

***“Efficacy of Juvenile Justice System in Combating
Recidivism”***

***A Dissertation
to be submitted in partial fulfilment of the requirement for
the degree of
Master of Laws (LL.M.)***

Submitted by

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I wish him success in life.

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Mohammad Aqib Khan

LL.M. (Criminal and Security Laws)

LIST OF ABBREVIATIONS

S. No.	Abbreviation	Full Form
1	AC	Appeal Case
2	Govt	Government
3	AIR	All India Reporter
4	ART	Article
5	DLT	Delhi Law Times
6	Ed.	Edition
7	F.N.	Footnotes
8	HC	High Court
9	I.A.	Indian Appeals
10	Ors.	Other
11	SC	Supreme Court
12	SCC	Supreme Court Cases
13	SCR	Supreme Court Reporter
14	SCW	Supreme Court Weekly
15	Sec.	Section
16	UOI	Union of India
17	V/Vs.	Versus
18.	JJ Act	Juvenile Justice Act
19.	Anr.	Another
20.	CrI.	Criminal
21.	Mad.	Madras
22.	LJ	Law Journal
23.	All.	Allahabad
24.	IPC	Indian Penal Code
24.	Cr.P.C.	Code of Criminal Procedure
25.	Ori.	Orissa
26.	NHRC	National Human Rights Commission
27.	UNICEF	United Nations Children's Fund
28.	Dr.	Doctor
29.	Pg./P.	Page
30.	W.P.	Writ petition
31.	Vol.	Volume
32.	Ibid	The same place
33.	Pvt.	Private

34.	Ltd.	Limited
35.	Raj.	Rajasthan
36.	Pat.	Patna
37.	Jhar.	Jharkhand
38.	UP	Uttar Pradesh
39.	NDPS	The Narcotic Drugs and Psychotropic Substances Act, 1985
40.	Yrs.	Years
41.	w.e.f.	With effect
42.	NCRB	National Crime Record Bureau
43.	CRC	Commission on Child Rights
44.	Id	Identity Document
45.	RCR	Relative Citation Ratio
46.	INDLAW	Indian Law
47.	SCALE	Supreme Court Almanac
48.	Rev. Stat	A name of a journal
49.	NGOs	Non-Government Organizations
50.	AWC	Allahabad Weekly Cases
51.	JT	Judgments Today
52.	ALC	All India Cases
53.	WLN	Weekly Law Notes
54.	Del.	Delhi
55.	OCR	Orissa Law Reports
56.	US	United States
57.	LR	Law Report
58.	SCCJ	Session Cases Court of Judiciary
59.	UNCRC	United Nations Convention on Child Rights
60.	NCLP	National Child Labour Projects

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CHAPTER I

INTRODUCTION

It is very profoundly and certainly very aptly, believed that everyone is born innocent and as pure as anyone else but, delinquency in a child is sometimes a result of his adolescence, or idiocy or adventurous traits or surroundings. The child, who befalls any of these categories, and as a result he would be referred as a child in warfare (conflict) with the society or law of the land but in the language of a layman, they're regularly termed as "a criminal", or their names are associated with the nature of crime they committed. They are considered as the faces of young criminals. Every society or state aims to achieve or live in peace and to get the same, stakeholders of the society wish to eliminate such worthless, desperate beings with a view that such children will always be, anyhow, living their life with criminal traits in whole of their life.

But, we, as a society in the meantime, often conk out to understand that every child coming in the ambit of delinquency, has faced or has been is dealing with hardships in life. Any little child, because of a few unavoidable reasons has fallen out of his shielding sheet at some stage of his childhood and has been robbed of a possibility of securing a protective and healthful early years of his life. The study through this Dissertation is primarily based totally at the understanding of the Indian system of juvenile justice, and understanding the very motives and reasons as to why such children in warfare with law must be handled as children in hardships or in tough instances and the how the juvenile justice system must be targeted towards addressing the vulnerabilities in children which surely cause delinquency in them, and making their rehabilitation efficient and sure with the goal or intention of reaching the low graph of delinquency and recidivism in children or juveniles.

1.1. Research Scheme

The subject matter of this Dissertation "*Efficacy of Juvenile Justice System in fighting Juvenile Recidivism*" is an analytical examination or study at the query of performance of the existing juvenile justice set up and provisions of law, handling or dealing with

juvenile delinquency in India, and to look whether or not such laws meant for ensuring social welfare, are efficient and sufficiently sound to address the juvenile delinquents who commit one of the most brutal and heinous offences and most significantly and importantly, fall again and again with the cajole of recidivism. The behavioural tendencies of the juvenile delinquents is specially looked upon in this Dissertation, and also upon the primary motives and causes due to which they walk back in the passages of delinquency. Also, it does keen assessment of the erstwhile *Juvenile Justice (Care and Protection of Children) Act, 2000* and the current *Juvenile Justice (Care and Protection of Children) Act, 2015*, with the suggestions to make it more efficient and relevant.

1.2. Background of the Research

This study is geared towards knowledge and locating the foundation reasons at the back of juvenile delinquency in India and approximately the methods or measures which might be taken by the governments through its various mediums and law enforcing agencies for giving or nurturing the mind of delinquents through providing a meaningful platform. Additionally, this study, specializes in the very vital and crucial appreciation or appraisal of the present laws and regulations which have been enacted by the legislature to lower or lessen the delinquency among the children and to look at what extent or volume those statutory enactments and other laws are capable of shielding the children who're in want of absolute care and protection.

1.2.1. Understanding a Juvenile: A General and Legal Overview

It is very important to first of all, realise and apprehend in very absolute sense and the meaning of the word 'juvenile', often understood, in the world of laymen, as someone who has not reached a certain specified age and thereby, by this reason only, cannot be made liable or responsible for his wrongful acts or omissions, equally as a grown up person in accordance with laws applied. Hence, more preferably, a child who is yet to reach 18 years of age, is a juvenile and in the duration of such age he has committed a few offence that's punishable according to law.

It is important to say that those children who commit a few offences earlier than reaching the age of 18 years are regularly referred as "delinquent juveniles", in the laws.

Therefore, generally, the younger offenders are apprehended or defined as 'juvenile delinquents'.

The phrase 'juvenile delinquent' is made up of, or consists two words- DELINQUENT and JUVENILE. Latin word 'delinquere', is behind the word delinquent, which means 'neglect' and the word 'juvenile' means young. So, a delinquent juvenile in short means 'neglect the part of the juveniles to comply to the accepted norm or standards of conduct in the society'¹.

1.2.2. Some Laws and Provisions in the benefit of Juveniles

In India, juvenile delinquents are given statutory protection under diverse enactments as follows:

1. In *Indian Penal Code 1860*,²section 82³ ensuring absolute protection or immunity to children below 7 years of age- *doli incapax*, and section 83⁴ providing qualified protection or immunity to the children of the age of 7-12 years- *doli capax*, are in favour of the juveniles.
2. In the *Code of Criminal Procedure, 1973*⁵, section 27⁶ containing special provision for trial, rehabilitation and social integration of juvenile delinquents, section 360⁷ directs that a man or a woman below 21 years of age to be released on probation with good conduct or admonition if the offence committed isn't punishable with death or imprisonment for life.
3. *Juvenile Justice (Care and Protection of Children) Act, 2000*⁸ repealed *Juvenile Justice (Care and Protection of Children) Act, 1986*, which was a result of convention of United Nations General Assembly aimed at protecting and safeguarding the interest of children under the age of 18 years in opposition to exploitation and child abuse. The Act was bifurcated into two parts, of which

¹ K.D. Gaur, Textbook on Indian Penal Code, Pg. 127, Universal law Publishing Co. Delhi,5thEdn.

² Act No. 45 of 1860

³ Act of Child under seven years of age

⁴ Act of Child above seven and under twelve of immature understanding

⁵ Act No. 2 of 1874

⁶ Jurisdiction in case of juveniles

⁷ Order to release on probation of good conduct or after admonition

⁸ Act 56 of 2000

first one deals with the juveniles who're in warfare or conflict with law and second one deals with Children in want or requirement of care and protection. Its major functions encompass absolute prohibition upon capital punishment in case of child culprit below the age of 18 years, conducting separate trial for child offenders, no appeal in challenging the acquittal of the juvenile, separate juvenile police units, and targeted rehabilitation and social integration of the child.

4. *Juvenile Justice (Care and Protection of Children) Act, 2015*⁹, made by the Parliament post drastic aftermath of the inhumane and brutal *Nirbhaya cases*' judgment primarily written as as *Dr. Subramanian Swamy & Ors. v. Raju Thr. Member Juvenile Justice Board & Anr.*¹⁰. Massive protest and outrage among masses upon the acquittal of the culprit in said case despite being the most brutal, was the reason of enacting this Act, entirely just due to his age and juvenility. The Act was made or enacted maintaining in thoughts the nature of offence committed through the juveniles irrespective of their age. So, now the existing Juvenile Justice Act allows juveniles among the age of 16-18 years of age to be prosecuted as grownup offenders for the commission of the brutal and heinous offences. Also, the scope of rehabilitation for the children in want or requirement of care and protection, has been broadened through facilitating adoption of deserted children. This *Act of 2015* repealed the *Act of 2000*.

5. In *Indian Evidence Act 1872*¹¹, *section 118*¹² addresses, impliedly, the admissibility of the statement by a child witness. In *Rameshwar s/o Kalyan Singh v. The State of Rajasthan*¹³, it was held by the Court everybody is allowed to be a witness within the bounds of court, provided, he in not incapable of apprehending the query or questions positioned to him to answer in accordance with to the provisions packed under *section 118 of the Indian Evidence Act*. The Supreme Court, in the judgement of *Nivrutti Pandurang Kokate & Ors. v. The*

⁹ Act No. 2 of 2016

¹⁰ AIR 2014 SC 1649

¹¹ Act No. 1 of 1872

¹² Who may Testify

¹³ 1952 AIR 54, 1952 SCR 377

*State of Maharashtra*¹⁴, held that a child witness' testimony is necessitated to be checked or scrutinized so that it can be ascertained and ensured that it is not tormented by means of any kind of coercion and undue influence, and has to be corroborated with other given evidences. The insertion of this clause has been duly made with due attention given to the very gentleness and vulnerability of the children at such an early age, wherein certain instances or incidents could make a destructive impact upon their reminiscence, and somewhere sooner or later they may perceive matters from thereon. This is why, courts must be very careful and must take note of different factors at the back of such delinquency in a child earlier than making his testimony admissible, as an example, it has to be ascertained and ensured that the child has surely apprehended the nuances of the circumstance, what caused the prevalence of his delinquency. Apparently, it can be very often seen that children of gentle age regularly have a tendency to be submissive and docile because of the immoderate stress and the kind of anxiety that surrounds and exists the whole things, and lastly it occurs that the court's whole judicial proceedings grow to be taking a toll on their touchy thoughts, leading to extrusion or breakdown of testimony before the court. So, the courts must have, to be very cautious and careful, to appreciate and attend to problematic elements very responsibly. It has to be ensured by the court that the child's testimony, in the trial isn't affected, in in any manner¹⁵.

6. In the *Probation of Offenders Act, 1958*¹⁶, section 6¹⁷ enshrines some qualified exemption to persons who have not reached 21 years of age and also, who're not proven guilty of committing offences punishable with death or imprisonment for life.

1.2.3. Reasons behind Special and Protective Treatment of Juveniles

“A young person is thought to be much less blameworthy than a grown up man, due to his lack of judgement, and prone to easily influenced by others”.

“Younger the child the lesser are the probabilities of him being corrupt”.

¹⁴ (CrL.) 345 of 2008

¹⁵ https://blog.ipleaders.in/admissibility-child-witness-court-law/#_ftnref1 visited on 01/05/2021

¹⁶ Act No. 20 of 1958

¹⁷ Restriction on imprisonment of the offenders under twenty-one years of age

It is often believed that persons who have not attained majority, are incapable of knowing or apprehending the outcomes of their act or omissions. Moreover, a lot of socio-economic issues surrounding him may also push them in something which is unacceptable by the society at large, and ultimately into delinquency or criminality, such as the factors like cruelty, poverty, lack of education etc. So, considering and keeping in minds all these issues, delinquent children cannot be put at par with the grownup offenders and cannot also be put to harsher outcomes such as death sentence, imprisonments etc.

In the case of *Marimuthu*¹⁸, a 10 years' old who picked up a silver button and handed that over to her mother was not held guilty of theft because of lacking prudence and maturity to apprehend the nature of her act.

It was held by the House of Lords in *R vs. G*¹⁹, that liability for harm is decided in line with the subjective standard of the highbrow capabilities of the accused in case of children is very important factor in affixing the liability for harm or damage.

But, in *Ulla vs. King*²⁰, where 10 years old girl accused for striking her husband with a pointy object whilst her husband was into sleep, was held to be *doli capax* i.e., she was held to be capable of apprehending the nature of her act, consequently she was punished for homicide.

1.2.4. In the of Prevention of Recidivism in Juvenile Delinquency: Steps Undertaken

Each and every child born in this world, is innocent however, the surrounding instances around him play a very vital role in making him a delinquent or criminal. Hence upbringing of a child performs a complete critical and proves to be important position in his nourishment in which his bodily, intellectual, ethical and religious improvement is important. Unsuitable environment in the society, bad company, negligence of child's very basic and important needs, numerous physical and psychological abuses, are most of the instances that leave no other option, and force a child to become a delinquent.

“It's less complicated to construct robust children then to restore damaged ones”²¹

¹⁸ 1909, 9 Cr LJ 392 Mad.

¹⁹ 2003, 4 All ER 763

²⁰ AIR 1950 Ori 261.

²¹ Frederick Douglass

Children in India represent nearly 40% of our nation's total population and are taken into consideration as a country's vast asset that are verily extremely assuring for country's bright future. Sometimes, children are also acknowledged as the foundation of a society. In the case of *Bandhua Mukti Morcha vs. Union of India*²², the *Supreme Court of India* highlighted the necessity and significance of enlightenment of the children and held that the children are lighting fixtures to the society as a whole.

So, repeatedly, it has been acknowledged that every child needs to be well educated, and must possess the important understandings in order that once he reaches or accomplishes the age of his adulthood, he grows to be a person who is important and contributes to the society.

Below are the initiatives taken for the attainment of above said targets:²³

1. Employing children in hazardous or risky works is banned by the *Factories Act, 1948*.
2. Child labour is made punishable by the *Child Labour (Prohibition and Regulation) Act, 1986*.
3. Making child marriage a punishable act by the *Child Marriage Restraint Act, 1986*.
4. The *Constitution of India* provides shields or remedies for children which are a kind of special protection to them, within its *articles 14, 15, 21, 21-A, 23, 39(e), 39(f), 45, 46 and 47*.
5. Integrated Child Development Services with the goal to address the hassle of malnutrition and different fitness troubles confronted by each child under the age of 6 years in addition to their mothers.
6. Midday Meal Scheme Lunch (freed from cost) to school students at primary education level.
7. National Literacy Mission Program to make eighty million of Indian population between the age of 15-35 years' literate.
8. National Child Labour Projects (NCLP), a group of children under 14 years of age who're working in the occupations and processes dealt by the Schedule to the *Child Labour (Prohibition & Regulation) Act, 1986* or in different such occupations and processes which might be considerably dangerous to the fitness and protection of the child.

²² (1997) 10 SCC 549

²³ https://en.wikipedia.org/wiki/List_of_government_schemes_in_India

In fact, global and international institutions or organizations like NHRC & UNICEF also have been taking certain unique efforts to protect and shield the rights and interests of children in want of care and safety or protection. Also, there are diverse provisions in the *Indian Penal Code, 1860* that are specifically geared towards arching and protecting the interests of the children and these provisions are carried *in sections 317²⁴, 361²⁵, 363A²⁶, 366A²⁷, 369²⁸, 372²⁹, 373³⁰*.

1.2.5. The Present Scene with some Stats

The Indian legal system or India's juvenile justice system does not term the juvenile delinquents as criminals but as juveniles who're in conflict with law of the land. In India, lot of children are made to go through a lot of pain, sufferings and hardships, irrespective of above mentioned safeguards for them. Furthermore, the share of children in the age of 15-18 years, in the crimes committed in India is very excessive. Also, the aftermath of the notorious *Nirbhaya* rape case incident has caused a debate as to whether or not a special treatment to be given to the accused children in very heinous and brutal crimes, which lastly caused the birth of the revamped *Juvenile Justice (Care and Protection of Children) Act, 2015*.

Even so, various reports of the government, non-government organisations and news houses show very clearly that the crimes committed by the younger children aren't much prevented any time quickly and that is also shown, by following headlines of newspapers that;

1. According to Government, assault and attacks upon females or women by juveniles rose by 132% in 2012-2013.³¹
2. In the year 2013, it was said by cops that hardened criminals (juveniles) mock law in the cases of sexual assault and homicide.³²

²⁴ Exposure and abandonment of child under twelve years, by parent or person having care of it

²⁵ Kidnapping from lawful guardianship

²⁶ Kidnapping a minor for purpose of begging

²⁷ Procuration of minor girl

²⁸ Kidnapping or abducting a child under 10 years with the intent to steal

²⁹ Selling minor for purpose of prostitution etc.

³⁰ Buying minor for purpose of prostitution, etc.

³¹ Editorial, The Times of India dated Nov 28 2014, Times News Network

³² Editorial, Crime Committed by Juveniles, Times of India, dated 15.07.2014

3. In the year 2014, by a report 18% boom in crimes by juveniles was recorded in Delhi.³³
4. During the years 2014-2016 it was found that one juvenile was held for rape each four hours in India.³⁴
5. In the year 2016, it was again reported that 35.6% of the crimes in Delhi were committed by the juveniles in conflict with law.³⁵

Juvenile delinquency, in India, is still one of the ugliest thing prevalent and witness. However, the enactments of *Juvenile Justice (Care and Protection of Children) Act, 2000* and of *2015*, have in fact, have also supplied a current of reformation in a lot of delinquent children who had been in warfare with law of the land and have also furnished them with a hope or desire of residing in the society as a brand new, nonviolent and dignified person as a stakeholder. However, nevertheless the stated legislations have not very effectively been capable of coping with the issue of juvenile delinquency in India, from its very ground and the above given records in fact, suggest that the existing enactments in favour of the delinquent juveniles are not the only methods which we need to adopt to root out the issue of juvenile delinquency. But we as a society, need to undergo a kind of change in our sociological and mental tendencies that leave no other choice for such children other than delinquency to opt in their life. A crime is an illegal act which is also looked up by the society as an act of wrong, morally and ethically, regardless of the thing that whether or not it's committed by a major person or a juvenile. Henceforth in reality there may be an acute want of making mass recognition, among the children of each rural and urban regions, regarding the outcomes of the picks or choices they make of their existence and the way risky such picks may be for the future in their lives.

