CHAPTER VI

JUVENILE JUSTICE SYSTEM -
CHALLENGES AHEAD

The brutal Delhi gangrape case has brought forth a new aspect of criminality that India's justice system needs to address urgently. One of the accused, as per police record and, according to reports, the most aggressive of the lot who brutalised the young girl, is a minor of 17 years. Reports have shown that it was the minor who first lured the unsuspecting victims into the bus and that he was the most aggressive in the repeated rape of the victim.

In India the sentencing and trial of juvenile offenders is mandated and governed by the Juvenile Justice Act 2000. Section 1(4) mandates that all cases involving detention, prosecution, penalty and sentence of imprisonment involving juveniles shall be governed by the Juvenile Justice Act. Section 2(1) defines a juvenile as any child who has not yet completed eighteen years of age. Section 15(l)(g) of the JJ Act further mandates that a juvenile convicted of any offence can be sentenced to be sent to a special home for a period of three years, maximum and thereafter be released on probation.

What this boils down to is the fact that in case the accused happens to be a juvenile the maximum time that he shall serve is three years or 1095 days in a special rehabilitation home.

In India it is easy to notice that rather than have a flexible procedure for sentencing we have opted for a rigid and sweeping one. This is a system in which the maximum amount of sentence served by a delinquent who say partakes in armed robbery in order to feed himself
is the same as the one given out to a serial rapist or murderer; just so long both are under eighteen years of age.

The biggest reason for our current system is the supposed rehabilitation of the offenders. A glimpse of this may be found in the rechristening of the word offender to 'Juvenile in conflict with the law'. While the swanky name change is an earnest and somewhat romantic gesture at our societies' endeavour in recognising and unleashing the 'good' within each child, there is an inherent problem with the term of the sentence. There is no logical or scientific reason which shows that total and complete rehabilitation can be achieved by a delinquent/offender/child in conflict with the law within a maximum period of three years.

In the case of the Delhi rapist, even if one were to say that the boy needs to be rehabilitated and that perhaps the reason for his barbaric and animalistic act was a deep-rooted psychological problem, there is no assurance that the issue can be dealt with in three years.

Of course, the absolute lack of implementation of the provisions of the JJ Act after a juvenile completes his sentence is another concern. India's massive population makes it impossible to track and ensure that a juvenile once released continues with his therapy or even reports regularly to his parole officer.

With this basic and undeniable truth it is a matter of simple calculation that in all probability the Delhi rapist shall be on the streets within the next three years that's 1095 days with nothing more than a stint in a special home in the name of absolute and complete Rehabilitation.
6.1 IMPACT ON INDIAN SOCIETY WITH REFRENCE TO DELHI GANG RAPE (NIRBHAYA) CASE

The horrific gangrape of a 23-year-old woman that resulted in her death has raked up the issue of safety of women in India like never before. For the first time hundreds marched seeking justice and greater safety for women, and the harshest possible punishment for those guilty. The subject also sparked debates over how the law should deal with juvenile offenders and how India can be made safer for women.

6.2 CHRONOLOGY OF EVENTS

16 December, 2012: Paramedic student gangraped and brutally assaulted by six persons in a private bus and thrown out of the moving vehicle along with her male friend. They were admitted to Safdarjung Hospital.

17 December: Widespread protests breakout demanding strict action against the accused.

17 December: Police identifies four accused — bus driver Ram Singh, his brother Mukesh, Vinay Sharma and Pawan Gupta.

December 18: Ram Singh and three others are arrested.

December 20: Victim's friend testifies.

December 21: Delinquent juvenile nabbed from Anand Vihar bus terminal in Delhi. Victim's friend identifies Mukesh as one of the culprits. Police conduct raids in Haryana and Bihar to nab the sixth accused, Akshay Thakur. A police vehicle, carrying four men convicted in the Delhi gangrape case. AP

December 21-22: Thakur arrested in Aurangabad district of Bihar and brought to Delhi. Victim records statement before the SDM in hospital.
December 23: Protesters defy prohibitory orders, take to streets. Delhi Police Constable Subhash Tomar, on duty to control protests, rushed to hospital with fatal injuries.

December 25: Girl's condition declared critical. Constable Tomar succumbs to injuries.

December 26: Following a cardiac arrest, victim flown to Singapore's Mount Elizabeth Hospital by the government.

December 29: Victim succumbs to injuries and other medical conditions at 2:15 am. Police add murder charge in the FIR.

January 2, 2013: The then Chief Justice of India Altamas Kabir inaugurates fast track court (FTC) for speedy trial in sexual offence cases.

January 3: Police files charge sheet against five adult accused for offences including murder, gangrape, attempt to murder, kidnapping, unnatural offences and dacoity etc.

January 5: Court takes cognisance of the charge sheet.

January 7: Court orders in-camera proceedings.

January 17: FTC starts proceedings against five adult accused.

January 23: Justice JS Verma committee submits report on how crimes against women can be curbed. Suggestions range from political changes to changes in law.

January 28: JJB says minority of juvenile accused is proved.

February 2: FTC frames charges against five adult accused.

February 28: JJB frames charges against the minor. In Union Budget, Finance Minister P Chidambaram promises creation of Rs 100 crore 'Nirbhaya fund' to be spent on safety and empowerment of women.
March 11: Accused Ram Singh commits suicide in Tihar jail.

March 22: Delhi HC allows national media to report trial court's proceedings.

April 22: Justice JS Verma passes away

July 5: Inquiry (trial) in JJB against juvenile in gangrape-cum-murder case and robbery matter concludes. JJB reserves verdict for 11 July.

July 8: FTC completes recording of testimonies of prosecution witnesses.

July 11: JJB holds minor guilty of illegally confining and robbing a carpenter on 16 December night before allegedly taking part in the gangrape. Delhi High Court allows three international news agencies to cover the trial of the case.

August 22: FTC begins hearing final arguments in trial against four adult accused.

August 31: JJB convicts the minor for gangrape and murder and awards three years term at a probation home.

