

JUVENILE JUSTICE AMENDMENT BILL, 2014 - AN INSIGHT

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"It is easier to build strong children than to repair broken men."

-Frederick Douglass

ABSTRACT

The author by means of this paper has attempted to analyze the juvenile justice system in India. The principal objective of the article is to briefly shed light upon the history of the legal position regarding juvenile justice system in India and to adumbrate upon socio-legal developments which lead to amendments in the laws pertaining to the same. This paper compares and contrasts the pros and cons of the Juvenile Justice Amendment Bill, 2014 and critically analyses the provisions of the bill with respect to the existing laws and the changes which have occurred in the social set up in the country pertaining to the juveniles.

I. INTRODUCTION

The Juvenile Justice System in India finds its roots in era of British rule in India. Prior to the British rule i.e. prior to 1773 the personal laws of Hindus and Muslims were followed rigorously. Religious theories had a great impact on the actions of the children. The laws governing the children were vague and there was no special provision for juveniles. The primary responsibility of upbringing of the child was of the family.¹ But it was the British rule which inducted a series of changes in judicial system of India and Juvenile Justice System was a part of the same. The English Children Act, 1908 and establishment of Juvenile Court under the Madras Children Act, 1920 are prime examples of their reformation process.

Post independence owing to socio-legal changes, a need for special legislation for juveniles in India arose. The Supreme Court had stated that a central act is needed for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost.² Therefore, the Juvenile Justice Act of 1986 was promulgated as the first legislation dealing with the juveniles in conflict with law and children in need of care

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¹ *Mayne's Treatise on Hindu Law and Usage*, N. Chandrasekhara Aiyer, 11th Edition, 1953

² *Sheela Barse v. Union of India*, AIR 1986 SC 1175

and protection. The objective of the legislation was to ensure the care, protection and development needs of the children who are either neglected or have come into conflict with law constituting delinquency.³

Moreover, the growing consciousness of the world community regarding the issue led to the declaration of UN Convention on the Rights of Child on 20th November 1959 followed by the UN Standard Minimum Rules for Administration of Juvenile Justice otherwise known as Beijing Rules. The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders. It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age level, keeping in mind the emotional, mental and intellectual maturity of children.⁴

Therefore, in light of the aforementioned convention and rules the erstwhile Act had to be amended following India's ratification to United Nations Convention on the Rights of the Child on 11th December, 1992. Consequently, the Juvenile Justice Act 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act (hereinafter referred as "*The JJ Act*") was passed in the year 2000. Apart from the aforesaid Convention, other laws which influence the policies relating to juvenile justice are Article 15(3), Article 39 (e) & (f), Article 45 and Article 47 of the Indian Constitution.

But, with passage of time a need was felt to further amend the JJ Act, 2000. As a result, the Ministry of Women and Child Development had introduced the Juvenile Justice (Care and Protection of Children) Bill 2014 (hereinafter referred as "*The Amendment Bill*"). The Amendment Bill will repeal the JJ Act, 2000. The JJ Act of 2000 was broadly categorized in five chapters. These chapters lay down provisions for a juvenile in conflict with law (Chapter II), child in need of care and protection (Chapter III), rehabilitation & social reintegration (Chapter IV) and other miscellaneous provisions (Chapter V). In comparison with the aforementioned, the amendment bill is much more extensive. The Amendment Bill has been dissevered into nine chapters, which deal with procedure with respect to children in conflict with law (Chapter IV), Juvenile Justice Board (Chapter III), procedure with respect to children in need of care and

³ Preamble, Juvenile Justice Act, 2000

⁴ *Salil Bali v. Union of India*, (2013) 7 SCC 705

protection (Chapter VI), adoption (Chapter VIII) and other offences against children (Chapter IX).