1.3. Objectives behind this Study

³³ Editorial, Crime Committed by Juveniles, The Times of India, dated 20.08.2015

³⁴ Editorial, Crime Committed by Juveniles, The Times of India dated 25.10.2017

³⁵ Editorial, Crime Committed by Juveniles, The Times of India, dated 1.12.2017

Below are the objectives behind this study:

1. To examine and to look that to what limit the existing and modern legal provisions in controlling the delinquency in juveniles, are effective in confronting the delinquency in children and up to what limit they are efficient in reforming the delinquents who've been in the warfare with laws.
2. To come with a very clean and concise pictographic idea of recidivism in juvenile delinquency in the country through examining its meaning, nature and impacts on the society as well as children, furthermore how our laws and our judiciary deal with it.
3. This study, in addition focuses on the modifications introduced in 2015 through the brand new *Juvenile Justice (Care and Protection of Children) Act*.

1.4. Hypothesis in this Study

Below averments are hypothesized, that;

1. No birth (of a child) is a birth of a criminal or delinquent but the elements like poverty, paucity of schooling and diverse different socio financial situations are verily the important causes at the back of the upward thrust in juvenile delinquency and its recidivism.
2. Lowering the cap for the purpose of determination of the juveniles' age, from the age bracket of 18 to 16 years, might not clear up the evil issue of delinquency in juveniles and recidivism in it.
3. *Juvenile Justice (Care and Protection of Children) Act* has been capable of reforming the juveniles in warfare with laws of the land. However, there aren't many provisions and packages that target the fine improvement of those delinquents. Furthermore, it's ultimate want of the hour that besides reformative measures, special and unique preventive combative measures must also be taken up for confronting the issue of delinquency and recidivism in them.

1.5. Questions in the Research

The executory capacity and limitations in implementation of the Indian laws for addressing the issue of juvenile delinquency, has been tried to be investigated in this Dissertation. Therefore, the questions below are framed:

1. What are the primary causes at the back of the growing pace of juvenile recidivism?
2. How is the age of the juveniles decided in the Indian legal set up to ascertain and fix culpability of the delinquent child?
3. Whether punishing the juveniles as a major or ordinary offender for heinous crimes or lowering the age for determination of their culpability, will defeat the whole intention and goal of enactments like *Juvenile Justice (Care and Protection of Children) Act* which are surely meant for social welfare?
4. Is there persists any necessity or requirement to amend or bring in any changes in the existing punishment mechanism addressing juvenile delinquency and its recidivism?

1.6. Research Method followed in the Dissertation: Research Methodology

To undergo this empirical legal examination or to do study on the subject, the researcher will be expressing his thoughts founded on doctrinal method by primary data collection such as statutory enactments, provisions in laws etc. and secondary data like judicial pronouncements, articles authored by scholars, legal journals, newspapers etc.

1.7. Literature Review

Different books and articles on web on the issue of juvenile delinquency and the legal set up in the country for combating or controlling the same and also for safeguarding

the rights of delinquent juveniles by various reputed and known authors and also reformists, were studied by the researcher. These consist of:

1. Authored by Dr. N. L. Mitra, the book ‘Juvenile Delinquency and Indian Justice System’³⁶, by analysing different sociocultural, financial and mental elements that compel a child to opt for delinquency, enshrines a very quick evaluation of the country’s juvenile justice system.
2. Authored by Justice V. K. Krishna Iyer, the book ‘Judicial Justice in Action’³⁷, encompasses techniques of our country’s system of juvenile justice and also highlights the significance of reformatory provisions in penal laws for the combating criminality and crimes in the country.
3. Written by K.D. Gaur, textbook on the *Indian Penal Code*, enlists various provisions of Indian Penal Code with proper appreciation, and explains the Code with the assistance of different judicial pronouncements. Very basic and fundamental principles of penal laws, criminality, culpability etc. are aptly highlighted.
4. Authored by Hussain Syed³⁸, in the book ‘Juvenile Delinquency’, juvenile delinquency and the development of the evil of juvenile delinquency in India is studied, and also causes at the back of the delinquency and techniques or measures to be followed to steer out the evil of delinquency in juveniles is discussed.
5. By the authors Vijay Hansaria and P.I. Jose, the book ‘Juvenile Justice System’³⁹, deals with the position or standing of the governments in states and NGOs, the functioning and working of juvenile justice board, police, observational homes, in handling the hassle of juvenile delinquency.

³⁶ Dr. N. L. Mitra (Professor, National Law School of India University, Bangalore) “Juvenile Delinquency and Indian Justice System”, 1998

³⁷ V R Krishna (Justice) Iyer, *Judicial Justice in action*, Tripathi Pub (1985)

³⁸ S. Hussain, *on Juvenile Delinquency*, Madras Book Agency, (1969)

³⁹ Vijay Hansaria and P. I Jose on “Juvenile Justice System” (2010)

6. Authored by Dr. B.N. Mani Tripathi, the book 'Legal Theory on Jurisprudence'^{40,41} enlists the reformatory and punitive measures for the criminality and criminals and the principles surrounding these, and the way diverse theories allow or help in lowering the pace and probabilities of recidivism within the criminals or offenders.

Moreover, an in depth examination of the principles and provisions of the *Juvenile Justice (Care and Protection of Children) Act, 2000* and successor's which was introduced in the year 2015, has been made by the researcher to look into and to examine its effect and implications and also to look whether or not an enactment meant for social welfare like this, has truly helped in lowering the pace of crimes committed by children and offer or provide an efficient and powerful reformation, care and protection to the ones in want or it is simply another piece of rules on paper which in the clothing of social welfare scheme is in real, offering utmost exemption, leniency and a license to the delinquent and antisocial children to commit any crime of offence they wish and break out clutches of the regulation entirely and only due to their alleged early phase of life.

1.8. Scheme of the Chapters

Chapter I introduces the problem of juvenile delinquency in India and gives an overall background of the research done in the process of this Dissertation.

Chapter II deals with the general and legal perspective involved in the juvenile delinquency with an assessment of recidivism as well.

Chapter III carries the historical and philosophical background of the juvenile justice laws in India.

Chapter IV enlists the causes behind delinquency in juveniles with a sociological and psychological approach with special focus on the factor of age in juvenile delinquency.

⁴⁰ Dr. B.N. Mani Tripathi, Jurisprudence (Legal Theory), Allahabad law Agency 17thEdn

Chapter V contains a detailed assessment and comparison of the juvenile justice laws and ordinary penal laws followed in the country.

Chapter VI discusses the theory of reformation in preventing recidivism among juveniles with an analysis of the *Juvenile Justice Act of 2015*.

Chapter VII enumerates the conclusive remarks by the researcher with some suggestions which can be adopted to prevent the menace of juvenile delinquency in the society.

CHAPTER II

JUVENILE DELINQUENCY AND RECIDIVISM: MEANING, INTER-RELATIONSHIPS, FACTORS OF INFLUENCE AND INVOLVEMENT OF THE RISKS

In this Chapter the researcher discusses the literal as well as legal meaning of the phrase juvenile delinquency. Further, the researcher also discusses the meaning of the word recidivism. There are various factors involved in the life of a delinquent child which often influence the recidivism in him, those factors are also dealt by the researcher in this Chapter. Risks generating vulnerability in juveniles towards recidivism is also dealt with an empirical assessment of the recidivism itself.

2.1. Understanding the phrase Juvenile Delinquency: Meaning

de-linquere, in which ‘*de*’ means ‘away’ and ‘*linquere*’ means ‘to leave’ and the phrase thereby means ‘to depart or to abandon’, is the Latin phrase and originator of the word ‘delinquency’.

Delinquency in juveniles also can be meant as an unwanted or unlikely act, conduct, and of a juvenile that's prohibited by law or unacceptable in a given society. Delinquency in juveniles is a sort of disease or illness related to behavioural patterns in a child usually described as “a child pretending or attempting to act or behave like a major person”. The act of the minor may be visible through his non-stop and absurd infantile silly conduct and if omitted on the preliminary or early years of his life, it could become something very dangerous. For the phrase juvenile delinquency, there isn't any watertight definition to provide an explanation, and a sort of vagueness and confusion usually persists surrounding its meaning. Juvenile delinquency got the very first legal recognition by the *State of Illinois* in 1899, which also, accordingly enlisted and explained or described diverse varieties of delinquency in juveniles similarly to the offences arched by the ordinary penal laws⁴¹. In very general sense we can say that

⁴¹ 6 Ill. Rev, Stat. C. 23

juvenile delinquency is something which is unacceptable in a social set up by virtue of those being against the inherent values of that particular social set up or by virtue of being opposed to the legal set in a country.

In the early phases, 'delinquency' had simply one meaning and implemented to the ones mother and father simplest who had deserted and disregarded their children. However, with the change in society its meaning has taken a whole distinct path as now days, its meaning is injected towards all the ones children who're indulged in unlawful things.

Thus juvenile delinquency is a kind of indulgence of a child in a few unlawful or outlawed things. These younger offenders or culprits often range from the age of 7 to 18 years. Visibly, it is often found that a sort of conduct of a minor child is encouraged through unlawful behaviour, their chronic antisocial conduct, or uncontrollable disobedient tendency to their parents which the child's guardians are regularly not able to steer. They are children who've committed a few crimes that is culpable. There is a totally mild and very noisy difference among a delinquent child and an ordinary child and the finding out component stays his conduct towards a traumatic man or woman among a cheerful act and act of an awful delinquency. Essentially, it is worth to note down that that younger offenders or delinquents are handled in a different way from the major or ordinary offenders, the delinquents are not put in jails or prisons and they cannot be hanged even for heinous crimes, unlike ordinary offenders. The very primary backing in providing the juvenile delinquents with special kind of attention and treatment lies in the fact that they are the country's fate and certainly deserve empathy, compassion and care with utmost excellence. It is thoroughly accepted that every mother gives birth to an innocent child however sometimes they are forced by certain intolerable situations or circumstances, either social or environmental, towards criminality or delinquency, whose elimination from the surroundings of a child if carried out correctly, would possibly and verily mildew such juveniles into someone of high stature and excellence.

2.2. The Vicious Circle of Delinquency and Recidivism in Juveniles

Very simple and general meaning of the word 'recidivism' is "falling back into awful or delinquent behaviour again". It is originated from a Latin term '*recidivus*', meaning 'recurring'. Thus, we can say that the children who generally incline or tend to relapse,

or 'fall back' into their vintage behaviour, specifically delinquency are the recidivists. With more clarity, we can say that tendency or inclination of an earlier convicted culprit to repeat his offence, is recidivism.

Juveniles are handled in a different way in our legal set up. Strict and harsh penal provisions meant for ordinary offenders are not inflicted upon delinquent juveniles, because of the pertinent belief that those juveniles fall into delinquency or crime not because they want, but due to some compelling and detrimental instances in their life or because of the causes which are beyond their control or uncontrollable by them. All these things lead to the belief that if a delinquent juvenile is treated empathy, compassion and is given care and protection then it can help in changing the behaviour of such delinquent, he can additionally develop as well as become an accountable civic person and there may be very lesser probabilities or chances of him again committing delinquency. Every child requires love, mainly when they are not deserving the same. Very lesser possibilities of recidivism are believed to take place within the delinquent juveniles if all these precautions are taken care of. It has been proven from the records of National Crime Records Bureau (NCRB) that the range of juvenile offenders has widened very immensely from a mere 31,725 in the year 2013 to 33,526 in the year 2014. But the range of juveniles who were caught or apprehended for recidivism recently, got down considerably from 9.5% in the year 2013 to 5.4% in the year 2014⁴². The purpose in the backdrop of the increase in records of the graph of recidivism is majorly due to loss of financial protection confronted by those younger offenders after they're freed from reformatory homes. The younger offenders can neither win people's trust nor does the authorities offer them with any scheme which could lead them to achieve ordinary path of existence from the darkish tunnel of crime.

Likewise, the belief is, primarily due to the aftermath in the *Nirbhaya* case' that the lenient treatment given by the law enforcing agencies and courts to the delinquents even if they are accused of committing one or more offences of very brutal and heinous nature, is primarily one of the causes at the back of increase in recidivism in juveniles as they're not frightened of being punished harshly by the law of the land, they could scot loose even after committing offences that in itself shakes the very conscience of humanity.

⁴² <https://timesofindia.indiatimes.com/india/Slight-increase-in-crimes-by-juveniles-recidivism-down/articleshow/48601723.cms>

2.3. Factors having an Influence on Recidivism in Juvenile Delinquency

1. Juvenile delinquents who are proven guilty are sent to reformatory homes in spite of prisons, under the present law dealing with juvenile delinquents. In those reformatory homes, they have to be there for some time (3 years being the upper cap) and this is taken into consideration as a custodial remedy, afterwards they are released. It is basically taken as a rehabilitation process for such delinquent juveniles which in the long run targets at their all-round development and makes an attempt to lead them to a civilised, disciplined and a responsible citizen. In addressing the cases relating to brutal and heinous offences like rape, homicide etc. these lenient and comforting remedies may not be sufficiently efficient as there are enough possibilities for such delinquent juveniles to be vulnerable to recidivism in such instances.
2. If any kind of pressure or influence is behind the delinquency at much younger age as much less than 12 years, then setting them in remand or reformatory houses with different young adults who in addition can without difficulty influence and pressure those younger brains towards delinquency again, is not an excellent notion and might additionally, boom the chance of recidivism in them.
3. Peer pressure is also a component which cannot be said to be irrelevant because it has been very much visible in the society that juveniles bask in crimes if they are in company of people having some sort of criminalities in them. On a few instances, there is probably peer-forced reason to adopt delinquent conduct in juveniles simply to show or prove their 'loyalty' to such company (gangs). These varieties of gangs or anti-social agencies are believed to have in large part encouraged the thoughts of those children and almost pressured them into committing illegal acts through convincing them of the truth that that they've not anything to worry as they may not be put to a strict or harsh prosecution and punishments like a major offender. Very often, it is visible that those naive children do not have much potential to apprehend the outcomes and

consequences of the wrongful acts which they commit and very usually get trapped into the peer compulsion or pressure of certain gangs who are involved in unlawful activities and finish up committing a few illegal acts. Also, it is also the fact that because of the benefits and safeguards conferred by the legislative enactments upon the delinquent juveniles, sometimes delinquency in them is a result of their known or wilful submission towards the delinquent entices in them with the awareness of the fact they cannot be jailed in any circumstances by the Indian laws and consequently, they will be sent to juvenile homes that too for a maximum period of three years.

4. It's not very unusual that maximum of the juveniles basks in wrongs and crime because of their negative monetary situations or social motives which regularly consists of dysfunctional own circle of relatives or disputes and fights with their mother and father or some other own circle of relative participants. Further it has additionally been visible that children who face excessive steer and sheer negligence from their own circle of relatives or relatives and closed ones and due to which they therefore search for or are searching for approval and solace somewhere else and finish up to be sitting in the lap of delinquency. The primary cause probably, as to why juvenile rehabilitation is closely targeted on getting those younger offenders back to their households, is to steer such child on an ordinary or common path of existence. The principal hassle at the back of delinquency in juveniles and recidivism thereon, exists on the reality in society that if a child has undergone or suffered abuse from his own circle of relatives or family due to which he finally ends up committing a few offences again. After undergoing the sentence completely, the juvenile might be sent back to that circle of relatives or family wherein he was disregarded and now he needs to live with them again under the same environment which gave upward thrust to his criminal tendencies. In this kind of situation there may be possibilities that such child can be vulnerable to recidivism and can commit the equal or a few different offences once more. Therefore, there may be want of offering suitable rehabilitation and reformation to those younger offenders as they need to be surrounded with some greater and healthful surroundings to stay and employed in, which might provide them a monetary increase additionally upon their launch from the reformatory home so that they could begin afresh.

2.4. Factors of Risks Involved

Followings are the factors of risks behind the birth of the delinquency in juveniles;

1. Individual

- Delinquent conduct in early years of childhood, different emotional elements along with, low self-respect, low behavioural inhibitions etc.
- Bad intellectual and cognitive improvement.
- Anxiety and hyperactivity.

2. Family

- Inadequate technique of child rearing through mother and father or different relatives.
- Domestic discord.
- Subjection to maltreatment or some other bodily or intellectual abuse.
- Ignorance or abandonment because of big joint family.
- Parental discord.
- Poverty and financial troubles.
- Exposure to repeated domestic violence.
- Excessive quarrel among the discern-child.
- Excessive controlling and dominating nature of the guardians.
- Lack in the involvement or affection of parents.

3. Pressure caused by peers

- The child is in uninterrupted affiliation or company of someone who has been indulged in unlawful activities already.
- Indulgence in anti-social gangs.
- Less familiarity to constructive social possibilities at an early age due to bullying and rejection at diverse public and private platforms.

4. School/Community

- Poor instructional or academic performance, non-involvement with research.

- If the colleges or schools fail in complying with the diverse academic, social or emotional necessities of children.
- On the part of schools, there is not enough attention upon the child.
- No higher academic targets and aspirations.
- Lack of motivation.
- The residence of the child is in some bad locality.
- Not enough emotional bonds with the people of child's locality.
- Community is anti-social.
- High price of crimes in the environment and community.

2.5. Empirical Assessment of Recidivism in Juvenile Delinquency

It is important to keep in mind that there may not be a mono element in a whole that pioneers or steers a younger man or woman in the route of delinquency but there are numerous unavoidable and compelling instances that force those youngsters to make them criminals.

Following averments can help in understanding it better:

Elements of risks in delinquency don't act cumulatively and not in an isolated manner, meaning thereby, the chances of an adolescent of getting into delinquency are more when he is majorly exposed or confronted by more and more risk factors. When a child confronts or faces an element of risk or chance, such child will be getting wider domain of options which will consequently lead him towards delinquency resulting in high rate of delinquency in juveniles.

It is likewise visible that distinct risk or chance elements usually act or impact the innocent and naïve child at distinct degrees or stages in their life. For instance, it is often seen that peer pressure in a child is witnessed in the later phase or stage in the life of a child.

