

IMPACT OF JUVENILE JUSTICE ACT IN INDIA

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF
LAWS**

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ANKIT RAJ

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LIST OF CASES

- Arnit Das vs State of Bihar
- Bhoop Singh vs State of U.P
- Thakorlal D Vadgama v. State of Gujarat
- Bhoop Ram vs State
- Bholu Bhagat vs State of Bihar
- Emperor vs Dharma Prakash
- Emperor vs Valli Mohammad
- Emperor vs Nawab Dheru Gul
- Krishna Bhagwan vs State of Bihar
- Hava Singh vs State of Haryana
- Subash Chand vs State of Haryans and others
- Kumar Satyanand vs State of Bihar
- Hari Om vs State of Uttar Pradesh
- Abdul Mannan and Others vs State of West Bengal
- Lakhi Sahu vs Emperor
- Milap Singh vs State of U.P.
- Parabati Dasi vs Emperor
- State vs Jahlu
- Ramdeo Chauhan vs State of Assam
- Ramgopal vs State
- Raghbir vs State of Haryana
- Ramchandra vs Inspector of Police
- Rohtas vs Haryana
- Shyam Narayan Singh vs State of Bihar
- Umesh Chandra vs Rajasthan
- Mukarrab vs State of Uttar Pradesh
- Raja Singh vs State of Bihar
- Dilip Saha vs State of West Bengal
- Balbir Singh vs State of Rajasthan
- Devi Singh vs State of Madhya Pradesh
- Sheela Barse vs State Union of India
- Mata vs State of Rajasthan
- Shokat Ali vs State of Rajasthan
- Mohomed Alan vs The Crown
- Kario alias Man Singh vs State of Gujarat

- State of Madhya Pradesh vs Shobharam Singh
- Sultan Singh vs State of Madhya Pradesh
- Tirunelveli vs Perumal
- Vinod vs State of Uttar Pradesh
- Mukhtiar Singh vs State of Punjab
- Lallan Singh vs State of Uttar Pradesh
- Roper vs Simmons
- L vs DPP
- IPH vs Chief Constable of South Wales
- J.M. vs Runeckles
- Director of Public Prosecutor vs K& B
- Harilal Mallick vs State of Bihar
- Gopinath Ghosh vs State of West Bengal
- Arjun ram vs State of Rajasthan
- Daljit Singh vs State of Rajasthan
- Mahendra Singh vs State of Rajasthan
- R. Rathinam vs Kamala Vaiduriam

ABBREVIATIONS

- AIR – All India Report
- SC – Supreme Court
- HC – High Court
- JJA – Juvenile Justice (Care and Protection) Act, 2015
- IPC – Indian Penal Code, 1860
- Cr. P.C- Code of Criminal Procedure Act, 1949
- COI – The Constitution of India
- MTWA – Motor Transport Workers Act, 1961

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CHAPTER -1

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children¹.”

- Nelson Mandela

To ensure the recognition of children’s rights within our societal framework, it is imperative to shift from a transitioning from a need-based approach to a rights-based approach. The word “Juvenile” originated from the Latin word “juvenis”, which means young. Juvenile justice work towards to protect the rights of all children, specially those involved in legal matters. The term “conflict with law” and delinquency are used to describe minors who are either accused of or have committed a crime and are involved in legal proceedings. This contradiction between the protective strategy of Juvenile justice and the conventional approach of the criminal justice system represent a significant problem for our Juvenile justice system.

The Indian constitution provides various civil rights as well as child-centric services, a large number of Indian children have to face discrimination and impoverishment across many occasions. According to the National Crime Records Bureau, 60,539 minors were taken in custody and presented in front of different Juvenile boards in 2014. As compared to 2013 data, the ratio of female to male detention for offenses committed under Special and Local Laws was approximately 9:91, showing a reduction in the total number of incarceration of adolescent females. The largest number of juveniles detained for special and local law offenses within the age range of 12 to 16. i.e. 11220, while the maximum number of detained females were between the ages of 16 and 18 i.e. 451. According to the report in 2014 there were more than 48,230 children in India prosecuted for crimes like sexual offences and major crimes like murder, who are between the ages of 16 and 18. Statistics also indicate a rise in sexual abuse cases involving minors, with just 399 reported crimes from 2001 as compared to 1,419 as per the report of 2011. In December 2012, Delhi Police apprehended six persons, including a juvenile, for heinous crime like brutal rape and assault of a 23-year-old woman in Delhi. Regrettably, the individual succumbed to their injuries. Statistics of 2011, indicates that 6,770 minors were apprehended in Maharashtra, Madhya Pradesh, Chhattisgarh, Rajasthan, and Gujarat.

