Gurjar v. The State of Madhya Pradesh*⁴⁵.

CONCLUSION AND SUGGESTIONS

Though there are many actions taken in order to protect the juveniles from falling into the system without getting caught up into it still there are many changes required in the Juvenile Justice system of the country. This can be proved that the measures taken are not ample enough since the rates of the crime committed by juveniles are still increasing, and most importantly now after the commission of the crime the juvenile is well aware of the crime committed and with the seriousness of the crime and still goes for it. This depicts as a society we are failing to help the children of the society. These are alarming times. Heinous crimes like kidnapping, murder, rapes are being committed by the juveniles. Lets' take an instance like Nirbhaya rape case. The juvenile was well aware with his actions and still went with it. Such juveniles and children require special treatment and attention by the society as well as the government of the country. These children are the future of the country hence serious and vigorous actions are required at the time. With this rate, there is a fair chance that there will be increment in the crimes committed by the juveniles.

⁴⁴ *Satendra Sharma vs The State Of Madhya Pradesh*, Anticipatory bail application No.66/2014

⁴⁵ *Kamlesh Gurjar vs The State Of Madhya Pradesh*, M.Cr.C. No.10345 of 2019

Now when we consider the Juvenile Justice acts, there are many loopholes present in itself. The act though provides a lot of clarification over the jurisdictions provided in order to protect the rights of the juvenile offenders but there are no specific rules or jurisdictions provided in order to protect a juvenile child or female juveniles. Well, it is observed that how the criminal justice system primarily concentrates on the fact that the offender should be punished and on the other hand the Juvenile Justice act tries to provide stability to the juvenile offender by making them undergo rehabilitation or making them being examined by the social worker in order to maintain their mental health. This basically stresses on reformatory justice by the Juvenile Justice Act.

There are many suggestions that can be made but the basic suggestion is that as it is clear that the main agenda of the Juvenile Justice Board is to provide the child with mental stability in order to make him fit in the society and even for the unification of the society hence, in order to make this idea more concrete the board should introduce a social worker, in the panel with the graduate degree in the field of law. Now the board members should also be given some basics and abstracts about the child psychology in order to make sure that the outcome of the situation is beneficiary for the child.

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ANNEXURE

MINISTRY OF HOME AFFAIRS

NATIONAL CRIME RECORDS BUREAU

CRIMES IN INDIA

JUVENILES IN CONFLICT OF LAW

**CASES REGISTERED AGAINST JUVENILES IN CONFLICT WITH THE LAW
AND CRIME RATE UNDER IPC DURING 2005-2015**

TABLE 10.1

Cases Registered against Juveniles in Conflict with the Law and Crime Rate under IPC During 2005-2015

S. No.	Year	Cases registered		Percentage Cases of Juvenile in Conflict with Law to Total Cognizable Crimes	Mid-Year Projected Population (In Lakh) +#	Rate of Crime under Cases of Juveniles in Conflict with Law
		against Juveniles in Conflict with the Law	Under Total Cognizable IPC Crimes			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
YEAR:						
1	2005	18939	1822602	1.0	11028	1.7
2	2006	21088	1878293	1.1	11198	1.9
3	2007	22865	1989673	1.1	11366	2.0
4	2008	24535	2093379	1.2	11531	2.1
5	2009	23926	2121345	1.1	11694	2.0
6	2010	22740	2224831	1.0	11858	1.9
7	2011	25125	2325575	1.1	12102#	2.1
8	2012	27936	2387188	1.2	12134	2.3
9	2013	31725	2647722	1.2	12288	2.6
10	2014	33526	2851563	1.2	12440	2.7
11	2015	31396	2949400	1.1	12591	2.5