However, there is equal chances that a child can come across a several risk elements at an early relatively age too, it's also very pertinent to consider that everybody has their personal strengths and are able to resilient enough contemporaneously: *“All children*

and families have individual strengths that can be identified, built on, and employed to prevent future delinquency and justice system involvement."⁴³ There has been more visible impacts, in recent times, shown by research of juvenile delinquency and effectiveness in implementation of justice system, of those strengths (protective elements) on child's potential to conquer adverse situations and thrive towards a tranquil and nonviolent improvement.⁴⁴

2.6. Conclusion

By going through a broad idea of delinquency in juveniles and recidivism as well, we have got an insight of issues revolving around the problem of delinquency. Recidivism in juveniles is very connected to the treatment they get after the first instance of delinquency in them. The factors influencing recidivism in them are psychological, social and sometimes personal. The causes or risks in such cases, very much lie in the roots of the society.

⁴³ Osher, 1996, p. 186

⁴⁴ Kendziora & Osher, 2004

CHAPTER III

HISTORICAL AND PHILOSOPHICAL

BACKGROUND, WITH EXISTING LAWS, OF

JUVENILE JUSTICE SYSTEM IN INDIA

In this Chapter the researcher gives a general overview of historical and philosophical background of the juvenile justice laws in the country. A discussion around the Juvenile Justice (Care and Protection of Children) Act, 2000 is also contained in this Chapter. Further, the researcher also discusses the benefits as well as flaws in the juvenile justice laws followed currently.

3.1. Juvenile Justice System in India with a Historical Overview

From the very beginning, a child's protection has generally been an essential thing in India. It was earlier to 17th century, when Hindu and Muslim personal laws governed the Indian society and such personal laws were having provisions specially for children. There were different kind of punishments contained in personal laws of both of these major religious communities in India which were inflicted upon delinquent children in accordance with the severity of crimes they commit⁴⁵. As an example, immunity from prosecution was given under Muslim personal laws, to minor children if there had been a sexual intercourse with a consenting major woman and a minor child, i.e., he cannot be made responsible for any punishment for that act that's in any other case an offence.⁴⁶ In Hindu Law too *Manusmiriti* additionally consists of a few provisions wherein, if some offences have been committed by a child that too a child, then in such a situation he was conferred with some privileges in his prosecution⁴⁷. Very glaringly, it is therefore highly apparent that from the very inception each of Hindu and Muslim laws had a very lenient and unfastened kind of approach in dealing with juvenile delinquents or children conflict with laws of the land⁴⁸.

⁴⁵ Ved Kumari, "The Juvenile Justice system in India: From welfare to rights", (Oxford University Press, New Delhi, 2004, pg. 58

⁴⁶ *Ibid* pg. 58

⁴⁷ *Ibid* pg. 60

⁴⁸ A.D. Attar, "Juvenile Delinquency: A Comparative Study", (Popular Prakash, Bombay 1964) Pg. 111

With the transition in time, in 1773, the very first regulation or enactment relating to the rights or protection of children in conflict with laws of the land, came while the East India Company commenced its administration in Bengal⁴⁹. Therefore, in this kind of manner the very first law for children i.e., *Apprentice Act, 1850* was enforced, which gave recognition to the special status of the children in conflict with laws of the land. Additionally, the judges were authorised by virtue of the Act with the power to punish the delinquent children ranging from the age of 10 years to 15 years under the Act. Additionally, one very flamboyant provision in the said Act was that it provided for working of the convicted delinquents as a helpmate first and as a professional later, which opened the passage of employment for such children⁵⁰. Before this enactment, delinquent children were being sent to the reformatory homes and other locations as a punishment. However, when the *Indian Penal Code, 1860*⁵¹ came into existence, it contained provisions like, *doli incapax* to confer absolute immunity from prosecution to the delinquent children who have not completed the age of seven years yet, as any offence by them are no offence at all and *doli capax* which gave relative immunity to the children ranging from 7 to 12 years of age, against their prosecution. The very basic and prime philosophy at the back of insertion of this exception from prosecution was the presumption that such a provision can additionally result in lessening the juvenile delinquency to such a volume that there may not be requirement to set up reformatory homes for such child offenders any longer.

Reformatory Act, which was passed in 1897 provided for delinquents below the age of 15 years. It was specifically provided that juveniles, who are proven guilty, should be sent to reformatory homes in spite of jails.⁵² More Importantly, this enactment was the first which gave recognition and importance to the requirement to deal juveniles in separation from the ordinary adult criminals.⁵³

⁴⁹ *Ibid*

⁵⁰ Donald J. Shoemaker, “*International Handbook on Juvenile Justice*”, (Green Wood Publication, United States of America 1996) pg. 175

⁵¹ Section 82 of the Indian Penal Code (Act 45 of 1860) gives blanket immunity to the child below the age of 7 years

⁵² Section 8 and 10 of the Reformatory School Act, 1897 Act No. 8 of 1897

⁵³ Dr. J.M.J Sethna, “*Society and the criminal*”, (NM Tripathi Pvt. Ltd., Bombay, 4th Edition 1980) pg. 140

*Children Act, 1920*⁵⁴, by the Presidency of Madras, which was India's first in bringing the concept of establishment of separate Juvenile Court(s) and institutions for delinquent children. This idea obtained broad appreciation and were given an entry in nearly each statute enacted (state wise) in India. However, as those being the state Acts and there has been no Act of the Centre, and there are various distinct definitions of a child in different state Acts, we can take the example of *Madras Act* wherein definition of a child is given as a person under the age of 14 years, and very surprisingly the applicability of the Act was extended upon the delinquent juveniles up to the age of 18 years.

With the transition in time, there arose a requirement to enact and have a central and uniform law applicability of which will be to the children of whole of India. As a result, a prototype legislation with the name *Children Act, 1960*⁵⁵ was passed which was initially limited to union territories only. Consequently, different states came up with their own legislation and uniformity was brought in regarding age of a 'child'. Under the Act, in *section 2(c)*, the word 'child' was described as a boy who has not completed the age of sixteen years and girl who has not reached the age of 18 years. Also, there was a twofold division of children within the Act wherein the one class being children in conflict with law of the land and the other being children in want of care and protection. Two separate bodies were empowered to address those children, children's court was additionally set up and for children in want of care and protection Child Welfare Boards. In addition, in any case any sort of imprisonment for a child offender or use of jail/prison for restricting such children, was completely prohibited by this Act did no longer allowed courts to award death sentence as a punishment in case of a child being held guilty. In the year 1986, Indian Parliament once more enacted another statute named as *Juvenile Justice*

*Act, 1986*⁵⁶, which was enforced and made applicable pan India besides state of Jammu and Kashmir. Also, it is very pertinent to note that the provisions in this Act are very nearly comparable with the provisions in *Children Act, 1960*, considering the substitution of a few words like in place of 'child', the *Children Act*, used the word

⁵⁴ The Tamil Nadu Children Act (Act 4 of 1920)

⁵⁵ Act No. 60 of 1960

⁵⁶ Act No. 53 of 1986

‘juvenile’⁵⁷, Children Court was termed as Juvenile Court, and also Children Welfare Board was termed as Juvenile Welfare Board. Three brand new provisions, for setting up of advisory boards, to make appointments of site visitors for institutions and also for setting up children’s fund were incorporated in the Act.

But lastly, the Parliament of India came up with *Juvenile Justice (Care and Protection of Children) Act, 2000* with the objective to conform with the international or global responsibilities like *Convention of Rights of Child, 1989*, and the *United Nations Minimum Rules for the Management of Juvenile Justice 1985* (the Beijing Rules). The preamble of the *Juvenile Justice (Care and Protection of Children) Act, 2000* makes all these averments very apparent.

3.2. Philosophical Background of Juvenile Justice System

One of the major hassle confronted by India and by different countries as well is the problem of juvenile delinquency. Every social set up throughout the world has prominent care and concern for their children. To determine, whether or not a selected society is civilised or not no longer we need to see the way it treats its children. Hence, for every legal set up protecting child rights is of utmost importance. Today’s child will turn into a responsible citizen tomorrow. This is why the governments are under an obligation or duty to provide its children with good and affable social surroundings, wherein our children could inculcate their highbrow potential, grow socially better and bodily robust.

It is pertinently believed that child improvement is decided through the declarations by the country’s laws wherein the children are declared as the most important asset of the nation and the conditions had been imposed upon the state to include such provisions that are useful in growing their character.⁵⁸ It is the duty of the state to protect children rights. Ultimately, children revel in such a special status which is universal. There are many international commitments which are aimed towards providing for protection and safeguards of the children who are or have been in conflict with laws of the land or are

⁵⁷ The Definition of the Juvenile under the 1986 Act was the same as that of the child under the 1960 Act

⁵⁸ Resolution No. 1-14/74 CDD (the National policy for children 1974

engaged in criminality. Thereby, whilst acknowledging significance of child care and protection, diverse countries came up with techniques to address juvenile delinquents. For instance, in 1850 to address such children, diverse reformatory homes had been set up in England. In America, principles of '*parens patriae*' had been strongly observed and state was made answerable for the care and protection of child equally as a guardian. In the same manner, also in India care and protection of child rights is an important subject for the state.

Henceforth, *Constitution of India*⁵⁹ additionally directs Indian Government to have laws or provisions in its laws with special attention to shield and defend child rights in India. Also, *Constitution of India* gives directions to the state to draw laws concerning development of children in India.⁶⁰

Therefore, there have been diverse enactments in our country with the intention of care and protection of the rights of children. Likewise, *Juvenile Justice (Care and Protection of Children) Act, 2000*⁶¹ is one of those enactments in keeping with the constitutional mandate. Therefore, it has to be submitted that the *Juvenile Justice (Care and Protection of Children) Act, 2000* provides a kind of special criminal procedure to address children in conflict with laws of the land, contemporaneously there has always been a debate in the country centred on the functioning of *Juvenile Justice (Care and Protection of Children) Act*. However, the aftermath of the very infamous and brutal rape case of *Nirbhaya*, has given more attention to the fact that out of six rapists of the 23 years old victim one was found to be a juvenile. As in keeping with Delhi Police, 33 pages' charge sheet (final report)⁶² contained that the juvenile's contribution to the rape of victim was the brutal most in nature and it was his acts only that caused sufferer's very brutal and painful loss of life. This issue was very much highlighted and caused outrage among the common mass and panel of news channels asked for the amendments in the followed juvenile laws in India, because of which some amendments had been made in the laws dealing with delinquent juveniles which consequently resulted in the enactment of *Juvenile Justice (Care and Protection of Children), 2015*⁶³, for which bill

⁵⁹ Article 15(3) of the Constitution of India, 1950

⁶⁰ Article 37 Constitution of India, 1950

⁶¹ Act 56 of 2000

⁶² Under Section 173 of Cr. P.C.

⁶³ Act no. 2 of 2016

was introduced or tabled by the *Ministry of Women and Child Development* in the Parliament (lower house) on 12/08/2014.

However, there has been a dichotomy among folks that supported the modification and preserved the view that it's the high time in the country that the law makers must additionally, came up with laws providing stricter and harsher punishments or a kind of retributive treatment to the delinquent juveniles in the cases of brutal and heinous offences as nowadays we have been witnessing a very major boom the commission of severe and heinous offences by juveniles. Contrarily, there has been another view on the same that we cannot restrain delinquency in children by providing with harsher treatments as juveniles are those who are, most of the times, incapable of knowing or apprehending the nature and consequences of their acts and this is the basic reason of them being conferred with special procedure in the laws for dealing with them.

3.3. The Juvenile Justice (Care and Protection of Children) Act, 2000

*Juvenile Justice (Care and Protection of Children) Act, 2000*⁶⁴ and provisions within are having very huge and wide scope of applicability. In comparison with the *Juvenile Justice Act, 1986*⁶⁵, the Act of 2000 is regarded as having more efficiency and relevancy is combating delinquency in children. The reality that the Act of 2000 uses the phrase 'Care and Protection of Children', verifies the above statement by proving the very foremost and primary objective behind the enactment of the Act, is not anything else but only to serve the juveniles with sufficient care and protection within justice set up for juveniles. Additionally, the 2000 Act lays its keen emphasis in reforming the juveniles through reformative method as opposed to adopting for punitive method subsequently, as it aims to serve the juveniles with adequate care and protection and it never intends to punish juvenile delinquents for the delinquency they commit. However, applicability of the Act is subject to a state's own enactment or law of a particular state, in the situation when such states choose to substitute this Act through making its own separate state enactment rules for the juvenile delinquents, state law prevails in such a case.

⁶⁴ Act 56 of 2000

⁶⁵ Act 53 of 1986

3.4. Indian Juvenile Justice System: Prime Features with Pros and Cons

A. Meaning and Definitions

The word 'juvenile' or 'child' is defined by *section 2(k)* of the Act which means and includes any person who has not completed the age of 18 years⁶⁶. The very pertinent feature of the Act is that it has come up with uniformity within the age limit for juveniles notwithstanding of the gender of the person; any other enactment on the delinquency in children was lacking the same. Hence, by virtue of this definition any child who is still within the age of 17 years and 364 days, will be a child⁶⁷.

Irrespective of the very clear provision concerning the age limits of the juvenile a very pertinent query nevertheless persists- whether age of someone to be taken into consideration for getting the benefits conferred by the Act, at the date when the alleged act was committed or at the date when he was apprehended or caught first or at the date when he is put to trial for the first time? Very thick layer of vagueness existed on the issue as there was no settlement on the issue by the Hon'ble Supreme Court. Thus, the layer of ambiguity was cut across by the Supreme Court in *Umesh Chandra v. State of Rajasthan*⁶⁸, in which the issue got noticed by the Court, and consequently the date of commission of crime was held to be relevant in computing the age of accused for his eligibility to get the benefits under the Act for juveniles.

In order to settle the issue of the date in computing the age of the juvenile, Hon'ble Court also went into examining the objectives of the Parliament and while examining the same, observed that the intention behind the enactment of the Act is to shield the delinquent juveniles from being inflicted with harsher and stricter punishments and outcomes in their act due to the reality that such juveniles are not enough mature to form mens rea for their act as they have not an age to apprehend the final product of their acts. Furthermore, it was also clarified that

⁶⁶ Gopal Sharma v. State of Rajasthan 2004 (14) AIC 952 (Raj.)

⁶⁷ *Supra* note at 55

⁶⁸ AIR 1982 SC 1057

by virtue of *sections 3 and 26* of the Act, it is very apparent that the trial of an accused would continue with treating the accused a juvenile even if he ceases to be a juvenile during the pendency of his trial. Thus, it is proved and clear now that while computing the accused's age, date of offence's commission is relevant to decide the applicability of the Act and consequently an accused who claims the benefits under the Act for being a juvenile when the alleged offence was committed, must not have reached 18 years of age on this very date and not any other date is relevant in such a case.⁶⁹

Before the Supreme Court, in another case known as *Bandela Ailayah v. State of Andhra Pradesh*⁷⁰, again the issue, in computing the age of the accused for being entitled of the benefits under the Act, arose whether the date of commission or crime or date of inquiry is relevant? While resolving the issue, Hon'ble Court revisited the objectives behind the enactment and it was held that the Act aims to confer benefits on delinquents who were juveniles when the alleged offence was committed, hence, any other date was held to be irrelevant in computing the accused's age.

But again in *Arnit Das v. State of Bihar*⁷¹, the same issue came before the Hon'ble Court and this time, very interestingly, the date relevant in computing the accused's age was held to be the date on which the plea of juvenility was taken meaning thereby, it would be the date on which the accused is produced before a competent court or authority for his trial as then only the plea of juvenility can be taken by him. Effectively, the accused needs to be within the given age bracket on the date of inquiry, and any other date is irrelevant. The Supreme Court's view in this case trampled its own view by a three judges bench in the case of *Umesh Chandra v. State of Rajasthan*.⁷²

Hence, with two opposite views of the Hon'ble Supreme Court, a kind of vagueness and state of puzzle persisted in computing the age of the accused for him being benefitted under the Act.

Furthermore, the Supreme Court again in *Pratap Singh v. State of Haryana*⁷³, went with its earlier view on the issue and very apparently held that no date is relevant in

⁶⁹ Arjun Ram v. State of Rajasthan, 1998 RLW 2007(3) Raj. 2081

⁷⁰ 1995 Cr. I.J.1083 (AP)

⁷¹ (2000) SC 2264

⁷² *Supra note at 68*

⁷³ AIR 2005 SC 2731

computing the date of the accused other than the date of commission of the alleged offence. The veil and sheets of confusion, therefore, in computation of juvenile's age were done away by the *Pratap Singh* judgement. The Court in this case took notice of the judgement in *Umesh Chandra* case and observed: “as it was already recognised by the 3 judges bench of this Court which is very accurate that the relevant date to determine or calculate age of the accused must be the date of commission of the offence and not the date of the inquiry”.⁷⁴

To be in accordance with the judgement in *Pratap Singh*⁷⁵, an amendment was proposed by the Parliament, in the year 2006 and which brought in changes in the Act, like ‘juvenile in conflict with law’ was now inserted which stood as ‘juvenile who's alleged to have committed an offence’, prior to the amendment.⁷⁶ Thus, the meaning of the phrase ‘juvenile in conflict with laws’ stays as a person who has not reached the age of eighteen years and has, allegedly, committed a crime or forbidden act. Now, with these manifest provisions and by virtue of *section 2(1)* of the *Act*,⁷⁷ there remains no confusion regarding date in computing the age of the accused. It is now settled that the date would be the date of commission of the crime only.

B. Plea of Juvenility

It is the foremost and very prime principle in criminal justice system that no one is guilty unless proven otherwise, beyond reasonable doubts (presumption of innocence). Eventually, the prosecution is bound to prove (burden of proof) and establish the guilt of the accused. In the same manner, another very paramount principle of criminal law is ‘*ignorantia juris non excusat*’ (ignorance of law is not an excuse in the eyes of law) and therefore law doesn't allow a culprit to take excuse of not knowing the law. These standards, in the Indian criminal justice system, play a very pivotal and substantial role in figuring out whether the plea is maintainable or not, to grab immunity because of the juvenility of the accused.

⁷⁴ AIR 2005 SC 2731

⁷⁵ AIR 2005 SC 2731

⁷⁶ The Juvenile Justice (Care and Protection) Amendment Act, 2006 (No. 33 of 2006)

⁷⁷ Act 56 of 2000

In numerous instances we have seen and witnessed the laws being flouted and brought down by the lower courts, the same has been in practise in curbing the rights of the juveniles at the point or stage of calculating the age of the accused.

