

Deviation from Traditional Approach of Juvenile Justice Law: Does it Reduce the Juvenile Delinquency?

Muhammed Saheeret¹ and Sachin Menon²

Abstract:

For more than six decades the Indian juvenile administration followed a reformatory and rehabilitative form of punishment for juvenile delinquent and accepted the fact that 16 to 18 years is the most crucial and sensitive age requiring greater protection. But the unfortunate, Nirbhaya incident reversed the existing reformatory oriented juvenile justice administration. Juvenile Justice Act, 2015 started a new era for juvenile justice administration in India by introducing provision for transfer of 16 to 18 years old juvenile delinquent alleged to have committed heinous offence to an adult criminal court. The provision for transfer of the juvenile to adult criminal court to trail as the adult and to punish like the adult is, directly and indirectly, inconsistent with the basic objectives of juvenile justice system in India and CRC. The paper focused on the various changes in traditional approach of juvenile justice law and its effect in juvenile administration.

Introduction

Children are considered as the future asset of every nation, and it is the moral obligation of every nation to ensure protection and healthy development of the children. Juveniles should be permitted and provided opportu-

1. Adv. Muhammed Saheer E T, Advocate, Calicut District court, LLM (Cochin University), email: saheer.amu@gmail.com

2. Adv. Sachin Menon, Assistant Professor, Co-operative School of Law, Thodupuzha
email: menon225@gmail.com

nities to develop as good, law abiding citizens. In societies all over the world, children are considered as the most vulnerable group, and most communities keep children under the protection of their parents. Most often they are under the circumscribing limit of their parent or any adult or any other authority. Today's children are tomorrow's citizens. Therefore, the children who involve in criminal or anti-social activity cause harm not only to him but also the society as a whole.

Juvenile delinquents have always got a treatment and punishment separate from adult offenders in most of the countries. This has resulted in a divergence in response in case of violation of law by the children and immature citizen. The reason for that is young people do not possess sufficient maturity to understand the consequence of their acts, and it would be unjust to deal them in the same manner as those who don't have the similar disability.

Juvenile delinquency is one of the important parts of criminology. The term delinquency is derived from the Latin word "delinquent" which means to leave or abandon and the term "delinquent" originally indicated the children who were neglected or abandoned by their parents. In the present system, the term using to indicate the children involved in harmful, anti-social or criminal activity. The term juvenile delinquent is defined as the child who is alleged to have committed any offence which is punishable by the law of the land and who has not attained the age in which an adult person is liable under the law.

The Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Act', hereinafter) is a beneficial legislation. The legislation is aimed at catering to the children's basic needs through providing the basic care, protection, development, treatment and social reintegration by adopting a child-friendly approach in the adjudication and the disposal of matter keeping in mind the best interest of the children and for the rehabilitation through the process provided and institution and bodies established. Before the establishment of

SidiqueAhemmed, criminology problem, and perspective,172 (1st ed.,1983).

the separate system, the alleged juvenile delinquent was arrested and investigated by the police officers, put on trial before the magistrate and sent to the jail along with the adult offenders or the habitual offenders. There was no separate treatment or any kind of leniency toward the children who committed the offence. The process of arrest, trial, and detention of child without any leniency causes the destruction of childhood of the juvenile offender and also the possibility of rehabilitation or reintegration of the juvenile offender into the community. The modern juvenile law established a separate system for the treatment of the juvenile offenders, and it included the treatment of both children in conflict with law and children in need of care and protection.

History and Development of Juvenile Justice Law

The classical Hindu law is a pointer in this regard. Even though it is very difficult to find out much about the subject in the Vedic literature, Smritis have taken up the issue at different stages. It is very difficult to find out the subject in some historic chronological order because we are not certain about the date of the different Smritis. The classical proponents are unanimous on the problem that the children should be given special treatment for they are incapable of understanding things but there was no uniformity in the exposition of the law in the issue. Sankha prescribed the complete exclusion of the juvenile delinquent up to five years. Kautilya prescribed the complete exoneration up to the age of twelve for the female and sixteen for the male but on the other hand, Manu approved corrective and corporal punishment for the juvenile delinquent. Mahabharata prescribed complete exclusion of juvenile up to the age fourteen, and that was followed in a different part of India with some variations. Matsyapurana, Narada, Brihaspathi and Yajnavalkya mentioned the male up to the age of eight as 'sisu' (like embryo) and 'bala' or 'poganda' after that up to sixteen years. This shows that during the early period of Indian history there existed a different kind of treatment of the juvenile delinquent and indicates the possibility of a double standard.

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

Ancient India did not have a single organized system of prison. India was ruled by the Muslim and Hindu rulers. During these periods the manner and quality of administration was different. This divergence in the quality of administration was clearly reflected in the administration and treatment of prisoners. Kingdoms ruled by the autocrat rulers were generally not concerned about the welfare and protection of their subjects. The law breakers were imprisoned and punished for offences. They got harsh punishment even for petty offences. During this period there was no segregation between the juvenile offender and the adult one.

A milestone in the development of juvenile justice was the report of the Committee on Prison Discipline published in 1834. The report demanded the classification of prisoners according to antecedents and character. It further recommended that classification among offenders should be applied to those under trial. The first separate institution for the better treatment of juvenile delinquents was established in 1838. The main objective of the institution was the reformation of juvenile delinquent arrested by the police or any other authority as well as the encouragement of the apprenticeship among the working class. One of the important initiations on the part of British East India Company was the establishment of the reformatory school for the protection of delinquent children. In 1843, due to the irrefutable demand from part of Indian people, Lord Cornwallis established a reformatory school at Bombay for children who were orphan and neglected. The prime objective of the school was giving a shelter to orphans as well as destitute children. It also aimed at reformation, rehabilitation, and reintegration of juveniles who engaged in anti-social activity and committed crimes.

Another important landmark in the development of juvenile justice system in India was the recommendations of the Indian Jail Committee in 1889 and 1919. The 1889 report investigated all aspects of Indian prisons, especially its administration. Some of the important recommendations given for the improvement of Indian prison administration were: (a) establishment of borstal schools in some parts of India for the reformation and correction

of juvenile delinquents (b) improving facilities for the vocational training (c) establishment of advisory board to look into and revise the terms of administration, if necessary (d) provision of religious instruction (e) improving the physical atmosphere and layout of the prison by means of a guardian (f) provision for giving instruction to the female prisoners in home industries etc.

On the basis of the jail committee report, the government took some steps to separate adult habitual offenders from casual ones, female offenders from male offenders, and juvenile delinquents from adult offenders. Special prisons were established for the prisoners suffering from tuberculosis or leprosy.

The measure taken to improve the condition of delinquent children in India has been considered as charity rather than social reformative policies. During the mid-1880s, the British East India Company enacted different legislations for the protection of juveniles- it was not absolutely for the treatment of juveniles in conflict with the law. The legislations enacted for the protection and welfare of the children were Vaccinations Act, 1880, Guardianship And Ward Act, 1890 and Factories Act, 1881. These are not exclusively dealing with juvenile delinquent but also included provision for the welfare and well-being of children, just like the Apprentice Act, 1850.

The Apprentice Act, 1850 was the first pan-India legislation for the treatment of juveniles. It dealt with the relation between the employee and employer. There is provision for the welfare and protection of children, especially poor and orphan children. It gives priority to the reformation and rehabilitation rather than institutionalized punishment of juveniles between the age of 10 and 18. Under this Act, both girls and boys who are convicted for petty offences or found destitute upon trial before a magistrate were bound to be an apprentice.