On investigating the juveniles’ family, the data shows that out of 27,577 juveniles suspects of crimes, 1,924 were homeless, 4,386 were residing with caretakers, and the rest with their parents. Instead of perceiving these delinquents as inherently wicked, they are often viewed as mentally ill or victims of circumstances. In ancient times, even minor offenses were met with severe punishment. Nevertheless, contemporary psychologists have drawn global attention to the underlying reasons behind the adolescent misbehaviour,

¹ Address by the President on the launch of Nelson Mandela Children’s Fund Pretoria

emphasized the necessity to replace punishment with rehabilitation. Nowadays, countries focus on rehabilitating juveniles instead of punishing them.

“A child is a person who will carry on what you have started²”. In the absence of parents, they will step into your shoes and attend to all that you consider significant. Whether or not your chosen policies are implemented rests in their hands. They are the future custodians of everything whether it is places of prayer or education or business enterprises. They are the future of any country as well as the future of the human race also.

Juvenile delinquency is a problem that knows no boundaries and has persisted throughout civilizations and countries for centuries. It arises when social bonds are disrupted, leading to significant disagreements among groups of people. According to the report of National Crime Records Bureau's presented in 2014 the number of abandoned children in developing countries like India is increasing rapidly day by day. The increasing numbers of children involvement in crimes, in comparison to the all reported offences in the country, over last few years is also alarming for India.

Extensive research and various theories have consistently indicated that several factors contribute to delinquency and neglect, and these factors often overlap and interact with each other. Juvenile delinquency can be attributed to factors such as divided families, financial problems, sexual abuse, poor education, bad environment and racial abuse. Ignorance from parents, family, and society has detrimental effects on children's mental, social, and overall development. Even internationally recognized documents like the “Standard Minimum Rules for the Administration of Juvenile Justice³”, as established by the United Nations³ and the “UN Convention on the Rights of the Child⁴” emphasize the need for specialized treatment and protection for children involved in the legal system. This study aims to explore the development of India's Juvenile justice system through statutory and constitutional laws.

India, because of signatory to the United Nations Declaration on the Rights of the Child, has addressed and provided several fundamental rights to children which includes the right of health and care, the right to expression and nutrition, and the right to protection from various forms of abuse and exploitation. In 1974, India established a national policy for children to ensure the realization of these fundamental rights. The national policy provides constitutional guarantees for children's well-being and comprehensive development throughout their growth stages. The government of India has implemented appropriate monitoring systems to ensure compliance with the demands of the UN Convention on the Rights of the Child which includes the examination of national and state laws.

In line with India's obligation to the 1990 International Declaration on Children's Well-being, the Ministry of Human Resource Development has developed a national working plan for children, considering their

² Quoted by Abraham Lincoln

³ Beijing Rules, 1985

⁴ UN Convention on the Rights of the Child of 1989

basic needs, rights, and aspirations of the country's 440 million children. However, an estimated 50% of school-age children do not attend school, and girls are very much affected by penury and segregation in the society. While there is growing attention and discussion about these issues in India, effectively protecting and caring for children remains a challenging task. Efforts are being made at various levels to address the country's problems but the proper protection and care of children continue to present ongoing challenges in India.

The socio-economic conditions are the primary contributing factor to juvenile delinquency. The changing attitudes within society also put a strain on today's youth. In a 2005 study titled "Child Under Threat" conducted by UNICEF, it was found that millions of children in India suffer from inadequate access to essential healthcare, education, sanitation, nutrition, and clean drinking water. It is crucial to recognize that children are not only a national treasure but also humanity's greatest gift.

Recognizing children as invaluable assets to every nation, it becomes imperative to provide individual attention and care to each one of them. "There is no greater investment for any society than putting milk into newborns⁵" stated by Winston Churchill. The intense belief in the concept of juvenile justice resonates with people worldwide.

Justice Krishna Iyer emphasized the foundational principle of juvenile justice, stating that it is centred around nurturing the inherent worth of every child, both born and unborn. The phrase "child is the father of a man" underscores the significance of providing proper upbringing and education to children, ensuring their growth into purposeful individuals. It is essential to equip children with knowledge, awareness of the world, and an environment conducive to their development. The Bandhua Mukti Morcha case further underscores the importance of children as beacons for society. Depriving children of their social, mental, and financial well-being will result in a loss of human resources for social, economic empowerment, law as well as orders, and social instability within the country.