September 3: FTC concludes trial. Reserves verdict.

September 10: Court convicts Mukesh, Vinay, Akshay, Pawan, Mukesh of 13 offences including gangrape, unnatural offence and murder of the girl and attempt to murder her male friend.

September 11: Court fixes 13 September for pronouncing sentence after hearing arguments on quantum of punishment to be awarded.

September 13: Court awards death to all four convicts. Sends case to Delhi High Court for confirmation.
September 24: The four convicted men are produced in Delhi High Court for confirmation of sentence.

October 7: Vinay Sharma and Akshay Thakur file joint appeal against the trial court's conviction and sentencing orders.

November 1: Division bench of Delhi High Court begins hearing case.

November 6: Police claim enough medical evidence against accused.

November 12: Supreme Court asks High Court not to rush with hearing

November 26: Convicts provided Hindi translations of judgement.

December 16: One year anniversary of rape.

The recent gang rape of a 23-year old girl in New Delhi, India raised a lot of pertinent questions in the minds of the public. People across the country reacted with rage and hurt and collectively came together to start a movement for the safety of women in India. In the midst of this agitation, the media shared details about a young boy whose odious acts of violence further sculpted public opinion. The people of India called for amendments in the juvenile justice system by reducing the age of juveniles to 16 years (currently 18 years) whilst child rights organizations/activists argued to adhere to the present justice system for children.

Delhi gang rape was mainly the incident which forced the authorities to pay heed to this topic once again and brought into spotlight the criteria of classifying an individual for the juvenile trial. It was after and due to this incident only that public protests against the Government of India and the Government of Delhi took place for not providing adequate security for women in New Delhi, where
thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country. This incident generated widespread national and international coverage and was widely condemned, both in India and abroad.

The brutal incident took place on 16th of December, 2012. The case involved a rape and murder that occurred on the fateful day in Munirka, a neighborhood located in the southern part of New Delhi, when a 23-year-old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male friend. There were six others in the bus, including the driver, all of whom raped the woman. The woman died from her injuries thirteen days later while undergoing emergency treatment in Singapore.

All the accused were arrested and charged with sexual assault and murder. One of the accused, Ram Singh, died in police custody on 11 March 2013 in the Tihar Jail. The rest of the accused went on trial in a fast-track court; the prosecution completed its evidence on 8 July. On 10th September 2013, the four remaining adult defendants were found guilty of rape and murder and three days later were sentenced to death by hanging. And one of the accused, who was a juvenile, was convicted of rape and murder and given the maximum sentence of three years' imprisonment in a reform facility, as per the JJ act. It was the conviction of this juvenile in this case, which raised the hue and cry for lowering down the age of juvenile from 18 to 16, so that the juvenile accused, who was the main culprit in the case be tried in an adult court as other accused.

In the 33-page charge sheet, the Delhi Police described the juvenile as the most brutal of the six accused. The accused was
declared as 17 years and six months old on the day of the crime by the
Juvenile Justice Board (JJB), which relied on his birth certificate and
school documents. The JJB rejected a police request for a bone
ossification (age determination) test for a positive documentation of his
age.

On 28th January, the juvenile was declared to be a juvenile by
the JJB. A petition moved by Janata Party president Subramanian
Swamy seeking the prosecution of the minor as an adult because of the
ghastly nature of his alleged crime was rejected by the JJB. The minor
was tried separately in a juvenile court.

On 31st August, the juvenile was convicted of rape and murder
under the Juvenile Justice Act and given the maximum sentence of
three years' imprisonment in a reform facility, inclusive of the eight
months he spent in remand during the trial.

6.3 DISCUSSIONS ON THE ISSUE

As of now, one of the biggest challenge posing a big question
mark on the face of all the judicial authorities in regard to the juvenile
is to what should be the criteria of classifying as to whether the case of
a juvenile should be tried in a juvenile court or not? Should age be the
only criteria for this purpose? Should judges follow the J J Act blindly
in black and white i.e. categorizing cases solely on the basis of the age,
without going into the intention and purpose of the legislators behind
enacting such type of legislation?

In the Delhi incident, one of the accused was aged about 17 years
i.e. below 18 years and as per the prevailing law has been treated as a
juvenile and kept in some reformatory school/ borstal jail. Not only
this, as per the prevailing law the Juvenile Justice (Care and Protection
of Children) Act, 2000, his trial was also conducted separately and even after being found guilty of rape and murder was awarded only a tiny imprisonment in a reform facility up to 3 years."

Although government statistics show a woman is raped every 20 minutes in India, the brutality of the December attack became the tipping point that brought the issue of violence against women into the limelight, not only in India, but globally. The incident triggered outrage and a debate over women's safety across the South Asian nation, prompting the country's parliament to pass stricter laws on sexual violence, including a minimum 20-year prison sentence for rape and, in the event the victim dies, the death penalty.

6.4 LEGAL CHANGES

In addition to this, the definition of rape was expanded to include penetration by objects or any body part. "Sexual abuse in all its forms including sexual harassment, stalking and voyeurism was made illegal," India's additional solicitor general, Indira Jaising.

Moreover, fast-track courts were established to speed up trials in sexual assault cases which earlier took years to conclude. Some ten months after the crime, such a court found four of the adult suspects guilty on all counts and sentenced the men to death by hanging.

The ruling was handed down only a few days after another suspect was also found guilty. But unlike the four adults, the teenager defendant was sentenced to only three years in a correctional facility - the maximum penalty allowed for a juvenile offender under Indian law.

The fact that the teenager was tried in a juvenile court sparked protests and heated discussions across the country on a possible reduction of the legal age of a juvenile. Only five of the six alleged
attackers faced legal proceedings because the reported ringleader and regular driver of the bus died in jail in an apparent suicide.

**6.4.1 In the spotlight**

Experts point out that the widespread media coverage of the case has also led to an increased awareness of the issue of violence against women in Indian society. "Women have been forthcoming in reporting crimes against them. They have been empowered by law and the response of civil society," said Jaising.