Another issue came up before the Supreme Court in *Gopinath Ghosh v. State of West Bengal*,⁷⁸ as to whether or not plea of juvenility, when taken on later stages of the trial or the accused has ceased to be a juvenile, to be allowed to someone alleged of committing offence? It was thus observed by the Court said: *the question is very tough to answer wherein an individual right is in tussle with the technicalities of procedural laws and whilst figuring out whether or not someone in issue, is a child and consequently to defend child's interest it turns very crucial that beneficial provisions of a socially progressive and welfare enactment must not be denied merely on non-fulfilment of technical grounds.* In this particular case an obligation or duty was imposed upon the magistrates, in lower courts, that if an accused who within the age of twenty-one years is produced before him, or if he deems it required, then he is bound to ascertain the age of the accused at the time of commission of the alleged offence. The duty imposed was with a view and purpose to forestall immense cases going to the higher courts with the issue of age and it was also deemed to be in shape that at the very starting or initial stages of a proceeding, the issue around the age of the accused while committing the crime should be ascertained.

Still, there had been instances wherein the plea of juvenility was raised in later stages of the proceedings, the issue continued until an amendment in the Act, was made in 2006 and subsequently a brand new provision *Section 7A* was inserted in the Act.⁷⁹ The reason behind introduction and insertion of *section 7A* in the Act, therefore, was to sum up the process to be undergone when an accused opts to claim benefit of juvenility in front of the court and consequently, the provision empowers the court to undergo an inquiry and which included the power to take evidences, if required. Additionally, it is very pertinent to note that this section does no longer allow affidavit as a proof to conclusively decide or ascertain accused's age and eventually, the court is under duty

⁷⁸ 1984 Cr. LJ 168 (SC)

⁷⁹ Act 56 of 2000

to maintain a proper record of the findings it makes, alongside mentioning real and actual age of accused.

Also, this section enshrines that the issue surrounding accused's age may be raised at any stage of the trial before the court, consequently the declaration of the juvenility is to be done as in keeping with provisions of the referred Act despite the fact that the accused in centre of issue is not a juvenile any longer or had become a major on, or earlier than, the date of application under this Act but was juvenile at date when the crime was committed, therefore, it's very upright to mention that the *Juvenile Justice Act, 2000* has a retrospective impact in its applicability.

This is clear from the thing that *Section 7A(2)* gives directions to the Court that, in case, post the inquiry it unearths that the accused whose age in issue was, at the time when the alleged offence was committed, a juvenile, then such case will be referred to the juvenile board established or set up under the Act to come up with any kind of order, which is appropriate, and eventually it shall be deemed to be ineffective in case any punishment was inflicted by the court.

C. Legally Determining the Age of an Accused

Under *section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000*, the procedure which is to be followed to decide the age of the juvenile and responsibility of a competent authority is provided. The authority in such a case will be the authority before which the issue regarding age of the accused is raised. The authority is given the power to call for evidences to determine and ascertain the age of the accused after undertaking an enquiry to decide on the applicability of the Act upon the accused. It is also required that the authority has to maintain and make a record of the findings of the inquiry mentioning whether or not accused is a juvenile. It is very important to say that this doesn't acknowledge affidavit as a relevant proof to establish accused's age. Also, the Act in *section 49(2)*, regarding the age of the accused it is made clear that the order of the competent authority on the point of accused's age cannot become invalid due to any subsequent proof to the accused's age. In any case, the age in the order made by the competent authority shall, for the purpose of this Act, be deemed to be the true age of the accused. Thus, it is unavoidable and required to determine and ascertain the age

of the accused much before the initiation of any other criminal proceedings against the accused for a fair trial.

D. Procedure of Inquiry

The competent authority's most important work is to look and ascertain whether or not the accused be treated as a juvenile on order to be eligible for this Act's applicability. For accomplishing the same, undertaking fair and proper inquiry to decide the issue of the accused's age is very much incumbent upon the court. One more question arises here as to whether or not it's obligatory for the court to undertake such inquiry? What to be done if the court fails to undertake the inquiry? These questions had been taken by the Supreme Court in a case known as *Mohd. Gufran v. State of Uttar Pradesh*,⁸⁰ to conduct and undertake an inquiry for ascertaining the age of the accused, every time an accused opts the plea of juvenility was held to obligatory and mandatory for the authority or court and contemporaneously, any kind of failure in undertaking or conducting an inquiry for finding out the accused's age and an order thereafter was held to be illegal.⁸¹ For urging the competent authority to undertake an inquiry for ascertain the accused's age in many cases wherein plea of juvenility was opted, this judgement of the Hon'ble Court was cited.⁸² Eventually, we can say that avoiding the inquiry for the said purposes may defeat the very objectives behind the enactment of such a social welfare legislation.⁸³

E. Legal Issues in Determination of Age of an Accused

Under *section 12* of the *Juvenile Justice (Care and Protection of Children) Rules, 2007*, provision in order to determine the age of the accused is additionally provided. It provides that the court is under obligation to constitute a committee under *rule 19* of the Rules. The committee shall be competent to make decisions regarding age of the accused and shall also be under obligation to decide the age of the accused within 30 days of the application being forwarded for such determination. As a result, the accused whose age is in question, to be conveyed to an observational home or in a jail, on the basis of his physical appearances and production of documents.

⁸⁰ 1990 (2) AWC 986

⁸¹ Shankar Chaudhari v. State of Bihar, 2006 (47) AIC 907 (Pat)

⁸² Munshi Khan v. State of Rajasthan 2004 Cri LJ 3465 (Raj.); Mohan Dass v. State of Rajasthan 1966 Cr. LJ 1412 (Raj.); Shankar Chaudhari v. State of Bihar, 2006 (47) AIC 907 (Pat)

⁸³ Bholu Bhagat v. State of Bihar AIR 1998 SC 236

Section 12, additionally talks about admissibility of evidences, whilst inspecting regarding accused's age. Therefore, it's very apparent that high school certificate or equal certificates from school or college or birth certificates issued from the municipal authority or panchayat are a few documents which can be produced in front of the court for the claim's backing or assistance. Scientific or clinical opinion of a duly constituted team or board may be opted for if the claimant isn't capable to produce any of these proofs, and the same shall work equally in helping the claimant's claim. Still, in spite of that if the team or board fails to unanimously decide the claimant's age, then it has to record, in writing, the reason behind their failure. Afterwards, the benefit of doubt is given to the accused by thinking about his age, with margin of one year, on lower side.⁸⁴ If the age of the accused is duly decided, in accordance with the above procedures, to be within 18 years of age then such decision will be conclusive on the point of accused's age and no other or additional inquiry of trial thereafter can be allowed to take place. Hence, this provision confers upon the juvenile a benefit (of doubt) and eventually, it carries a certain retrospective applicability.⁸⁵

Mere a simple and plain reading of the above referred section and rules makes it very apparent that, proofs or documents like high school or equal certificates or certificates of birth from college or issued from the municipal authority or panchayat contain extra evidentiary weight than the clinical opinion. Additionally, the Court made it very sorted that an excessive amount of reliance, in figuring out accused's age, cannot be put upon Medical Jurisprudence and Toxicology.⁸⁶

It was again ascertained by the Supreme Court in *Kameshwar Prajapati v. State of Jharkhand*,⁸⁷ in which it was held that migration (transfer) certificates or school leaving certificates are the excellent proof to show the date of delivery of a child as clinical opinion is simply a kind estimation thru science, however it cannot have a higher degree of reliance, if we evaluate it at par with the proof of age as in keeping with data in the college certificates. Therefore, a school leaving certificate is more relevant in

⁸⁴ Section 12 of the Juvenile Justice (Care and Protection) Rules, 2007

⁸⁵ *Id* Sub Rule 3,4

⁸⁶ Ram Deo Chauhan v. State of Assam, 2001 Cr LJ 2902 (SC)

⁸⁷ 2006 Cr LJ 773 (Jhar.)

determining age of an accused. than all other various different evidences.⁸⁸ But, it was additionally observed that people often give fake certificates of birth in the institutions. Therefore, it might not be viable to reach a finding or conclusion on the premise of such proofs or documents, whose genuineness is itself questionable and is very prone to objection.⁸⁹ Further, it was held that in ascertaining the age of the accused, a scientific or clinical opinion on its own cannot be taken, in itself, into consideration as a conclusive evidence, and it can only hold some value if the Court flouts the accused's particulars relating to his birth in the records of the school.⁹⁰

In the case of *Jyoti Prakash v. State of Bihar*,⁹¹ the Court held the accused as not a juvenile on the basis of scientific or clinical opinion confirming to be above 18 years of age, as in the instant case, the documents (horoscope and transfer certificate from the school) that were submitted by the accused as a proof of his age were declared to be fake and tampered.

F. Directions and Orders by the Board

If the board has formed an opinion regarding guilt of the accused after ascertaining his age, passing an appropriate order in accordance with provisions of the Act would be the next thing to do. Now onwards, *section 15* of the Act becomes active, wherein it is provided that the delinquent juvenile whose guilt is upheld could be conveyed to a reformatory home but this is to be done after the counselling of the juvenile with his guardian or parents or there can be a counselling in group as well. Besides sending the delinquent juvenile to a reformatory home, *section 15* also empowers the board to release the juvenile on probation provided, his conduct permits the board for so. An obligation for employing, if required, a probation officer is also put on the board under this section, and eventually, if board unearths and decides that it's in the interest of the juvenile and of the society, that the delinquent juvenile should stay in the supervision of the probation officer for a few durations (up to three years), can pass such order too.⁹²

⁸⁸ Ragious Bara v. State of Jharkhand, 2008 (64) AIC 408 (Jhar)

⁸⁹ Rama Kant v. State of UP 2000 Cr. LJ 4682 (All)

⁹⁰ Kailash Singh v. Rajeev Singh (2008) 65 AIC 827 (Raj.); Pappu v. Sonu AIR 2009, SC 2372

⁹¹ AIR 2008 SC 1696

⁹² Section 15(3) of the JJ Act 2000

Section 16, further talks about probability or chances of sort of orders which can be passed against a juvenile. A bare analysis of the section makes it clear that a juvenile can by no means be subjected to capital punishment or be despatched to prison. Additionally, irrespective of the nature (bailability) of the offence, a juvenile, generally, cannot be denied bail and his right to be freed on bail cannot be denied to him, it is provided under *section 12* of the Act, but is an exception to this rule.⁹³ A reasonable ground for denying the bail to such juvenile is that, the accused may, post his release on bail, come in touch with hard-core criminals which may cause emotional, ethical, psychological or mental or physical threat or may also defeat the very ends of justice. In such reasonabilities, bail to an accused juvenile can be denied.⁹⁴ Thus, we can say that the conduct and nature of the offence committed is very important to decide bail to an accused juvenile.⁹⁵ Likewise, criminal background of the accused is beyond reasonability to justify refusal of bail to the juvenile.⁹⁶

G. Juvenile Justice Board

To deal with and address the issues revolving around *Juvenile Justice Act*, a body known as the Juvenile Justice Board is constituted. The board is authorized to undertake criminal proceedings with having some special powers, under the Act and “in an informal and child pleasant way”⁹⁷. Under *section 4* of the Act, it is directed mandatorily to set up, in each and every district of the country, juvenile justice board.⁹⁸ Juvenile Justice Board’s constitution in accordance with *section 4* of the Act should not be taken just as a direction, but it’s an obligation and its violation would lead to denial in justice.⁹⁹

Further, the composition of the board is given under *section 4(2)* of the Act, which shall be as below:

- a) Magistrate, both Metropolitan or Judicial Magistrate 1st Class,

⁹³ Deepak Kumar v. state of UP 2003 (46) ACC 599 (All.); Vikram Singh v. State of UP 2003 Cr LJ 3457 (All.); Sanjay Kumar v. State of UP 2003 Cr LJ 2284 (All)

⁹⁴ Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000

⁹⁵ Sheru v. State of UP 2003 (46) ACC 599 (All.); Master Niku Chaubey v. State of Delhi, 129 (2006) DLT 577

⁹⁶ Aswani Kumar Singh v. State of Jharkhand 2008 (3) JCR 459 (JHR)

⁹⁷ Anand Vishal Khujur v. State of Jharkhand 2008 (3) JCR 488 (JHR); Dalveer Singh v. State of Rajasthan (Raj.) 2010 (2) WLN 557

⁹⁸ Bachpan Bacho Andolan v. UOI (2010) 12 SCC 189

⁹⁹ Sanjeev v. State of UP 2004 AC (49) ACC 216 (ALL.)

b) two social workers (at least one needs to be a woman).

The purpose at the back of including two social workers within the board is that court cases under the Act shall not be taken strictly in legal sense, but in a greater casual and less complicated way in approaching the accused.¹⁰⁰ Also, it is made mandatory at the part of the government authorities to have diverse short time period education or training programs for the Magistrates who're participants of the juvenile board. The selection of social workers so appointed will be decided on by a selection committee constituted in accordance with *rules 5 and 7 of the Juvenile Justice (Care and Protection of Children) Rules, 2007*, head of which shall be a retired judge of a high court.¹⁰¹

Additionally, it is provided in the *Juvenile Justice (Care and Protection of Children) Rules, 2007* under *rule 7* that, as a member of this juvenile justice board a social worker to be appointed, who;

- A) Shall not be less than 35 years of age.
- B) Must be a qualified person or must have engaged in working of children welfare or have an experience in working in the field of administrating measures relating to child welfare for at least seven years.¹⁰²

Members of the board can only be appointed for a maximum of two tenures of the board, the period or tenure of which shall be for six months.¹⁰³ Also, by virtue of *section 6* of the Act, juvenile justice board with has a separate jurisdiction to address instances or cases of the juvenile delinquents.¹⁰⁴ Therefore, the Act has an overriding impact on all offences together with offences which are even within the ambit of other laws like *NDPS Act, Arms Act, UAPA* and many more. Which means even if the offence, allegedly committed by a juvenile in conflict with law, falls in the scope of these laws, then also the board shall hold the inquiry.¹⁰⁵

¹⁰⁰ Ashwini Kumar Ghosh v. Arbinda Bose, AIR 1952 SC 369

¹⁰¹ *Id.* Rule 5(4)

¹⁰² *Id.* Rule 7, which defined qualifications for the members of the Board

¹⁰³ *Id.* Rule 6

¹⁰⁴ Amit v. State of UP, 1998 (2) All Cr. R 1630 (All.): Pratidhi v. NCT Delhi, 2001(1) Femi Juris Cl 375 (Del.)

¹⁰⁵ Raj Singh v. State of Haryana (2000) 6 SCC 759: Manish Tyagi v. State of UP (All.) 2007 Cr LJ 3165

The Supreme Court, in the cases of *Sant Das v. State of U.P.*,¹⁰⁶ *Mohd. Amir v. State of U.P.*,¹⁰⁷ and *Naseem v. State of U.P.*,¹⁰⁸ has gone into analysing the real position, in handling cases of juvenile delinquency, of the courts of sessions and high courts, and observed that higher courts in the country should, being protectors of rights of people including children, act like a 'watch dog' and also, should have a watch on the working and functioning of the juvenile justice board, on every occasion the problem comes in front of them whether in the form of a bail application or in the form of a trial, or as a writ Petition.¹⁰⁹

3.5. Conclusion

The kind of approach followed in the country in treating the child offenders has always been lenient and in favour of the juveniles. The idea of treating juvenile delinquents with delicacy is somehow rooted in the history itself. Ever since independence, the law makers have been thriving to enact laws to treat delinquent juveniles differently from ordinary offenders. *Juvenile Justice Act, 1986* and *Juvenile Justice (Care and Protection of Children) Act, 2000* were an outcome of these thriving efforts which, to an extent, solved the problem.

¹⁰⁶ 2003 CR CJ 3424 (ALL)

¹⁰⁷ (2002) 45 ALL CRI 194

¹⁰⁸ 1995 ALL LJ 1473

¹⁰⁹ *Manish Taygi v. State of UP* (All) 2007 Cr LJ 3165

CHAPTER IV

DELINQUENCY IN JUVENILES; STUDYING CAUSES WITH A SOCIOLOGICAL AND PSYCHOLOGICAL APPROACH, AND THE DEBATE FOR LOWERING THE AGE OF JUVENILES

Various causes, sociological and psychological, revolving around the origin of delinquency within juveniles is discussed in this Chapter. The aftermath of *Nirbhaya* case has also ignited the debate or demand for lowering the cap of juvenility within the juvenile justice laws to make the same more severe and harsher, the issues around the debate are also discussed by the researcher in this Chapter.

4.1. A Sociological and Psychological Approach to locate Causes at the back of Delinquency in Juveniles

Very conspicuously and really dreadfully, juvenile delinquency is something which is suffered by the society and it usually happens because of diverse social or mental elements along with isolation at an early age, peer pressure consistently, alienation from own circle of relatives or family, minimal mental assistance, regular social rejection and living with the company of different criminal or delinquent gang or anti-social groups or individuals in the society, parental control/discipline in excess or abandonment, and affiliation in wrong group or environment etc. Trapped with all these above said mental and social troubles there may be diverse different socio-cultural things or factors that play a very vital role in pioneering such children to delinquency and next, to recidivism.

These elements or factors as regularly termed as “insecurity” is due to diverse societal elements carried on by a few biological elements along with chromosomal aberrations

or hormonal imbalance etc. Some of the important elements which might be answerable for the antisocial conduct (delinquency) in the juveniles are as under:¹¹⁰

A. Social Rejects

It is very much visible in the society that at adolescence and at a young age, many children usually lack self-confidence, motivation, and positive outlook towards their existence (in life) or lack the capability to perform better at different stages in life including academics. We often see that due to all these reasons, students are dropped out from their academic institutions at early age and consequently fail, for being low in the required qualification, in getting an appropriate job for themselves and their livelihood. As an end result, those youths regularly sense and somehow believe out that they're no longer required or wished in the society. Therefore, they often call themselves as “social rejects”. It is very important to take note that usually, in the progress of the society, the younger generations of us are the sufferers.

B. Alienation and Rebellion

One of the very usual issues among the youth these days is that they are not as committed to the values of their parents or family, and very interestingly, they are also much perplexed regarding their own values and identity. They stay at the wrong path and as an end result regularly see and precepts grownup society as an opposed surrounding and subsequently expand hatred or non-pleasant mind-set towards it. These children continuously disobey their guardians or parents and eventually get themselves isolated and alienated from their own households and the society as well.

Accordingly, due to isolation and alienation as discussed above, such children often fall prey to gangs indulged in unlawful activities or they become a part of such a group of friends which has anti-social tendencies, and these are certainly very destructive for the child and for the society as well.