To address and mitigate adolescent delinquency, specific measures need to be implemented for the regulation and monitoring of potential offenders. The National Policy for Children emphasizes the worldwide implications of child development, stating that children are the ultimate assets of the country. The well-being of children significantly influences the trajectory of society's future. The well-being of children is a significant concern for humanity completely. Children are now considered as a most important social body and it is their right to have a healthy lifestyle, sufficient leisure time, education modify to their natural learning techniques, and nurturing care within their homes and they can't be deprived from them.

Promoting the mental, physical, emotional, and social growth of children is essential to ensure their well-being. The Central Children Act of 1960 recognizes children as the most vulnerable segment in any community, requiring the highest level of social attention. Due to their dependence on and trust in adults,

⁵ Winston Churchill aptly expressed the importance of children

children often become victims of exploitation, mistreatment, and coerced involvement in harmful behaviours by elements within the community who engage in antisocial activities. It is the responsibility of the state to prioritize providing children with appropriate care and ensuring their safety at all times.

RESEARCH HYPOTHESIS

- The inclusion of a special provision for juveniles in the Juvenile Justice Act aligns with Article 15(3) of the Indian Constitution.
- In the current scenario, the existing Juvenile Justice Act of 2015 is insufficient to ensure the protection of juveniles.

IMPORTANCE OF STUDY

Adolescent delinquency is a global issue with potential consequences. If a delinquent child is not adequately cared for, there is a risk that they may evolve into a hardened criminal. It is crucial to address juvenile criminality and delinquency before they pose threats to society and the nation. Authorities and organizations have presented data indicating an increase in juvenile criminality. To find solutions to the challenges posed by delinquent children, scientific and proper research of the various factors and situations leading to crime is very much necessary.

In India, the Parliament has regularly passed acts to address these concerns, but further efforts are required to fully establish an effective juvenile justice system. Several questions need to be addressed, such as:

- Will the Government be able to effectively enforce laws for young offenders?
- India's existing acts on juvenile delinquency are adequate or not and what reforms are needed?
- Is society also responsible for juvenile delinquency and to what extent?

Over time, various challenges related to juvenile delinquency have been analysed in the light of court decisions and statutory provisions.

STATEMENT OF PROBLEM

- The loss of young lives is a tragic outcome of both acts of terrorism and natural disasters. In Punjab, for instance, around 30,000 children have been left without parents due to terrorist attacks. The persisting issue of terrorism in Jammu and Kashmir has had a detrimental impact on the state's education system, leading to alarmingly high dropout rates. Specifically, the dropout rate stands at 48% for males and 60% for girls, primarily attributable to the prevailing conditions of terrorism.
- Growing numbers of young people are compelled to run from their families and home and take shelter on the streets due to factors such as poverty, abuse, mistreatment, and family discord. In 1998, the Indian government reported that there were approximately 5 million youngsters living as street children.

- The JJ (C&P) Act brought about changes in the terminology and categories of children, now referred to as “children in need of care and protection”, and expanded its jurisdiction to include a wider range of categories. The term “children in need of care and protection” excludes children who are beggars in general includes three categories: sick or disabled children, children for whom guardians are threat, sufferer of armed rebellion and conflicts and natural calamities.
- India has to go very long way in meeting the needs and demands of its children, as highlighted in the report “We the Children⁶”.
- The statistics provided in the report shows many alarming concern:
 - i. 63% of children in India are not registered.
 - ii. 25% of children do not receive immunization for any disease.
 - iii. 26% of children lack access to clean water.
 - iv. 47% of children experience malnutrition within the first three years of their lives.
 - v. 6% of children are born with a weight less than 2500 grams.
 - vi. 15% of children never attend school.
 - vii. Only 52% of children who begin schooling complete the first grade.

These figures highlight the pressing need to address the issues and improve the conditions for children in India.