II. FUNDAMENTAL PRINCIPLES FOR CARE AND PROTECTION, REHABILITATION & JUSTICE OF CHILDREN

The second chapter of the Amendment Bill deals with the aforesaid principles which are fundamental to the understanding and implementation of the bill. All the Competent Authorities or agencies shall abide by these Principles and will be guided to apply, interpret and implement any provision related to Care, Protection, Rehabilitation and Justice for Children, under the bill. These principles are⁵:

- i. **Principle of presumption of innocence:** This principle says that any child is to be presumed to be innocent of any malafide or criminal intent upto the age of eighteen years.
- ii. **Principle of dignity and worth:** All human beings are to be treated as equal in dignity and rights.
- iii. **Principle of participation:** Every child has a right to be heard and to participate in all processes and decisions affecting his or her interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. The family of the child also has a right to such participation unless decided otherwise by the Competent Authority, in the best interest of the child.
- iv. **Principle of best interest:** It states, all decisions regarding children should be based on the primary consideration that they are in the best interest of the child and shall help the child thereby to develop to his or her full potential.
- v. **Principle of family responsibility:** The primary responsibility of care, nurture and protection of the child is that of the biological family or adoptive or foster parents as the case may be.
- vi. **Principle of safety (no harm, no abuse, no neglect, no exploitation and no maltreatment):** All measures will be taken to ensure that the child is safe and is not

⁵ Clause 3, Juvenile Justice Amendment Bill, 2014

subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

- vii. **Positive measures:** All resources shall be mobilized including those of family and community, for promoting well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under the Bill.
- viii. **Principle of non-stigmatizing semantics:** Use of adversarial or accusatory words should not be made in processes pertaining to a child under the Bill.
- ix. **Principle of non-waiver of rights:** No waiver of rights of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Competent Authority under the Bill.
- x. **Principle of equality and non-discrimination:** There shall be no discrimination against a child on any grounds including sex, place of birth, disability, offence committed etc. and equality of access, opportunity and treatment shall be provided to every child under the Bill.
- xi. **Principle of right to privacy and confidentiality:** This principle lays down the child has a right to protection of his/her privacy and confidentiality, by all means and through all stages of the proceedings under the Bill.
- xii. **Principle of institutionalization as a measure of last resort:** As per the principle a child shall be placed in institutional care only temporarily and if no other family based care option is possible or available.
- xiii. **Principle of repatriation and restoration:** This principle states that every child in the juvenile justice system has the right to be reunited with their families at the earliest and to be restored to the same socio- economic and cultural status that they were in before coming under the purview of the Bill, unless such restoration and repatriation is not in their best interest.
- xiv. **Principle of fresh start:** According to this principle all past records of any child under the Juvenile Justice system should be erased.
- xv. **Principle of diversion:** It states that measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted.

- xvi. **Principles of natural justice:** As per this principle the basic procedural standards of fairness should be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the Bill.

The abovementioned principles are the guiding pathway to the Central Government, State Government, Juvenile Justice Board and other committees which are a part of the Amendment Bill. These principles are to be followed in spirit and are useful for proper implementation of the provisions of the Amendment Bill.

III. **CHILD IN CONFLICT WITH LAW**

“Child in conflict with law” means a child who is found by the Board to have committed an offence and who has not completed eighteen years of age as on the date of commission of the offence.⁶ Chapter IV of the Amendment Bill deals with provisions relation to the same. Before proceeding it is imperative to understand the meaning of term “Juvenile”.

A. **Who is a Juvenile?**

In common parlance the term “Juvenile” means a young person who is not fully developed. According to the *Black’s Law Dictionary*, a juvenile is a person who has not reached an age at which one should be treated as an adult by the criminal justice system.⁷ In the Indian Legal system, the Indian Penal Code (IPC) provides seven years as the minimum age at which any person can be charged for a crime.⁸ An offence committed by a child above the age of 7 years but below the age of 12 years will not be punishable if it seems that he does not possess sufficient maturity to judge the consequence of his actions.⁹

There has been a lot of debate with respect to the age of maturity of juvenile. Supreme Court of India had dismissed pleas to reduce the age for juveniles from 18 to 16.¹⁰ However,

⁶ Clause 2(13), Juvenile Justice Amendment Bill, 2014

⁷ Black’s Law Dictionary, 7th Edition

⁸ Section 82, Indian Penal Code.