C. Sociopathic Parental Model

It has been shown in numerous surveys or investigations that, in our society there is an excessive prevalence of sociopathic tendencies which are followed or observed in the family or circle of relatives or guardians or even parents of delinquent juveniles. These

¹¹⁰ <http://www.mindauthor.com/psychology/factors-underlying-juvenile-delinquency>

sociopathic tendencies encompass immoderate or excessive alcoholism, delinquent mind-set, brutality, useless absences from home, violence with different members in the family etc. It has been visible that those sociopathic pushed parents make contributions in a huge volume in diverse approaches, unknowingly, and expand a sense of antisocial conduct or delinquency in their child.

D. Delinquent Association and Gang Culture

We may find it usually, that gangs delinquent in nature are common mainly in lower socioeconomic regions but it's much vital or pertinent to say that they're not limited to such lowers economic regions only. Most of the children be part of such gangs simply to get a kind of experience of belongingness and identity. It majorly serves as method of gaining a few social identification and standing for themselves. Additionally, it certainly allows them in committing illegal and unlawful acts for their mental, physical, personal, monetary, or social gains by serving them as an acclaim.

E. Shattered Homes

It is also observed by a bundle of scholars or investigators that the back picture of delinquency in children is created also by a shattered home where relations are broken and unending arguments among the parents of the juvenile persist. Very often, it is noticed that the shattered homes produce more delinquent children who're deeply tormented by the ache because of their parental separation.

F. Undesirable Peer Relationship

Juvenile Delinquency has a tendency to be a shared revel or experience regardless of gender variations for either gender. It's been observed, in a study relating to delinquents that approximately 2/3 of delinquent acts had been committed in affiliation with one or different people.

G. Influence of Adult Criminals

It is not very un-common to see in the modern days, that young children are indulged in different criminal behaviour or activities like robbery, pick-pocketing etc. very often, people of criminal nature put a kind of track record of such delinquents needing care and protection generally. Afterwards, by giving them diverse kind of incentives, they try to lure such delinquents towards them, and one of such tricks is to talk to them

pleasantly and very politely after which tempt them with luxuries of life for a certain duration prior to tutoring and preaching them of their unlawful acts and trade. For them, the simplest benefit of all these tutoring and preaching is to committing offences through those children, for their own gains.

H. Parental Rejection and Faulty Discipline

Each and every child in this world wants his close ones to understand him and enjoy his presence, and this is a very basic and primary psychology. In his development while growing up, every child admires love and affection from his guardian, parents and also from his own family or circle of relatives. Thus, if the needed volume or extent of care, affection, love, empathy and everything which completes a child emotionally is not received by the child, it leaves a very adverse and destructive impression upon such. Eventually, it develops a feeling of rejection, alienation and remoteness in the child, which leads the child to leave his own circle of relatives or family and moves out to simply fulfil his unmet wishes or delight through resorting to delinquent and unlawful acts. Such a disregarded child regularly falls prey to diverse delinquent gangs who make the most of these youths for their unlawful wishes and trades or the child, for his personal motives joins such antisocial or criminal or delinquent gang.

The investigators delineated a sample, in a study of 26 antisocial (delinquent) boys wherein father's rejection was mixed with inconsistent managing or handling of the boy through both the parents. The father commonly used bodily punitive techniques to discipline the child, to complicate the pathogenic photograph, consequently augmenting the already felt hostility in the boy towards him in addition to modelling aggressive behaviour.¹¹¹

I. Cheap Films, pornographic fabric and obscene Literature

Media performs a vital role in such things, as these days telecast of crime loaded serials, publishing such novels and broadcasting rowdy movies encourages a sense of delinquency or criminality among the youngsters. Additionally, encouragement of pornography and vulgar productions along with X rated films may additionally lead a child to an antisocial and wrongful route.

¹¹¹ A study conducted by Bandura and Walter

J. Drug Abuse and Obnoxious Substance

A huge range of antisocial or delinquent or criminal acts e.g. robbery, rape, homicide and attacks etc. are immediately related to problem of drug abuse. Youngsters get pulled towards obnoxious substance without any kind of difficulty and without difficulty get hooked on it also. In order to maintain their addictiveness and to come up with the money for the drugs they're pressured to either steal or to commit different crimes.

K. Unusual Stresses and incidences in past

The past of a child also leaves a child in dilemma sometimes. Very often, we see children with some lethal scar (which remain with them whole life) in their hearts which are apparent from their actions and in such cases there are, in the past of such children, some traumatic and tragic incidents or stories. These incidents certainly have a say in their subsequent delinquency Nearly one third of the total cases of delinquency were found out to be a result of a highly tensed and stressed life.¹¹²

4.2. Debate concerning lowering the age of juveniles in the aftermath of Nirbhaya's case

In relation to lowering a juvenile's age, from eighteen to sixteen years, a major debate started after the brutal *Nirbhaya* case. More concern was put upon the issue whether or not there is a want of any amendments within the current system dealing with juvenile delinquency. In 2012, India saw an awful incident in which six males were accused (guilt was upheld later) of gang raping a young woman of 23 years of age that too in the capital of the country which stunned the whole world.

After the incident, a committee¹¹³ under the headship of *Justice (retired) J.S. Verma* was formed to look into and suggest whether within the existing legal provisions dealing with juvenile delinquency, there is any need of amendment, eventually changes were suggested by the Committee due to the fact of which *2013 Amendment*¹¹⁴ came

¹¹² A study conducted by Clarke

¹¹³ Report on the amendments to criminal law by Justice J.S Verma, Justice Leila Seth and Justice Gopal Subramaniam, Dated 23rd January, 2013

¹¹⁴ Also known as Nirbhaya Act

into existence which consequently amended certain provisions relating to offences against women in the *Indian Penal Code, Cr.P.C., Indian Evidence Act* etc., to provide a little harsher and stringent provisions and punishments for the offences or crimes committed against, in particular, women.

Still, the most burning issue in the aforesaid case was regarding the nature of trial of one juvenile accused who was allegedly most brutal and ruthless in the commission of the offence as he was, because of being a juvenile, subjected to the juvenile justice system under the *Juvenile Justice Act, 2000*. Regarding settling the age of a juvenile under the *Juvenile Justice Act* particularly in brutal and heinous offences allegedly committed by a juvenile, the said incident caused an uproar and a heated debate was triggered, and also for having harsher punishments for such juveniles upon establishment of their guilt. Therefore, the *Nirbhaya* rape case¹¹⁵ put a question mark upon the treatment and determination of age of a juvenile and justifiability of the same. On the point of mens rea or guilty intention, the brutal most participation of the juvenile in the said incident establishes the fact that there was enough guilty mind in that juvenile which caused him to act so brutally and ruthlessly amongst other 5 culprits and certainly he had enough apprehension regarding the outcomes of his brutal actions in such a heinous act of crime.¹¹⁶

Eventually, upon the establishment of the guilt of the juvenile in the said incident, he was made to undergo next three years of his life in a juvenile justice home, which was the maximum hardship a delinquent juvenile can be put to, under the Indian laws, notwithstanding the brutality of his actions, this fact caused more resistance and chaos among the masses. Subsequently, a legal question was raised that why cannot we lower the cap of age of juvenility in the cases or offences like sexual assaults, loots, homicides, etc., from 18 to 16 years and also subject them to the ordinary penal laws? Also, on the other hand, another debate was on, on the issue that why Indian criminal justice system is reluctant to comply with principles of that like United States of America's.

¹¹⁵ State v. Ram Singh and Anr. SC No. 114/2013

¹¹⁶ B.B. Pandey, "Justice cannot follow a tough Act" *The Hindu* 23rd September, 2013, retreated from <http://www.thehindu.com/todays-paper/tp-opinion/justice-cannot-follow-a-tough-act/article5162042.ece> visited on 04/05/2021

But finally, there was an inquiry committee formed by the Government of NCT of Delhi with an objective to “reconstruct the events leading to December 16th brutal gang rape and to pick out the lapses caused by the police and other agencies and lastly to fix the responsibility of the crime”,¹¹⁷ the committee was headed by *Justice Usha Mehra*.

Justice Verma Committee submitted a report (report of the Committee on amendments to criminal law) to the Government of India on 23rd January 2013. There were certain suggestions by the Committee including the focus upon the point that this certainly need of the time to bring in some changes to the juvenile justice system under the laws of the country. On the other hand, the Committee did not put much emphasis of favoured to lower the cap of juvenility as age in not a bar in dealing the issue of delinquency among juveniles and controlling the same. The objectives or purpose of the Act will fail if we tend to be harsher upon juveniles and it will additionally have no benefits to deliver in controlling delinquency.

4.3. Determination of the Juvenile’s age: A Judicial View

Aftermath of the *Nirbhaya’s* case caused some sort of judicial activism too due to various writ petitions before it to ensure harsher attitude of the law enforcing agencies against the juveniles in the alleged commission of brutal and heinous offences by them.

The Supreme Court in *Salil Bali v. Union of India and Another*,¹¹⁸ delivered a landmark judgement on the point of the constitutional validity of the *Juvenile Justice (Care and Protection of Children) Act*. Along with this case, diverse writ petitions were submitted before the Hon’ble Court which were clubbed and dealt together by the Court.

The following reliefs cum prayers were sought by the petitioner:

- A) To decide the constitutionality of the *Juvenile Justice (Care and Protection of Children) Act, 2000*.¹¹⁹

¹¹⁷ Surabhi Aggarwal, Justice Usha Mehra to probe Delhi gang-rape case, (Dec 26 2012), Live Mint and Wall Street Journal retreated from <http://www.livemint.com/Politics/PsvgMLnvnZYRI8VQjIPM4O/Justice-Usha-Mehra-to-probe-Delhi-gangrape-case.html>

¹¹⁸ 2013 VII AD (S.C.) 505, 2013(3) RCR (Cr) 796, 2013(9) SCALE140

¹¹⁹ Saurabh Prakash v. Union of India [Writ Petition (C) No. 14 of 2013], Vinay K. Sharma V. Union

- B) To trash *sections 2(k) and 2(l)* of the Act and to reframe the same in line with the constitutional values and the *Constitution of India*, additionally for handling the delinquency in juveniles, to direct the Indian government with the kind of procedures as recommended by the United Nations.¹²⁰
- C) In the cases of heinous and brutal offences allegedly committed by a juvenile, he should not be given the arch of *Juvenile Justice (Care and Protection of Children) Act* and also, he should be subjected to the same procedure at par with a major offender.¹²¹
- D) To direct the concerned agencies to have a proper mental check-up of the accused juvenile in the *Nirbhaya* case for having a test of his juvenility, capacity and prudence.¹²²

4.3.1. Contentions of the Petitioner

Following arguments were put forth by the petitioner in the above said case:

A. Fixation of Age and Culpability:

The petitioner argued that the culpability of a juvenile needs to be ascertained on the premises of the *sections 82 and 83* of the *Indian Penal Code*. It is uprightly stipulated by *section 83*¹²³ if a child who has completed the age of 12 years shall be subjected to prosecution to ascertain his guilt if he had enough prudence and knowledge to apprehend the outcomes of his acts, and for the same, post offence conduct of such a child is made relevant. Eventually, it raised a question on *Juvenile Justice (Care and Protection of Children) Act* that why cannot prudence and conduct of a delinquent child be taken into consideration for deciding his juvenility when *Indian Penal Code* suspects the culpability of a child who has been part of an offence's commission and has completed age of just 12 years? Further, it was argued that the judiciary must also put the weight and relevance upon the post offence conduct of the accused juvenile and subsequently, his juvenility should be decided.

of India [Writ Petition (C) No. 90 of 2013], Kamal Kumar Pandey and Sukumar v. Union of India [Writ Petition (C) No. 42 of 2013], Salil Bali v. Union of India [Writ Petition. (C) No. 10 of 2013], and Hema Sahu v. Union of India [Writ Petition (C) No. 182 of 2013]

¹²⁰ Salil Bali v. Union of India [W.P (C) No. 10 of 2013], Kamal Kumar Pandey and Sukumar v. Union of India [Writ Petition (C) No. 42 of 2013], Salil Bali v. Union of India [W.P (C) No. 10 of 2013], and Hema Sahu v. Union of India [W.P (C) No. 182 of 2013]

¹²¹ Krishna Deo Prasad v. Union of India [W.P (C) No. 85 of 2013]

¹²² Shilpa Arora Sharma v. Union of India [W.P. (C) No. 6 of 2013], Salil Bali v. Union of India [W.P (C) No. 10 of 2013]

¹²³ Indian Penal Code Act No, 45 of 1860

B. Inadequacy in Sections 15 and 16 of the Act, and its Unjust Use:

The petitioner also argued that when we look at the delinquency among juveniles, the graph keeps rising not only in the number of cases but also in the severity of offences committed by them as now, no offence remains untouched by a juvenile including offences like culpable homicide and rape. On the same premise punishment, prescribed in *section 15* and *16* of the Act, was argued to be insufficient in coping with the problem of delinquency.

C. Sections 2(k) and 2(l) and its Interpretation:

The petitioner also brought in UN Convention on Child Rights in his arguments as it defines child as “every human being below the age of 18 years unless under the law applicable to child, majority is attained in earlier”.¹²⁴ However, very strangely, we have no uniform definition of a child in our country and it is laid upon the state legislatures in whole. Further, petitioner argued that the legal responsibility of the child culprit must be decided as in keeping with his state of maturity and must not only depend upon numeric figures of his physical age.

D. Articles 21 and 14 of the Indian Constitution and its Violation:

Petitioners further argued that fundamental right to life of each individual, as provided in *article 21*, is violated when the state or law enforcing agencies fail to curb delinquency in juveniles. Also, the arch like protection given to child offenders in spite of being indulged in severe offences is a clear cut infringement of equality rights imparted in the Constitution under *article 14*.

E. Juvenile’s Criminal Records:

Direction to the juvenile justice board under *section 19*, to remove entire criminal antecedents of a juvenile delinquent after a time frame was argued by the Petitioner to be unreasonable and also, removal of the same section was pleaded. *Section 19* was said to be a disabling provision by virtue of direction it consists as when a juvenile recommit any offence and again comes before the board for his trial, the board will

¹²⁴ Article 1 of the UN Convention on the Child Rights

have no data of his criminal antecedents which will disable the board from understanding the nature of the juvenile.

4.3.2. Contentions of the Respondent

BALCO Employees Union (Regd.) v. Union of India and Others,¹²⁵ was primarily the judgement upon which the pleadings or arguments of the respondents were built. In the said judgement the Hon'ble Court threw light upon the limitations of the Court in the matters of public policy and it very uprightly said that courts cannot direct if or how the public policies should be. Hon'ble Court observed that the only responsibility which rests upon our shoulders is to ensure, and to protect the infringement of, the fundamental rights assured by the Constitution and even if infringed, to remedy the same. Thus to fix the age cap for juvenility is the subject of the legislature which cannot be reached by us.

4.3.3. Verdict of the Court

In the judgement, the Hon'ble Court held that, "while handling this kind of severe problem and after studying diverse submissions made through each of the parties supported through contentions made through diverse government and non-government organisations and taking note of the suggestions made by the *Justice J.S. Verma Committee*, it's acknowledged that the *Juvenile Justice (Care and Protection of Children) Act, 2000*, is a special enactment within the boundaries and fulfilments of the constitutional mandates as enshrined under *Article 15* of the Constitution. Thus, there is no need to reduce age of the juveniles in the Act.

Therefore, if any modification is carried out to the Act entirely on the premises of public outburst and response to the brutal Delhi gang rape incident, the same will be appeared as mere a panic motion and will be a miscarriage of justice thereby defeating the intention or purpose of such a social welfare legislation in whole, such an implementation will eventually turn into an aberration as opposed to or rather being a rule". Thus, the reliefs sought by the petitioner were denied by the Hon'ble Court.

¹²⁵ AIR 2002 SC 350, 2002 (3) CGLG 128, (2002) 108 Comp Case 193 (SC)

4.4. Conclusion

The reasons which give rise to the flame of wrongfulness or delinquency in a child, are embedded within the society itself and most of the times, it is an outcome of disparity in distribution of the resources in the society and this is where the idea of social justice comes in. The outrage in the society after the *Nirbhaya* case unjustifiably fuelled the questions regarding age of juvenility. Benefits in the laws based on the age of the delinquent has never been a prime cause behind delinquency, and the view of our judiciary has upheld the same. Law makers should not try to defeat the ends of justice to satisfy people's outrage.

CHAPTER V
JUVENILE JUSTICE LAWS AND ORDINARY
PENAL LAWS; A COMPARISON, AND
CONSEQUENCES OF TREATING A JUVENILE
AS AN ADULT

There persist many differences as well similarities between juvenile justice set up and criminal justice system meant for ordinary offenders, such differences and similarities are discussed by the researcher in this Chapter. Treating a delinquent juvenile may result in some awful consequences which impact such juvenile as well as society at large, those consequences are also incorporated in this Chapter.

5.1. Ordinary Penal Laws and Juvenile Laws: A Comparative Analysis

There is greater relaxation in the juvenile justice system, and it focuses higher at the rehabilitation of juveniles. It provides greater sentencing and punitive alternatives compared to the ones given in ordinary penal laws governing the grown up offenders. Most of those juvenile sentencing alternatives are geared towards enforcement of diverse reformatory strategies aiming to assist the juveniles to remain out of prison, and to stay in pleasant surroundings nicely in reformatory homes or observatory homes with inmates of their age group. They are also furnished with diverse counselling schemes that allows them in constructing higher character and prudence in apprehending the outcomes in their wrongful acts. A fixed or settled common understanding that offenders who are juvenile are subjected to trial not for crimes but for delinquent acts and also they are not referred as criminals, but as delinquents.

In the juvenile justice system, a public or open trial by a judge does not take place to ascertain the delinquency of the juvenile, instead the juvenile justice board conducts the hearing and decides whether or not the juvenile is delinquent by taking evidences from both the sides. In case a juvenile is observed to be guilty, he's recognised or called as a delinquent and suitable actions are taken, for rehabilitation of the delinquent juvenile.

However, in the criminal justice set up for the grown up or adult offenders is aimed towards punishing the offenders and not purely to reform them, where the guilt is proven of adult offenders, they are sent to prisons instead of reformatory homes or given harsher punishments for their offence. Jails or prisons are supposed give him a sense of realisation that how far the act or offence committed by him is against the very values of the humanity and society, and offences committed by anyone cannot go unnoticed every time. When it is about administration of justice additionally, juvenile justice courts are having greater liberal and casual approach than the ordinary or general criminal justice system, and feature with a higher of leniency and flexible procedure in the justice delivery system.