The Apprentice Act, 1850 was replaced by the Reformatory School Act, 1879, which was subsequently amended as the Reformatory School Act, 1897. The 1897 statute was enacted with objectives of reformation and rehabilitation of juvenile in need of care and protection. It gives power to the appropriate

government to establish a reformatory school for the protection and rehabilitation of children in need care and protection, and further, it prescribed the basic requirement of establishing the reformatory schools and child-friendly court. Under this Act, no boys over 18 years of age were to be detained in the reformatory school and such boys are to be released on the license if suitable employment is found for them. It did not make any indications on dealing with girls, even though the earlier Act made provisions for the treatment of girls.

The Second Jail Committee Report (1919) recommendations led to tremendous changes in the juvenile justice system in India. The Committee report reiterated that the object of punishment of juvenile delinquent should be reformation and reintegration of juvenile delinquent into society, and that the system should be focused on the moral and intellectual development of the juvenile delinquent. The Committee further recommended establishment of borstal schools for juvenile offenders aged below 15 years and reiterated that the government should ensure the functioning and effectiveness of child-friendly courts and separation of juvenile delinquents from the adult prisoners.

The 1919 Report investigated all aspects of the administration of prisons and recommended the separation and classification of prisoners, discipline, punishment, reformatory influences among prisoners, aiding prisoners' release on probation, borstal treatment and measures to prevent imprisonment for children and the young. The result of this Report was increased public as well as government attention for the welfare and better treatment of institutionalized offender, especially the juvenile offender. The Report points out that juvenile delinquency is the product of the circumstance and environment of children and that they are entitled to get good conditions for their growth and development. The Report also emphasizes that juvenile offenders are amenable to re-education and treatment because their attitude is not fixed. It can be changed giving good education and other positive treatments.

Beginning of the Era of Modern Juvenile Protective Legislation

The beginning of all development of prisons in India can be traced back to the recommendations of the Jail Committee, which made several proposals for the development of prisons in India. Till the said recommendations, the reformation and treatment of juvenile delinquents had not received much consideration from the government. In India, before the Jail Committee recommendations, juvenile delinquents had to undergo imprisonment in jail along with the adult offenders. The Bombay Jail Administration Report called the attention of government and the public to five cases of juvenile delinquency which were rather harshly dealt with by the magistrate. The Report stated many incidents in which minor girls and boys aged below 10 years were sentenced to rigorous imprisonment for six months or above under the criminal procedure code even for petty offences.

As the result Jail Committee recommendations, some states enacted legislations to give effect to the recommendations. After 1920 different states started enacting separate state laws for the protection of juvenile offenders. Tamil Nadu was the first state to enact a law, the Madras Children Act 1920,

³ The Bombay Jail Administration Report(1915-16), Bombay Prison Authority,1916,Government of India press minto Road, New Delhi

⁴S.3 (1), Madras Children Act 1920.Child means a person under the age fourteen year age and when used in reference to child sent to a certified school applied to that child during whole period of detention notwithstanding that child attained the age fourteen years the expirations of that period.

id. S.3 (2).Youth person means person who is fourteen years old or upward and under the age sixteen year.

Id. S .3(3).The youth offender means any person whom has been convicted any offence punishable with transportation or imprisonment and who at the time of such conviction was under the age of sixteen.

Delhi Children Act, 1943.

Mysore Children Act, 1943.

The Travancore Children Act,1945.

The Cochin Children Act, 1946.

The Bombay Children Act, 1948.

A.P. Children Act,1920.

The Uttar Pradesh Children Act, 1951.

The Bengal Children Act, 1922.

to deal the juvenile delinquent. It proposed separate treatment, custody, trial and punishment for the youthful offender and the protection of children and youth. Sections 3(1), 3(2) and 3(3) define child, youth person and youthful offender respectively.

The Madras Children Act, 1920 included provision for establishment certified schools such as the senior certified school for the training of youthful offender, and the junior certified school for the training of children. Further, it is to be noted that the senior certified school was designed to give protection and training to the youthful offender, who were below 16 years of age; and the junior certified school, who were designed to give care and protection for children, who were below 14 years of age. After the Madras Children Act, 1920 different states enacted state laws to deal with the juvenile offender. Some states were Delhi, Mysore, Travancore, Cochin, Bombay, Andhra Pradesh, Uttar Pradesh and West Bengal. All these legislations proceeded in the same manner which gives importance to the reformatory and rehabilitative measure of punishment for the child and youth offender.

After independence, there were many developments in Indian juvenile justice administration consistent with the international human rights law framework. Both the central government and state governments introduced different laws, policies, and programs for the development and welfare of the juvenile in conflict with law and children in need of care and protection. For treatment of the juvenile delinquent, the Children Act, 1960 is the first central legislation after independence. This Act was extended to all union territories and was designed as a model to all states. The Children Act, 1960 was a purely beneficial legislation which established child-friendly courts and had a friendly procedure for the welfare, well-being, and rehabilitation of the juvenile offender. It consists of seven chapters and sixteen Sections. Sections 13 to 17 deal with neglected children. In 1978, it was amended for removing some lacunae in it. Also, the amendment widened the definition of neglected children to include children on whom parents are not able to exercise power

Also known as Beijing rule

within the definition provided in the statute.

The Juvenile Justice Act, 1986 was the first pan-India legislation for the treatment of juvenile delinquents. The government of India enacted the legislation for the reformation and rehabilitation of juvenile delinquents as existing laws were found inadequate in providing care, protection and healthy development of juveniles in conflict with law and children in need care and protection. It is first in the history of India where a single legislation was enacted for the separate treatment of juveniles including the investigation and trial of the juvenile offender. The prime objective of the statute was the implementation of the provision related to the United Nations Minimum Standards Rule 1985 and it implemented the rule into domestic law without losing its spirit and object.

The Juvenile Justice Act, 1986 was enacted with the objective of providing a uniform way of administration of juvenile delinquents all over India along with providing a humanitarian approach to the treatment of juvenile offenders and it ensures that the no juvenile delinquent under any circumstances is treated under the ordinary criminal procedure. This Act gave a gender-based definition for child, according to which 'child' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. This gender-based definition of the juvenile has been controversial.

The preamble of the 1986, Act is states that it is "An act to provide for the care protection, treatment, development and rehabilitation of neglected or delinquent juvenile and for the adjudication of certain matters related to the juvenile delinquent." The incorporation of words like 'development' and 'treatment' widened the scope and importance of the preamble, and the word 'development' has indicated a humanizing aspect in the treatment of juveniles.

Juvenile Welfare Board, Juvenile Court and different other authorities were constituted under the 1986 Act for creating juvenile-friendly proceedings and treatment. It gave direction to the appropriate state governments to constitute a Juvenile Welfare Board and Juvenile Court in each state; all the reforma-

tions are the part of the creation of child-friendly system. The child brought before the board is entitled to get bail in both bailable and nonbailable offences; a board can only in exceptional circumstance refuse bail.

So it was the first uniform legislation for the treatment of juvenile delinquents. It faced a lot of criticisms from different parts of society. Firstly, it was criticized as a mere replacement of the central Children Act, 1960 by excluding some terms, thereby containing nothing new. Some other criticisms related to the definition of 'juvenile' and 'neglected child'. The first problem related to the age differentiation between boys and girls for application of the statute; the next critique was that the definition of 'neglected child' was very narrow. The need and demand for care and protection of juvenile delinquents, and a separate body for dealing with them remained unanswered.