- The situation of children in India indicates that a significant majority of them live in deprived conditions, lacking the necessary resources for their basic survival, well-being, and development. This calls for prompt action from the government, especially in addressing issues such as high child mortality rates, school dropouts, child labour, children with disabilities, and juvenile delinquency. These problems all point to the same underlying issue. However, there is a lack of comprehensive data regarding the number and location of children and adolescents in need of care and protection. This hinders the identification of appropriate measures, such as the establishment of juvenile courts, welfare boards, and other services in different areas. The absence of organized pressure from relevant stakeholders or organizations to improve the policies and operations of the Juvenile Justice System (JJS), except for a few isolated instances, further complicates the situation. Children, particularly those from financially, socially, and educationally disadvantaged families, rely on the support provided by the JJS. Unfortunately, their limited mental and physical development, as well as their marginalized position in society, prevent them from advocating for their own interests. This underscores the need for external efforts to safeguard their well-being and advance their rights.
- In India, numerous voluntary workers and organizations have dedicated their efforts to the welfare of children. However, they have yet to establish effective mechanisms for cooperation, dialogue, or joint action in order to prioritize the well-being of children within the state. This lack of collaboration

⁶ By the Secretary General of the United Nations

poses a significant problem. Furthermore, social workers have not consistently exerted pressure on the state to address the issue seriously and improve the conditions for children. While certain individuals and organizations have raised concerns with the state regarding specific instances of injustice inflicted upon children, it is important to note that such cases do not necessarily indicate widespread mistreatment of children.

- The Juvenile Justice (Care and Protection) Act was introduced with the aim to provide support to the law with the rights-based approach of the Convention on the Rights of the Child (CRC). However, the provisions of the Act do not adequately reflect this policy change, even though the Act was specifically enacted for that purpose.
- The Act aimed to shift from fragmented implementation to the comprehensive implementation of the JJ(C&P) Act. This policy shift is crucial and should be prioritized.
- There is abundant evidence within the field of juvenile justice indicating a widespread lack of awareness about the law among the personnel responsible for its implementation. This lack of awareness poses a significant problem, as the law is enacted to make sure that all children are able to get proper care, protection, and opportunities for their development and growth.
- In such a situation, it is of utmost importance to emphasize the requirement of giving them with personnel training, education, and regular sessions.

OBJECTIVES

- a) To analyse the various laws connected to juvenile delinquency.
- b) To inspect the importance of the Juvenile Justice System.
- c) To examine different offenses committed by juvenile delinquents.
- d) To study the necessarily required care and protection required for juvenile delinquents.

RESEARCH METHODOLOGY

The study will primarily utilize the doctrinal explanatory research method, supplemented by observational and descriptive approaches. Additionally, historical and analytical research methods may be employed as necessary. Analytical methods will be applied to introductory and observational aspects of the study.

The information for this research will be collected from the secondary sources of data. The research will be expressive, narrative, based on secondary sources like governmental and semi-governmental publications, earlier research, as well as it includes personal records, mass media reports, law journals, public and personal documents, internet magazines, and other reliable sources of data. Depending on the study's requirements, some primary sources of data may also be utilized. This research endeavour is expected to contribute to the knowledge on the legal dimensions of "Juvenile justice".

SCHEME OF CHAPTERISATION

Chapter 1: Introduction

Chapter 1 serves as an introduction to the dissertation work, providing an overview of the topic. It encompasses various aspects such as the research problem, research methodology, significance of the study, research objectives, research hypotheses, and statement of the research problem. Furthermore, this chapter provides a concise outline of the structure and contents of the remaining dissertation. The introduction section also highlights the specific objective of the research which is to explore the role of political parties and civil society in the context of juvenile justice.

Chapter 2: International perspective of Juvenile: An Overview

While the issue of juvenile delinquency in the US has seen variation in impacts and attention, it is surely a big problem on a global scale. As similar with the other situation of the criminal justice system, juvenile justice has been affected by globalization, which promotes the interdependence and connection among nations. This chapter explores various regional conventions and initiatives undertaken by the United Nations to address and improve juvenile justice.

Included in this chapter are discussions on the “United Nations Standard Minimum Rules for Juvenile Justice Administration of 1985, the United Nations Convention on the Rights of the Child of 1989”, and the Optional Protocols to the Convention on the Rights of the Child addressing issues such as sex trafficking, armed conflict, and the Universal Declaration of Human Rights (1948). Additionally, the Havana Rules of 1990, a UN instrument promoting the advancement of juvenile justice, have been the subject of debate in India.

Chapter 3: Constitutional provisions for juveniles in India

In this chapter, the legal history of juvenile justice in India is examined, tracing the evolution of the juvenile law from 1773 to 2000. The discussion includes an exploration of key legislations such as the Apprentices Act of 1850, the Indian Penal Code of 1860, and the constitutional protections provided for children.