This is why in connection with the court proceedings, a major is referred as an accused or criminal responsible of committing some act or omitting something which is against the law, while a child who has committed a crime, despite the fact that of being responsible of committing the offence of equal or higher degree than a major offender, is usually referred as a juvenile or a delinquent child.

The rationale at the back of this huge distinction reflects the psyche of the law makers that a delinquent juvenile commits the delinquency sans knowing or understanding the nature and outcomes of his act. The difference is not merely of the wordings used in courts, for an ordinary criminal and a juvenile, but also procedure followed post to establishment of their guilt and the purpose thereon is different as in the case of major offenders, courts often go for retribution rather going for reformation.

Necessarily, courts impose such a liability on adult offenders so that there are less chances of going them towards recidivism. Incarceration is believed to be the most often used method of punishment. Alternatively, the juvenile justice system is different on this issue and seeks to reform the juvenile delinquents. There are diverse schemes of reformation and diversion for the delinquents like going for counselling, some sort of therapies for mental peace, various community services etc. and these are frequently followed by law enforcing agencies. Also, in a few times, there are schemes which are aimed at educational assistance to juveniles. The very purpose of the juvenile justice system, is to basically help the underage delinquents to get on a distinct route than the

delinquency, so one can optimistically hold them out of jails and prisons in the life ahead.

5.2. Ordinary Penal Laws and Juvenile Justice Laws: Similarities

There are some similarities also which are followed by the courts in delivering justice in both these scenarios. Although, it's very apparent both these structures have numerous variations, but there exist a few similarities. The court cases in ordinary criminal justice system and juvenile justice courts are pretty comparable while the evidences are presented, testimony is given and when the witnesses are questioned. It is important to take note of that because the prime focus of the *Juvenile Justice (Care and Protection of Children) Act* is upon care and protection of delinquent juveniles, the rules or procedure for evidences is much casual in juvenile justice courts.

Besides, both these systems have certain similarities too, such as;

1. Right to have a lawyer.
2. Cross examination rights.
3. Right against self-incrimination.¹²⁶
4. Right to know the charges against him.
5. Guilt of the accused must be established beyond reasonable doubts for his conviction.

5.3. Prisons and Reformatory Centres or Observation Home: A Comparison

Hopes of an efficient criminal justice system are put or placed on prisons. Usually, it is usually understood as a correctional mechanism, the failure of which will make the entire criminal justice system pass in vain.¹²⁷ In prisons, a guilty or an accused under trial is sent for a certain period of time to undergo the sentence passed against him for his guilt whereas in the case of the latter, it is done to prevent the accused from tampering with the evidences or approaching the witnesses.

¹²⁶ Article 22 of the Constitution of India, 1950

¹²⁷ <https://www.lawctopus.com/academike/reformatory-theory-of-punishment>

The doctrine at the back of serving punishment in the jail for any crime is basically premised totally at the fact that the prisoner must take and undergo tough outcomes of his wrongful acts and must be required to limit himself and refrain from committing any offence again, but the theory of punishments has undergone a lot of changes with the change in its jurisprudential essence as concept of human rights has become a part of it. The believers of the human rights jurisprudence often support the notion that cruelty must not come in the way of punishing a wrongdoer, which certainly degrades the values of humanity.¹²⁸ The belief is also that cruelty as an element in a punishment, or if the remedy is in itself inhumane, is an offence in itself.

Prisons Act, 1894,¹²⁹ deals with the meaning of word “prison” in its *section 3(1)*, very exhaustively. Prison could be described as any place controlled and governed by the government in order to detain the persons who've committed any offence, even a jail falls under the definition of prison. But, the concept and philosophy which has emerged in the modern times relating to prisons is more because of the judges by their decision making process. With the transition taking place in the jurisprudence relating to persons, the physical condition of the prisons has also been improving.

"Crime is behaviour or action that is punishable by criminal law. A crime is often termed as a gross public wrong which is quiet distinct and is opposed to a moral wrong; A crime is said to be an offence committed against (and hence punishable by) the state or the public at large. It isn't disputed that crimes may also have an element of immoral, and hence are not termed as illegal."¹³⁰

“Crime exists in every society which does not have laws to prevent the same” is the statement by *Durkheim*, which states the reasons of crimes in a society. He in addition also asserts that every society faces crime, due to the fact all societies contain a category among varieties of wrongs i.e., the ones which might be allowed and isn't always actionable through legal provisions and the other being those which are forbidden and

¹²⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

¹²⁹ Act IX of 1894

¹³⁰ Shaswata Dutta, 'Theories Of Punishment - A Socio-Legal View' At www.legalserviceindia.com/Articles/Pun_Theo.html

are subject to cognizance by the law enforcing agencies. The word 'criminals' is often used for the latter one.¹³¹

The branch of criminal justice of juris thoughts or jurisprudence is the one which deals with the criminal justice system of a legal set up. Additionally, there is a blend of political philosophies as well as morals in such principles of the criminal justice set up in practice. It is also very important for us to know that reformatory theory is also one thing which is offered by such principle which aims at reforming the criminals in spite of punishing them. The theory of reformation is an important and vital organ of the criminal justice system. The theory of reformation which deals with reformation of criminals does not believe in inflicting punishment in rehabilitating the offenders in accordance with the values of the society, i.e. making him a law abiding citizen. Corporal punishments are also condemned by this theory. These steps are taken in order to convert the offenders in a manner that those offenders may come in the mainstream of the society. The most fascinating thing about correctional homes is that the inmates can live there up to the time when they feel that they can now live a normal life in the society. As appropriate method for reformation of the criminals, the reformation is usually done both thru the approach of parole or probation.

A very strong view is taken by the theory of reformation at the seclusion of the criminals from the society with an attempt to reform them and to refrain them from any kind of social ostracism. With regard to delinquent juveniles and first time offenders, reformatory theory effects magnificently in their correction or reformation, but where there are hardened and habitual offenders and criminals, this theory or principle won't be appropriate and might not act in its fullest effectiveness.¹³² It is very often witnessed that deterrent theories and the retributive theories are more useful or significant in dealing with hardened and habitual offenders.

Thus we can say at this point that negatives and positives aspects are there with each theory in a criminal justice set up and when we are asked to choose any one of these, we get to know the importance and significance of all the theories. In order to have a sense of reformation in the offenders, the theory of reformation favours the tilt that the

¹³¹ Seamus Breathnach, "Emile Durkhiem on Crime and Punishment (An exegesis)

¹³² Bishnu Dayal v State of West Bengal; AIR 1979, 964

infliction of punishments upon offenders must be as such that enables them to sense so. We see variations in reactions towards crimes, such variations are subject to society, time, civilization and even the criminal justice system etc. Generally, the thoughts and though process of the society towards wrongdoers is terrible, negative and even sometimes coloured or arched by excessive feelings of hatred.¹³³

“The grand combination of a reformatory philosophy, coupled with suitable rehabilitative method along with the therapeutic prison treatment and enlivening of prisoner’s character thru an innovative art of correctional technique and social defence, ensures of the fact that the prisoner’s rights in the present society are the hopeful note of national prison policy that is a prominent factor taken by the Constitution and the court.”¹³⁴

Ideally, the conventional notion and definition of prisons or jails is taken as ‘unfitting’ for the modern criminal justice set up. Reformation and change in penal laws has been highly influenced by the human rights jurisprudence and in a set up like India, it has been proven to be very effective. Additionally, it is very pertinent to state that India’s justice system is encouraged or influenced through the penal laws reforms made in any country under the sky. It is only the reformatory theory of punishment which has enlightened this world with the idea of reforms in penal laws.

Thus reformatory values must be imparted in modern era prisons and jails. Incorporating humanitarian approach or humane values into the conventional deterrent imprisonment system is the objective of the theory of reformation and equally, it is encouraging to see that jail officers have started moving on the path of reformation for attaining the said aim. In addition, the volume of safety this is ensured by the rule of law for the reformatory treatment of prisoners must take shape and act under country wide framework, but verily, in the efficient and effective implementation of the said techniques, India lags much behind among its counterparts.

¹³³ Ranka Sahu v State of Orissa; 1995 II OLR 1

¹³⁴ A quote by Justice V.R. Krishna Iyer

5.4. Consequences of Juveniles being tried as Ordinary Offenders in an Adversarial Criminal Justice System:

A. Jails lacking Provisions for Rehabilitation and Reformation:

There are not sufficient rehabilitative techniques or methods in our jails to address delinquent juveniles. Therefore, our jails turn into an excellent institution or place for such younger offenders to learn criminal tactics as opposed to correcting their past mistakes. This state of affairs was additionally explained in the *Justice J.S. Verma Committee*. For instance, let's assume that a boy aged about sixteen years is put in a prison to undergo life imprisonment as a sentenced awarded to him and when he reaches 30 years of age, i.e. after fourteen years of imprisonment, he is released from the jail. Probabilities are very high then, that in his 14 years in jail he would possibly have made pals who're habitual offenders and because of such awful corporation and no reformation scheme, he won't worry to commit the equal or some other offence once more. Therefore, there is certainly no procedure or method within the Indian criminal justice set up which might guarantee the reformation of a guilty or convict in prison and or there are less or very meagre chances of him to fall again on the path of criminality.

B. Insufficient Parental Guidance and lack of Education:

There are provisions within the *Juvenile Justice (Care and Protection of Children) Act*, which are focussed at guidance by parents and schooling or education as a technique of reformation to take a juvenile delinquent back to the ordinary course of life. Thus greater and huge loss or damage are caused to a juvenile if there is no or insufficient guidance of parents in his life. Consequently, if delinquent juveniles are not given place in juvenile justice home instead they are put in jail or prison it will be a defeat to the very intention of the enactment of the *Juvenile Justice (Care and Protection of Children) Act, 2000* and its objectives.

C. Crunch of Counsellors and Remedy Sessions in the Juvenile Justice System:

A very huge deficiency of powerful and effective counselling sessions lies with the juvenile justice system in India which are required to be provided to the delinquent juveniles. Therefore, there is verily a want to employ higher counsellors in this institution in order that the juveniles can without difficulty undergo more and more

counselling and remedial sessions to have improvement their ethical and social character.

D. Recidivism in Juvenile Delinquency:

There will be very higher chances of recidivism in a delinquent juvenile wherein the juveniles are tried and prosecuted as ordinary offenders. Such juveniles will be certainly committing crimes repeatedly, and serving their sentence in jails.

E. Reformatory Justice System followed by Different Nations:

Countries like Thailand, South Africa and United States of America, in order to curb the menace of juvenile delinquency which was rapidly growing, introduces certain very powerful, efficient and effective rehabilitative procedures in their juvenile justice system. Consequently, many delinquent juveniles with greater potential and healthier minds, have been restored to the society. Thus, in order to have such an effective mechanism for the reformation of delinquent juveniles, there should be efforts made in the same line in our country too. This will certainly be something very far from achievement if juveniles are not kept in juvenile justice home, but are sent to jails.

F. United Nation's Convention on rights of the Child and International Commitments to it:

UN Convention on Child Rights, of which India is a signatory, which places a responsibility on its participants to make special provisions for the protection of children. Therefore, the most major blockage in trying a delinquent juvenile as an ordinary offender, are *sections 37* and *38* of the Convention. The Convention put an obligation upon its signatory countries, under *section 37*, that no child shall be treated cruelly or will be subject to torture or any sort of inhuman treatment or punishment neither life imprisonment nor death sentence. Another responsibility is also placed under *sub-section (c)* of *section 37*, that a child should not be handled arbitrarily even if there is any need to arrest, detain or imprison him. Taking it further, it directs that any a child under the age of 18 years can merely be arrested, detained or imprisoned only as a last resort and also, such arrest, detention or imprisonment shall be only for the tiniest possible duration. To ensure the handling of delinquent juveniles differently with ordinary offenders and protection of rights of children is the principal purpose behind this Convention.

G. Scientific Factors:

When dealing with a culprit under the age of 18 years and whilst figuring out their culpability it's highly important to take note of their psychological fitness and maturity, hence level adolescence maturity improvement is a critical thing consideration on this point. There are two important judgements by the American Supreme Court wherein the Court acknowledged the psychological state of the delinquent juveniles as a very vital component to decide their culpability.

U.S. Supreme Court, in the case of *Roper v. Simmons*,¹³⁵ quashed and demolished death sentence from being inflicted upon the juvenile delinquents for their delinquency, through mentioning that on every occasion a heinous offence is committed by a juvenile, it'd be reasonable, justified and lawful, till a point, on the part of law enforcing agencies to curtail and limit the liberty of such a juvenile. Still, depriving or denying the right to life to such juvenile can never be favoured at such a beginning phase of his life when he has not developed enough prudence to even understand his life. Therefore, inflicting such a huge punishment upon such a person whose culpability is in itself subject to scrutiny, cannot be proper, legal or in any manner, justified.

Again the U.S. Supreme Court in the case of *Graham v. Florida*,¹³⁶ held that it's the responsibility of the state that there must be an opportunity to be released on the premises of good conduct or behaviour, provided to a delinquent juvenile too. Keeping them caged behind the bars longer will certainly enhance the chances of recidivism in him and it is in fact, not a good idea or solution to the problem. The courts, therefore in any case, must be restricted or refrained from sentencing juveniles (except the cases of homicidal nature) to life imprisonment. The Court observed that *“a state isn't required to provide and guarantee ultimate and individual freedom to a juvenile delinquent, who has committed some crime. Instead what the state needs to do, is to provide offenders like Graham a few meaningful opportunities to obtain release from the jail primarily based on demonstrated adulthood or maturity after rehabilitation. It is the prime most responsibility of the state only at the very beginning, to discover the methods or mechanism for compliance of the given measures. The emphasis comes upon the change or amendment which restricts the state from inflicting imprisonment to life or capital*

¹³⁵ 543 U.S. 551 (2005)

¹³⁶ 130 S. CT 2011 (2010)

punishment sans parole upon a juvenile for non-homicidal offences. Those offenders who commit really awful and severe crimes as juveniles would possibly end up irredeemable and disastrous. Further the eighth amendment does not foreclose the opportunity whether or not a juvenile who's convicted for non-homicidal crimes shall held back of the bars for life. It additionally does not restrain the state from reaching a judgement on the outset that those offenders will never be able of re entre and be a part of the society.”

The reasoning given by the United States of America’s Supreme Court in the above case was supported by findings or facts, that a child undergoes a lot of physical and psychological variations or changes in this stage of life when he is on the verge of starting his adulthood, proved by many medical and scientific reports.¹³⁷

The Supreme Court of India has also acknowledged that by lowering the age cap of juvenility from eighteen to sixteen years, we cannot solve the issue of juvenile delinquency. However, the root of the problems lies in the deficiencies in implementation of the Act in its full essence. Eventually, until and unless till that deficiencies are abridged from the juvenile justice system of our country, no rights and interests of the children can be preserved or protected. For an efficient juvenile justice system, we need to have no imbalance between the interest of the state and rights of a child.

5.5. Policy of Death Sentence to Juveniles, Consequences and its Judicial View

In the case of *Roper v. Simmons*,¹³⁸ the U.S. Supreme Court declared very uprightly that the capital punishment for juveniles as unconstitutional, unreasonable and unjustified. A justice system to be devoid of imperfections, must be ready to adjust itself with the societal demands and varying requirements. *Juvenile Justice (Care and Protection of Children) Act* is one such legislation which has been enacted to offer the children with

¹³⁷ Laurence Steinberg “Science on Adolescent Development : Adolescent Development and Juvenile Justice” Annual Review of Clinical Psychology (2009) retrieved from http://www.eji.org/files/Science%20on%20Adolescent%20Development_0.pdf

¹³⁸ *Supra Note 135*

the arch of care and protection. The courts will be losing its credit, if the juvenile justice system does not offer healthy and handsome treatment to the juveniles. The idea of *parens patriae* is a noble concept, if juvenile justice system is not able to behave effectively by finding the guilt justifiably and administrating the punishments fairly upon the juveniles.

A huge outrage among masses erupted with the debate on feasibility to inflict capital punishment upon delinquent juveniles in the commission of heinous offences, after the brutal rape case of *Nirbhaya*. People came up to question the validity and reliability of the *Juvenile Justice (Care and Protection of Children) Act, 2000*, with looking into the requirement for the change in it. India is a signatory to diverse global conventions and a number of them are targeted towards defending the rights and interests of the children, who're in want of care and protection.

Therefore, prior to bringing any important change or amendment to the Act, it's very crucial to check out diverse global treaties which very apparently and expressly limit the member states to inflict capital punishments upon juvenile offenders. The vital most provision in this kind of situation is *article 6(5)* of the *International Covenant on Civil and Political Rights*,¹³⁹ and *article 37* of the *UNCRC*,¹⁴⁰ both these directives together very strictly restrain from inflicting any sentence of execution upon the juveniles and even if it is inflicted, it'd be deemed as a violation or infringement of the human rights and consequently each state members of the mentioned conventions are directed to abolish the sort of provisions from their respective criminal justice system. Hence, in the International Law, which expands across the globe, inflicting capital punishment upon a juvenile delinquent is taken into consideration as violation of human rights of that delinquent and consequently, all member states to such conventions are prohibited to practice the same.

In the legislation of various countries also, a prohibition lies against the infliction upon delinquent juveniles, of capital punishment. In India, the *Juvenile Justice (Care and Protection of Children) Act, 2015*, under *section 21*, prohibits the infliction of capital

¹³⁹ Convention on Civil and Political Rights- <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁴⁰ The United Nations Convention on the Rights of the Child 1989

punishment upon the juvenile delinquents. Also, in the nations like England and America, same kind of practices are followed.

5.6. Conclusion

The question that whether a juvenile can be prosecuted or treated as an adult is in itself destructive to the very idea of social welfare or social justice. No modern legal set up can afford to treat its delinquent children at par with an ordinary offender. The boomerangs of doing so will be much horrendous than the problem of juvenile delinquency itself. If we start treating and punishing juvenile delinquents in the same manner as an adult offender is treated and punished, the consequences will be beyond our imaginations. Thus, there must always be special care and protection for delinquent juveniles.