Convention on the rights of the Child and its effect on Indian Juvenile Administration

The Convention on the Rights of the Child ('CRC', hereinafter) is the international human rights convention which enumerates and emphasizes the basic human rights of children worldwide, and further, it elaborates the standard of human right with respect to the child. CRC was adopted by UN General Assembly on November 20, 1989, and it entered into force on September 2, 1990. It is one of the most widely accepted treaties in the world and more than 190 countries have ratified the treaty. Unfortunately, the United States of America did not ratify CRC along with South Sudan and Somalia but at same time the convention quickly become the world's most recognized treaty, a recognition which is considered as a victory for the global child rights movement. The rights enshrined in the CRC are available to all children without any discrimination or unreasonable limitations. The CRC is considered as a milestone in the history of human rights protection. It includes several provi-

S. 2 (h), Juvenile Justice Act 1986.

id. Preamble.

id. S.4.

id. S. 5.

sions for the welfare of children such as the right to education, name and nationality, right to identity, right of access to information, right to healthcare. Further it gives protection from arbitrary arrest and treatment, separate conviction from adults, prohibition of death penalty, right against exploitation, torture, and inhuman punishment, etc.

A prime object of the CRC was to give a binding effect the rights enshrined in the United Nations Standard of Minimum Rule for the Administration of Justice System, especially the rights related to the juvenile in conflict with the law. Articles 37, 38 and 40 are dealing with the delinquent child and the trial and punishment of such children. Article 37 is one of the important provisions which gives a basic standard for the treatment of juvenile delinquents and it places a binding obligation on nations to not give any kind of punishment for the children in a manner that causes cruel, torture or inhuman and degrading punishment and neither capital punishment or life imprisonment without possibility of release. The Article further provides a child the right to be not deprived of the right to liberty unlawfully and arbitrarily. Arrest and detention is considered a last resort; if the circumstances do not allow the avoidance of arrest and detention it should be done in accordance the law, and the arrested child should be treated with humanity considering the age and vulnerability of the child.

CRC provides that the juvenile offender should be treated separately and shall have the right to maintain contact with family and relatives. It enunciates that children who are deprived of their liberty have the right to get legal and other assistance; the right to challenge the legality of the deprivation of their liberty and to be heard at any administrative or judicial proceeding directly or through a representative or any appropriate body in a manner consistent with the law of land.

Art.7, Unite Nations Convention on the Right of Child 1989.
id. Art.8.
id. Art.29.
id. Art. 37(1) (a).
id.Art.37 (1) (b).

Article 40 deals with juvenile delinquents or children accused of committing an offence or violating the penal law of land. This provision establishes a basic standard for the arrest, investigation, trial and punishment of children and for the treatment of juvenile delinquents who have been accused or alleged to have committed an offence. The Article advocates that states parties must give importance to the rehabilitative measure rather than the punitive form of punishment and gives direction to states parties to give priority to a variety of dispositions such as care, guidance and supervision orders, counseling, probation, foster care, education, vocational training and other institutional care to ensure that children are dealt with in a manner appropriate to their well-being, protection, circumstance and the alleged offence.

Another important factor of CRC is that it creates an international monitoring committee known as Committee on the Rights of the Child. It is a body created under the convention to monitor how the parties fulfill their obligation under it. The committee is composed of ten independent experts elected by states parties and makes its assessment through the five-year reports submitted by the concerned government. The report includes facts and difficulties, if any, faced by parties for implementing rights and duties enshrined in the CRC. The report would be in such manner that the committee can understand all the difficulties and problems faced by countries for implementing the provisions of the convention. Using the report, the committee takes appropriate proceedings which will help countries to implement the provisions in a better and easier way.

So it is clear that the main objectives of CRC are to establish and administer a child-friendly juvenile administration system which is acceptable to all communities and ensure all kinds of care and protection from both governmental and non-governmental organizations. CRC gives a moral and legal obligation to states parties and parents of children. All actions taken by

id. Art. 37 (1) (c).

ibid

ibid

Art. 40, The United Nations Convention on the Right of the Child 1989.

parents and states parties should be in the best interest of the child. It further states that state parties must ensure that the institutions, services and facilities responsible for the care and protection of children are consistent with the standards prescribed by the competent authority.

After the formulation of CRC, there was irrefutable demand in different parts of India for the replacement or amendment of existing domestic juvenile justice legislation to bring in the principles and obligations under CRC, which India also had recognized. The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted with an objective to give care, protection, good and effective treatment to those who need care and protection, and to rehabilitate and reintegrate children in conflict with the law, as well as to provide speedy adjudication and disposal of matters related to children for their well-being and in their best interests. The statute applies to children in need of care and protection and juveniles in conflict with the law. One of the main critiques against the 1986 Act was that there is no uniformity in age between boys and girls under it. The 2000 Act brought uniformity in the definition of 'juvenile'. According to it, 'juvenile' means the child who has not completed the age of eighteen years. It means that boys and girls who have not completed eighteen years of age come within the preview of juvenile law. 'Juvenile in conflict with the law' means juvenile alleged to have committed the offence and has not completed eighteen years of age as on the date of commission of offence. Further, it created a statutory body for dealing with the juvenile in conflict with the law. The Board shall consist of a magistrate and two social workers; one member shall be a woman. The Principal Magistrate should have special knowledge or training in child psychology and child welfare and the social workers are required to have actively involved in health education or welfare activity pertaining to children for at least 7 years and should have postgraduate degree in social work, health education, psychology, child devel-

id. Art. 3 (3).

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

id. Sec. 2 (1).

id. S. 4 (2).

opment or any other social science discipline.

If any child is alleged to have committed any offence, it is the duty of an officer to bring that juvenile to the Juvenile Justice Board, and the Board can order for further inquiry in the matter. Inquiry is done by a special juvenile police unit. They have to finish the inquiry within the stipulated time and during the pendency of proceeding they may send the child to the concerned parent or guardian or in some circumstances they may send the child to the observation home. In case the children do not have any parent or guardian they may be permitted to remain in the juvenile home. If the child is found guilty of any offence, imprisonment is considered a last resort. There are many other options in front of the Board like providing group counseling, advice, admonition, etc

Adult Punishment for the Juvenile Offenders: Does it reduce Juvenile Delinquency

The punishment approach is functionally based on the different attitude of the society, including the emotional attitude of the crime caused. Indian juvenile system is traditionally based on reformatory and punitive approach. Ahemmed Sidique has successfully summarized the two basic theories of the punishment approach. According to him, the rationalization of punishment may be classified into two classes to be based on the utilitarian and retributive theories. While the retributionist's emphasis that the implementation of punishment can be justified in itself since the offender should be given their deserts. The utilitarian's regard punishment as an evil which should be used only if it serves some real purpose. There were many theories justifying the retributive punishment from the different points of view. Henrich Oppenheimer has explained that "theological ground which is satiating the pun-

id. S. 4 (3).

Id. S.2 (w)."Juvenile Police Unite" means unite of police unites of police for handling of juvenile or children under the section 63.

SidiqueAhemmed, criminology problem and perspective,44 (1st ed.,1990).

HenrichOppenheimer, The rational and punishment,(1st ed.,1930),

ishment should be such as to flush away the guilt of the offender.” Walter C. Reckless demanded for punitive retribution which still lurks in the mind of the individual. Although it takes in the form of a rationalization or sentiment something that ought to be done or an action that justly and rightly need to be made and streamlining and feeling are carried forward as a social concept of justifying the necessary punitive measures on the part of the state, the deterrent form of punishment is intended to teach a lesson to the offender and create a fear in the eyes of others that it will happen to them if they violate the law or norm of the community.

The concept of punishment under the juvenile administration is incompatible with the other criminal system. Juvenile Justice Acts or Children Acts were the beneficial legislation which was enacted to the protection of children and not punishing the child. The ostensible object of the juvenile administration is to create a separate system of administration for the development, welfare, rehabilitation, and reintegration of juvenile delinquents into the society. Therefore, all the activities and initiation-related to juvenile administration is to achieve the object and the punishment under the juvenile which is also considered as one of the means of making this object.