Chapter 4: Analysis of Juvenile Justice (Care and Protection) Act, 2015

The act contains 112 sections divided into 10 chapters. This section provides a comprehensive analysis of the Juvenile Justice (Care and Protection) Act, 2015. The amendments to the Juvenile Justice (Care and Protection of Children) Act have introduced many important modifications. Mainly, juveniles between the ages of 16 and 18 can now be litigated as adults, and on attaining the age of 21, they will be detained for the period of their term. The Juvenile Justice Board will be responsible for making these judgments.

The enactment of the JJ Act, 2015 was result of an increase in the offences like rapes committed by minors aged between 16 and 18. Nevertheless, the new Juvenile Justice Act of 2015 has faced criticism for being

more punitive than transformative. The law is seen as retributive due to its provisions that allow juveniles who commit severe crimes will be tried in adult courts. Juveniles guilty of heinous crimes will be held in custody until they reach the age of 21, after which they will be sent to prison. If a juvenile is found guilty of a crime, they will lose all the privileges which they get because of being a child and may face imprisonment.

Critics of the new Juvenile Justice Act 2015 also argue its unconstitutionality. They claim that it violates several Indian Constitutional Articles, including 14, 15, 20, Article 15(3). According to Indian Constitution “every individual is equal before the law”, but it is seen that children are exception of this. The UN’ Standard Minimum Rules for the Administration of Juvenile Justice, 1985, emphasize the importance of giving priority to the juvenile justice system in cases involving juveniles in conflict with the law.

In order to determine whether a juvenile has committed a heinous crime punishable by a 7-year sentence, whether they comprehend the nature of their actions and the consequences they may face, and whether they committed the crime under specific circumstances, a Juvenile Justice Board must be established. This board should consist of a magistrate and two social workers. The purpose of this board is to carefully evaluate the evidence and circumstances surrounding the case, taking into account the age and maturity of the juvenile involved. The board’s objective is to ensure a fair and just decision regarding the appropriate course of action for the juvenile offender.

Taking into account all these factors, the author strongly believes that it is necessary to reassess and amend the Juvenile Justice Act, 2015 to incorporate child-friendly modifications in order to prevent any instances of injustice.

Chapter 5: Juvenile Justice and Indian Judiciary

This chapter has focused on the judicial approach to juvenile justice and examined significant cases and recent legislative developments.

The Reformatory Schools Act, says that the courts have always focused on the principle of protection of legal safeguards for children, as seen in **Emperor v. Dharma Prakash**. Judicial authorities have ruled against the imprisonment of young children, emphasizing the preference for returning children under 18 years old to their parents or legal guardians whenever possible. The court is required to establish the legal age of an individual before considering their placement in a reformatory school. In cases where institutionalization, or incarceration, is deemed necessary, an order must be issued, and the duration of the stay in the reformatory school should comply with the regulations.

In order to avoid future complications, it is not uncommon for individuals to misstate their age by one or two years. In **Bhoop Ram v. State of UP**⁷, the Supreme Court held that a person’s age should be determined

⁷ AIR, 2019

based on a doctor's evaluation rather than depending completely on their certificate. The Supreme Court acknowledged that medical evidence relied on estimations derived from radiological examinations and physical characteristics, acknowledging the potential for error in such estimates. In the absence of contradictory evidence, school records were deemed valid and trustworthy.

The rehabilitation of child prostitutes and their children was a central issue addressed in two cases, namely *Gaurav Jain v. United States of America* and *Vishal Jeet v. United States*. Vishal Jeet pointed out that the Juvenile Justice Act, which focuses on the care, protection, and rehabilitation of neglected children, contains specific provisions for handling and issuing appropriate orders for child prostitutes, despite neither the Children Act nor the JJ Act were mentioned in Gaurav Jain's case. The request for separate hostels and schools for the children of prostitutes was denied to prevent hindrances in integration. A committee was formed to conduct an investigation and provide a report on the matter. However, Gaurav Jain's judgment hindered Vishal Jeet's rehabilitation efforts.