CHAPTER VI

CORRECTIONAL AND REFORMATIVE THEORIES, STRATEGIES TO COMBAT RECIDIVISM AND AN ANALYSIS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

In this Chapter, the theory of reformation which is followed in the treatment of delinquent juveniles is discussed with an overview of strategies which may be adopted to overcome the issue of recidivism within juveniles. The changes brought in by the *Juvenile Justice (Care and Protection of Children) Act, 2015* are also incorporated in this Chapter with an analysis of the changes needed in the laws.

6.1. Correctional and Reformatory Theory

“Whenever someone commits an act against the laws of the land, it's committed against the society at large coupled with committal of a diabolical, coldblooded, pre-planned murder of one innocent person, the extent of brutality of which ends up shocking the conscience of Court, hence it's far justifiable that such culprit or offender must face the outcomes of his wrongful act. And by committing such heinous crime such person forfeits his right to life by himself.”– Justice A. P. Sen¹⁴¹

“Every saint has a past; every sinner has a destiny.”– Justice V. R. Krishna Iyer

The above statements by such notable and learned justices apparently replicate the ideology of contradictory treatment of offenders or delinquents with upholding the point that in the country, since the very starting there has been an overt and flaring debate on the issue of the infliction of punishment upon a convicted person.

The phenomenon that a crime is a genesis of the faceoff between the very nature and motive of an offender, is a very established and robust phenomenon. It is often believed that an offence is committed by an offender either, due to his motive for the crime or

¹⁴¹ Rajendra Prasad v. State of Uttar Pradesh 1979 INDLAW SC 277

robust temptation towards the crime or due to the fact of the restraint imposed by the personality of the offender is weaker.¹⁴² The theory of reformation clearly targets to bolster the personality of a culprit in order that he might not become the sufferer of his robust temptation towards the crime, and incorrect mind-set once more time. The theory of reformation puts importance on rehabilitation or to act as a medicine.

Moreover, this theory also pleads that crime or an offence is also a sort of a disease, hence, an offender cannot be treated by taking his life away. The very intention of this theory is to make the offender a useful tool for the society by bringing about a change in his character, traits and personality.¹⁴³ And this certainly brings the fresh beginnings and a kind of brand new tale of someone- the tale that gradually crawls towards the renovation and regeneration of a person, and his transition (i.e., from the world of crime to an ordinary course of life as a person respecting law).¹⁴⁴

The very prime intention or goal of the theory of reformation is that to renew and renovate of an offender and to show him path of a new life.¹⁴⁵ The very attempts in this direction had been commenced from the year 1956¹⁴⁶ asking for the end of capital punishment, and for the same government came up with a bill in the lower house (Lok Sabha) but because of some obstacles, it has not been attained yet.¹⁴⁷

It is also not irrelevant to state that all the latest and humanity loaded theories are primarily aiming at reforming the offenders by giving them individual treatment. Humanly treating such offenders, this principle correctly puts ahead the varying nature of the modern social set up wherein it's very glaring that every theory has significantly failed in fighting recidivism in the offender to establish peace and stability in the society.¹⁴⁸ However, it could be a truth that there is a higher onset of crimes nowadays in comparing it with the past. However, it could additionally be argued that a lot more

¹⁴² Shyokaran and Ors. v State of Rajasthan and Ors; 2008 CriLJ 1265

¹⁴³ H.L.A. Hart, 'Punishment and Responsibility' Oxford University Press

¹⁴⁴ J. M Finnis, 'Natural Law: the Classical Tradition' in Jules Coleman and Scott Shapiro

¹⁴⁵ H.L.A HART, in Radzinomics and Wolfgang(eds.) 'Crime and justice, Vol. II, 1971 – 1972

¹⁴⁶ "Should Capital Punishment be abolished?" The Times of India, June 27, 2004

¹⁴⁷ *Ibid*

¹⁴⁸ Andrew Ashworth, "Principles of Criminal Law" 5th Edn., 2006, Oxford University Press

of the criminals also are getting highly reformed and are capable of living a non-violent and a life filled with tranquillity.¹⁴⁹

The deterrent theory on the contrary aims at reforms with a different approach by punishing the offender as later he may wish to change by undergoing the harshness. A kind of formal condemnation by the society towards the punishment of the criminals was believed to be a pertinent element in bringing about such recognition.¹⁵⁰ A very substantial number of residents believe that all the criminals are having bad traits, are ill and required to be given treatment equally considering the same as disease, contrarily, most of the criminologists believe infliction of punishment is the best way and method to deal with a criminal.¹⁵¹ This has been the perfect and consequently the popular most in current years. In his works, *Lord Windlesham*, discussed that if sentiments of people started impacting penal policies, then in the coming years, towards retribution there may be greater inclination of the law makers.¹⁵²

Hon'ble Supreme Court, in the case of *Ramdeo Chauhan alias Rajnath Chauhan v State of Assam*,¹⁵³ relied very explicitly on the theories of reformation but additionally, observed that though the impactful principle of an eye for an eye, a tooth for a tooth and death for death isn't of much relevance in a truly modern and civilized society but contemporaneously, we cannot let it pass when a man becomes beast and a possible menace to the society, he has subjected himself to be chopped of his right to life in accordance with due process of law.¹⁵⁴

6.2. Things which can be done to Stop or Slow Down the Pace of Recidivism in Juvenile Delinquency

We've got a clear idea of the most probable categories of delinquents who are prone to recidivism in the fore discussed chapters, and those are the children who;

1. Are lacking education.

¹⁴⁹ Hall Jerome, 'The Aims of Criminal Law'

¹⁵⁰ Kenworthy Bilz, "What's Wrong with the Harmless Theories of Punishment"

¹⁵¹ Russell L. Christopher, "Deterring Retributivism: The Injustice of "Just" Punishment"

¹⁵² J. Bentham, 'Principles of Penal Law'

¹⁵³ 200 INDLAW SC 390

¹⁵⁴ *Dina Bawri v State of Assam* Criminal Appeal No. 120(J) of 1996

2. Are coming from poor backgrounds.
3. Have not got sufficient care and attention from their family.
4. Have not reached the substantial age of 14 years.
5. Had been in close contact with criminal justice system.

With an outline of the formerly mentioned specialities and enforcement of the laws handling juvenile delinquents it's very glaring that many prominent and successful efforts have been done to lessen juvenile recidivism with the preferred intention to considerably lessen and address the issue of juvenile recidivism. It is very vital to take note of that such steps have not merely decreased the numerical values of delinquency in juveniles moreover, have also impacted in the reduction of ordinary offenders.

Each year, the data collected by National Crime Records Bureau (NCRB) shows the problem of recidivism in India. According to the data published by NCRB in 2015, in 2014, out of total number of persons arrested (37,90,812), the second time convicts turned out to be 2,34,896 (6.2%), and the range of third time convicts turned out to be 47,884 (1.3%) and people convicted for the fourth or greater times turned out to be 12,960 (0.3%). The percentage of recidivists amongst all offenders increased to 7.8% in the year of 2014 as compared to 7.2% in the year 2013. In the years 2011 and 2012, the pace of recidivism remained unchanged at 6.9%. The data published by NCRB in 2015 additionally studied and analysed the frequency of repeating criminality in the year 2014 and observed that 79.4% of recidivists were convicted only once whilst for those recidivists who were convicted twice and thrice, the figures stood at 16.2% and 4.4% respectively. While looking at the data we can draw implications the more frequent conviction results in more rapid recidivism.¹⁵⁵

There isn't always mere a single cause or reason of recidivism in juvenile delinquency, the approaches and measures for lowering juvenile recidivism are also manifold. It was believed anciently that strict and harsher punishments might bring deterrence against recidivism. But, with transition in values of the society and time, the deterrent theory has stopped performing as needed and contemporaneously, lost its significance too. On the other hand, the inception and development of idea of human rights and fundamental rights has impacted theories of punishment very out rightly.

¹⁵⁵ http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001739/M022058/ET/1504173299Etext.pdf

Eventually, unduly solitary confinements, harsher punishments, or strict watch/vigil are looked as antithesis to the idea humanity and fundamental rights. Hence, now the criminal justice system aims at the individualized remedy of the offenders wherein the offender is handled as the top consciousness of correctional justice system. This approach is referred to as 'reformatory method or approach' and in this approach criminality is taken as a specie of social disorder or disease which may be cured merely through treatment of offender and attention given individually. So, attempts had been commenced to pick out the foundation and prime reasons of the crime committed by the juveniles and a way to cope with the reasons that lead the juveniles towards recidivism.

Methods which we can undertake to restrain the issue of recidivism in juvenile delinquency, are as below:

A. Harsher and stricter treatment to recidivists:

The punishment inflicted at the earlier conviction did not cause adequate deterrence in the mind of the recidivist is the presumption upon which this assertion is truly premised.¹⁵⁶ Concept of the increased punishment for juvenile recidivists will absolutely deter them from recommitting offences. For instance, a re-offender can be sentenced up to life imprisonment, if he is an earlier convict of human trafficking (defined under *section 370* of IPC),¹⁵⁷ which shall imply imprisonment for the rest of the natural life span of the convict,¹⁵⁸ whereas, the punishment of imprisonment ranges from seven to ten years in case of a first time convict.¹⁵⁹

B. Strict and consistent surveillance:

A competent court can while passing sentence upon a juvenile convicted on an earlier occasion, also additionally, order that such convict's place of residence after his release from the reformatory home or any change or absence from such house, be notified for at least a time period, from the date of expiry of his punishment, not less than five years. Many states have come up with enactments to tackle the issue of recidivism by

¹⁵⁶ The Law Commission of India, in its 42nd report (1971) recommended enhanced punishment for all the offences punishable with imprisonment of three years or more committed by previous convicts.

¹⁵⁷ Substituted by Criminal Law (Amendment) Act, 2013 (w.e.f. 03/02/2013) for the old Section 370

¹⁵⁸ IPC, S. 370 (6)

¹⁵⁹ IPC, S. 370 (2)

incorporating harsher treatment and surveillance of recidivists.¹⁶⁰ Yet, Parliament has not come with any law to address such hassle of recidivism in juvenile delinquency and it's also believed that making these kind of laws will defeat the very intention behind the *Juvenile Justice (Care and Protection of Children) Act*. In fact, in the country, different states have enacted laws to address recidivism however they're not particularly for the juveniles in addition, those state laws need to comply with the constitutional mandates. There must not be any denial to the right to life and personal liberty (protected by *Article 21*) of an individual, which certainly includes right to privacy. Furthermore, the reasonable restrictions as prescribed by *Article 19(1)(d)*, must be taken care of in imposing bounds on a recidivist's physical movement.

In the case of *Govind v. State of M.P.*,¹⁶¹ the government's law enforcing agencies believed by that a certain person has robust dedication to steer a life of crime that person's details can be entered in records of the surveillance, and he might be put in a regular surveillance. The said surveillance, can be encompassing day and night and additionally domiciliary visits at any time within the 24 hours of the day. The Supreme Court went on holding that "*surveillance through domiciliary does not always amount to an unreasonable restraint on the right of privacy of an individual. It is only people who're suspected to be habitual criminals and people who're determined to lead criminal lives that are subjected to surveillance. If 'crime' in this context is confined to such acts as involving public peace or security, the law imposing this kind of reasonable restriction needs to be upheld as valid.*"

More importantly, it is very pertinent to take note of that it was observed by the courts, even in pre-independence India, that restriction or limitations upon movements and place of residence can only be put upon known recidivists, and not upon everyone randomly, who is a mere suspect of committing a crime.¹⁶² Putting restraints upon movements of an accused would be unjustified and impermissible if an order of furnishing bond has been made against him.¹⁶³

¹⁶⁰ The Restriction of Habitual Offenders Act, 1918 supplemented by the Punjab Habitual Offenders (Control and Reform) Act, 1952; Rajasthan Habitual Offenders Act, 1953

¹⁶¹ (1975) 2 SCC 148

¹⁶² Ahmed v. Emperor, AIR 1926 Lahore 803

¹⁶³ Bhana v. Emperor, AIR 1919 Lahore 87; Emperor v. Gahina Kom Babaji, 7 Born. L.R. 456 (1905)

C. To have more watch and security in prisons or jail barracks:

Though, *Juvenile Justice (Care and Protection of Children) Act* opposes the idea of sentencing juveniles to jail but to control the issue of recidivism, stringent provisions and stricter actions are required to be taken against the juvenile recidivists. In the year 1920, the *Jail Committee* had, in fact, suggested the separation of habitual offenders or recidivists from first time offenders or normal criminals. There is need to keep the habitual offenders or recidivists in excessively secured and watched prisons,¹⁶⁴ subsequently the *Jail Reforms Committee (1946)* and the *Model Prison Manual (2003)*, additionally furnished for segregation or separation of habitual criminals from first time offenders.

D. Ensuring the possibilities of rehabilitation and reintegration with the society:

It is important to prevent the juveniles from reoffending after providing them with care and treatment. We have seen that more deserted or remote parts in a city or district have given more number of delinquents to the society. Sturdy schemes and programs specializing in removal of poverty, providing education with leaning and employment possibilities may be useful in stopping their repeated indulgence in crime. Merely treating the delinquent child mentally isn't always enough to deliver an extrude in his delinquent behaviour until the situations surrounding him also are improved.

6.3. Needs in the Change of the Laws Dealing with Juvenile Delinquency

There commenced a heated debate as to whether or not deliver any kind of change within the laws dealing with juvenile delinquency. The arguments raised in favour of the change were that in spite of handling of juvenile delinquents by the existing legal set up, the pace of their participation in delinquency is swiftly growing and heinous offences like homicide, rape, etc. are being committed by them. So, it was needed very importantly to limit and control the growing cases of juvenile delinquency and recidivism, hence, there persists a requirement to amend the (then) existing *Juvenile Justice (Care and Protection of Children) Act, 2000*,¹⁶⁵ to have its provisions stricter

¹⁶⁴ Report of the Indian Jail Committee (1919-1920)

¹⁶⁵ Act No. 56 of 2000

and more efficient. Many steps had been ensured by the union government towards realising the same, and one of them was recommendations put forth by *Justice J.S Verma Committee* which threw light upon the need of change in the juvenile justice system. Later, in the case of *Salil Bali v. Union of India and Another*,¹⁶⁶ (writ petition) Hon'ble Supreme Court while dismissing the petition held that any substantial change within the juvenile justice laws will result in failure of purpose and objectives behind the *Juvenile Justice (Care and Protection of Children) Act, 2000. Ministry of Women and Child Development* Subsequently, taking recognition of the heinous and brutal offences committed by delinquent juveniles, came up with the *Juvenile Justice (Care and Protection of Children) Bill, 2014* on 12th August, 2014, in the lower house of the Parliament (Lok Sabha),¹⁶⁷ which got the presidential on 31/12/2015 after being passed by the lower house (Lok Sabha) and the upper house (Rajya Sabha), with a claim that their modern draft has brought stricter and more efficient provisions for, and in opposition to the juveniles which is required with the change in situation and it will be very efficient and powerful in preserving the much required balance between rights of children and societal interests.

6.4. An Appreciation of the Juvenile Justice (Care and Protection of Children) Act, 2015

The Government of India came up with the proposal to bring about certain changes or modifications within the (then) existing juvenile justice laws in the country, vide the bill of 2014,¹⁶⁸ which was enforced from the date of 31st December, 2015 and is known as the *Juvenile Justice (Care and Protection of Children) Act, 2015*.¹⁶⁹

6.4.1. Salient Features of the Act:

- This Act places greater concentration at the children in conflict with law and those in want of care and protection, consequently the Act targets at giving separate procedures to address each the issues in juveniles respectively.¹⁷⁰

¹⁶⁶ 2013 VII AD (S.C) 505 2013(3) RCR (Criminal) 796, 2013(9) SCALE 140

¹⁶⁷ Bill No. 99 of 2014, introduced in Lok Sabha, retrieved from <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%202014.pdf>

¹⁶⁸ Bill No. 99-C of 2014

¹⁶⁹ Act No. 2 of 2016

¹⁷⁰ *Id*

- The vital most and talked most characteristic of this Act is that it lowers the age cap for juvenility from eighteen to sixteen years.¹⁷¹
- Discretionary powers are provided by the Act to the Juvenile Justice Board to undertake an inquiry for the juveniles, aged between sixteen to eighteen years and are alleged to have committed grave or severe offences, with an objective to ascertain the nature of crime allegedly committed and the extent or degree of participation of the juvenile in the commission of the same. Post the inquiry, if the Board is satisfied and is of the opinion that the alleged commission lies within the bracket of heinous offences, then Board is well within its authority to deal with such juvenile as an ordinary or grownup accused. The Act also provides that if a delinquent juvenile aged between sixteen to eighteen has allegedly committed an offence of lesser gravity or severity, even then he may be prosecuted as an ordinary or grownup accused and punished as well an ordinary or grownup offender, if he was apprehended or arrested after having completed 21 years of age.¹⁷²
- Additionally, the Act contains diverse provisions to handle issues like adoption of the juvenile (in want of care and protection) and carries diverse penalties or punishments for the offences committed against the child.¹⁷³

6.5. Arguments in Favour of the Discussed Change

A. Sentence for a maximum of three years is not adequate:

It was advocated by the people in favour of the amendment that an efficient and ideal criminal justice system must be so powerful that it could very effectively and successfully control the commission of the offences and must make the society a nonviolent, peaceful and liveable place with minimal or sans disturbances. It's a prime responsibility of a state to defend and protect the person and properties of its citizens.¹⁷⁴

¹⁷¹ *Id*

¹⁷² *Id*

¹⁷³ *Id*

¹⁷⁴ B.B. Pandey “Justice cannot follow a tough Act” THE HINDU(23rd September, 2013) retrieved from <http://www.thehindu.com/todays-paper/tp-opinion/justice-cannot-follow-a-tough-act/article5162042.ece>

So, it's very much needed that every enacted and framed laws must fulfil its intended result i.e., to fulfil the ends of the justice but this prime motto is getting defeated by the provisions in the *Juvenile Justice (Care and Protection of Children) Act, 2000*, as the highest punishment it provides is for only three years and this also, to be spent in a reformatory home irrespective the fact that the juvenile is responsible of committing offences like rape or homicide and stands at the same platform as an grownup offender.¹⁷⁵

Therefore, this deficiency of the provisions furnished an unjust immunity and privilege to the juvenile offenders of the severe offences and consequently it's very expedient that there must be greater deterrent laws in to deal with the juveniles who're responsible of committing brutal and heinous offences in any other case the intention behind the whole Act would not be served.