Concept of Concept of Punishment under Indian and International Law

Under the leadership of the United Nation Organization, world community initiated different declarations and conventions for the protection of children from the cruel and adult-centric punishment system; it is considered as one of the important function of the United Nations to establish an international standard for the protection of children from adult-centric punishment and create a separate form of juvenile administration.

Punishment under Convention on the Right of Child

All the international documents which were enacted for the protection of right of juvenile in conflict with law did not the favor giving punishment to ju-

venile delinquent and international documents advocated that imprisonment should be a last resort in case of the juvenile in conflict with law and forbid death sentence as well as cruel or inhuman punishment for the child who violates the law. Article 37, 39 and 40 of the CRC specifically dealing with the punishment aspect of the juvenile in conflict with the law, article 37 (a) of convention states that, “No child shall be subjected to the torture or other cruel, inhuman or degrading treatment or punishment. Neither the capital punishment nor the life imprisonment without possibility of release shall be imposed for the offences committed by the persons below eighteen years of age.”

Article 37 (a) reiterating one of the established principles of the International Convention on civil and political right 1966 states that the no person shall be subject to cruel or inhuman and degrading treatment or punishment and the term person includes a child, also further the convention gives an obligation to the world community to abolish the death penalty and not to give the death penalty to the person below 18-year-old. Child is entitled to get benefit of all basic human right as adults are entitled to get as well as some other subset of right which is not to the adult persons, the convention further offers some special right to child offenders like Article 10 (3) demanding segregation of the juvenile offender from the adult offender and Article 14 (4)

Art. 7, International Convention on Civil and Political Right 1966.

id. Art. 65. Sentence of death shall not be imposed for the crimes committed by the persons below the eighteen years of age and shall not be carried out on pregnant women.

id. Art.10(3) 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their social reintegration and reformation. Juvenile delinquent shall be separated from adult offenders and be accorded treatment appropriate to their age, and legal status.

id. Art.14(4) 4. In the case of the juvenile persons, the procedure shall be such as will take account of their age and desirability of promoting their rehabilitation.

Art.37(a).UN Convention on the Rights of the Child, 1989. Which is excludes child offenders from the death penalty (B) International Covenant on Civil and Political Rights, 1966 Article 6 (5), (C) African Charter on the Rights and Welfare of the Child (D) American Convention on Human Rights.No state party whose laws currently provide for the death penalty against child offenders has entered a reservation to the relevant provision of that treaty.

demanding the procedure against juvenile should consider the age of juvenile delinquent as well as with the intention of rehabilitating the juvenile offender into community and the International Convention on Economic Social and Cultural right 1966 also emphasized that the punishment for the juvenile offender should be reform the juvenile offender.

Article 37 of CRC deals about the obligation of the world community to prohibit the cruel and inhuman punishment against the juvenile offender and forbid death penalty for a juvenile offender. There are several international and regional convention and declaration which ostensibly forbid the death penalty for children who had broken the existing law. About 194 states have now ratified the regional or international convention which prohibits the death penalty for a juvenile offender and most of the country incorporated and implemented the provision into the domestic law except united state of America. USA is one of the few nations which has reserved the provision of prohibiting of death penalty stating that the USA reserves the right, according to its Constitutional constraints, to impose death penalty on any person (other than a pregnant woman) duly imprisoned under existing or future laws permitting the imposition of death penalty, including such punishment for crimes committed by persons below eighteen years of age and most of the State law of United States enacted in such way that there is no difficulties in treating a child offender as the adult. Article 19 (1) CRC gives obligation to parties that the parties shall take all the appropriate legislative, administrative, social and educational measures to protect the children from all kinds of mental or physical violence, abuse or injury, neglected or negligent treatment, exploitation or maltreatment, including the sexual abuse, while in the care of

In the USA since 1995, two states, Indiana and Montana, have raised the minimum age for the imposition of the death penalty to 18 at the time of the offence. Of the 38 US states whose laws currently provide for the death penalty, 16 exclude its use against child offenders, as does federal law. No US state has lowered the minimum age since executions resumed in the country in 1977.

Amnesty International Report, (2003).

Art.38 (b), United Nation Convention on Right of Child, 1986.

Rule 17 (3), Beijing Rule, 1985.

the parent(s), legal guardian(s) or any person who has the care of the children. Article 39 of the Convention recognized the responsibility of the state to take measures to promote the physical and psychological recovery and social reintegration of the juvenile victim from any form of the neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts.

Under the international law imprisonment of a juvenile is considered as the last resort, CRC states that the no children shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of children shall be in conformity with the law and shall be used only as a last measure of the resort, and it should be for the shortest appropriate period. There should be no corporal and degrading punishment and the imprisonment of the juvenile offender without the possibility of release is considered as the violation of the basic human right of the juvenile delinquent. The basic standard of treatment of juvenile offender now has become part of the customary international human right law, and the Committee on the Right of Child expressed its concern about the nations which did not prohibit the death penalty and corporal punishment of the juvenile offender.

CRC emphasizes that all proceeding initiated against the children should be for the best interest of juvenile offender. Article 3 (1) of CRC in all actions related or affecting children, whether undertaken by the public or private social welfare institutions, the courts of law, legislative bodies, or administrative authorities, the best interests of the juvenile shall be a primary consideration, and it gave some kind of binding obligation upon the parties to that all the proceeding related to juvenile delinquent should be for giving care and protection or development or rehabilitation and reintegration of the juvenile delinquent, not for punishing the juvenile delinquent. Beijing Rule gave special importance to protect the interest of the juvenile delinquent offender, Rule 5 (1) The juvenile justice system shall emphasize the well-being of the children and shall ensure that any reaction to child offenders shall always be in proportion to the circumstances of both the offenders and offence and Beijing Rule

ensuring and protecting the basic human right of juvenile offender during proceeding against the juvenile. According to Beijing Rule all the States are obliged to ensure the Basic procedural safeguard such as right to be notified of the charges, right to counsel, the right to remain silent, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses the presumption of innocence, and the right to appeal to a higher Court or authority shall be guaranteed at all stages of proceedings.

So clearly the CRC or any other international document enacted for the protection and welfare of the juvenile delinquent, the international human right law not only advocated the adult-centric punishment but also gave a binding obligation to the state to prohibit the adult-centric punishment of juvenile delinquent. Article 37 of CRC only prohibits death sentence or life imprisonment without parole or release and further convention put a giving obligation to respective state that the imprisonment of juvenile offender should be recognized as the last resort of punishment, meaning that giving or recognizing imprisonment as one of the means of punishment is not contradictory with the any article of convention on right of child.

Introducing separate punishment for the juvenile delinquent who had committed the heinous offence is inconsistent with the basic objective of the CRC. Even though the CRC is not absolutely prohibiting the imprisonment of the juvenile offender but the convention emphasized the imprisonment of juvenile delinquent should be the last resort of treatment, and it should be for the best interest of juvenile offender.

Punishment under Indian Law

During the early period of the Colonial rule, there was no legislation dealing with the liability of juvenile offender or welfare of juvenile delinquent; there was no separate punishment for the juvenile offender, they were tried and punished like the adult offender. The Apprentices Act, 1850 was the first legislation which renders a separate form of punishment for the juvenile offender. The Apprentice Act made an attempt to keep away juvenile delinquent

between the age of 10 to 18 from the imprisonment and segregated juvenile offender from the adult offender, included provision for vocational training for the juvenile offender. In Reformatory School Act, 1876 gives a duty to the government to establish a reformatory school for juvenile delinquent aged below 15 years and sending them to the reformatory school instead of sending them to jail with the adult offenders.