This view is shared by K. T. S. Tulsi, a senior lawyer practicing in the Supreme Court of India. According to the lawyer, the social stigma associated with rape is getting reduced. "Girls are becoming more assertive and they are open to complaining. They don't feel that the society is going to stigmatize them".

This development is supported by the latest government figures. According to local media reports, 1,330 cases of rape were reported to police in New Delhi this year until October, against 706 cases for the whole of 2012.

Despite the increased attention on women's issues, activists say crimes against women are on the rise. In the latest high profile case, police arrested the editor-in-chief of India's leading investigative magazine, Tehelka, late November after a female colleague accused him of sexually assaulting her. The investigation into Tarun Tejpal - who denies the accusations - has dominated headlines in India for days, followed by similar accusations by an intern against a retired Supreme Court judge.
6.5 CHALLENGES AHEAD

However, experts say that a lot still needs to be done to make women feel safe in the country, as there has been little progress made in addressing the attitudes that legitimize violence and discrimination against women. "Rape cultures are nourished by norms, attitudes, and practices that trivialize, tolerate, or even condone violence against women," Indian human rights activist Ranjana Kumari explains.

Kumari, who also heads the New Delhi-based Centre for Social Research (CSR), believes that the only way to prevent these crimes is to educate the masses, especially men, on the issues of violence, gender stereotyping, and the pervasive and negative impact of patriarchy.

"The subject of gender sensitization must be introduced from the grass root level in schools, colleges and the workplace. We need to educate men and women on women's rights under the law and work with communities to develop a gender sensitive society that is underpinned by respect and equality," the rights activist said.

This view is supported by Kaimini Jaiswal, a legal expert and lawyer at India's Supreme Court, who believes that in order to bring about real change, it is imperative to empower all women, most of whom are still financially and emotionally dependent on their male relatives. "What we see in the bigger cities and metros is not the true picture. Women can barely raise their head and voice in most households. This needs do be dealt with literacy because most women don't even know their rights."

Now, the question that is facing towards us all is that whether such modest punishment for his such a heinous and grievous act is
enough and fulfilling its purpose?

Since the Act has no parameter about the physical or mental maturity of a juvenile is mentioned, it has like given license to "all matured, cruel type of persons under the age of 18 years to live with full impunity and commit any crime of any level and walk scot free only on the basis of their age being less than 18 years and being covered under the Juvenile Justice (Care & Protection of Children) Act."

The issue has assumed "public significance" as such a "juvenile would make mockery of law and would walk free without any appropriate punishment and fair trial as far as the victim is concerned."

Delhi gang rape case was an example that should be "taken into consideration by the official respondents to immediately carry out amendments in the definition of juvenility and insert appropriate exceptions which would cover the facts and circumstances of that case and which would include the gravity and heinousness involved in that particular case along with the level of maturity and understanding of that particular offence by the juvenile concerned."

"The insertion of the exception is the need of the hour as the law on this aspect is totally silent and people would use the silence of law to their benefit as has been done in the Delhi incident."

The time has come in order to bring some reform in the Juvenile laws as there is a steep rise in serious crimes involving youth of 16 - 18 years of age and they very well know that below 18 years is the 'getaway pass' for them from the criminal prosecution. The punishment should be made a bit deterrent in order to inject the feeling of fear in the mind of the criminal.
6.6 BALANCING THE JUVENILE ACT

On August 31, 2013, the Juvenile Justice Board (JJB) ordered that the boy who raped Nirbhaya, brutalised her with an iron rod, pulled out her intestines and then cleaned up the bus and made tea would go virtually free by sentencing him to only 28 months in a remand home as eight months of the total 36 months' sentence had already been served. This order is subject to review by the JJB based on the behaviour of the juvenile and the police are required to expunge this crime from his record in order to ensure complete rehabilitation. Despite the unprecedented street protests following the Nirbhaya rape, there has been little substantive debate on the adequacy of the Juvenile Justice Act to deal with such heinous crimes.

6.6.1 Underlying principle

The JJ Act was passed in 2000 with the purpose of incorporating into domestic law India's obligations under international law as a signatory of the U.N. Convention on the Rights of the Child of 1989, the U.N. Standard Minimum Rules for Administration of Juvenile Justice (1985) (known as the "Beijing Rules") and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990). Underlying these international texts is the legal philosophy that juveniles lack the physical and mental maturity to take responsibility for their crimes, and because their character is not fully developed, they still have the possibility of being rehabilitated. This basic principle underlies the juvenile justice systems in many countries, including the United States and the U.K.

The JJA creates a juvenile justice system in which persons up to the age of 18 who commit an offence punishable under any law are not
subject to imprisonment in the adult justice system but instead will be subject to advice/admonition, counselling, community service, payment of a fine or, at the most, be sent to a remand home for three years.

However, the interest in protection of juveniles has to be balanced with the interest of protecting particularly vulnerable members of society from violent crimes committed by persons under 18 years of age and amending the law when societal conditions radically change over time. As per the reports of the National Crime Records Bureau (NCRB) entitled "Crime in India 2011" and "Crime in India 2012," the percentage of crimes committed by juveniles as compared to total crimes has not significantly increased from 2001-2012. According to the NCRB statistics, India is not in the throes of a general crime wave by juveniles. However, the NCRB statistics relating to violent crimes by juveniles against women are very troubling. "Crime in India 2011" suggests the number of rapes committed by juveniles has more than doubled over the past decade from 399 rapes in 2001 to 858 rapes in 2010. "Crime in India 2012" records that the total number of rapes committed by juveniles more than doubled from 485 in 2002 to 1149 in 2011.

As the data suggests, between 2011 and 2012 alone, there was a massive increase in instances of rape by juveniles by nearly 300, which is almost as much as the increase in such cases over the entire previous decade. This increase alone makes amendment of the JJA imperative.