B. Psychological and physical factors are not acknowledged in the existing set up:

The people in support of this amendment majorly argued that the old Act did not discuss regarding the two very prime elements of a crime i.e. “*actus reus*” and “*mens rea*” that are very important whilst figuring out the guilt of an offender.¹⁷⁶ There isn't any parameter or method in the *Act of 2000* to decide on a juvenile’s adulthood or understanding for his acts and this is the primary cause as to why number of the brutal juvenile delinquents get meaningless and illogical immunity because of the age limit.¹⁷⁷

Hence, it was very important to feature certain provisions in the Act recognising the culpability of the juvenile delinquents on the premise of their intention and understanding whilst committing the offence and not simply on the basis of their physical age. This change is want of the time specifically while a child gets mature earlier than the age recognised by the legislature. Therefore, it's absolutely unjust to provide license and unconditional immunity to a mature child under the age of 18 years, to commit offences at his whims and fancies.

¹⁷⁵ Aparna Viswanathan “Balancing the Juvenile Act” THE HINDU (9th September, 2013) retrieved from

<http://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>

¹⁷⁶ Haveripeth Prakash “Juvenile Justice- A Harsh Look” IRJSS Vol.2, 38-40, 13th January, 2013 retrieved from

<http://www.isca.in/IJSS/Archieve/v2il/8.ISCAA-IRJSS-2012-067.pdf>

¹⁷⁷ *Id*

C. Anti-social agencies using children as a tool of committing crime:

It was also discussed that the *Act of 2000* furnished merely three years of punishment to the juvenile delinquents regardless of the thing how heinous is the offence committed by them.¹⁷⁸ It's a very prime flaw which offers a possibility to different anti-social agencies to rent needy and indigent children for some cash and commit diverse offences thru them only. It's also a reason as to why maximum of the offences in huge and metro towns are committed through younger offenders and why the real culprits are apprehended. Also, the juvenile delinquents have no worry to get punished as a juvenile delinquent in the *Act of 2000* as it's not a harsh enactment anymore. Hence, to discourage the juveniles from taking the path of delinquency or from being influence by anyone towards criminality, it is needed to create a sense of worry in such juveniles so that they cannot be a puppet of some else's whims.

D. Instead of being stagnant, laws should be dynamic:

The supporters of the amendment made this sociological argument that was based on a reasoning that with the transition in time there will be variations in society's legal set up as well, as it's an established truth that the upcoming generations are more mature, than the older one, to make an assessment of their act or actions. Also, the destructive impact of the various mediums of entertainment like television, world of web etc., make a child mature tons earlier than the time consequently there is certainly a robust requirement that the flexible, liberal and dynamic juvenile justice laws must be enacted with a few stricter experiences for delinquent juveniles.

6.6. Arguments in Opposition of the discussed Change

A. Amendment vitiates the intention of the Act:

The oppositions of the amendment argued that the very reason at the back of the enactment of juvenile justice laws is to provide with care and protection to the children who need it and for this reason only the Act contains a provision talking of the constitution of a Juvenile Justice Board to take care and adjudicate those varieties of

¹⁷⁸ B.B. Pandey: "Stilling the turbulent juvenile justice water: The apex courts precedent response to an unprecedented challenge in *Salil Bali Case*" Vol 9 SCCJ(2013)

topics. The Board additionally, follows the method that specializes in the reformation of the juvenile and not to deal with those younger offenders as a criminal.¹⁷⁹ Creation of a Juvenile Justice Board suggests that children have a very special status in our criminal justice system and it's apparently unconstitutional to get them rid of their rights assured by *Article 15* of the *Constitution of India*.

B. Lowering the age of a juvenile delinquent is very complicated decision and it could inflict greater harm:

The amendment was opposed and protested by the opposition on the ground that India is a signatory to UNCRC and consequently being part of this convention it's obligatory for India too to comply with its mandates and set the age of juvenility not below the age of 18 years. As diverse enactments and laws too, take note of 18 years of age because the higher restriction for a juvenile to determine his state of adulthood or maturity. Hence, the argument that a child between the age of 16 to 18 years, becomes mature and have sufficient prudence to commit offences, and understands the nature of his acts the age yet must be handled as a grownup offender, is a flawed argument as, it's a widely and globally acknowledged presumption in the law that someone under the age of 18 years cannot commit any wrongful act and certainly he is not mature enough to deal with the same. Hence, efforts should be made in addressing the flaws in the juvenile justice system, instead of lowering the age of the juvenile, and investment of time and money must be made in making the existing system more efficient and social friendly.

C. Children in the teenage aren't sufficiently mature to apprehend the gravity and outcomes in their acts:

The oppositions also advocated that the large section of the children in warfare with laws in India belongs to the poor and indigent segment of the society and consequently there may be social negligence, which forces or lures those children to get indulged in criminal acts consequently it's the very duty of the society to give due attention to such children mainly after they get influenced or encouraged towards criminal acts because of their social and monetary circumstances. Also, lowering their age from 18 to 16 years is a very bad decision as if we take an example that what will be done if a fifteen years

¹⁷⁹ *Id*

old commits a brutal and heinous offence as the sixteen years old has committed? Will we lower the age bracket again? Therefore, there is obviously failure in enforcing and implementing the reformative system in India and it is needed to be reconsidered and solved as quickly as feasible.

D. Disparity in figuring out age of the juveniles legally:

There are various enactments in India where the word 'child' is defined differently, and very notably, it defers from statute to statute. For instance, in the provision of law dealing with education system in the country, maximum age for a child to get free schooling or education is 14 years, while in the laws dealing with marriages, for a female it is 18 years and 21 years for a male. Also in diverse Acts like *Factory Act*,¹⁸⁰ *Plantation labour Act*,¹⁸¹ the lowest age required for a child to be employed to work is 14 years. Also, in the *Indian Penal Code, 1860*,¹⁸² culpability of a child is decided considering the age of 12 years or above.¹⁸³ Hence, on the point of minimum age for a child, no parity is found among different statutes in India.

6.7. Conclusion

The theory of reformation is best suited in rooting out the problem of delinquency from the society. We cannot expect reformation within anyone by putting him in jail with hard core criminals. In order to prevent recidivism in a juvenile, efforts should come from the law enforcing agencies, society, family and most importantly, from the juvenile himself. The changes brought in by the *Act of 2015* were of no requirement and, in my opinion, have no better say in preventing delinquency than the erstwhile *Act of 2000*.

¹⁸⁰ Act No. LXII of 1948

¹⁸¹ Act No. 69 of 1951 as amended by Acts Nos. 42 of 1953, 34 of 1960, 53 of 1961, 58 of 1981 and 61 of 1961

¹⁸² Act No. 45 of 1860

¹⁸³ Section 83

CHAPTER-VII

CONCLUSION, OBSERVATIONS AND RECOMMENDATIONS

In the end of this Dissertation, the researcher makes below averments;

7.1. Conclusion

In order to end up with this Dissertation, the researcher wishes to submit and conclude by stating that *Juvenile Justice (Care and Protection of Children) Act, 2000* was a much comprehensive and child friendly enactment and consequently, there was no requirement to bring about the changes brought in by the *Juvenile Justice (Care and Protection of Children) Act, 2015*, but the efforts should have been made or should be made in pressing urgent requirements like finding out the flaws in efficient implementation of the juvenile justice laws and then having a proper implementation of the juvenile justice system. A social welfare legislation should not be so prone to change or vulnerable on public sentiments, instead, the problems of such nature should be handled in a very delicate manner with targeting the roots or point of origin of such problems. Lack of laws had never been a cause in the society's confrontation with the menace of juvenile delinquency and its recidivism but the major cause is the surroundings we give to such children and the upbringing they undergo. To take away such problems, it is important for the family members to spend their time with their wards to have proper interaction and observe the kind of positivity they give to their children in their life. The variations or swings in the behavioural patterns of the child should be observed by his close members within the family. 'To get tough and hard on crime' may be good in certain manners but treating the delinquents in the same manner is something opposed to the constitutional mandate and hence, our society and law makers must restrict themselves in doing so.

Regarding the issue of recidivism in juvenile delinquents, it's very pertinent that the parliamentarians or law makers of our nation, must take a breakthrough in making more potent options for the convicted juveniles and making schemes and packages to facilitate delinquents' rehabilitation. Once a child is put to detention and released, the very basic problem faced by him is in getting normal again in the ordinary course of

life and on the other hand, society is also reluctant towards accepting him as a citizen like others in the society. Hence, the governments must focus on the thing that once a child is out after undergoing his sentence in reformatory homes, he must be getting regular assistance which shall be very helpful in getting the child again on the path of an ordinary life, aloof from delinquency. With the support from juveniles' family, NGOs, and various other social welfare organisations, these steps for the reformation of the delinquent child can be taken post his detention. In order to prevent a delinquent child from going back to the life of delinquency, benefits like job, school education followed by regular and frequent sessions of counselling and rehabilitation etc. should be done, and which shall certainly be helpful in combating recidivism. These techniques aren't merely efficient however also are robust as they assist in lowering the problem of recidivism in juvenile delinquency at a much lower cost.

7.2. Observations and Hypothesis Testing

1. The issue of juvenile delinquency is a highly traceable and unavoidable problem in our nation and it severely calls for greater focus to be given to it for the only purpose that it determines the values of our upcoming generation. The hypothesis is accurate that selecting the route of juvenile delinquency isn't always a preference for maximum of the delinquents in reality but there are numerous compelling elements that pressure such children to comply with the passages of crime, and the one of those is certainly the one contributed by the parents and society. To take away all these constraints these juveniles must be taken, by their parents, on priority. It is also very glaring that the society and parents of the child have a major responsibility and a position to play in resolving this issue of delinquency in children. It may also be stated that there are numerous character variables and environmental situations which are answerable for an antisocial conduct in a child. Also it's very largely hidden in our society that an individual's belief of fair and honest treatment in our criminal justice system has a destructive or opposite impact at the emotional and different behavioural consequences in a child.

However, it could be superseded through a fine youth development in them and it may be carried out through the society and family members of a juvenile. Also, it's very glaring that an aggregate of different personal factors like

excessive mobility rate in the family, extra anonymity in neighbourhoods, intentional or unintentional abandonment by the parents who spend much less time with their children, in educational institutions wherein they lack any sort of inclination in studies, massive vicious media publicity before them with full of violence and heavy use and abuse of drugs, alcohol and poverty etc. Also children find it very tough to get themselves in, in today's complicated society where they face major challenges and competition on every stage of life. Not only physical but psychological development is also hampered by these things in the society which put in thoughts of delinquency in young minds and as an outcome, they end up committing offences much before attaining a sense of prudence or maturity.

Therefore, the very first hypothesis is proved that no child is born a criminal and it's the elements like lack in proper schooling or education, poverty, and different other socio-economic situations are the important causes at the back of the upward thrust in recidivism among children.

2. On the point of lowering the age of the juvenile, it's often believed that lowering the age of juvenile from eighteen years to sixteen years might assist in fixing the hassle of the juvenile delinquency and growing cases of recidivism in the juveniles. But, after going thru, in detail, different judicial pronouncements, as mentioned above, it's very much opined that lowering the higher age restriction of a juvenile might not clear up the hassle of juvenile delinquency and recidivism in them. So, researcher as a conclusive word of this paper contends and backs the hypothesis that India's then existing juvenile justice set up was enough efficient to address juvenile delinquents and there was no necessity to bring about the *Act of 2015* and to decrease the age of juveniles. It is therefore submitted that the issue has not always been about the possibility whether or not a juvenile delinquent to be punished harshly or rigorously. The actual issue lies at the truth that whether or not the existing juvenile justice system and *Act of 2000* were enough to have a restraint on the increasing cases of juvenile delinquency and recidivism, and specifically when the most populace of the children in India is engaged in commission of brutal and heinous offences like homicide or rape.

Hence, it's also submitted that the *Juvenile Justice (Care and Protection of Children) Act, 2000* had efficient and powerful provisions to address children in warfare with laws of the land and consequently issue wasn't always that we did not have sufficient provisions in law for handling juvenile delinquents however the problem laid on the point of the implementation of these provisions. Therefore, even the *Act of 2015*, which introduced provisions like lowering the age of juveniles from eighteen to sixteen years and keeping the offences like rape and homicide beyond the ambit of the Act might not clear up the hassle that Indian juvenile justice system is confronting, with specifically after the brutal and notorious *Nirbhaya* case which affected the entire jurisprudence of juvenile justice system.

Through the below arguments the researcher wishes to back his contentions: -

- i. Lowering the age of juveniles to sixteen years under section 2(k)¹⁸⁹ isn't the required solution: It is hereby submitted that lowering the age restriction from eighteen years to sixteen years, does not assure that an antisocial child of 15 years of age will not commit heinous and severe offences like rape and homicide. Hence the change brought in by the *2015 Act*, is baseless and suggests mere a panic and haphazard response by the law makers to the outrage in masses towards too liberal method provided to the juvenile delinquents. It is likewise pertinent that the brand new *Act of 2015* ignores the truth that children within the age of early life or adolescence, do not have the options and capability to decide what's proper and what is not proper for them. This kind of ignorance of the *2015 Act*, undoubtedly, defeats the whole intention and spirit of any social welfare legislation and undoubtedly, of *the Juvenile Justice (Care and Protection of Children) Act, 2000*. It is submitted, on the point of sending those delinquent juveniles, instead of juvenile home, to prisons, that if those delinquent juveniles are put in prison at such an early stage of their life, then such juvenile's harsh and sour revel or experience in the prison will lessen the possibilities of him getting reformed considerably in the future.
- ii. Defeating the global commitments: It is found by the researcher that the *Act of 2015* has been enacted in a gross violation of diverse global commitments and consequently it shifts its consciousness from having children centric provisions,

aims and objectives and thus it is in violation of various international conventions on child and juvenile rights. It isn't always out of context to state that the purpose at the back of incorporation of diverse UN conventions on child rights is that children are the one segment or section of the society who're mentally, emotionally and bodily vulnerable and are incapable of elevating their voice and struggle and combat for their rights, consequently because of their vulnerability they necessarily require safety and protection in the laws. The laws dealing with juvenile delinquents is all about rehabilitating and restoring the juveniles and consequently treating them at par with grownup and mature offenders and punishing them with the retributive measures will defeat the very intention of the Act that's certainly to deliver juveniles back into the mainstream of our society. Therefore, a kind of restriction in tracing out the major or ground level issues of delinquency in juveniles has been imposed by the attitude of law makers by being so harsh to juvenile delinquents. So, the second hypothesis is likewise true that lowering the age of juvenile from eighteen to sixteen years cannot help in rooting out the obstacle of juvenile delinquency and its recidivism.

- iii. It is often believed that it is much less difficult to make robust child, than to remake a scattered or broken man: Often, it is believed that delinquency in juveniles must be restrained earlier than it spills over to a stage wherein it'd be too tough to do something to control it. Therefore, it's far very crucial that it must be stopped from its roots and to attain it, distinct schemes and programs focusing at the all-round development and improvement of the child must be organised so that it can be assured that the juvenile is subjected to such an upbringing wherein he achieves, in his life, the very best characters of a man and grows up as an accountable, law abiding and loving citizen as opposed to a juvenile delinquent. It is often said that the authorities must target on setting up diverse correctional and improvement schemes that assure and assist in making prognosis of a child at very earlier stages of his life, and to look if there exists any disease or disorder in him and in case it is found then it must be cured within time. This approach will really act as an efficient and effective method to make sure that the range of juvenile delinquency cases frequently, are decreased to a considerable point. Government and its all different agencies, organisations or

affiliations have a huge and very lively position to play in resolving the issue of juvenile delinquency and may restrain a variety of diligence. Thus, the third hypothesis is also proved that *Juvenile Justice (Care and Protection of Children) Act, 2015* must undertake greater preventive measures as opposed to following merely reformatory techniques.

7.3. Suggestions and Recommendations

When we look at the causes for failure of juvenile justice system, it is often found that such failure is not because of delinquents' conduct instead, in fact, it lies because effective and efficient steps are not put forth to reform or concentrate upon children who reflect irresponsible and ruthless conduct at very initial stages of their life, and in spite of possibilities or chances being given later, aren't capable of concentrating on their actual improvement and growth in life. Thus, for the proper implementation of the juvenile justice laws or any other laws enacted for the benefit of children who need special care and protection, there followings are few tips by the researcher;

- Juvenile justice system in the country should be the integrated with the Human Resource Development planning by the governments.
- Among the households, awareness or agility should be shared with children so that they act as a unit of children's care.
- Diverse children friendly counselling and advisory boards should be set up at school levels, and those boards or bodies should be more approachable to children.
- Programs and schemes to make sure that there will be extended and lively participation of children in schools and in other curriculum things.
- Easy access to education should be provided to the children primarily in poverty driven localities.
- Special and focussed schemes for children should be created.
- The terrible mind-set of the society towards juvenile delinquency must be discouraged.
- Training, primarily sociological and psychological, should be provided to people handling the juveniles at juvenile homes.

- Educators at juvenile homes need to build a connect with delinquent juveniles in order to enable resistance against crime within them.
- Teachers, educators, guides, counsellors, social workers etc. must have understanding/prudence of the reasons behind delinquency in juveniles.
- Greater attention in educational institutions towards guiding and counselling the children.
- Family should make attempts in preventing juvenile delinquency.
- It is very essential to control the behaviour of a child, not too harshly but with delicacy, to prevent the very inception of delinquent behaviour in his conduct.
- On academic front, programs must be prepared and presented to educate parents in order to ensure growth and development of their children in a healthful way, in addition, there must be spread of awareness made to the children concerning the destructive consequences of drugs, involvement with criminals, crimes like rape, and use of weapons etc.

Ensuring these kind of approaches will absolutely assist and will be proved useful resource for the children in following the righteous path of life and could also ensure the prudence in understanding their acts and its outcomes upon themselves and upon the society as well. All these steps are very crucial and very important ailment in treating the root causes of delinquency in juveniles. It is also very pertinent to take note of that initiation of diverse academic schemes and packages for children have manifold advantages in shaping the future of a child entrapped with the web of delinquency, and certainly to make him a responsible and peace loving resident in the society.

With this, the researcher would like to conclude by saying and stating responsibly that if the above cited recommendations and suggestions are, in reality, implemented by the governments (of states and union) effectively and with full cooperation of law enforcing agencies then in the forthcoming days we can see a world with endless hopes where pristine and innocence of a child are preserved with utmost care in order to keep the beauty of a child untouched. Whenever we can have such a society which treats its children with such humility and caution, hopefully, we shall see no child choosing the path of delinquency and certainly then, this world will be the best place to live in.

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