Imprisonment as the method of punishment does not have any ultimate objective expecting to have a retributive or deterrent value; it is inconsistent with the objective of the juvenile justice system. Naturally, it is always advisable that under any circumstance child offender should not be sent to prison because once he is sent to prison he is almost certainly a lost case for the society. In prison, he develops an arrogant attitude, disregard for the society, and ultimately he converts himself as a hardened offender criminal in which he is assisted by his colleague in prison.

Juvenile - Centred Punishment Approach

The concept of punishment was not compatible with the object of the juvenile justice system in India, before the enactment of state Children Acts by the different statute. The Indian Penal Code, 1860 and Code of Criminal Procedure, 1973 were the only enactment which deals with the juvenile delinquent all over India. Indian law, In general prescribe five types of punishment, namely death, imprisonment for life, imprisonment of either description, simple or rigorous forfeiture of property or fine but Children Act of different state included correspondent punishment under Act and emphasized that the no juvenile shall not be sentenced to death or sentenced to imprisonment or committed to prison for default of payment of fine or default of furnishing

The Andhra Pradesh Children Act, 1951. The Bombay Children Act, 1948. The Haryana Children Act, 1974. The Uttar Pradesh Children Act, 1951. and Saurashtra & West Bengal Children Act, 1922. etc.

Ss. 82 and 83, Indian Penal Code 1860.

Ss. 29(8), 29 (B), 309, 399 and 572, Criminal Procedure Code 1973.

Ss. 53, Indian Penal Code, 1860.

security. Children acts provide the following types of punishment for the juvenile delinquent:

(a) Order the delinquent to be sent to the reformatory institution or Borstal. If the offense committed is serious in nature or the delinquent of unruly character to be sent to the reformatory institution

(b) Order the delinquent to pay fine. If he is lawfully employed and above the particular age, may order to pay the fine

(c) Order the guardian or parent of juvenile delinquent to pay the fine

(d) Discharge after admonition

(e) Release on probation of good conduct and placed under the care of parent, guardian or any such fit person executing bond with or without sureties

There is a clear difference between the punishment for the children acts and punishment under other criminal law system in India; Children Acts did not consider imprisonment or sending the juvenile to the reformatory institution as the method of punishment in any case. Sending a juvenile delinquent to reformatory institution provides a safe custody in such place and such a manner may be prescribed by the court or report in case of the administrator, on receipt of the report of the court the administrator may make such arrangement in respect of child as he deem fit and may order to such juvenile delinquent detained at such place and in such condition deemed fit, custody under children act not only mean the protective custody but it shall also mean the reformatory custody, it is an attempt to transcend the custody as treatment to juvenile delinquent for reform and reintegration into society .

The important punishment given under the state's children acts was im-

The Andhra Pradesh Children Act, 1951 The Bombay Children Act, 1948 The Haryana Children Act, 1974 The Uttar Pradesh Children Act, 1951 and Saurashtra & West Bengal Children Act, 1922, etc.

Saurashtra & West Bengal Children Act, 1922.

Dr. N.L Mithra , Juvenile Delinquent, and Indian Juvenile System, 249 (2second ed.,1988)

posing the fine upon the juvenile offender or guardian or parent of the juvenile offender. Fine is considered under the Act as a means of punishment, even though fine has been universally applied as means of punishment in all most all system but to some extent in juvenile administration, imposing fine is the process of discrimination amongst the accused by personal wealth. In juvenile justice system especially in Madras Children Act, 1920, Bombay Children Act, 1948 and West Bengal Children Act, 1922 fines were an important tool for the punishment, there is condition is to be satisfied by the court that the juvenile delinquent must above age of 14 and he must have been gainfully employed and this is very rare that the parent or guardian of juvenile delinquent may find if they have been found not to have exercised due control over the juvenile delinquent.

Whereas the juvenile delinquent is bound to be scarred psychologically, the punitive measure of the precautionary consideration is minimal at the age of the juvenile. The juvenile is least concerned about the fine. Of course, fine imposed upon the guardian on account of juvenile delinquent belonging to a family shall have the deterrent aspect and compel the guardian or parent to take proper care of their children and fine also provides an opportunity to release a juvenile delinquent who is belong to a middle-class family.

For First time offenders for small and minor offence, juvenile delinquent should be treated with leniency, so that children are not unnecessarily accosted with the unusual life of the correctional institution that is prevalent in our country, and it also needs to be considered that the delinquent propensity of person is minimum the family environment, therefore his family life should not be disturbed unless essentially required. If the parents are warned, and juvenile delinquents are admonished in such situation that itself would have a retarding and controlling effect in the case of the first offender. Releasing of juvenile delinquents on admonition is also to be read along with releasing after imposing the fine, it is apparently true that the all the juveniles accused brought before the police authorities were not produced in the children court or any other appropriate judicial body, in such case police after warning the

parents admonish the juvenile offender even though the police did not have the power to do so, but countries like UK and USA gave the power to police after warning and admonition.

There is a notable difference between the provisions of punishment under the state's children act like the Orissa Children Act, 1981, West Bengal Children Act 1959 and Madras Children Act, 1920 and punishment provision of Children Act, 1960. In section 22(1) of Children Act, 1960 indicate that the where a child who has completed the age of fourteen years old has committed an offence, and the children's court found out that the offence committed is so serious in nature or that his behavior and conduct have been such that it would not be in his or her interest or in the interest of other children in the special school to send him to such a special school. The Children's Court may order the juvenile delinquent to be kept in safe custody in such manner and place as it thinks fit and shall report the case for the orders of the Administrator. On receipt of such report from a children's court under sub-section (1), the Administrator may make such an arrangement in respect of the juvenile as he deems proper and may order such delinquent child to be detained at such place and on such conditions as he thinks fit, provided that period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been convicted of the offence committed. Provision of the section 24 (2) of the West Bengal Children Act, 1959 indicate that where the Court finds out that the offence committed by the juvenile offender is of such a serious nature or that he is so unruly depraved then he is not a right person to be sent to a reformatory or portal school. The court may convict him to imprisonment for a period not exceeding the maximum period of imprisonment to which he could have been sentenced. West Bengal Children Act, 1959 recognized and accepted imprisonment as a method of punishment, but at same time Children Act, 1960 did not differ the objective of the act, the act did not recognize the concept of imprisonment as method of punishment, custody of juvenile means the reformation of juvenile delinquent.

New Approach of Punishment

Before the Juvenile Justice (Care and Protection of Children), 2015 Act was enacted, juvenile system was purely child oriented, and the system did not give much importance to the victim of the offence and system was based on the reformation and reintegration of the juvenile offender into society. The juvenile system of administration established a separate system of correctional institutional treatment of juvenile delinquent with the object reform and rehabilitated the juvenile offender, Justice Bagawathi pointed out that “It is an elementary requirement of any civilized society, and it had been provided that in different statutes related to the children that juvenile delinquent should not be confined to prison because incarceration in jail has a dehumanizing effect and it is harmful to the development and growth of children”.