Chapter 6: Apprehension

The responsibility of taking a juvenile delinquent into custody usually falls on the police, although community school authorities may also be involved in some cases. Police intervention occurs when specific allegations are made against a minor. Diversion programs are often offered by certain courts to prevent the incarceration of first-time offenders. These programs involve the child and their family agreeing to conditions such as school attendance and improved grades. Police officers have various options for dealing with apprehended youth, including disciplining and releasing them, acting as mediators, or documenting the complaint in a written report for less severe offenses. Police Juvenile Units handle cases involving juveniles and may attempt to mediate conflicts. Non-judicial resolution is common, with a designated juvenile officer considering alternatives for closing the case.

If detention is necessary, an intake officer collects relevant information about the young person, their family, and their circumstances. A detention hearing takes place within 48 hours, and the court determines whether the juvenile will be detained while awaiting further hearings. The judicial process involves several hearings, including detention, plea, adjudicatory, and dispositional hearings. The judge evaluates the child's social history during the dispositional hearing and considers various options for disposition, such as probation or placement in a juvenile institution. Age determination in the US varies, but individuals under 21 are generally considered children in the context of juvenile delinquency.

Causes of juvenile delinquency in the US include peer influences, family influences, race as a factor, low self-esteem, and trauma. Preventing juvenile delinquency requires early intervention and a reformatory approach focused on education, rehabilitation, and community involvement. Various strategies and programs can be implemented, including professional development programs, specialized school programs, structured group activities, and collaborations between NGOs, local citizens, and law enforcement.

In India, the juvenile justice system aims to enhance law enforcement effectiveness, protect neglected children, and provide rehabilitation for delinquent juveniles. Juvenile offenders are separated from adults, and court proceedings are confidential. The definition of the age of a juvenile varies, and the system includes separate trials, protection of probation officers, and provisions for the welfare of young girls and children without means. The court hears cases involving juvenile offenders, and probation officers prepare evaluation reports. Delay in the process may prolong the remand stay of the juvenile. The court considers medical reports and may release the offender on bail, dismiss the case with a fine or reprimand, or order detention or placement in an institution.

Chapter 7: Comparative study of Juveniles in USA, UK AND India

Social, economic, and cultural factors contribute to the seriousness of juvenile offenses. Economic decline often leads to an increase in juvenile criminality, especially in low-income areas of major cities. Juvenile justice is a universal concern, and this chapter examines relevant legislation in the United Kingdom, the United States, and India.

In the United States, the age of juvenile jurisdiction typically ends at 18, but some states set it at 17 or 16. Certain jurisdictions can prosecute 16-year-olds as adults for serious offenses like murder. The Supreme Court ruled that the death penalty for crimes committed by juveniles under 18 is unconstitutional.

In the United Kingdom, individuals aged 10 to 18 are considered adults for criminal motive and may be tried in adult courts depending on the seriousness of their offense. In France, children under 10 cannot face criminal charges, and those aged 10 to 16 receive shorter sentences for offenses committed between 13 and 16. A person under 18 may lose their juvenile status and be transferred to the Criminal Court.

Cases such as *L v. DPP*, *IPH v. Chief Constable of South Wales*, and the case of *J.M. v. Runeckles and Director of Public Prosecutions v. K & B* illustrate how the courts assess the mental state of juveniles and determine guilt. In the case of *Harilal Mallick v. State of Bihar* established that children under 12 must lack maturity and awareness to be considered not criminally responsible. However, children between 7 and 12 are generally held accountable for their crimes unless evidence proves otherwise.

In India, a juvenile is defined as a boy under 16 and a girl under 18. It is impermissible to impose the death penalty or imprisonment on juveniles for failure to pay fines. They may be released on probation or committed to an institution for treatment. Accurate determination of age is crucial, and discrepancies between medical records and school certificates can be considered. The Juvenile Justice Act provides protection to children and allows for bail in certain cases.

The Act also specifies that cases involving juveniles should be heard in juvenile courts, and mistakes in jurisdiction must be rectified. Section 22 prohibits the execution, imprisonment, or transfer of minors for non-payment of fees or death sentences. Safety and protection of juvenile girls until the age of 18 is

mandated. However, the Juvenile Justice Act, 2000, has some gaps that need to be addressed by the state administration.

In general, the Juvenile Justice (Care and Protection of Children) Act strives to ensure the safety and well-being of children while promoting their overall welfare. It focuses on the care, protection, and resolution of conflicts involving children in legal matters.

Chapter 8: Conclusion And Suggestions

This is the last chapter which deals with the the conclusion of overall dissertation and also deals with the suggestion which contains necessary steps and measure that is required for the improvement of Juvenile Justice System in India.

