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A Critical Comment on the Juvenile Justice (Care and Protection of Children) Act, 2015

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Abstract: ***The Nirbhaya rape and murder case has once again brought the efficacy of the juvenile justice laws in India under scanner. The popular belief is that children who are capable to commit crime must suffer. This belief found its place in the new legislation pertaining young offenders for a particular age group of the children. The new legislation does not differ from the scrapped legislation on this point only but on many other points which need to highlight before it is too late. This paper is a modest attempt to highlight not only the demerits but also the merits of the latest legislation concerning the Children in Conflict with law.***

Keywords: Juvenile Justice, Children, Protection

1. Introduction

The Juvenile Justice (Care and Protection of Children) Act, 2015 is a welfare legislation which stress on the reformation and resocialisation of the children in conflict with law1. The legislation is a well-knit piece of law which based on the staunch belief and philosophy that young offenders can't be treated in same manner and fashion as their adult counterparts. This legislation is not of recent origin. It took many decades to develop in the present form. The most tragedy this legislation faced is that it remained simply on papers with least implementation in certain states. In the recent past, with the directions of hon'ble Supreme Court of India, the process of implementation of juvenile justice legislation has attained the pace. Many institutions have been established as envisaged under the legislation and most importantly it has attracted the attention of scholars, judge and critics across the nation. The United States Supreme Court decisions laying down the strong foundations of the developing jurisprudence that juveniles are different has further assisted in developing a strong basis back in India that Children deserve special and unique attention. This legislation, without any iota of doubt, is inevitably required. The latest legislation, Juvenile Justice (Care and Protection of Children Act) 2015, is the modified version of the early legislation of 2000, which itself has been amended twice. The present legislation has adopted well recognised principles, based on highly researched theories and philosophies. The legislation, however, lacks in certain respects which deserve attention and has become the subject of decision and criticism. A few important points have been discussed without going into minute details.

2. Historical Development

The discourse on the development of Indian juvenile legislation is devoid of any theoretical and philosophical reference. The reason for this aptitude is found deep in the historical conditions of the nation. India was a colonial law and as other legislations this piece of legislation too has been more or less borrowed from England. The first law which dealt with delinquent offenders in India was. Apprentice Act, 1850. It was brought almost century before India achieved its freedom. The concept of apprenticeship was innovative ideal British and other European nations which itself failed due to multiple reasons. All here is to understand that this legislation was imported & applied by the Englishmen to Indian subcontinent. The brought a legislation after legislation for young offenders, some merely tackle the unrest among the masses. The Juvenile Justice Act, 2000 was implemented in India in order to enforce the United Nations Child Rights Convention of the Rights of Child, 1989. This is the reason that discourse of juvenile justice never attracted the attention of scholars to its philosophies and theories. Also, India has attained the Independence after a long struggle with a crippled economy and it was the economic and other developments which remained on priority list. The fact is that juvenile justice is out-product of different theories and philosophies particularly in America which deserve attention.

In England, so in America and now in India, juvenile justice legislation is more or less representing the ideas of both conservative and liberal blocks. The conservatives always pleading for zero tolerance policies for the young delinquents, while as liberals advocating for lenient treatment. The fact remains both ideology has some space in the juvenile justice legislations with welfare philosophy always holding much premises. The present Indian juvenile legislation has yielded to popular pressure and tough approach has been adopted for young offenders of a particular age group but it is still welfare of the child which has a pervasive force. Various philosophies (models) has shaped and reshaped the juvenile justice from time to time viz., "welfare model", "justice model", "participatory model", "modified justice model", "crime control model", "corporatist model", "minimum intervention model", "restorative justice model" the "neo-correctionalist model"[2]

[1] "Children in conflict with law" is the latest term for Juveniles in conflict with law. In other jurisdictions an scholarly writing words like young offenders, youth offenders, young criminals, bad kids etc. has been used. In this paper the author has used all such terms and same shall be understood as children in conflict with law.