6.6.2 'Get tough' approach

Several other countries such as the U.S. and the U.K., which are both signatories to the U.N. Convention, have also faced an increase in violent crimes by juveniles but, unlike India, they have taken action to
amend their laws. Most States in the U.S. have enacted a juvenile code of which the main objective is rehabilitation and not punishment. Juveniles appear in juvenile court and not in adult court. Juvenile courts do not have the power to impose punishment and can impose only rehabilitative measures or assistance by government programmes. However, since the increase in violent crimes committed by juveniles in the 1990s, U.S. States have adopted a "get tough" approach in response.

In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court. A certification hearing takes place and an adult court prosecutor is required to convince the adult court that the case should be transferred. The juvenile is entitled to an attorney at the hearing and to present any evidence which mitigates against the transfer. For example, in Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. California's Proposition 21 which was passed in 2000 allows prosecutors to automatically try juveniles who commit felonies as adults. Under Michigan's Juvenile Waiver Law passed in 1997, juveniles can automatically be tried as adults.

6.6.3 Youth Court

Similarly, in the U.K., persons under 18 are tried by a "Youth Court" which is a special type of magistrate's court for those aged 10-18 years. The Youth Court can issue community sentences, behavioural programmes, reparation orders, youth detention and rehabilitation programmes which last three years. However, for serious crimes like
murder or rape, the case starts in Youth Court but is transferred to a
Crown Court which is the same as a Sessions Court. The Crown Court
can sentence the child for offences of murder committed when the
offender was a youth as well as for "grave crimes" including sexual
assault and sentence the child to "indeterminate detention for public
protection."

The Crown Court can also give "extended sentence" to a minor.
If a youth is jointly charged with an adult, the charge is heard and tried
by a regular court. If the youth is found guilty, the Crown Court can
impose a sentence which does not exceed the maximum sentence
applicable to an offender who is 21 years or older. Therefore, in both
the U.S. and the U.K., juveniles who commit violent crimes such as
rape are prosecuted in the same manner as adults.

Even the U.N. Convention and the Beijing Rules do not prohibit
subjecting children/juveniles to the regular criminal justice system
under certain circumstances. Article 40 of the U.N. Convention
provides that a child who has been accused of having violated the penal
law shall have the following guarantees: to be presumed innocent until
proven guilty according to law, to be informed promptly of the charges
against him and to have legal or other appropriate assistance in the
preparation of his defence, to have the matter determined without delay
by a competent and impartial authority or judicial body, not to be
compelled to confess guilty, and to examine witnesses. Moreover, the
state can establish a minimum age below which children shall be
presumed not to have the capacity to infringe the penal law. Therefore,
in accordance with the U.N. Convention, the JJ Act could have
established an age limit, such as 14 or 16, below which a person could
not be deemed to have the capacity to commit an offence. In short, the U.N. Convention does not prohibit prosecuting a child under 18 who has committed an offence under the regular penal laws.

### 6.6.4 Beijing Rules

Rule 17 of the Beijing Rules, in turn, provides that the reaction shall be in proportion to the circumstances and the gravity of the offence as well as the circumstances and needs of the juvenile as well as the needs of society. Furthermore, personal liberty may be deprived if the juvenile is adjudicated guilty of a serious offence involving violence against another person or persistence in committing other serious offences. Unlike the U.N. Convention, the Beijing Rules do not fix 18 as the age of a juvenile. Instead, the Beijing Rules provide for rules applicable to persons between the age of 7 and 18. Therefore, India's international legal obligations do not prohibit it from amending the J J Act to provide that persons between the age of 16-18 who are accused of rape, kidnapping and abduction of women and girls will be exempted from the jurisdiction of the JJB and tried in the adult criminal justice system.

Unfortunately, the current system serves neither the purpose of rehabilitation nor deterrence against future crime. As reported by *India Today*, there are 815 remand homes in India with a capacity of 35,000. However, there are 1.7 million juvenile accused in India. Remand homes in India are not conducive to the reform and rehabilitation of juveniles as envisioned by the principles enshrined in international law. While rehabilitation is certainly an important legal and societal objective, this interest surely has to be balanced with creating a legal deterrent to protect women and
girls from the increasing incidence of rapes by juveniles. Particularly in view of the significant increase in rapes committed by juveniles since the JJ Act was passed, India should consider amendment of the Act to transfer certain violent crimes such as murder and rape committed by juveniles above a particular age to the adult criminal system.

6.5 AMENDMENT OF EXISTING LAW A BROAD PERSPECTIVE

6.5.1 Views in favour

1. Ordering a convict of heinous crimes such as rape and murder to spend just three years in a correctional home is not going to deter others from committing crimes against women

   The basic purpose of law in any country is the smooth functioning of country without any chaos and disturbance, etc. But, the juvenile act in our country seems to be defeated by this very basic and prime purpose of law. Giving a punishment of imprisonment for just 3 years and that too in a special home atmosphere for the heinous and grievous acts, such as of rape and murder, no where seems to meet the ends of the justice or the purpose for which this law was enacted.

6.5.2 JJ Act needs amendment as it does not talk about the physical or mental maturity of a juvenile

   The 2 main components of any crime in law is "Actus Rea" and "Mens Rea" and when both the components are proved in the court of law, then only an individual is convicted. Now, in the case of a juvenile, the actusrea part of his offence is protected under the juvenile law and the mensrea part is never taken into consideration, as there are no parameters to judge the same.
Having no parameters about the physical or mental maturity of a juvenile, it has like given a license to "all matured, cruel type of persons under the age of 18 years to live with full impunity and commit any crime of any level and walk scot free only on the basis of their age being less than 18 years and being covered under the Juvenile Justice (Care & Protection of Children) Act."

The mental maturity of the juvenile is to be judged on the fact if he was fully aware and conscious during the execution of the crime. If not then an adult of the age of 30 who has committed a crime unintentionally should be tried at the juvenile court for the reason that he was not mentally alert. The researcher would vow that age is no reason to exempt somebody who has brutally raped and been the reason for the death of a future Indian when he was completely aware and conscious of what he was doing. A hard step now can be a warning to the many young minds who grow up today and design their perspectives for tomorrow considering the handling of law in their hands just for fun.