CHAPTER- 2

DEFINITION, MEANING AND CONCEPT OF JUVENILE DELIQUENCY

“Children require love, particularly when they least appear to deserve it⁸”.

- Harold S. Hulbert, child psychiatrist

Different aspects to acknowledging juveniles from the new penology that was implemented by following the Courts’ understanding. The risk of getting affected among delinquents because of having in the same confinement with other hardcore criminals necessitated unique strategies. It is crucial for the future of our country that we show compassion and make our best efforts to support young individuals. While children are born without criminal intent, certain factors in their social and environmental surroundings can contribute to the development of criminal inclinations. By eliminating these influences, we can help transform young individuals into individuals of character and distinction.

It is widely acknowledged that children are the most valuable asset of a nation, with a unanimous belief in this regard. In order for all children to develop as physically capable, socially active, and intellectual members of society, they require a healthy environment that fosters their skills and encourages active participation. Providing equal opportunities for all children to grow and thrive reduces inequality and ensures social justice, which in turn helps prevent delinquency in any society. It is important for children to

⁸ Stated by Harold S. Hulbert

exhibit proper behaviour, respect others, and internalize positive moral values. However, various factors often distract them from acquiring social and general competence.

The field of criminal psychology has recently expanded its focus on juvenile criminality. Juvenile delinquency can have a detrimental impact on the stability and social order of our society. The disruptive nature of juvenile deviance undermines moral standards and creates an unsettling situation for all of us.

The word “delinquency” originated from the Latin term “delinquere”, means “to depart” or “to abandon”. In the beginning “delinquency” term was used for the parents who had neglected or abandoned their children. However, its scope has expanded to include all minors who are engaged in unlawful activities. The term “juvenile” refers to a minor who is accused of committing criminal acts or omissions. It is worth noting that there are different legal terms used to describe juveniles and minors. “Juvenile” specifically denotes a young offender, while “minor” refers to a person’s legal capacity based on age. The age at which a juvenile commits an offense in the United States varies from state to state, allowing each state to determine the age range for juveniles within its jurisdiction. While there is no uniformity, many states adhere to the age restriction established in 1976. According to federal law, anyone under 21 can be called as a juvenile delinquent for any offense, but some states consider the age limit at 12 or 18. It is worth noting that certain states, such as Mississippi and New York, do not have minimum age limit for delinquency trials.

DEFINITION OF A JUVENILE

Prior to the Children Act of 1960, India did not have a standardized definition of a juvenile, leading to variations based on age. Different acts and laws in various states defined a “child” or a “juvenile” differently. For instance, According to the Bombay Children Act of 1948, a “child” is defined as an individual who is male or female and under 18 years of age while the U.P. Children Act considers a child as anyone under 16. Under the A.P. Children Act of 1920, the term “child” denotes an individual below the age of 14 who is enrolled in a certified educational institution, without considering the specific age at which they turn 14. This definition applies universally, including in the context of Saurashtra and West Bengal recognize anyone under 18 as a child. In Haryana’s Children Act, both males and females under 18 are defined as “children”. These definitions maintain the distinction between genders.

The Juvenile Justice Act of 1986 defined a “juvenile” as an underage male who has not yet reached the legal age limit of 18, specified by their state. However, in 2000, the Indian government abolished the Juvenile Justice Act of 1986, eliminating the age distinction between male and female juveniles. Under the new law, both male and female juvenile offenders must be 18 years old. The Juvenile Justice (Care and Protection) Act 2015 defines a “child under 18” as a juvenile according to Section 2 of the Act.

DEFINITION OF DELINQUENCY

Juvenile delinquency refers to unacceptable behaviour exhibited by young individuals within a community. It involves a juvenile's failure to fulfil societal expectations and responsibilities. The term "juvenile delinquency" broadly describes a child's attempt or pretence to act like an adult. While such behaviour may be perceived as immature or foolish, it can cause significant anxiety and stress. Whether a child is labelled as delinquent depends on their conduct towards an anxious adult, as their behaviour toward the concerned individual makes the distinction. Delinquency is often ambiguous and subject to misunderstanding, lacking a universally accepted definition. The first legislation addressing juvenile delinquency was enacted in Illinois in 1899, which defined various types of delinquency beyond criminal statutes.

Several social workers characterize delinquency as engaging in socially unacceptable activities. According to a psychiatrist, delinquent behaviour represents a deviation from the norm. Lawyers would define "juvenile delinquency" based on legal interpretations.