[2] Pruin, I., *"The scope of juvenile justice in Europe"*, in: Dünkel, F., Grzywa, J., Horsfield, P. and Pruin, I. (eds.), Juvenile Justice Systems in Europe, Vol. 4, 2nd ed. (Forum VerlagGodesberg: Mönchengladbach, 2011), pp. 1546-1547, as quoted in *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*, UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, United Nations, 2013

and "developmental model"[3]. The impact of these models is such that it is almost impossible to make clear the categorisation of juvenile justice systems on the basis of models. Even if only the "welfare model" and the "justice model" are taken as "the classical models for distinction, in practice, these two models have to a great extent, become mixed over the years in many countries around the world due to developmental processes, making it almost impossible to identify either a pure welfare model or a pure justice model in any one State."[4].

The philosophical premises of the American juvenile justice system are much more captivating than any other juvenile system in the world for some reasons like:

- It is amenable and adoptive, and comprehensive in its ambit.
- The shifts and drifts in the philosophical premises of the American juvenile justice system are much more prominent. However, it is difficult to pinpoint when the particular philosophical shifts occur because the process is typically gradual[5].
- It has adopted and tested several models[6].

In contrast to this the Juvenile justice system in India is the outcome of influences of international developments, recommendation of various committees, legislative mind and now media and public pressure. Although India was a pragmatic legislation now in hand but a comparative analysis of this legislation from practical point of view with European nations forces one to accept the stark reality that Indian Juvenile Justice Laws are still in infancy.

It is only with the enactment of the uniform Juvenile Justice Act, 1986 that Indian juvenile justice laws came under discussion, Until 1986, all states had their respective legislation with the Children Act, 1960 as a model legislation with restricted application to union territories of India. The implementation juvenile laws in India are, however, meagre. In America the process of establishment of separate institutions for children dates back to 1925 when first juvenile institution was established called the House of Refuge. The first formal court for young delinquents came into existence in 1899 in Chicago. The House of Refuge for children was established throughout America until its legal basis came for consideration for the first time in Mary Ann Crouse. The claim of the father that these houses are not the places for reformation but punishment was rejected by the Pennsylvania Supreme Court on the ground that the House of Refuge was a charitable School, not a prison and that it was legal to help her on the basis of the state's role as *parenspatraie*. But court in *O'Cornells* took an opposite view by stating that "no one can be punished unless proved guilty". Those believing House of Refuge was a novel idea to help the children came up with an idea of establishing Juvenile Courts, making *parenspatraie* its basis and similar to Chancery Courts in England. The juvenile court was vested with powers to all kinds of children, delinquent and destitute. The year 1967 marked a significant deviation from early trend and extended constitutional protection for young offenders, which were so far dealt without any procedural nitty-gritties. The Supreme Court of America observed that "under our constitution, the condition of being a boy below a certain age does not justify Juvenile Court to be a Kangaroo Court".[7] In subsequent cases,[8]the court extended more constitutional protections to juvenile offenders before juvenile court, thus, turning it more in a criminal court.

The Juvenile Justice System in India has developed over many decades. The enactment of the Apprentice Act, 1850 should not be marked as reflecting the commencement of menace of juvenile delinquency in India. Delinquency in India was present but meagre and manageable.

The preamble of the Act read as:

> *"For better-enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood."*

This Act empowered the magistrate on the principle of *parenspatraie* to deal on behalf of parents with those children who committed petty offences or are found to be vagrant[9] (status offenders). It also empowered the magistrate to take suitable measures for orphans and poor children abandoned by their parents.[10] Further, this Act brought within its ambit children who were not delinquents but children desperately in need of help. This category would have been otherwise ignored by legislation, as was done under the Indian Penal Code, enacted in 1870.

The Indian Penal Code under sections 83 and 84 laid down specific provisions for imputing *mensrea* to children. Invoking the rule of *doliincapex*, section 83 extended

[3] Developmental Model of Juvenile Justice is the latest model not so much endorsed through legislations.