⁹ Section 83, Indian Penal Code.

¹⁰ *Salil Bali v. Union of India*, (2013) 7 SCC 705

according to the JJ Act, 2000¹¹ and the Amendment Bill¹², a "Juvenile" or "Child" means a person who has not completed 18 years of age.

B. Types of Criminal Activities:

The Amendment Bill segregates the crimes committed by the juvenile in the following three categories:

- **Heinous Crimes:** Includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.¹³
- **Serious Crimes:** Includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years.¹⁴
- **Petty Crimes:** Includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.¹⁵

C. Procedure for Arrest of Juvenile

One of the preliminary steps of any criminal investigation is arrest of the person in conflict with law. Clause 11 of the Amendment Bill, provides for procedure to be followed for apprehending a child allegedly to be in conflict with law. A special juvenile police unit or the designated child welfare police officer should be handed over the charge of the aforementioned juvenile as soon as the apprehension is done by the police. The child has to be produced before the Board without any loss of time but within a period of twenty four hours of apprehension. In no case the child in conflict with law has to be placed in a police lockup or lodged in jail.¹⁶ The person in whose charge the child is placed, while the order is

¹¹ Section 2(k), Juvenile Justice Act, 2000

¹² Clause 2(35), Juvenile Justice Amendment Bill, 2014

¹³ Clause 2(33), Juvenile Justice Amendment Bill, 2014

¹⁴ Clause 2(54), Juvenile Justice Amendment Bill, 2014

¹⁵ Clause 2(45), Juvenile Justice Amendment Bill, 2014

¹⁶ Clause 11(1), Juvenile Justice Amendment Bill, 2014

in force, has authority over the child as if the said person was the parent of the aforementioned child.¹⁷

D. Inquiry of the Incident

The Juvenile Justice Board shall hold the inquiry in accordance with the provisions of the Act in relation to child in conflict with law as it deems fit.¹⁸ The inquiry has to be completed within a period of four months from the date of its commencement, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.¹⁹ If the inquiry by the Board for petty and serious offences remains inconclusive even after the extended period, the proceedings will be terminated. Further, for heinous offences, in case the Board requires extension of time for completion of inquiry, the same may be granted by the Chief Judicial Magistrate.²⁰ The Chief Judicial Magistrate has to record the reasons for the same in writing.²¹

Moreover, in case a heinous crime has been committed by a person in the age group of 16-18 years it will be examined by the Juvenile Justice Board to assess if the crime was committed as a 'child' or as an 'adult'.²² Since this assessment will take place by the Board which will have psychologists and social experts,²³ it will ensure that the rights of the juvenile are duly protected if he has committed the crime as a child. The trial of the case will accordingly take place as a juvenile or as an adult on the basis of this assessment. Depending upon the assessment, the trial of the case can be transferred to Children's Court which is the Session's Court having the necessary jurisdiction to try the matter.²⁴ This preliminary inquiry of the heinous crimes by the Board has to be conducted within a period of one month.²⁵

¹⁷ Clause 12, Juvenile Justice Amendment Bill, 2014

¹⁸ Clause 15(1), Juvenile Justice Amendment Bill, 2014

¹⁹ Clause 15(2), Juvenile Justice Amendment Bill, 2014

²⁰ Clause 15, Proviso, Juvenile Justice Amendment Bill, 2014

²¹ Clause 15, Proviso, Juvenile Justice Amendment Bill, 2014

²² Clause 16, Juvenile Justice Amendment Bill, 2014

²³ Clause 16, Juvenile Justice Amendment Bill, 2014

²⁴ Clause 19(3), Juvenile Justice Amendment Bill, 2014

²⁵ Clause 15(3), Juvenile Justice Amendment Bill, 2014

Under the Bill, a juvenile in conflict with law can only be sent to special home or fit facility for a maximum period of three years.²⁶ No juvenile in conflict with law who has completed sixteenth year of age and is found to have committed an offence under aforesaid sections shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of Indian Penal Code.²⁷

IV. CHILD WELFARE COMMITTEE

Chapter five of the Amendment Bill deals with child welfare committee. Clause 28(1) of the Amendment Bill states that, the State Government shall constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act, by notification in the Official Gazette. They will be composed of a chairperson and four other members who shall be experts on matters relating to children. At least one of the four members will be a woman.