6.5.3 Anti social elements may use children as means of conducting serious crimes

Following the JJ Act blindly in black and white, without providing it any scope for flexibility to meet the ends of justice or the intention behind the enactment of that act is ultimately heading towards in altogether a very different, which anyone of us would have never thought of and this strict abidance of the law is ultimately proving a "BOON" for the actual doers or master minds of the crime. They are hiring the poor and needy minors in alluriance for small amounts of money to execute their acts, because they know very well
that JJ Act would be acting as a safeguard for them and ultimately what at max. they can be punished with is a mere imprisonment for a period of 3 years, no matter how heinous the crime is. Instead of having a sense of fear to the JJ Act as a piece of law, they are using it as a "gateway pass" for their crimes.

6.5.4 JJ Act was unconstitutional and that it violates the right to life by shielding criminals

The prime purpose of any law in a country is to provide justice to the victim and punish the accused for its wrongdoing. But our JJ Act seems to be defeating this purpose, as it is in a way providing shield to the criminals, as what max. they can be awarded is a tiny punishment of imprisonment for a period of 3 years, even for the most heinous and grievous crimes, such as of murder and rape, on the basis of hollow reasoning that he just few months and at times days lesser than completing his 18. But, what about the physical, mental and reputation harm that has been caused to the victim, due to his heinous act. The heinous crimes such as rape, murder etc are crimes which totally destroys the moral of the victim's family and if it's a rape then it's a lifelong stigma for the girl and her family member. Especially in the rape cases, most of the time victims are shunned from the society and are left unmarried just because that she was not physically strong enough in order to fight for her freedom from the clutches of the person or persons. Many offenders of these crimes walk free after serving a minimal period of sentence after being proven juvenile as per the so called records. Since, in the situation as in which the JJ Act as of now stands, seems to be defeating the very purpose of law in any country, its constitutionality can be challenged on the same.
6.5.5. The records do not at all times presents the actual age of the juvenile

In our country it's a general trend to get our age reduced by 2-3 years at the time of matriculation so even if the offender is above 18 years but on record he is a juvenile as per his birth certificate then he would be treated as a juvenile and the same happened in the Nirbhaya case, the court relied totally on the so called records (documents) and made no effort to make out the actual age of the offender. The JJB rejected even a police request for a bone ossification (age determination) test for a positive documentation of his age.

6.5.6. Laws should be dynamic in nature and should change with the changing society

It is a famous saying that whatever will not change with the changing time, will ultimately result in failure and so stands for the law as well. Society is not static, it is dynamic. Its needs change with time to survive. It is correct to reform and rehabilitate a child in conflict with law, however we should not send a signal in society that a person below 18 years of age can commit any kind of heinous acts and still get away with a minor penalty. So, need is to take into account mental maturity age of person and not just chronological age while deciding the case. Facilities at reformation centre should be improved so that real rehabilitation happens rather than just lip service. Today, with breakdown of joint family system, rise of nuclear family, increasing influence of social media children are exposed to a number of threats -psychological, physical, sexual. In our country inspite of political equality, inequalities like socio-economical, regional, are wide spread. Need of the hour is to build character of our future
generation. Society should evolve a procedure (Mentoring, etc) to supervise and guide children during adolescent age so that they learn to respect fellow citizens, RTE act should be strengthen to include children up to 18 years of age into education system, since education has a transformative effect on a person, training to deal with different crisis in life and most important patriarchal attitude of society towards females should change.

6.5.7. JJ Act should be declared unconstitutional on the ground that it is providing a blanket immunity to the juvenile offenders and devoinding court of its discretion under sec. 83 of the IPC on the term "sufficient maturity"

Many of the protestors following the nirbhaya rape case are of the view that the JJ Act should as a whole be declared unconstitutional since it standing against a very sole pillar of our judicial system i.e. court's discretion. It seems to devoid our courts of the discretion provided to it under sec. 83 of the IPC, as the JJ Act is acting as blanket immune for the juvenile offenders and the courts are left with no discretion in their hands.

6.5.8. Biological changes in the human body demand the change

As the societal atmosphere is changing, the level of maturity, whether be it either mental or biological is also changing. A lot changes have taken place in our society, since the last amendment in the J J Act on the age issue in 2000. The level of maturity that a juvenile of 16 used to have at that point of time is entirely different from what he is having today. According to Dr. Prannoy Roy, a lot biological changes have taken place in human's body as compared to 2000. The age of the puberty of an individual, be it a male or a female
has shifted earlier. So, when the time of maturity, based on which basically the age of a juvenile was decided has changed, the age of a juvenile should also stand amended.

6.5.9. Right and wrong can be judged at the age of 16

According to Sridhara, a psychologist, "studies have shown that at 16 a boy/girl attains the clarity to judge between right and wrong and gains notion of his/her self. Based on that rationale, we can support 16 to be the age of majority. There is nothing wrong in reducing the age of juvenile to 16, as it will be scientifically sensible and harmless too. In fact, in a few countries a person is considered to be an adult at the age of 16.

6.6 VIEWS AGAINST

6.6.1. The aim of the Juvenile Justice Board is not to punish but reform offenders

The basic aim behind the enactment of the JJ Act as well as forming up of the JJ Boards was to reform the offenders and not to punish them. The basic aim and approach with which the JJBs are suppose to work is to somehow reform the child and not to punish him like the other courts. If only this is to be done by the JJBs, then there was no need to set up boards like JJBs, the same was already being done in a very nice manner by our judicial courts of law. The basic ideology for enacting an act with a such a type of differential approach was to save children from devastating ill-effects of criminalization, penalization and stigmatization, in short, the "welfare" of the children and not to punish them.

6.6.2. There was no concrete data to prove that stiff punishment resulted in the lowering of the crime rate anywhere in the world

If at all, we lower down the age also, there has been concrete
data or evidence neither of India nor of any foreign country, where stiff or harsher punishment for any crime has ultimately resulted in the lowering down of that crime rate anywhere in the world.