[4]Pruin, I., *"The scope of juvenile justice in Europe"*, in: Dünkel, F., Grzywa, J., Horsfield, P. and Pruin, I. (eds.), Juvenile Justice Systems in Europe, Vol. 4, 2nd ed. (Forum VerlagGodesberg: Mönchengladbach, 2011), pp. 1545 as quoted *in Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*, UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, United Nations, 2013

[5]James C Howell; *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework*; Sage Publication, 2nd Edition, 2009; p. 18

[6] The American Juvenile Justice has tested many models viz., Rehabilitative Model, Crime Control Model, Due Process Model, Just Desert Model. The juvenile justice is not, thus, operating on a single model.

[7]Thomas J.Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice*, Oxford University Press, 2nd Edition 2010, p.104

[8]*In re Winship* (1970), *Mckeiver v. Pennsylvania* (1971), *Breed v. Jones* (1975)

[9] Vagrancy is not an offence under the Juvenile Justice (Care and Protection of Children Act), 2015. It is considered as a status offence under European countries and in India vagrant is a child in need of care & protection.

[10] Section 3, The Apprentices Act, 1850: Any Magistrate may act with all the powers of a guardian under the Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him or any other Magistrate of vagrancy, or the commission of any petty offence.

absolute immunity to children below the age of seven for any act which constitutes an offence under penal statutes. However, for children from seven to twelve years, section 84 gave ample discretion to the magistrate to decide on a case-to-case basis the liability of children for criminal conduct owing to his maturity to understand the nature of the act and its consequence.

The Jail Committee was constituted to suggest reformation of prisons which strongly recommended segregation of juvenile offenders from adults criminals in these words:

> "*That in every Jail means should be provided for separating juvenile offenders from adults, and that it is, moreover, highly desirable, wherever such an arrangement is practicable, that separate sleeping accommodation should be provided for each juvenile prison inmate*"

The Reformatory School Act of 1876 was introduced amid mixed reactions about its efficacy in the Indian conditions. Most reformatory schools were established within the jails or on the side of prisons, giving a complete prison ambience. The Jail Committee of 1919-20further recommended:

> "*Reformatory schools should resemble ordinary schools and not jails, and should therefore not be located in old jail buildings; they should not be near a jail, but should be in the country and in properly plauned buildings on the cottage system".*[11]

The Report of the Indian jail Committee, 1919-20, is a comprehensive document, the one section of which exclusively deals with the study and recommendation on "***the Adolescent Criminal***". The committee recommended for segregation of juvenile offenders and establishment of separate institution for them in these words:

> *"We conclude, therefore, that such offenders should not be sent to ordinary jails. It also seems to follow ... that special effort should be made to bring them under reforming influences and to improve their minds by education, both general and special, as well as by religious and moral teaching"*[12].

With regard to female juvenile delinquents the committee state that problem is not as grave as in their male counterparts and hence there is urgency for the establishment of adolescent reformatory institutions for them. In simply recommended for lodging them in separate yard to keep them away from the vice of their adult counterparts in prison[13].

The Committee apprehended that soon these institutions could degenerate in adult prisons and hence needed to be guarded by men having full sympathy towards these children. It observed that:

> *"It seems to be quite clear that the officers to be appointed to these Special institutions will have to be selected with special care. It will not be easy to find men who will possess the necessary qualities, will power to maintain and enforce strict discipline in combination with the sympathy with young adolescents which will be required to make these special institutions a success"*[14].

The process of enactment for Children Act in Madras started in 1917 and finally it was enacted in 1920. This legislation completely focused on the rehabilitation and reformation of youthful offenders. Its preamble states:

> *"... it is expedient to provide for the custody, trial, maintenance, welfare, education and character training of youthful offenders and the care, protection, maintenance, welfare, education and character training of children and young persons who are uncontrollable, or are in moral danger, or destitute, or in need of care and protection"*[15].