A. The powers granted to this committee: These are follows:²⁸

1. The Committee has the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.
2. Committee is the final authority in:
 - Disposal of the cases for care and protection,
 - Treatment, development and rehabilitation of Children, in need of care.
 - Provide for basic human rights of the child.

B. Functions of the Committee: Functions of the Committee are:²⁹

- Taking cognizance of and receiving children produced.
- Conducting inquiry on all issues relating to and affecting the safety and well-being of children.

²⁶ Clause 19(1)(g), Juvenile Justice Amendment Bill, 2014

²⁷ Clause 22, Juvenile Justice Amendment Bill, 2014

²⁸ Clause 30, Juvenile Justice Amendment Bill, 2014

²⁹ Clause 31, Juvenile Justice Amendment Bill, 2014

- Directing the Child Welfare Officers or Probation Officers or Non-Governmental Organizations to conduct social investigation and submit a report before the Committee.
- Conducting inquiry for declaring “fit persons” for care of children in need of care and protection.
- Ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child’s individual care plan and passing necessary directions to parents or guardians or fit persons or childrens’ homes or fit facility in this regard.
- Selecting registered institution for placement of each child requiring institutionalization, based on the child’s age, gender and needs and keeping in mind the available capacity of the institution.
- Conducting regular inspection of residential facilities for children in need of care and protection (minimum one inspection visit per month) and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government.
- Witnessing the execution of the surrender deed by the parents and ensuring that they are given time to reconsider the decision as well as making all efforts to keep the family together.
- Ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process as may be prescribed.
- Declaration of an orphan, abandoned and surrendered child as legally free for adoption.
- Taking *suo moto* cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee provided such decision, is taken by at least three members including the chairperson.

It is evident from the above mentioned provisions that the Amendment Bill exhaustively lays down the mandates which the Child Welfare Committee has to adhere to. Functions and powers of the Committee have been unambiguously incorporated so as to ascertain that the Committee can work in an effective manner and carry out its functions without much difficulty.

V. CHILD IN NEED OF CARE AND PROTECTION

Any child who is need of care and protection has to be produced before the Committee within in twenty four hours.³⁰ On production of a child or receipt of a report the Committee shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency, may pass an order to send the child to the a children's home or shelter home or a fit facility or fit person, and for speedy social investigation by a social worker or child welfare officer or child welfare police officer.³¹ This social investigation has to be completed expeditiously so that the committee can pass a final order. The final order has to be passed within four months of the date of production of the child.

VI. ABANDONED CHILD

An "abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared abandoned by the Committee after due inquiry.³² The Committee shall make all efforts for tracing the parents or guardians of the child as prescribed and on completion of such inquiry, if it is established that the child is abandoned, the Committee shall declare the child legally free for adoption.³³

VII. ADOPTION

Chapter VIII of the Amendment Bill deals with adoption. "Adoption" is a process through which a child becomes the legitimate child of his adoptive parents with all the rights, privileges and the responsibilities that are attached to the child and is permanently separated from the biological parents.³⁴ A child in respect of whom an adoption order is made shall become the child of the adoptive parents, and the adoptive parents shall become the parent of the child as if the child had been born to the adoptive parent, for all purposes, including intestacy. From such date all the ties

³⁰ Clause 32(1), Juvenile Justice Amendment Bill, 2014

³¹ Clause 37(1), Juvenile Justice Amendment Bill, 2014

³² Clause 2(1), Juvenile Justice Amendment Bill, 2014

³³ Clause 39(1), Juvenile Justice Amendment Bill, 2014

³⁴ Clause 2(2), Juvenile Justice Amendment Bill, 2014

of the child in the family of his or her birth will stand severed and replaced by those created by the adoption order in the adoptive family.³⁵

Generally, it is the responsibility of the child's family to provide care and protection to the child. A child becomes legally free for adoption when it is declared as such as per clause 39(1) after the due inquiry of the Committee. As per clause 39(1) the Committee will have to make efforts for tracing the parents or guardians of the child as prescribed.