TABLE 10.1 - Page: 1 of 1

‘+’ Source: Registrar General/Population Commissioner, RGI, MHA

‘#’ Actual Population as per the Population Census

TABLE 10.4

Juveniles Apprehended under IPC and SLL Crimes by Age Groups & Sex During 2014

S.No.	Crime Head	Below 12 Years			12 yrs & Above – Below 16 years		
		Boys	Girls	Total	Boys	Girls	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
CRIME HEAD:							
1	Murder	14	5	19	291	9	300
2	Attempt to commit Murder	6	0	6	213	4	217
3	Culpable Homicide not amounting to Murder	1	0	1	18	1	19
4	Attempt to commit Culpable Homicide	1	0	1	15	1	16
5	Rape	23	0	23	632	1	633
	5.1 Custodial Rape	0	0	0	0	0	0
	5.1.1 Gang Rape	0	0	0	0	0	0
	5.1.2 Other Rape	0	0	0	0	0	0
	5.2 Rape other than Custodial	23	0	23	632	1	633
	5.2.1 Gang Rape	1	0	1	64	0	64
	5.2.2 Other Rape	22	0	22	568	1	569
6	Attempt to commit Rape	0	0	0	25	0	25
7	Kidnapping & Abduction_Total	7	0	7	283	7	290
	7.1 Kidnapping & Abduction	2	0	2	119	1	120
	7.2 Kidnaping & Abduction in order to Murder	0	0	0	11	0	11
	7.3 Kidnapping for Ransom	0	0	0	16	0	16
	7.4 Kidnapping & Abduction of Women to compel her for marriage	3	0	3	78	0	78
	7.5 Other Kidnapping	2	0	2	59	6	65
8	Dacoity	4	0	4	47	1	48
	8.1 Dacoity with Murder	0	0	0	0	0	0
	8.2 Other Dacoity	4	0	4	47	1	48
9	Making Preparation and Assembly for committing Dacoity	0	0	0	21	0	21
10	Robbery	7	0	7	339	0	339
11	Criminal Trespass/Burglary_Total	83	0	83	1254	14	1268
	11.1 Criminal Trespass/Burglary	64	0	64	923	3	926
	11.2 House Trespass & House Breaking	19	0	19	331	11	342
12	Theft	237	12	249	2505	52	2557
	12.1 Auto Theft	17	0	17	666	1	667
	12.2 Other Thefts	220	12	232	1839	51	1890
13	Unlawful Assembly	2	1	3	24	2	26
14	Riots	6	2	8	318	15	333
	14.1 Communal	1	0	1	8	0	8
	14.2 Industrial	0	0	0	0	0	0
	14.3 Political	0	0	0	5	0	5
	14.4 Caste Conflict	0	0	0	11	0	11
	14.4.1 SC/STs Vs. Non-SCs/STs	0	0	0	0	0	0
	14.4.2 Other Caste Riots	0	0	0	11	0	11
	14.5 Agrarian	0	0	0	4	0	4
	14.6 Students	0	0	0	2	0	2
	14.7 Sectarian	0	0	0	0	0	0
	14.8 Other Riots	5	2	7	288	15	303
15	Criminal Breach of Trust	0	0	0	5	0	5
16	Cheating	0	1	1	35	1	36
17	Forgery	0	0	0	1	0	1

TABLE 10.4

S.No.	Crime Head	Below 12 Years			12 yrs & Above – Below 16 years		
		Boys	Girls	Total	Boys	Girls	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
18	Counterfeiting	1	0	1	10	0	10
18.1	Offences related to Counterfeit Coin	0	0	0	0	0	0
18.2	Counterfeiting Government Stamp	0	0	0	0	0	0
18.3	Counterfeit currency & Bank notes	1	0	1	10	0	10
18.3.1	Counterfeiting currency notes or Bank notes	0	0	0	7	0	7
18.3.2	Using forged or counterfeit currency/Bank notes	0	0	0	2	0	2
18.3.3	Possession of forged or counterfeiting currency / Bank notes	1	0	1	1	0	1
18.3.4	Make/Possess materials for forging or counterfeiting currency/Bank notes	0	0	0	0	0	0
18.3.5	Make/Use documents resembling currency notes/Bank notes	0	0	0	0	0	0
19	Arson	1	0	1	13	0	13
20	Grievous Hurt	28	3	31	404	12	416
20.1	Grievous Hurt	28	3	31	402	12	414
20.2	Acid attack	0	0	0	2	0	2
20.3	Attempt to Acid Attack	0	0	0	0	0	0
21	Dowry Deaths	0	0	0	7	5	12
22	Assault on women with intent to outrage her Modesty	20	0	20	360	0	360
22.1	Sexual Harassment	9	0	9	136	0	136
22.2	Assault on women with intent to Disrobe	0	0	0	20	0	20
22.3	Voyeurism	0	0	0	1	0	1
22.4	Stalking	3	0	3	25	0	25
22.5	Others	8	0	8	178	0	178
23	Insult to the Modesty of Women	0	0	0	27	0	27
23.1	At Office premises	0	0	0	0	0	0
23.2	Places related to work other than Office	0	0	0	1	0	1
23.3	In Public Transport system	0	0	0	0	0	0
23.4	In Other Places	0	0	0	26	0	26
24	Cruelty by Husband or his Relatives	3	0	3	24	2	26
25	Importation of Girls from Foreign Country	0	0	0	0	0	0
26	Causing Death by Negligence	0	0	0	50	0	50
26.1	Deaths due to negligent driving/act	0	0	0	47	0	47
26.2	Deaths due to Other Causes	0	0	0	3	0	3
27	Offences against State	0	0	0	0	0	0
27.1	Sedition	0	0	0	0	0	0
27.2	Other offences against State	0	0	0	0	0	0
28	Offences promoting enmity between different groups	0	0	0	1	0	1
28.1	Promoting enmity on ground of religion race and place of Birth	0	0	0	1	0	1
28.2	Imputation & assertions prejudicial to national integration	0	0	0	0	0	0
29	Extortion	1	0	1	10	0	10
30	Disclosure of Identity of Victims	0	0	0	0	0	0
31	Incidence of Rash Driving	5	0	5	149	5	154
32	Human Trafficking	0	0	0	1	2	3
33	Unnatural Offences	10	0	10	67	0	67
34	Other IPC crimes	159	25	184	3109	142	3251
Total Cognizable IPC crimes		619	49	668	10258	276	10534