The recommendations of the Indian Jails Committee, 1919-20 for adolescent offenders triggered the process of legislation in each state and subsequently many states enacted their respective laws like Children Acts in Bengal and Bombay in 1922 and 1924and in 1940s, many more states enacted the children laws like Delhi[16], Mysore[17], Travancore[18], Cochin[19] and East Punjab[20].

Soon after Independence Children Act, 1960 was enacted. As mentioned above it was only model legislation and all states came with their state legislations with diverse ambiguities. It was only by the valour efforts of the Supreme Court of India that a uniform law was enacted. The Apex court in *Sheela Barse case*[21] expressed its desire to have a consistent legislation for the whole of India to overcome the difference in regional Acts. Subsequently, the Juvenile Justice Act, 1986 was later replaced by Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice (Care and Protection of Children) Act, 2000 was amended twice, first in 2006 and then in 2010 to overcome the difficulties faced in its implementation.

The famous Nirbhaya rape and murder case, which attracted the attention of public through huge media coverage, forced the government to introduce a new legislation called Juvenile Justice (Care and Protection of Children) Act 2015. This legislation is pragmatic law with certain lacunae which must be plugged at the earliest.

[11] Indian Jails Committee, "The Report of the Indian Jails Committee", 1919-20, Vol.1, available at https://jail.mp.gov.in/sites/default/files/Report%20of%20the%20%20Indian%20Jail%20Committee,%1919-1920.pdf
[12] Indian Jail Committee Report, 1919-20, p. 205, para 389
[13] Id, p.208, para 396
[14] Id, p.210, para 402
[15] Preamble to the Tamil Nadu Children Act, 1920
[16] The Delhi Children Act, 1941
[17] The Mysore Children Act, 1943
[18] The Travancore Children Act, 1945
[19] The Cochin Children Act, 1946
[20] The East Punjab Children Act, 1949
[21] 1986 SCC (3) 596

3. Principles of the Juvenile Justice (Care and Protection of Children) Act, 2015

The JJA, 2015 is highly rehabilitative in its approach towards young offenders. It completely focuses on rehabilitation and reformation of children in conflict with law. It envisages for developing a highly child friendly by all stakeholders at all stages. Section 3 establishes a comprehensive guide for all stakeholders. It enshrines the fundamental principles which need to follow by one and all. The best interest of the child is of paramount importance. All decision, whether apprehension, bail, denial of bail, institutional care shall be guided by the best interest of the child. The bail can't be denied unless and until it favours and protects the child. The UNCRC, 1989 also states that "all actions concerning children, whether undertaken by public or private, social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration[22]." Another fundamental principle is the presumption of innocence of child. The principle "innocent unless proved guilty" is the fundamental principle under criminal justice system. Once proved guilty, the accused is convicted and sentenced depending upon the gravity of the offence. The fascination of this principle under juvenile justice system is that it lays even if proved guilty the child shall be treated as devoid of any malafide intention because of his immaturity. The principle is "any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years." In the juvenile justice it is be interpreted as "innocent before and after establishing child is guilty" because he is to be presumed *doliincapex* until the age of 18 years.

The principle of worth and dignity has been enshrined in these "All human beings shall be treated with equal dignity and rights." Child has been always ignored as entity worthy to be considered as a human being. The French historian Philipe Aries in his book "The Centuries of Childhood" as ascribed multiple reason as to why a child was not considered as entity worth of attention and care. The childhood, pre-adolescence, mid-adolescence and late adolescence are now considered as different stages of development of child which need a specific focus. Further, the principle of participation is giving due weightage to a child who could participate in the decision making concerning the young. The principle reads as "Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child." These principles incorporates two important rights of the child, one rule of natural justice that is right of fair hearing and second the right to participate in decision making affecting his being. The child offenders were not extended protection before criminal and juvenile courts. In USA, the decision in *In re Gault case*[23] and in India the decision in *Kario alias MansingMalu v. State of Gujarat*[24]recognised and extended constitutional and procedural safeguards to child at every forum and on every step.