Post the inquiry if it is established that the child is either orphan or abandoned, then the Committee can legally declare a child free for adoption. For children who are upto two years of age, the aforementioned declaration should be made within two months from the date of production of child and for those who are above two years of age the declarations has to be made within four months.³⁶ The following conditions are necessary to be fulfilled by the prospective parents to be eligible for adoption:³⁷

- The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.³⁸
- Both parents have to give consent in case of a couple.³⁹
- Single parents are also eligible subject to fulfillment of regulations framed by the Authority.⁴⁰
- A single male child cannot adopt a girl child.⁴¹
- Any other criteria specified by the Authority.⁴²

Further, clause 64 states that any property which is vested in the adopted child before the adoption order comes into effect, will continue to be the vested in the adopted child. In addition to this all rights and obligations (if any) which are attached with the property, including obligation to maintain the relatives in the biological family. No payment or reward shall be given

³⁵ Clause 64, Juvenile Justice Amendment Bill, 2014

³⁶ Proviso clause 39(1), Juvenile Justice Amendment Bill, 2014

³⁷ Clause 58, Juvenile Justice Amendment Bill, 2014

³⁸ Clause 58(1), Juvenile Justice Amendment Bill, 2014

³⁹ Clause 58(2), Juvenile Justice Amendment Bill, 2014

⁴⁰ Clause 58(3), Juvenile Justice Amendment Bill, 2014

⁴¹ Clause 58(4), Juvenile Justice Amendment Bill, 2014

⁴² Clause 58(5), Juvenile Justice Amendment Bill, 2014

or received by any person as consideration for adoption, unless such activity is permitted by the rules and guidelines issued.⁴³ In event of contravention of the aforementioned provision a person can be punished by imprisonment extending upto 3 years and may also be liable to fine of Rs. 1 lakh or both for each violation.

Apart from these major rules which govern adoption process, this chapter also lays down rules with respect to procedure in case the prospective parents are living in India and inter country adoption, inter country relative adoption.

VIII. OTHER OFFENCES AGAINST CHILDREN

Chapter IX of the Amendment Bill deals with offences against children. Section 75 to Section 90 enumerate various offences and there punishments. A few of them have been discussed below:

- ***Prohibition on disclosure of identity of children (Section 75):*** Punishable by six months of imprisonment or fine extending up to Rs. 2 Lakh or both.⁴⁴
- ***Punishment for Cruelty on Child (Section 76):*** Punishable by term extending upto three years of imprisonment or fine extending up to Rs. 1 Lakh or both.⁴⁵
- ***Employment of Child for Begging (Section 77):*** Punishable by term extending upto five years of imprisonment or fine extending up to Rs. 1 Lakh or both.⁴⁶
- ***Penalty for giving Intoxicating Liquor or Narcotic Drug or Psychotropic Substance to a child (Section 78):*** Punishable by term extending upto seven years of imprisonment or fine extending up to Rs. 1 Lakh or both.⁴⁷
- ***Exploitation of Child Employee (Section 80):*** Punishable by term extending upto five years of rigorous imprisonment or fine extending up to Rs. 1 Lakh or both.⁴⁸
- ***Sale and procurement of children for any purpose (Section 82):*** Punishable by term extending upto three years of imprisonment or fine extending up to Rs. 1 Lakh or both.⁴⁹

⁴³ Clause 62(1), Juvenile Justice Amendment Bill, 2014

⁴⁴ Clause 75(3), Juvenile Justice Amendment Bill, 2014

⁴⁵ Clause 76, Juvenile Justice Amendment Bill, 2014

⁴⁶ Clause 77, Juvenile Justice Amendment Bill, 2014

⁴⁷ Clause 78, Juvenile Justice Amendment Bill, 2014

⁴⁸ Clause 80, Juvenile Justice Amendment Bill, 2014

⁴⁹ Clause 82, Juvenile Justice Amendment Bill, 2014

- **Abetment (Section 88):** If the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.⁵⁰