In the case the Public Prosecutor V. ShaikValli and Ors, the court stated that the concept of detention in certified or reformatory schools is not to be conceived as or equated to punishment in the sense in which the word is used in Section 53 of the Indian Penal Code, 1860 of course it is punishment in a narrow sense because there is a deprivation of personal liberty. The object of detention in certified schools is to reclaim erring young person's lost or likely to be lost to society because of the circumstance or bad upbringing or togetherness and to make good citizens of them. A certified school is a reformatory institution and not considered as a prison. Institutional treatment plays an important role in the correctional method of the juvenile justice system and in different cases Supreme Court and the various high court stated that there is provision under the juvenile justice act for sentencing the juvenile offender, in the case Kakoo V. In Himachal Pradesh, Kakoo, aged 13 years, was convicted of commission of rape on a child of two years and was convicted to four years' rigorous imprisonment. His sentencing has been maintained by the High Court of Himachal Pradesh, and in appeal Supreme Court reduced

id. p 247
Children Act 1960, Sec. 22 (2).

the sentence observing that

“The sordid characteristics of the case, including the sadistic way in which the offence was committed by their instinctive reaction to tend to steal the heart of law for a sterner sentence, we cannot overlook the stark fact that during the time of commission of the heinous offence, the appellant was hardly 13 years of old. An inordinately long prison term is sure to turn him into a hard criminal. In the case of juvenile offenders, current penological trends command a more humanitarian approach.”

More than sixteen years, Indian juvenile administration followed the reformatory form of punishment, but the Nirbaya incident led to change the concept of punishment under the juvenile administration. In *Darga Ram @ Gunga v. State of Rajasthan* Justice T S Thakur observed that no matter how serious in nature the crime was committed by juvenile the safeguards available to him under the Act must be provided, the appellant may have deserved the hard punishment allowed under law. The fact that the appellant has been in jail for more than 14 years is the only cold comfort for us to let out of prison one who has been found committed rape and murder of an innocent young child in *Gaurav Kumar v. State of Haryana* Emphasized about the need to rethink about the punishment aspect of the child who committed an offence like murder, rape etc. Dipak Misra J and Prafulla C. Pant, JJ observed that the

“When we state that we thought that there should be a rethinking by the Legislature, it is appropriate to note here that there can be a circumstance where the commission of an offence may be entirely inoffensive or emerging situation. Where a young boy is not aware of the consequences, but in cases of rape, dacoity, murder which are heinous crimes, it is tough to conceive that the Juvenile was not conscious of the consequences.”

In above two cases courts gave relief to the juvenile offender but the same court tried to establish a new treatment for juvenile offender by the gravity

Sheela Barse v. The Union of India, A I R 1986 SC 1773.
1971 Cri L J 1229.
A I R 1976 S C 1991.

of the offence committed and not on the sole basis of relying upon the age of the juvenile offender. Juvenile Justice Act, 2015, implemented remarkable changes in the juvenile justice administration especially treating the children in conflict with the law. For the purpose of treating and disposal of case-related the Juvenile in conflict with the law, Juvenile Justice Act 2015 categorized offenses into three (1) petty offence (2) Serious offence (3) heinous offence and juvenile justice board has the power to try and punish all the juvenile delinquent below 16 years of age who has committed any offence, also they have the power to try and punish juveniles for serious or petty offence between 16 and 18 years. In the case of a juvenile who had committed a heinous offence, he or she shall be treated as an adult offender. It is an obligation of the juvenile justice board after the preliminary inquiry to transfer such children into the children court having jurisdiction to try the case and in case of juveniles who has been found to have committed heinous offence, he is not entitled to get the benefit of Juvenile Justice Act, and he may be send to place of safety till he

2015(1) M L J 224. The appellant-year-old was tried and convicted for offences punishable under Sections 376 and 302 Indian Penal Code. For the offence of rape punishable under Section 376, he was sentenced to undergo imprisonment for ten years besides a fine of Rs.1000/- and default sentence of one month with rigorous imprisonment. By matter come for the final appeal appellant had served 14 years of his sentence. in final appeal appellant raised the claim of juvenility on date of commission of offence.
A I R 2015 S C287.

S. 2 (45), Juvenile Justice (Care and Protection of Children) Act 2015. "petty offences" includes the offences for which the maximum punishment under the IPC or any other law for the time being in force is imprisonment up to three years

id. S. 2 (54). "serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years;

id. S. 2 (33). "heinous offences" includes the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more

id. S. 18 (3). "Where the Board after the preliminary assessment under the section 15 pass an order that there is a need for the trial of the said juvenile as an adult; then the Board may order the transfer of the trial of the case to the Children's Court having jurisdiction to try such offences"

id. S. 19 (3). "The Children's Court shall ensure that the child who is found to be in conflict with the law is sent to a place of safety till he or she attains the age of twenty-one years and after that, the person shall be transferred to a jail"

attained the age of 21 and thereafter he may be transferred to the jail.

Sending a juvenile offender after a long and arduous process to children's court with only an assumption that the juvenile offender can be tried and punished just like an adult offender, is inconsistent with the basic object of the juvenile justice system as well as the international convention. This diverts the concept of juvenile protection from a child-friendly and protective approach of juvenile justice system. It is the apparent object of the Juvenile Justice Act that the children not subject to any kind of punishment should only be given care and protection. The transfer of juvenile delinquents who has committed a heinous offence by considering the circumstance of commission offence, the gravity of the offence and age of children but their state of mind is not lead toward achieving these objectives but to punish them by providing long-term incarceration which will lead them to spend time in a prison too. These children are also subject to lifelong disqualification attached to the imprisonment for the offence even if they are reformed and released from the place of safety on attaining the age of 21 years old.

Punishment of Juvenile Offender in other Asian Countries

The sentencing policy of the juvenile offender is different from one country to another country in the Asian region; each country follows different procedures, different versions and different processes for the punishment of juvenile offenders. Most of the Asian countries have ratified the United Nation Convention on the right of the child and other international document which are enacted for the protection and welfare of the juvenile delinquent.

Pakistan

A juvenile delinquent in Pakistan is lawfully subject to degrading and inhuman treatment, in most of the provinces of Pakistan juvenile delinquents are legally subject to death Penalty, life imprisonment without parole and corporal punishment. Pakistan is one of the country in Asia ratified the CRC. Although Pakistan enacted different legislations and introduced different pol-

icies for changing existing treatment of juvenile offenders but unfortunately the laws and policies enacted for the protection of juvenile offender from corporal and inhuman, degrading punishment are not properly implemented across all parts of the country. There is an existing legislation in Pakistan which explicitly provides for punishment to the juvenile offender.

Juveniles in conflict with the law in Pakistan is governed by the Juvenile Justice System Ordinance (JJSO) 2000, before the ordinance Pakistan did not have any central legislation for exclusively dealing with the juvenile delinquent and there existed only a criminal procedure code at the federal level for treatment of the juvenile offender. Farooq Ahmed V. Federation of Pakistan In this case, constitutionality of the Justice System Ordinance (JJSO) 2000, came for question before the Lahore High Court and Court declared the ordinance is unconstitutional and struck down the ordinance stating that the abolition of death penalty of juvenile offender led to increase in the offences involving children and enhance the chance for juveniles being used by adults for committing heinous offence but in appeal the Supreme Court overruled the decision indicating the importance of protection of right of juvenile delinquent. There are several enactments in Pakistan having an overriding effect of Juvenile Justice Ordinance, 2000. The Hudood Ordinances 1979, is enacted for specifically dealing with heinous offence like rape, armed robbery, and adultery, etc., the ordinance fixed stringent punishment like stoning to death for the offender. Child means under the ordinance that the person who has not attained the concept puberty, there is fixation particular age for the determine juvenile.

Section 14 of the ordinance prohibits death sentence to the juvenile offender stating “*not withstanding anything to the contrary contained in any law*”

Ved kauri, “Juvenile Justice Act,2015 a Critical Understanding”, Journal of Indian Law Institute, vol 58(1), 98 (2016).