The principle of safety states that "all measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter." The principle is reflecting the conscious apprehension of the policy makers that a child being immature and delicate can easily be subjected to harm, abuse or maltreatment under the juvenile justice system and thereafter. The Beijing Rules state that mixing of a child with juvenile justice system itself causes harm to the child and further harm must be avoided at any cost. The principle raises a pertinent concern that the child can be subjected to harm, abuse and maltreatment by those who are at the helm of affairs and thus intends to protect him. Large numbers of juvenile respondents have told to the researcher that they were subjected to torture and ill-treatment in the police custody.

The principle of positive measures states that "all resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act." The principle of non-stigmatising semantics is highly relevant for young offenders who started negatively evaluating themselves once apprehended. The principle reads as "adversarial or accusatory words are not to be used in the processes pertaining to a child." once a child is labelled as a criminal there is every chance he could become a hardened criminal. This is the reason that European nations have adopted the hands-off approach with respect to young delinquents. Also the principle of non-waiver of rights that "no waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver" shields a child from self-incrimination and conviction.

The principle of institutionalisation as a measure of last resort is highly child future oriented principle which seeks to protect the child from stigmatisation and loss of liberty. The principle reads as "a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry." This approach is giving a chance to child to start the life afresh. The principle of fresh start states that "all past records of any child under the Juvenile Justice system should be erased except in special circumstances." This principle is again incorporated keeping in consideration the tender age of a child who has every possibility of reformation as he is still in the developmental stage of his life.

4. Preliminary Assessment of Late Adolescents

Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has incorporated, what critics, call a controversial rule devoid of any basis. The section 15 with regard to children aged 16 to 18 lays down that:

[22] Article 3, UN CRC, 1989
[23] In re Gault 387 U.S. 1 (1967)
[24] (1969) 10 Guj LR 60

"In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offences and the circumstance in which he allegedly committed the offence…"

According to this provision preliminary assessment is to be done on following four aspects:

a) mental capacity to commit such offence
b) physical capacity to commit such offence
c) ability to understand the consequences of the offences
d) the circumstance in which he allegedly committed the offence

The Chairman of the Juvenile Justice Board may apply his/her judicial mind to assess the condition number (c) and (d) from his conduct before and after the offences and the condition in which offence was committed. This is almost the same approach adopted in Section 84 of the Indian Penal Code. With regard to condition (a) and (b) the judge has to surrender and bank exclusive on the opinion of field experts. The scientific test to evaluate the maturity of the child, which may develop at any stage from 14 to 25, as per latest scientific research, calls once attention to the fact can maturity be assessed with certainty among the young especially who are subjected to drastic physical and mental developments during the late adolescents. No doubt court has rule that "the admissibility of a result of a scientific test will depend upon its authenticity"[25] but this is a delicate issue which needs to handle with extra-care and caution. In *Sultan Singh v. State of Haryana*, the court observed that "the opinion of an expert witness on technical aspects has relevance, but the opinion has to be based upon specialised knowledge and the data on which it is to be found must be acceptable by the Court"[26]. The still evolving science about the development of child brain puts a huge question mark on the preliminary assessments.

5. A Comment on grounds of Bail

"Bail is right and jail is an exception is well-knitted principle of criminal justice system in India. The bail to an adult offender can denied on various grounds like nature of crime, circumstances of crime, apprehension of escape of accused and so on. The law on bail with respect to Children in Conflict with law under the juvenile justice laws is operating on different parameters. The detention of young offenders as per international norms shall be a measure of last resort. Both United Nations Convention of the Rights of the Child, 1989 and United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules) have stressed on detention as a measure of last resort.

The juvenile justice laws also subscribe to international principles and recognise that detention shall be used as a measure of last resort[27]. The matters of "apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law" are exclusively to be governed under the JJ Act, 2015[28]. The bail cannot be denied only for the reason that the juvenile delinquent has committed a heinous offence in a gruesome manner. The bail shall not be denied except for the benefit of children in conflict with law on three grounds[29]:

a) If there appears a reasonable ground for believing that the release is likely to bring that person into association with any known criminal
b) Expose the said person to moral, physical or psychological danger or the person's release
c) Would defeat the ends of justice

Although the Juvenile Justice Board is bound to record the reasons for the denial of juvenile justice to young alleged offenders but the fact remains that these ground again provide ample discretion to the judge to grant or deny the bail. For example the words "would defeat the ends of justice" create ample scope for the judge to exercise discretion to deny bail to young offender who otherwise should not have been detained in any institution.