IX. COMPARISON BETWEEN JJ ACT 2000 AND THE AMENDMENT BILL

The following is a tabular analysis of comparison between the JJ Act of 2000 and the Amendment Bill:⁵¹

PROVISION	JUVENILE JUSTICE ACT, 2000	JUVENILE JUSTICE AMENDMENT BILL, 2014
Treatment of juveniles	All children under the age of 18 years treated equally. Maximum penalty for juvenile in conflict with law is three years	Juveniles aged between 16-18 years committing serious or heinous offences could be tried as adults. However, there will be no death penalty or life imprisonment.
Juvenile Justice Board.	Conducts inquiry and directs the juvenile to be placed in any fit institution for a period not exceeding three years.	Adds a preliminary inquiry, conducted in certain cases by JJB to determine whether a child is placed in a home or sent to Children's Court to be tried as an adult.
Child Welfare Committee	Disposing of cases for children in need of care and protection; Frequency of meetings not specified.	Functions are same as in the Act; training of members to be done within two months of Bill becoming law; Committee to meet at least 20 days in a month.
Appeals	Appeal to the Session Court within 30 days of JJB order; further appeal to a High Court	Appeal JJB/CWC order within 30 days to Children's Court, further High Court (District Magistrate for foster care, etc)
Adoption	No provision for inter-country adoption in the Act; the Guidelines Governing the Adoption of Children, 2011 provide for inter-country adoption	Inter-country adoption allowed if adoption cannot take place within the country, within 30 days of child being declared legally free for adoption.

⁵⁰ Clause 88, Juvenile Justice Amendment Bill, 2014

⁵¹ www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf

Foster Care	Temporary placement of a child to be given for adoption, with a family for a short/extended period of time; biological family may be allowed to visit	Same as the Act. Adds new provision for monthly checks on foster family by the CWC
After-care	Monetary and continued support for children after they leave special or children home for a period of three years or till 21 years of age.	One-time financial support to children leaving child care institutions after completing 18 years of age.

X. IMPLICATIONS OF THE BILL

Some of the provisions of the proposed legislation are violative of the constitutional provisions as contained in Articles 14, 15 (3), 20(1) and 21. The provisions of clauses 2(33), 2(45), 2(54), 7, 16, 19(3) and 20 of the proposed legislation seeking to bring major changes in juvenile justice system were in contravention of these constitutional provisions. The two hundred sixty fourth report of the Standing Committee on Juvenile Justice (Care and Protection) Bill, 2014 has noted the following as implications of provisions of the aforementioned bill:

1. **Violation of Article 14:** Article 14 recognised that weaker and vulnerable sections required special/additional protection. Article 14 states that every person shall be treated equally before law. It has been interpreted that unequal treatment may be permitted between different sets of people only if there is a clear public purpose sought to be achieved by such unequal treatment. Clause 7 of the Bill states that any person who is between the ages of 16-18 years and has committed a serious (between three to seven years imprisonment) or heinous offence (minimum seven years imprisonment), will be tried as an adult if he is apprehended after the age of 21 years (subject to other provisions of the Bill). This creates a distinction between two juvenile offenders committing the same offence on the basis of the date of apprehension. It is unclear what public purpose is

being achieved by differentiating between two individuals, committing the same offence, on the basis of date of apprehension.⁵²

