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MINOR CONVICTION LEGISLATIONS AND ITS CRITICAL ANALYSIS

ABSTRACT: India has adopted a wide range of laws to protect the rights of children and also for their protection. It has become an important component in the development and growth of nation and India in particular. Children are considered as future of the nation but, in today's time this scenario is completely changed because of the rise in the number of crimes which is being witnessed by the imminent judges and law makers of the country. There are instances where minor children are involved in some of heinous crimes committed within the country and have put the criminal law motion on hold. These crimes resulted to several amendments in the minor conviction legislations. This article will generally focus on the critical analysis of minor conviction legislations and notable among them is Juvenile Justice Act. In the first half we will focus on as to the definition and conceptual meaning of minors, protection and rights given to them under various laws and historical background of laws related to minors while, in the second half will briefly discuss the instances which led to the amendments in the laws along with landmark judgments and what are the flaws and positive aspects of the legislations including the minor children.

INTRODUCTION: With the world growing into a global market, because of the development in the technology the societal status and economic structure of the nation started changing. Human interaction has been reduced to phone calls, online communications and messages it is not easy to express your sorrows and grief in particular to the people around you in recent times. These basic factors are responsible for the increasing crime rate in the country by adults and nowadays even by minors. The surrounding and the environment which the child witnesses in his or her life is the reason behind his ideology and mindset. Often children are witnessing domestic violence and sexual abuse at home and practicing these traits in their lives resulting in criminal offence committed by them. There are so many legislations in order to protect children from exploitation and violence against them. Under Section 82 of Indian Penal

Code, 1860 it is provided that nothing is an offence which is done by a child under seven years of age and section 83 of Indian Penal Code states that nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understand the nature and consequences of the act. Protection to children has been also provided under the POSCO Act. Article 21(a) of the constitution states that all children between the ages of six to fourteen should be provided with free and compulsory education. From this it can be seen that Indian legal system is accountable to children by preserving their right. However, there are laws which are made and amended to convict the minors for committing heinous offences and they will be treated as adults if they are understand the nature and the consequences of the act such as Juvenile Justice Care and Protection Act, 2000. There are different provisions in the law in order to treat the child differently as compared with adults

In order to understand the heading that is minor's conviction legislations we first need to understand the definition of minors. Minors are the persons below the age of 18 years in India. The age of minority varies from country to country; it generally demarcates or differentiates childhood from adulthood. The age of majority depends upon the ability understand the rationale while judging things and to understand whether it is wrong or right. According to United Nations Convention on Rights of the Child (UNCRC), "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."¹

While, conviction legally means the verdict given by the court of law results that the person is guilty of committing the offence.² Generally, minor's conviction comes with a warning it does not affect the defendant but accompanied with warning. Death Penalties are being prohibited in the cases of minor's conviction cases.

EVOLUTION OF LAWS RELATED TO MINOR'S CONVICTION: The primary legislation on the central level against juveniles was passed in 1986, after that several other acts were passed in different parts of the country regarding the juvenile laws but no other such laws were uniform. The primary juvenile laws failed in implementation because of its variation in different states and in different circumstances. The juvenile justice provides a law that deals with the development and protection of juvenile delinquent and there rehabilitation in remand room after the commission of offence. After India has adopted the UN Convention on Rights of Child they have repealed the earlier act of juvenile justice of 1986. There were several amendments done in the juvenile justice act in 2010 looking to the seriousness of increasing crimes in the country by the minors of the juveniles. These were the changes which were made prominent at the time of Delhi Gang rape case which opened the eyes of government and the citizens of the nation towards the implementation of these laws. The law suffered a nationwide criticism on the national level due to this case as juvenile were involved in the heinous case of

¹ "Laws related to children in India", <https://www.crpc.in/images/child-law.pdf>

² <https://en.wikipedia.org/wiki/Conviction>

murder and rape. Resulting to this several amendments was made in the juvenile justice act and the age of minority has been lowered to 16 year after several debates in the parliament.