In *Manoj alias Kali v The State (NCT of Delhi)*[30], the court observed that "a juvenile has to be released on bail mandatorily unless and until the exceptions carved out in the section itself are made out." In *Shashi Kumar Saini v. The State*[31], the court released the child delinquent with following observation that "there is no indication in the social investigation report that if the petitioner is released such release would be likely to bring him into association of known criminals or expose him to moral, physical or psychological danger or his release would defeat the ends of justice."The Supreme Court has also directed that bail shall be granted to all juvenile delinquents "unless it is shown that there appear reasonable grounds for believing that the releases is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice[32]."

Juvenile Justice Board and Retention of "procedure established by law"

The nature of the Juvenile Justice Board seems to be settled issue beyond any discussion and debate. The fact is that the neither courts nor legislation is clear with it is purely a civil court or a criminal court or else amalgamation of both. The issue has not been dealt seriously till date even by the Courts. Until 1967 Juvenile Courts in America worked a civil and informal body without extending due process protection to young offenders. It was only in 1967 the Supreme Court of American extended the juvenile courts the due process protection before the juvenile courts.

[25] *Brahmajeetsingh Sharma v. State of Maharashtra*, AIR 2005 SC 2277; also available at https://indiankanoon.org/doc/244079/
[26] (2014) 14 SCC 664
[27] Section 2(xii), *Principle of institutionalisation as a measure of last resort:* A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry
[28] Section 1 (4)(i), JJ Act, 205
[29] Proviso to section 12, JJ Act, 2012
[30] Crl. Rev. P. 178/2996 decided on 2.6.2006
[31] 120 (2005) DLT 313, 2005 (82) DRJ 255
[32] *GopinathGhosh v. State of West Bengal*, 1984 Supp SCC 228

Gerald Gault, 15-year-old, was taken into custody for making lewd telephone calls along with his friend Ronald Lewis to their neighbour *Mrs Cook*. The judge committed *Gerald* to the State Industrial School for Boys until his 21st birthday. That means confinement up to six years, but if Gerald had crossed the age of minority, as an adult, the maximum penalty would be a fine of $5 to $50 and imprisonment for not more than two months. Before the Supreme Court, the lawyer raised only constitutional issues viz., "the right to notice of the charges, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to have transcript of the proceedings".

The Supreme Court, referring to the decision in *Kent v. the United States*[33], "that the [waiver] hearing must measure up to the essentials of due process and fair treatment" and held that:

> "*the above right is reiterated here in connection with a juvenile court adjudication of "delinquency," (the above right) as a requirement which is a part of the Due Process Clause of the Fourteenth Amendment of our Constitution. The holding, in this case, relates only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase due process."*[34] *(Emphasis added)*

The accepted that Gerald was being punished and not helped in these words:

> *"It is of no constitutional consequence and of limited practical meaning that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional hours…' Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents" confined with him for anything from waywardness ' to rape and homicide".*[35]
>
> *"…it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings as that reported in an exceptionally reliable study of repeaters or recidivism conducted by the Stanford Research Institute for the President's Commission on Crime in the District of Columbia"*[36].

The court, stated that denial of due process amounts violation of his rights. The court laid down: -

> *"…it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court"*[37].

The dissenting view of *Justice Stewart* (*conservative by ideology*) deserve a special attention because it this opinion which cautioned that extension could convert a civil and informal body into a criminal court. He said that although the juvenile justice system has not lived up to expectations of the courageous pioneers, the intention should be retained rather than rejected:

> *"There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of the courageous pioneers who first conceived them. For a variety of reasons, the reality has sometimes not even approached the ideal, and much remains to be accomplished in the administration of public juvenile and family agencies-in personnel, in planning, in financing, perhaps in the formulation of wholly new approaches. I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution"*[38].