2. **Violation of Article 15:** Article 15(3) of the Constitution permitted the State to enact special laws for the protection of children. It can be concluded that the Constitution recognised that children being vulnerable, have special needs requiring special protection and care. Based this Article, many laws have been enacted for the benefit of women and children and one such legislation was the Juvenile Justice (Care and Protection of Children) Act, 2000 which was based on a premise that the juveniles have some characteristics intrinsic to their age, requiring both differential treatment and opportunities for reformation and rehabilitation. Even before this Act the juvenile justice jurisprudence in the country had always accorded differential treatment to the juveniles recognising their peculiarities and need for reformation. The existing juvenile system is not only reformatory and rehabilitative in nature but also recognises the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. There is no need to subject them to different or adult judicial system as it will go against Article 15(3) of the Constitution.⁵³
3. **Violation of Article 20:** Clause 7 of the Bill is in clear violation of Article 20 of the Constitution. An artificial differentiation between children apprehended before 21 years and those apprehended after 21 years of age is proposed to be created. The Committee strongly felt that this categorization has no rationale. A person who was a child when the offence was committed will be treated as an adult on account of a failure on the part of the investigating agencies in apprehending him/her. The hon'ble Constitutional Bench of the Apex Court in the case of *Pratap Singh v. State of Jharkhand and Anr.*⁵⁴ had stated that the application of the Juvenile Justice act depends upon the age of the accused on the date of the commission of offence. The existing system that allows all juveniles to be treated within the juvenile justice system does not offend the right to equality under the

⁵² www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf

⁵³ The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.

⁵⁴ AIR 2005 SC 2731

Constitution. Altering the existing system under the guise of promoting the rights of victims of the right to equality is, therefore, highly suspect.⁵⁵

4. **Violation of Article 21:** Article 21 states that no person can be deprived of their right to life or personal liberty, except according to procedure established by law. Courts have interpreted this to say that any law or procedure established should be fair and reasonable. The differentiation based on the date of apprehension fails this standard.⁵⁶
5. **Violation of UN Conventions:** The UN Declarations, Rules, Conventions and General Comments adopted on the international platform denoted the progressive realization of the right of a child, being a person under 18 years, to be dealt with by the juvenile justice system without any exception. It was emphasized that UN Convention on the Rights of the Child was built on the principle that all children were born with fundamental freedoms and all human beings had some inherent rights. The Beijing Rules, entailed that a child or young person who had committed an offence should be treated by the law differently from an adult.

The Bill requires certain juveniles between the ages of 16-18 years to be tried as adults with regard to specific offences.⁵⁷ This provision is not in accordance with the UNCRC, as ratified by India, and mentioned in the Bill's Statement of Objects and Reasons. The Standing Committee observed that the Bill violates the UNCRC as it differentiates between children below 18 years of age.⁵⁸ The UNCRC states that signatory countries should treat every child under the age of 18 years in the same manner and not try them as adults. It recommends that those countries that treat or propose to treat 16-18 year olds as adult criminals, change their laws to align with the principle of non-discrimination towards children. The 2000 Act was enacted to implement the UNCRC guidelines in the

⁵⁵ The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.

⁵⁶ The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.

⁵⁷ Clause 16(1), Juvenile Justice Amendment Bill, 2014

⁵⁸ The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.

Indian context. Unlike the Bill, the 2000 Act complies with the UNCRC guidelines and does not distinguish between persons below the age of 18 years. However, many other countries try juveniles as adults, in case of certain crimes. All of these countries, except the United States, have ratified the UNCRC.⁵⁹

Other provisions of the Amendment Bill which violates the United Nations Convention on the Rights of Child are:⁶⁰

- The transfer system as mentioned in Clauses 15(3), 19(3), 20(1), 20(3) and 21 are in clear violation of Article 2 and Article 3 of the UN Convention.
- Institutionalization under Clauses 20(3), 21(2) and 22 are in contravention with Article 37(b) which deals with deprivation of liberty to be a measure of last resort and for the shortest possible period of time and Article 6 of the Convention dealing with right to life.
- Preliminary inquiry under Clause 16(1) is in conflict with Article 40(2)(b)(i) dealing with presumption of innocence which also prohibits the prejudging of the outcome and Article 37(b) which prohibits Arbitrary deprivation of liberty.
- Transfer to prison as provided in Clauses 20(3) and 21(2)(ii) contravenes Article 37(c) which mandates separation of juveniles from adults which does not mean "that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18."
- Trial as adults of children apprehended after completion of 21 years for committing serious or heinous offences as mentioned in Clause 7 is in conflict with Violation of the prohibition on no retroactive juvenile justice under Article 40(2)(a).