TABLE 10.4

Juveniles Apprehended under IPC and SLL Crimes by Age Groups & Sex During 2014

S.No.	Crime Head	Below 12 Years			12 yrs & Above – Below 16 years		
		Boys	Girls	Total	Boys	Girls	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Arms Act, 1959	2	0	2	41	0	41
2	Narcotic Drugs & Psychotropic Substances Act, 1985	2	0	2	28	2	30
3	Gambling Act, 1867	1	0	1	44	0	44
4	Excise Act, 1944	1	0	1	22	1	23
5	Prohibition Act	0	0	0	13	0	13
6	Explosives and Explosive Substances Act	0	0	0	2	0	2
7	Immoral Traffic (Prevention) Act, 1956	0	0	0	2	1	3
	7.1 Under Section 5	0	0	0	0	0	0
	7.2 Under Section 6	0	0	0	0	0	0
	7.3 Under Section 7	0	0	0	0	1	1
	7.4 Under Section 8	0	0	0	0	0	0
	7.5 Other Sections under ITP Act	0	0	0	2	0	2
8	Indian Railways Act, 1989	4	0	4	2	0	2
9	Registration of Foreigners Act, 1939	0	0	0	0	0	0
10	Protection of Civil Rights Act, 1955	0	0	0	0	0	0
	10.1 PCR Act for crimes committed against SCs	0	0	0	0	0	0
	10.2 PCR Act for crimes committed against STs	0	0	0	0	0	0
	10.3 PCR Act for crimes committed against Others	0	0	0	0	0	0
11	Passport Act, 1967	0	0	0	1	1	2
12	Essential Commodities Act, 1955	0	0	0	0	0	0
13	Antiquities & Art Treasures Act, 1972	0	0	0	0	0	0
14	Dowry Prohibition Act, 1961	0	0	0	2	0	2
15	Indecent Representation of Women (Prohibition) Act, 1986	0	0	0	0	0	0
16	Copyright Act, 1957	0	0	0	0	0	0
17	Commission of Sati Prevention Act 1987	0	0	0	0	0	0
18	SC/ST (Prevention of Atrocities) Act, 1989)	0	1	1	20	1	21
	18.1 POA Act for crimes committed against SCs	0	1	1	20	1	21
	18.2 POA Act for crimes committed against STs	0	0	0	0	0	0
19	Forest Act, 1927	0	0	0	0	0	0
20	Prohibition of Child Marriage Act, 2006	0	0	0	1	0	1
21	Protection of Women from Domestic Violence Act, 2005	0	0	0	0	0	0
22	Information Technology Act, 2000	2	0	2	7	0	7
23	Official Secrets Act, 1923	0	0	0	0	0	0
24	Electricity Act, 2003	0	0	0	5	0	5
25	Wildlife Protection Act, 1972	0	0	0	0	0	0
26	Bonded Labour System (Abolition) Act, 1976	0	0	0	0	0	0
	26.1 Against SCs	0	0	0	0	0	0
	26.2 Against STs	0	0	0	0	0	0
	26.3 Against others	0	0	0	0	0	0
27	Environmental (Protection) Act, 1986	0	0	0	0	0	0
28	Air (Prevention & Control of Pollution) Act, 1981	0	0	0	0	0	0
29	Water (Prevention & Control of Pollution) Act, 1974(as amended in 1988)	0	0	0	0	0	0
30	National Security Act, 1980	0	0	0	0	0	0
31	Unlawful Activities (Prevention) Act, 1967	1	0	1	2	0	2
32	Young Persons (Harmful Publications) Act, 1956	0	0	0	0	0	0