Justice Stewart had mentioned that insisted of extending all rights to juvenile before juvenile courts, the modest infusion will be much better than converting it into a criminal forum by extending all constitutional and procedural protections to juvenile before it.

The only occasion the Indian courts found to decide the about the extension of constitutional protections and procedural safeguards before Children came up in case of *Kario alias Mansingh Malu v. State of Gujarat*[39]. The Children Act, 1960, prohibited the presence of a lawyer before the Competent Authority. In 1969, the provision prohibiting presence of a lawyer in the Children's court in the Saurashtra Children Act[40] was challenged in *Kario alias*

[33] 383 U. S. 541, 562 (1966)
[34] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep 387001/usrep387001.pdf
[35] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep 387001/usrep387001.pdf
[36] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep 387001/usrep387001.pdf
[37] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep 387001/usrep387001.pdf
[38] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep 387001/usrep387001.pdf
[39] (1969) 10 Gujarat LR 60 available at https://indiankanoon.org/doc/173867/
[40] Section 22 of the Saurashtra Children Act, 1954 (Act No. XXI of 1954): Notwithstanding anything contained in any law for the time being in force, a legal practitioner shall not be entitled to appear in any case or proceeding before a Children's Court unless

Mansingh Malu v. State of Gujarat[41]. The petitioners raised an important point that "If the prosecution is permitted to conduct the case by a police prosecutor, the accused should also be permitted to defend themselves by an advocate"[42].

The court, after scrutinising the various provisions of the constitution, Criminal Procedure Code and Saurashtra Children Act reached the following conclusion:

> *"…though a juvenile delinquent cannot be awarded death penalty, sentence of transportation or imprisonment, he can be directed to be kept in a certified school. He can be fined in the specified circumstances. Merely because the juvenile Court has no power to award a sentence of imprisonment, it cannot be said that the provisions of Article 22(1) of the Constitution of India cannot be pressed into service… It is atleast clear that when our Constitution lays down in absolute terms a right to be defended by one's own counsel, it cannot be taken away by ordinary law and it is not sufficient to say that the accused who was so deprived of this right, did not stand in danger of losing his personal liberty. If he was exposed to penalty, he had a right to be defended by counsel…. The framers of the Constitution have well thought of this right and by including the prescription in the Constitution, have put it beyond the power of any authority to alter it without the Constitution being altered. A law which provides differently must necessarily be obnoxious to the guarantee of the Constitution"*[43].

The court concluded by holding that "the accused juvenile delinquents are entitled as a matter of right to obtain legal assistance of their choice". But court did not pay any attention to the fact that actually the nature of the Children Court (now Juvenile Justice Board has been ascertained as criminal than civil or informal.

6. Conclusion

The Juvenile Justice (Care and Protection of Children) Act, 2015 is, undoubtedly a better piece of legislation premised on sound jurisprudence that "children are different from adults". The incorporation of the principles under section 3 of the Act is a constant reminder for all that children deserve different approach from all stakeholders at all stages. The Juvenile Justice Act envisages that the young need to helped to enable them a successful transition from a childhood to adulthood. The juvenile offenders are to treated as devoid of any malafide intention because of their immaturity. This legislation is certain a big leap for the welfare of young offenders despite their involvement in any offence. It will certainly make a difference if implemented with zeal and professionalism. The haziness with respect to bail, nature of working of juvenile justice board and preliminary assessment of late adolescents needs a special attention of policy makers to make this legislation unique.

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the Children's Court is of opinion that in public interest legal assistance is necessary in such case or proceeding and authorises, for reasons to be recorded in writing, legal assistance to be obtained.

[41] (1969) 10 Gujarat LR 60 available at https://indiankanoon.org/doc/173867/

[42] *Ibid*

[43] *Ibid*