The above-mentioned observations of the two sixty fourth report of the Standing Committee are absolutely correct. There are certain provisions in the Amendment Bill which are controversial

⁵⁹ www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf

⁶⁰ The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.

and do not conform to the constitutional principles. In addition to this, the provisions inconsistent with the United Nations Convention on Child Rights are in plenty. It is pertinent to adopt laws which are in consonance with the aforementioned Convention as India is not just a signatory to the Convention but has ratified it as well.

XI. INTERNATIONAL PERSPECTIVE

Juvenile delinquency is a global problem. Various countries have different thresholds with respect to juvenile offenders. For instance, in U.S.A the minimum age at which a juvenile can be charged for an offence is ranging from 6 years to 10 years. United Kingdom has setup a threshold of 10 years for the same and in Germany its 14 years. Similarly, according to the laws of U.S.A the age for trying a juvenile as adult is 13 years which varies across different states. In United Kingdom the same is 17 years in England, Wales and N. Ireland, 16 years in Scotland (can be lower in Scotland (can be lower in exceptional circumstances). In France and Germany it is 16 years and 14 years respectively. Furthermore, the penalty for juveniles treated as adults also varies across various countries. In U.S.A, the penalty is same as adults but no life imprisonment and no death penalty. U.K. also has the same provisions as that of U.S.A; however life imprisonment is allowed. In France, the penal laws allow the penalty to be decided on case to case basis.⁶¹

Therefore, from the above table it is clear that various countries have different ways to cater to the juvenile delinquents. Countries like U.S.A and U.K. are more flexible with respect to the threshold of age as far as trial of the juvenile as adults are concerned. On the other hand, countries like South Africa and France have same age bar as that of India.

XII. CONCLUSION

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2014 is exhaustive in nature. The Amendment Bill has incorporated plethora of new provisions which profoundly impacts the juvenile justice system in India. The first inconsistency which appears in the Amendment Bill is with regards to title of the bill. Although, the phrase "*juvenile in conflict with law*" has been altered to "*child in conflict with law*" in the whole bill but the title of the bill still

⁶¹www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf

retains the word “Juvenile”. There are certain provisions of the Amendment Bill which are not only in contravention with the constitutional principles but are difficult to implement also. For instance, there are no parameters to evaluate the mental maturity and capacity of a child. In absence of any specific guidelines regarding the same, there is scope for arbitrary decision making by the Juvenile Justice Board during the inquiry.

In addition to this, there is an apparent disparity and conflict between clause 6 and clause 7 of the Amendment Bill in treatment of juveniles. Clause 6 of the Amendment Bill enshrines that if a person who is completed 18 years of age but is below 21 years of age is apprehended for commission of a offence which was committed when he was below 18 years of age, will be considered as a juvenile. Whereas, clause 7 states that ant person who has completed twenty one years of age is apprehended for a serious and heinous offence which was committed when he was between 16 to 18 years of age will be tried as an adult. It is pertinent to note that age of the person on the date of commitment of the offence should be the parameter to determine whether the person should be tried as an adult or a juvenile. The date of apprehension should have no bearing whatsoever on the manner in which a person should be tried. Apart from this clause 7 in itself is in complete contradiction with Article 14 and Article 20(3) of the Constitution.

Therefore, in light of the aforementioned observations it is apparent that the Amendment Bill, 2014 is in contravention with not just the constitutional principles but with certain provisions of the United Nations Convention on the Rights of the Child as well. However, it is pertinent to note that the provisions of the Convention cannot be adopted in entirety as the socio-legal scenario does have a significant impact on the laws which are applicable in a country. Further, certain provisions of the Amendment Bill require review and revision. Any provision which is inconsistent with the fundamental rights of the citizens should not be applicable. The Amendment Bill has such provisions in abundance which fail the tests of fundamental rights. Such provisions will most certainly lead to disputes and are likely to be struck down by the judiciary once the Amendment Bill is passed.