Control of Narcotic Substances Act, 1997, The Abolition of the Punishment of Whipping Act, 1996, The Railways Act, 1890 the Criminal Procedure Code, 1898, the Pakistan Penal Code,1860, the Anti-Terrorism Act 1997, the Reformatory Schools Act 1897, the Hudood Ordinances 1979, and the Sindh Children Act 1955etc

for the time being in force no child shall be- (a) awarded punishment of death, or ordered to labour during the time spent in any borstal or such other institution” means that the act clearly prohibits death sentence to the person aged below 18 years, but at same time many cases are reported from the different provinces of Pakistan giving death sentence and other corporal punishment to juvenile delinquents under other different law like Control of Narcotic Substances Act, Anti-Terrorism Act, for giving death sentence to juvenile offender , after the promulgation of the 2000 ordinance many juvenile offenders were tried and sentenced to death under the both act. Amnesty International Report, 2015 reported an incident that the of the juvenile offender sentenced death and hugged in 2015 alleging that the 16-year-old child was engaged in waging war against the Pakistan government.

The Juvenile Justice Ordinance, 2000 recognized imprisonment as the method of punishment, sentence of Life Imprisonment is also provided for Juvenile Offenders. According to section 11 (b) of the ordinance that make an order directing the juvenile offender to be sent to a borstal and reformatory institution until he completes the age of eighteen years or for the period of imprisonment whichever is earlier. Further, the ordinance introduces alternative measures for the protection of juvenile delinquents from imprisonment and other corporal punishment. In case juveniles are found to have committed an alleged offence the court may direct the juvenile delinquent to be released on probation for good conduct and place such children under the care and protection of guardian or any other person executing a bond with or without surety as the court may demand, for the good behavior and well-being of the child for any period not exceeding the period of imprisonment awarded to such child.

Pakistan ratified both the International Convention on the civil and political right, 1966 and CRC but at the same time, Pakistan reserved many provi-

2005 (15) P.L.D. Lahore 15

Amnesty International Report2015, Available at: <https://www.amnesty.org/en/latest/news/2015/03/12-prisonerschanged-in-pakistan>,(Accessed on 10 /03/ 2017)

sion of both the conventions, stating that the provision were inconsistent with Sharia law and Pakistan Constitution. The Committee on Rights of Child expressed its concern about the inhuman and degrading punishment of juvenile offenders in Pakistan and recommended to “take all necessary measures to prevent juvenile from being subjected to torture or any other cruel, degrading or inhuman treatment or punishment in all the circumstances” and ensure that the sentences “constituting torture or cruel, inhuman or degrading treatment by the parallel judicial authorities and that access to an appeal procedure under statutory law are available for all the juvenile through the country” are not imposed on children.

Sri Lanka

Sri Lanka adopted a separate system of juvenile administration for the protection and welfare of the juvenile delinquent. There are several acts in Sri Lanka which deals with the trial and punishment of the child offender like Youthful Offenders (Training Schools) Ordinance, 1939, Probation of Offenders Ordinance, 1944, Sri Lankan Penal Code Act, 1885 and Code of Criminal Procedure Act, 1979. The Sri Lankan Penal Code, 1885 is an important code which prescribes the punishment for the offence and the penal code states that death sentence shall not be pronounced on or recorded against any person who, in the opinion of the court is under the age of sixteen years, but, in lieu of that punishment, the court shall sentence such person to be detained during the president’s pleasure, means that section 53 of the code partially prohibiting the death sentence to children age below sixteen but ultimate decision left to the will of the president, there is no any particular guideline for the president taking the decision on the matter, all the left to the whims and fancies of the president.

Children and young person’s ordinance is the prime law for the punishment of the juvenile delinquent, the ordinance is intended to follow the institutional

S. 11 (a). Juvenile Justice Ordinance 2000.

Report of Committee on the right of the child 2009, Available at <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>, (accessed on 21/4/2017)

correctional method for the juvenile delinquent rather than giving imprisonment to the juvenile offender, but unfortunately the ordinance not implement all part of country therefore juvenile delinquent lawfully subject adult-centric punishment in some part of the country. Part three of the children and young person ordinance specifically deals with the punishment of the juvenile offender, ordinance gives importance to the institutional treatment of juvenile delinquents rather than giving hard punishment, even though the ordinance gives important to the rehabilitative and reformative method of punishment but at same time imprisonment of juvenile offender is recognized as a last resort of punishment. The ordinance states that a young person shall not be ordered to be imprisoned for any offence, or be committed to prison in default of payment of a fine, unless the court certifies that he is of so unruly a character that he cannot be detained in a remand home or certified school or that he is of so depraved a character that he is not an apt person to be so detained and section 24 (2) also states that in the case of another method of punishments which are not suitable for the juvenile offender can be sentenced to imprisonment. Where such a sentence is passed, the court shall remand the child or

S. 53. Sri Lankan Penal Code 1885.

S. 23 (2). Children and Young Person Ordinance, 1939.
id. S. 24 (2).

S.53, Sri Lankan Penal Code 1885. "Sentence of death shall not be pronounced on or recorded against any person who, in the opinion of the court is under the age of sixteen years, but, in lieu of that punishment, the court shall sentence such person to be detained during the president's pleasure"

S. 24(1). Children and Young Person Ordinance 1939.
2006, S.C. Spl. (LA) No. 182/99.1

S. 29 (1). Children and Young Person Ordinance 1939, "Where a child or young person who is a male is found guilty by any court of any offence, the court may, if it is for any reason of opinion that the case is one in which hard and corporal punishment should be imposed, make order that the child or juvenile person shall receive not more than six strokes with a light cane or rattan, - such strokes to be inflicted in the presence of the court and, if the parent of the child or young person desires to be present, in his presence"

S. 29 (1). Sri Lankan Penal Code 1882. "Nothing, which is done in good faith for the benefit of a person under twelve years of age, or, of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause/or be intended by the doer to cause, or be known by the doer be likely to cause, to that person"

young person to a remand home pending his detention under the directions of the Minister.

Most unfortunate part of the ordinance is that the ordinance was enacted for giving care and protection and rehabilitation of juvenile offender, but at same time Section 53 of Sri Lankan Penal Code have an overriding effect on the ordinance, further the ordinance that where in lieu of sentence of death, a sentence of detention during the President's pleasure has, under section 53 of the Penal Code, been passed by any court in respect of a person who, in the opinion of the court is under the age of eighteen years, the court may order that person to be detained in a remand home until the pleasure of the President is made known.

Sri Lanka is one of the countries which ratified the CRC and therefore the country obliged to implement the provision of the convention to the domestic legislation in Sri Lanka. The Sri Lankan Supreme Court in *Nallaratanam Singarasa v. The Attorney General*, Reiterated the importance of implementing the International Convention into the domestic legislation for protecting the right of the juvenile delinquent. The punishment imposed on the Children and Young Person Act and Penal Code and other laws on juvenile offender changed the system from reformatory to punitive approach. CRC and ICCPR are part of international customary law; Sri Lanka had ratified both the convention. Both the convention have prohibited giving inhuman, degrading and corporal punishment to the juvenile offender but Section 29 of the ordinance imposing corporal punishment upon the juvenile delinquent, it is consistent with the international human right law and further more Section 82 Penal Code accepting corporal treatment of juvenile.

One of the important failures of juvenile administration in Sri Lanka is the inability to establish a unique definition of child, the definition of child is different from one act to another act in Sri Lanka. Due to lack of clarity in the definition of child, many juveniles are subject to the adult-centric punishment under different Act. Sri Lanka ratified the CRC therefore is legally bound to implement the provisions of the convention and prevented the juvenile of-

fender from an adult-centric punishment, the Committee on the right of the child repeatedly recommended preventing corporal punishment on juvenile offender.