6.6.3. Increase in the age of the juvenile from 16 to 18 doesn't mean that we have opened the gateway to include more criminals under JJ Act, and the statistics clearly supports that* The basic purpose of increasing the age was to protect more juveniles from the punishment of their unintended and under innocence crimes

It is argued by some, mainly the Suprindentents and staff of Observation Homes and Special Homes, that due to the increase in the age of boy juveniles under the 2000 Act, a much larger number of juveniles in conflict with law are entering the juvenile justice system, therefore, the existing infrastructure is insufficient to cope with this added burden. Some officials have publicly demanded that the age of the boy juvenile be reduced to 16 years. This demand is irrational and defeatist and can never be entertained. It is essential to understand that reducing the age to 16 is not an option. Furthermore, statistics belie this contention. Statistics denote an initial growth in the juvenile crime rate in 2001, but the same soon thereafter stabilized. The following figures have been reproduced from Crime in India published annually by National Crime Records Bureau, Ministry of Home Affairs, Government of India:

<table>
<thead>
<tr>
<th>Year</th>
<th>Juvenile Crime Rate</th>
<th>Offences Committed by Juveniles to the Total Crime Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>0.9</td>
<td>0.5</td>
</tr>
<tr>
<td>2000</td>
<td>0.9</td>
<td>0.5</td>
</tr>
<tr>
<td>Year</td>
<td>Rate 1</td>
<td>Rate 2</td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>2001</td>
<td>1.6</td>
<td>0.9</td>
</tr>
<tr>
<td>2002</td>
<td>1.8</td>
<td>1.0</td>
</tr>
<tr>
<td>2003</td>
<td>1.7</td>
<td>1.0</td>
</tr>
<tr>
<td>2004</td>
<td>1.8</td>
<td>1.0</td>
</tr>
<tr>
<td>2005</td>
<td>1.7</td>
<td>1.0</td>
</tr>
</tbody>
</table>

The table above shows an increase in juvenile crime rate in 2001 when the age of juvenility was increased to 18 years, and also indicates that the increase remained almost constant the following years. The data published by the National Crime Bureau Records reflects that the share of juvenile crime rate to the total IPC crimes has in fact marginally decreased from 1.2% in 1989 to 1.0% in 2005. The number of juveniles apprehended has also fallen.

"A decrease of 9.0% in the number of juveniles apprehended in the age group [16-18 years] was noticed in 2004 as compared to 2003. At the national level the overall decrease in juveniles apprehended was 7.1% in 2004 as compared to 2003." This belies the argument that the number of children involved in criminal activities is steadily on the rise.

The infrastructure was inadequate and required upgrading even under JJA 1986, when the age of boy juveniles was 16 years. It is imperative that the State governments upgrade and streamline the prevailing infrastructure. It is not a difficult or impossible task. It merely requires some application of mind and the political will to set an improved system in place. It is necessary to ensure that vacancies in institutions are filled, the strength of the institutional staff and Pos increased, appropriate posts created, educational and vocational
training provided, and the spirit of juvenile legislation adhered to.

With the increase in age of boy juvenile it was also envisaged that there would be a significant rise in the number of juveniles committing offences of more serious nature, such as murder and rape. Statistics also puts to rest this prediction. The data published by the National Crime Records Bureau show that in 1999, 2.7% of the total IPC crimes were murder and 2.1% were rape; in 2000, 2.6% of the total IPC crimes were murder and 1.8% were rape; in 2001, 2.2% of the total IPC crimes were murder and 2.1% were rape.

6.6.4. Lowering the age of a juvenile is far more complex than we foresee

India is a signatory to the UNCRC which mandates the age of a child to be below 18 years. Countries all over the world use this definition. India too, defines a child between the ages of 0-18 years. By law, he/she is not allowed to vote, sign a contract or engage a lawyer because he/she is not considered mature enough to make such decisions. Neuroscience proves in more ways than one, that an adolescent is at an age where he/she is not mature enough to understand the consequences of his/her actions. He/she is still vulnerable and can live a normal healthy adult life if allowed to undergo reformation through corrective measures. Our reluctance to acknowledge and prevent issues that cause children to turn to crime is a detriment to society. Why not have the State take responsibilities for their duty as care takers to our children?

Proper guidance, corrective treatment, education, healthcare etc gives a child a chance to reform. It is the responsibility of the community and state to provide these facilities to a child in order to
increase the possibility of a better life. Instead, children are sent to remand homes, observation homes etc where they are subject to various forms of abuse. How then is a child supposed to grow up normal if provisions made for him/her lead him to further crime?

Most children have hope for reformation. With adhering to current juvenile justice laws, we give our children hope for a better life.

6.6.5. **Repercussions that the amendment can lead to**

Lowering the age of the juvenile, which mainly came into the spotlight after the "Nirbhaya" i.e. Delhi gang rape case is more of a emotional issue than a legal issue as of now. Public demanding the lowering the age is mainly carried of their emotions related to the delhi gang rape case and is ignoring the other side of the coin, i.e. the repercussions it can have on the other juveniles in the country.

According to Sanjay Gupta, Director of NGO Childhood Enhancement Though Training and Action (Chetna), the "useless" proposal based on one incident will have grave consequences for several other juveniles.

Girls under the age of 18 years, who are forced to work in brothels, at present, are rescued and rehabilitated under the Juvenile Justice Act, but once the age is reduced to 16, police will arrest them and charge them with prostitution for no fault of theirs.

The reduction of age would certainly help the police as homeless juveniles are easy targets for them and can be easily implicated in false cases.
6.6.6. **Repercussions that the amendment can have on the other laws due to the ambiguity in laws**

In terms of the definition of a child, India doesn't have uniformity even though it is a signatory to the Convention on the Rights of the Child (CRC), 1989, Article 1, which clearly states a child means every human being below the age of 18 years. In India, majority is attained at 18. But, a child labourer is a person below the age of 14. The Constitution of India, in the Fundamental Rights and the Directive Principles of State Policy, prohibits child labour below the age of 14 years; a person can have consensual sex at 16 but can marry only at 18 and consume alcohol only when he/she turns 25.