JUVENILE JUSTICE ACT AND ITS AMENDMENTS: The Juvenile Justice Care and Protection Act provides and special approach towards preserving the rights of the minor children and provides a framework for the rehabilitation and welfare of juvenile delinquents in India. The Delhi Gang Rape case has a very serious impact on the perception of people and the law makers of the nation, as in this case one of the minor was convicted and was send to remand homes for three years. A huge outrage has been witnessed by the citizens of India while some were criticizing the law and were demanding that the age of majority shall be bring down to 16 years while this decision was opposed by many other organization such as International definition of juveniles in UN comes with the age of 18 years. Currently the 2000 juvenile bill was amended in the year 2015 and the categories of the crimes were divided according to the severity of the offence. The three types of offences defined by the Bill are: (i) a heinous offence is an offence that attracts a minimum penalty of seven years imprisonment under any existing law,

(ii) An serious offence is one that gets imprisonment between three to seven years and,

(iii) A petty offence is penalized with up to three years imprisonment.³

The bill provides the various provisions relating to the adoption procedures and also regarding the punishment for the minors in other offence. While in this act the detailed information has been given about the children under the age group of 16-18 years shall be treated as adults for committing the heinous crimes. It also provides the two main committees that need to be setup on the district level that is the Juvenile Justice Committee and the Child Welfare Committees for the grievances and the protection of children under that particular area.

CRITICAL ANALYSIS OF THIS ISSUE: Though the debate around the issue of age fixation in definition is necessary the issue has multiple facets in terms of uniformity and applicability as per nature of crime. The state has responsibility to protect its children and the basic tenet while fixing the definition of child should be the hope of reformation, consideration of negative influence of society on child Psyche. The issue should not be decided on basis of rising tempers or demand by public. It should be based on timeless concept of Justice. The profile of juveniles in conflict with law in any country is reflection on the society as a whole. The strict and uniform definition of juvenile is not suitable for country as diverse and vast as ours. If we assess the economic and social profile of convicted children, the economic adversity and exposure to subpar social conditions will be common thread across the spectrum.

The world through its multinational agencies has made great strides in protecting rights of its children by agencies like UNICEF, UNESCO etc. The member countries have enacted the model

³ Juvenile Justice Bill, 2015, <https://www.prsindia.org/theprsblog/juvenile-justice-bill-2015-all-you-need-know>

legislations to comply with the resolutions adopted at these agencies. These resolutions though very useful as guiding principles, sometimes falls short in taking into account the local issues.

The issue further becomes complex when we consider various labour laws, and domestic violence act. In the country like ours which is boasting its demographic dividend in front of the world, the problem of uneducated, unskilled children is a boon. The kids in family many times willingly join organized/unorganized labor opening them for exploitation/ abuses at home or working space. The important point need to keep in mind is the implementation of these laws should be done on the ground level. There shall be various awareness programs organized and proper education shall be provided to children so that they cannot become the habitual offenders of the crime. The concept of remand homes generally signifies that minors cannot be treated as adults; they are being kept away from their families so that they can understand the nature and consequences of the act and become the diligent citizen of the country like India. Often the laws are being misused by the individuals we can take the example of terrorist attacks where children from very tender age are involved in the terrorist activities and after a certain age of 15-16 years they are capable of understanding the nature and the consequences of the act. They often try to take the defense of minority in order to escape from the punishments. One Such example can be taken of the accused involved in the Mumbai Taj attacks of 26/11 where Ajmal Kasab one of the prime suspects of the attacks has took the defense of minority to avoid the punishment and death penalty.

CONCLUSION: In a democratic country like India we cannot enforce our decisions on anyone everyone has a right criticize and analyze the laws according to the needs of the society. In earlier times crimes committed by children are not that prominent as compared to the today's world. Fixation of age or amendment in the conviction rate of the minor should be very necessarily assessed according to the circumstances and need of the case. The severity of every issue is different what may be good for one can be against the concept of justice to other, there shall be a harmonized approach that is need to be adopted by the law makers of the country. The general and main focus of the implementation of these laws will be governed by the awareness and educational facilities given to the children so that they can become the law abiding citizen of the country. Basic education programs shall be followed and implemented properly, children mental and physical health shall be taken into consideration while sending them into the remand homes, and they shall be given opportunity to express themselves and should be engaged in different activities so that their ideology can be developed. This issue is like a two faced coin where on side we are forced to take strict actions against the minor offenders committing crimes of heinous nature while on the other hand these punishments have a huge impact of lifetime over their minds.