Bangladesh

Children Act, 1974 was repealed by Children Act, 2013, Bangladesh Penal Code, 1860; whipping Act, 1909, The Bengal Jail Code and Prisons Act, 1894 and the Criminal Procedure Code, 1898 are the important legislations which are dealing with juvenile in conflict with the law in Bangladesh. Section 29 B of the Criminal Procedure Code, 1898 provides trial and procedure for the juvenile delinquents in children's Court, further section 82 of the Bangladesh Penal Code, 1860 gives protection to the child aged between 7 to 9 from any criminal act and Section 83 of the Bangladesh Penal Code provides for convicting the juvenile offender aged below 12 must prove that the juvenile has sufficient maturity to understand the consequence of his or her act. Prisons Act, 1894 demanding the segregation of the child in conflict with a law from the adult offender.

Children's Act, 1974 was one of the most important legislation enacted for the protection and welfare of the juvenile offender and furthermore protection of juvenile delinquent from the adult-centric punishment. This act doesn't recognize imprisonment as a regular method of punishment to the juvenile delinquent and Act only accepted the sentencing of a child offender as a last resort of punishment, Section 51 (1) of the Act preventing giving punishment to juvenile offender

“Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment: Provided that when a child is found to have committed an offence of so serious a nature that

S. 82, Penal Code, 1860 “Nothing is an offense which is done by a child under nine years of age”

id. S. 83. “Nothing is an offence which is done by a child above nine years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.”

the Court is of opinion that no punishment, which under the provisions of this Act it is authorized to inflict, is sufficient or when the Court is satisfied that the child is of so unruly or of so depraved character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with is suitable, the Court may sentence the child to imprisonment or order him to be detained in such place and on such conditions as it thinks fit: Provided further that no period of detention so ordered shall exceed the maximum period of punishment for which the child could have been sentenced for the offence committed”

“Provided further that at any time during the period of such detention the Court may if it thinks fit, direct that instead of such detention the youthful offender is kept in a certified institute until he has attained the age of eighteen years.”

Section 51 of the act prohibits death sentence to the juvenile offender and stating that the no person shall impose death sentence or life imprisonment or any such kind of adult-centric punishment to juvenile offender and further Section 51 recognized imprisonment as a method of punishment, giving exception to the general rule by stating that the when the Court is satisfied that the child is of so unruly or of so depraved character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with is suitable, the Court may sentence the child to imprisonment and further emphasizing the segregation of juvenile offender from the adult offender.

Section 52 of Children Act 1974 is dealing with detaining of juvenile in conflict with law, Offences which are punishable with death or life imprisonment etc, section also states the sentencing of juvenile delinquent in certified institution, not less than 2 years and not more than 10 years or he may be detained, still if he has attained the age of 18, in case of children also who are convicted of an offence punishable with death sentence, transportation or life imprisonment. Section 53 of the act gives an alternative method for the sentencing or sending to the certified institution juvenile delinquent, fur-

Educere-BCM Journal of Social Work

ther section providing that if the court thinks fit that instead of sending to certified institution juvenile offenders should be discharged on admonition, or released on probation for good conduct or to be send with parent or any guardian after execution a bond.

Children Act, 1974 is repealed by the children act 2013 with the object of incorporating the international standard of protecting juvenile delinquent to the domestic legislation. Act gives importance to the correctional method of punishment rather than sentencing the juvenile offender. Section 33 of the Act prohibit the death penalty and life imprisonment of the juvenile offender and act further stating that imprisonment is to be considered as a last resort of punishment, only in the case of child offenders who are of an unruly nature or such juveniles who cannot be sent to the certified institution or juvenile delinquent has committed an offense which is of a serious nature, only then such extreme circumstance can resort to the imprisonment of the juvenile offender.

In the case of the juvenile offender found guilty of the offence punishable with life imprisonment or death sentence, he may be sent to protective institution for three years. Juvenile delinquents not charged with serious offenses like murder, rape, dacoity, etc. and has changed positively in such juvenile delinquency may be released on after attaining 18 years old upon the recommendation of the probation officer . In a case of a juvenile delinquent not changing positively or a juvenile charged with a serious offence he may be sent to the jail with permission of the children court such juvenile offender may be

S.52, Children Act 1974.”Where a child is convicted of an with the child, order him to be committed to a certified institute for detention for a period ,which shall be not less than two and not more than ten years, but not in any case extending beyond the time when the child will attain the age of eighteen years”

S. 33 (1), Children Act 2013, “No child shall be sentenced to death, imprisonment for life or offence punishable with death, transportation or imprisonment, the Court may, if it considers expedient so to deal with the child, order him to be committed to a certified institute for detention for a period ,which shall be not less than two and not more than ten years, but not in any case extending beyond the time when the child will attain the age of eighteen years”

S. 33 (1).Children Act,2013. “No child shall be sentenced to death, imprisonment for life or imprisonment”

S. 34, Children Act, 2013.

segregated from the adult offender and the Act maintained the provision for discharge after admonition or release on parole or release under the responsibility of parent or guardian or any other adult member of the family and include the provision for compensation to the victim of children.

Children Act, 2013 was enacted with the objective of incorporating the provisions of the United Nation Convention on right of the child into the domestic legislation, preamble of the Act itself stating that the act is enacted to implementing the provision of the CRC. But unfortunately the Act failed to comply with the provisions of the CRC, especially in the sentencing policy of the juvenile delinquent.

Conclusion

Juvenile justice administration in India has analyzed in this article and understood that there are many defects in the existing juvenile justice system some of the defects are incorrect and incomplete legal perception, problem-related to treatment of juvenile offender in case of 16 – 18 old children alleged to have committed heinous offence, sentencing policy of Children's Court, problem-related to the institutional treatment of juvenile delinquent and some other problems are related to the structural pattern and procedure of juvenile administration .

The problem related to the juvenile justice administration is, no doubt, one of the tragic interests of the human being. More than six decades the Indian juvenile administration was followed the reformatory and rehabilitative form of punishment for the juvenile offender, but the unfortunate Nirbhaya incident reversed existing form treatment of juvenile delinquent. Juvenile Justice Act, 2015 has diverted the traditional way of blanket protection of juvenile delinquent and introduced a new way of administration juvenile justice system in India. Juvenile Justice Act 2015 deviated from the protective system of approach juvenile in conflict with the law and traditionally understood the liberal form of juvenile law. The act introduced provision for transfer of 16

id. S. 34 (1). id. S. 34 (5). id. S. 34 (4). id. S. 39.

– 18-year juvenile delinquent alleged to have committed the heinous offence to adult court. The objective of juvenile justice system is not give punishment juvenile delinquent and provide the care, protection, reformation and reintegration of child offender into society as law-abiding citizen, so it is clear that transfer of such juvenile delinquent without considering the state of mind of offender and circumstance of commission of offence, which will lead to creating negative impact on children. The transfer of the juvenile offender to adult court is against the best interest principle of juvenile law.

The Act changed the basic juvenile principles of law, introduced the provision for adult punishment of 16- 18 old children alleged to have committed the heinous offence. The provision for transfer of the juvenile to adult criminal court to trail as the adult and to punish like the adult is, directly and indirectly, inconsistent with the provision of juvenile justice act and CRC. India is the country ratified the CRC, it was considered essential to adopt and implement the reformative form of punishment for the treatment of juvenile delinquent. The committee of the right of the child emphasized the ban on the use of police station, police lockup or jail and any adult-centric punishment at any stage of the proceeding and under any circumstance for children below the age 18 years found committed the offence. The provision for transfer child to adult criminal court is the violation of the basic principles enshrined in section three of the Act.