Amending the age of a juvenile at such a stage under the JJ Act, when we have such ambiguous laws can for sure lead to disturbance in the other laws.

Therefore, we should not rush into a decision under pressure of the societal outrage resulting from a single incident, but should give into more thoughts before actually making the amendment.

6.6.7. **The age should be decided not on the basis of knowledge but on the basis of culpable mind**

The basic idea behind enacting the JJ Act kind of law was to protect the juvenile offenders for their illegal and wrongful acts done under innocence and non awareness of the consequences. The researcher here would like counter Ms. Sridhara, (a psychologist) viewpoint discussed in point no. 9 of the previous heading.

The researcher completely agrees to her view, that an individual is matured enough at the age of 16 as to differentiate between what is right and what is wrong, but as per the researcher, having knowledge of
right and wrong is not enough a ground to punish a juvenile for his acts. What acc. to the researcher is required is the culpable mind to commit the crime. An individual of not 16, but even of 15 may be very rightly able to distinguish between right and wrong, but he is not matured enough to be aware of all the consequences of his acts and have a fear out of punishments.

For instance, a guy, who is studying in 12th standard is well aware of the fact that injuring some seriously is not right and may lead even to police action and he still often do that in the playground or on some other instance, but the same guy after will not do the same act at a graduation or after that level, its not because that he was not aware of that what he is doing is wrong instead he was lacking the culpable mind or the fear of the consequences, which he is having now.

6.6.8. Reducing the age to 16 may throw open the gate for frivolous FIRs and may lead to a even greater problem of backlogs of cases

Besides, having many other reasons, one of the reasons which may be counted as for not reducing the age of the juvenile is that it may lead to throwing open of the gate for frivolous complaints and FIRs, leading to the creation of another problem.

None of us is unaware of the minor fights and disputes day to day taking place amongst the young college and schools students, who are mostly in the age group of 16-18. As of now, these matters are taken up by the JJ Boards, who dispose off the case in a best possible manner, keeping in mind the future and career of the offender child. Now, if this category of individuals will be placed in the normal i.e. adult category, it may lead to harmful consequences, because the no. of
such incidents is quiet high and then each and every one of it would be converting into a FIR/Criminal case, leading to queue of cases in the police station and secondly, there is every possibility that the studies of the involved students in such a law will be affected in a comparatively more rigorous way, because no matter how worstly or slowly our juvenile justice system is working, it is still better than our adult judicial system.

6.7 SUPREME COURT ON THE ISSUE

The Supreme Court of India earlier on 18th January, 2013 issued notice to Union government on a public interest litigation petition seeking a direction to amend the Juvenile Justice Act. The petition called for amending the Act to insert a provision whereby an exception is mentioned regarding the non-applicability of the Act, qua juvenility, depending upon the facts and circumstances of a particular case, irrespective of the age of the accused i.e. below 18 years.

A Bench of Justices K.S. Radha Krishnan and Dipak Misra also issued notice to the Delhi government on the petition filed by advocate Salil Bali. It also issued notice on another petition filed by novelist and computer engineer Shilpa Arora Sharma that sought the appointment of a criminal psychologist to determine through clinical and medical examination if the juvenile accused in the case would be a threat to society and women if allowed to walk free.

However, the Hon'ble apex court on 17th of July, 2013 dismissed a batch of petitions seeking a direction to the Centre to take steps to make changes in the Juvenile Justice (Care and Protection of Children) Act 2000 to ensure that juveniles be tried under normal law in offences like rape and murder. The petitions also demanded that protection to
juveniles under the Act be removed.

A three-judge Bench of Chief Justice Altamas Kabir, and Justices S.S. Nijjar and J. Chelameswar, while rejecting the batch of petitions, also did not accept the plea that the investigating agency be permitted to keep records of the juvenile offenders, and take preventive measures to ensure that repeat offenders were brought to justice.

Writing the judgment, the Chief Justice said: "There is little doubt that the incident (the Delhi gang rape) which occurred on the night of December 16, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, was involved. But such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the rule."

The Bench said "If what has come out from the reports of the Crime Records Bureau is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate. The J J Act is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at 18 years in the J J Act was Article 1 of the Convention of the Rights of the Child. The age limit, which was raised from 16 to 18 years in the J J Act, is a decision which was taken by the Government, which is strongly in favour of retaining Sections 2(k) and 2(1) in the manner in which it exists in the statute book."

The Bench said that a misunderstanding of the law relating to sentencing of juveniles needed to be corrected.

The general understanding, the court said, was that a juvenile
guilty of a heinous offence could be allowed to go free on his attaining the age of 18 years. The Bench made it clear that even if a juvenile attained the age of 18 years within a period of one year, he would still have to undergo a sentence of three years. The Bench pointed out that the essence of the Juvenile Justice Act is "restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the mainstream society."

"The age of 18 has been fixed on account of the understanding of experts in child psychology and behavioral patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future."

6.8 BIRD'S EYE VIEW OF JUSTICE VERMA COMMITTEE ON THE ISSUE

On 22nd December 2012, a judicial committee headed by J. S. Verma, a former Chief Justice of India, was appointed by the Central government to submit a report, within 30 days, to suggest amendments to criminal law to sternly deal with sexual assault cases.

The committee in its report submitted that assuming that a person at the age of 16 is sent to life imprisonment, he would be released sometimes in the mid-30s. There is little assurance that the convict would emerge a reformed person, who will not commit the same crime that he was imprisoned for (or, for that matter, any other crime). The attempt made by Ms. Kiran Bedi to reform Tihar Jail inmates was, and continues to be, a successful experiment. But we are afraid that that is only a flash in the pan. Our jails do not have
reformatory and rehabilitation policies. We do not engage with inmates as human beings. We do not bring about transformation. We, therefore, breed more criminals including juveniles) in our prison and reformatory system by ghettoing them in juvenile homes and protective homes where they are told that the State will protect and provide for them, but which promise is a fruitless one.

Children, who have been deprived of parental guidance and education, have very little chances of mainstreaming and rehabilitations, with the provisions of the Juvenile Justice Act being reduced to words on paper.

We are of the view that the 3 year period (for which delinquent children are kept in the custody of special home) is cause for correction with respect to the damage done to the personality of the child. We are completely dissatisfied with the operation of children's institutions and it is only the magistrate (as presiding officer of the Juvenile Justice Board) who seems to be taking an interest in the situation. The sheer lack of counselors and therapy has divided the younger society into 'I 'and 'them'.

It is time that the State invested in reformation for juvenile offenders and destitute juveniles. There are numerous jurisdictions like the United Kingdom. Thailand, and South Africa where children are corrected and rehabilitated; restorative justice is done and abuse is prevented. We think this is possible in India but it requires a determination of a higher order.

6.9 STEPS TO BE TAKEN

The researcher after a thorough research on the topic is in a situation and feels safe to suggest that reducing age of a juvenile under
the J J Act is not the solution to the problem of juvenile justice system in India.

Here are some suggestions that the researcher feels can help in improving the juvenile justice system of the country;

1. First of all, we should try to mould our society in such a way such that no juvenile commits crime. Circumstances are one thing that we all know is the root cause of many juveniles becoming offenders. If this thing can be sorted out, the researcher feels that the problem of juvenile justice will to a great extent will be solved of its own.

2. The act should be implemented heavily. The Juvenile Justice Act is comprehensive and if implemented honestly can curb incidents like Delhi gang rape by providing timely help to juveniles who might turn into criminals. The problem is not with the act but with its implementation. Instead of making amendment in the act, the need of the hour is to make sure that existing provisions in the act are implemented.

3. Since, there is every possibility that the above 2 suggestions may not be enforceable as has been in the last 28 years (since the enactment of the J J Act), what at present we can do to improve our juvenile justice system and curb incidents like Delhi gang rape is to adopt the approach or concept of some foreign countries such as "Get tough" and "Youth Court" of U.S.A and U.K. respectively (discussed in the report earlier).

We should not have a common juvenile age for every crime. We can divide the juvenile system into different age groups on the lines of various foreign countries such as; U.S.A., U.K. and France. Different
types of crime should have different juvenile age limits. For e.g. as in
the current Delhi gang-rape case, the juvenile must be tried as an adult,
for rape is no joke. It's perhaps the most heinous crime one could
commit. If you commit crimes of the adult, you must tried as an adult.
No one could possibly rape someone (and that too in such barbaric
way) and claim that he didn't fully understand what he was doing just
because he's not yet an adult. Crimes like rape must have lower
juvenile age limits.

On the other hand, suppose a 16 year old teen is caught in a case
of substance abuse. He is held with significant amounts of banned
narcotics. Our country's anti-narcotics laws are very tough and can put
way an adult for at least 10 years. Now, there's a very high chance that
this 16 year old guy was misled by the company of wrong kinds of
people in to the world of drugs. He probably even doesn't know about
the stringent anti-narcotics laws. But alas! Juvenile age is 16 and law
says he is an adult so he must be put away for 10 years or more of
rigorous imprisonment. But I don't think it would be right to imprison a
16 year old for such a long time for something he doesn't even fully
understand. Similarly say for armed robbery... suppose a 16 year old
conducts and an armed robbery (out of need/greed) and loots away a
lot of wealth, would you like to lock him up for around 10 years?
Juvenile age for such a crime is better at 18 years at the least.

These are just two examples.... there can be several more points
and counter points. The researcher thinks that it might be proper not to
have a general juvenile age but one that varies from crime to crime. Or
better yet, if it's possible, decision on juvenile age may be left to
presiding judges for each case, where the judges could subjectively
decide whether or not to treat the accused as a juvenile, depending upon the nature and severity of his crime.

4. Now, the next question which might arise in the mind of all of us is that if we are leaving the question of juvenility to be decided from case to case, then who is to judge and decide as to whether a case will fall in the category of juvenile or not. This task can very well be handled by our JJ courts. If the presiding judge feels that the case of the juvenile offender should be tried by an adult court then he/she can transfer the case to an adult court.

Or since, our JJ courts are already burdened with backlogs of cases, additional boards or committees can be formed of experts or judges who can decide from case to case as to whether a case should be tried in a juvenile court or an adult court.

5. The age in researcher's opinion should not be reduced at all, as it may have serious repercussions as discussed in arguments advanced against the amendment. It may be beneficial for a specific that cannot be done at the cost of keeping a lot others at stake.

We should not think of this gang-rape case in isolation and we should not take decisions under any kind of emotional bias. Think about it... Would you've even asked this question if that one gang-rape hadn't happened? A collective lowering of juvenile age might have some good effects but will create many complications in the long run.

The researcher at the end stands completely in support of the apex court decision that reducing the age of the juvenile under the J J Act is not the solution to the problem.

If today we lower down the age from 18 to 16, on the basis of Nirbhaya rape incident, what is the surety that tomorrow the act with
even more heniousity can't be done by a child of 15 years, will we then again protest to reduce the age to 14? Therefore, instead of reducing the age, we should try to remove the very root cause of the problem i.e. mould our juveniles in such a way and provide them with such an atmosphere that they don't commit crime at the very first step itself. We should not forget that the essence of the Juvenile Justice Act is "restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into the mainstream society."

Undoubtedly, juveniles in conflict with law and children in need of care and protection are defenseless and they need special protection. The state guarantees special treatment to them through statutory law. However, in practice, they often get victimized by legal and procedural entanglements. They are more prone to human rights violations at the hands of state agencies, their own family and community in the form of arbitrary detention, cruel punishments, torture and abuse. The best solution is to provide proper care and help to juveniles so that they don't turn into criminals. The Juvenile Justice Act is comprehensive and if implemented honestly can curb incidents like Delhi gang rape by providing timely help to juveniles who might turn into criminals. The problem is not with the act but with its implementation.

The need of the hour is to make sure that existing provisions in the Act are implemented.