W.H. Sheldon characterizes delinquency as behaviour that exceeds reasonable expectations and leads to disappointment.

Cyril Bur describes a delinquent child as an individual whose behaviours and actions of an antisocial nature require intervention by the government.

Robison Holt asserts that the concept of "delinquent" oversimplifies complex patterns of behaviour.

Frederick B. Sussmann, defines delinquency as encompassing any violation of law or ordinance, persistent truancy, and association with individuals involved in criminal activities, involvement in violence or immoral acts, and being unmanageable beyond parental or guardian authority.

Edwin Powers and Helen Witmer used severity, frequency, and attitude toward society to identify "actual delinquents" and developed a five-tiered categorization system based on the level of petty crimes committed. Consequently, there is no fixed definition of "delinquency", but the social and legal interpretations of the term is widely acknowledged and accepted globally. Sociology broadens the scope and understanding of the term "delinquency".

Psychiatrist Clyde B. Vedder provides a definition of juvenile delinquency as the manifestation of antisocial behaviour in children and adolescents. These actions can either be explicitly prohibited by law or considered delinquent, requiring official intervention, depending on the specific circumstances. The term focuses on behaviour that deviates from the norm.

Robison proposes that the term "delinquency" is a wide-ranging legal concept that encompasses different socially unacceptable behaviours, which can vary depending on the specific context, location, and the attitudes of law enforcement officers. Examples of delinquent behaviours may involve disobedience, truancy, tardiness, incorrigibility, and returning home late at night. There may be concerns regarding the well-being, safety, or education of a child when their behaviour deviates significantly from accepted social

norms. The legislation addressing juvenile delinquency was enacted in Illinois in 1889, leading all states to pass similar laws.

Due to **U.S. law**, states have modified their definitions of delinquency. Delinquency is defined as “lawbreaking by minors alone”. Hence, any act prohibited by law for individuals below a certain age is considered juvenile delinquency, necessitating involvement with the juvenile court system.

In **Illinois**, a child/delinquent is described as “Children who exhibit incorrigible behaviour or spend their time idly or roaming the streets at night without authorized occupation can be a cause for concern”.

In **New Mexico**, a delinquent is defined as a child who consistently fails to comply with reasonable and lawful commands from parents or other lawful authorities can raise concerns, persistently skips school, or consistently conducts themselves in a manner that endangers morals, health, wealth, or their own welfare or the welfare of others. However, the terms “incorrigible” and “reasonable” remain undefined in Illinois law.

U.S. law provides a broader definition of juvenile delinquency, including the following actions:

- Engaging in immoral or offensive conduct
- Knowingly associating with immoral individuals
- Visiting establishments with a bad reputation
- Visiting liquor shops
- Roaming out on the streets at night without a legitimate purpose
- Engaging in illegal or unlawful activities
- Violating any state law
- Engaging in immoral conduct within a school setting
- Persistently wandering on roads
- Steering vehicle without valid driving license
- Habitually skipping school
- Uttering immoral language in public places
- Leaving home without permission
- Engaging in smoking activities in public areas
- Engaging in begging or receiving alms⁹

In the **United State**, two additional elements have been incorporated into this definition. A delinquent can refer to a youngster who repeatedly skip schools, ran away from home or persistently disobeys parental commands or caregiver authority, or is wilfully breaks school rules.

Write & Briggs interpret a delinquent as an individual whose misconduct results in a legal violation which is unfit for their development and strange within their cultural circumstances. It is irrelevant whether the

⁹ Sol Rubin Crime and Juvenile Delinquency (1958)

person is apprehended or convicted. However, this definition does not specify the nature of the misbehaviour.

Prof. Walter C. Reckless proposes a stance to define a delinquent.

There are three perspectives to consider when addressing delinquency:

- as a social problem,
- a behavioural problem, and
- a legal problem.

Professor Walter C. Reckless has examined these aspects independently, addressing delinquent behavior as a societal issue involves examining its causes and understanding the legal aspects related to crime and delinquency. According to Reckless, the ultimate determination should not solely rely on the legal definition. He emphasizes that behaviour is an observable phenomenon, and it is the scope of criminal law and punishment that should be a concern.

India has accepted the proposals of the U.N. Congress regarding delinquency. In the context of India, delinquent juveniles are individuals who have been identified as having engaged in an offense as stipulated by the Children Act of 1960. As per legal regulations, a child is typically defined as an individual who is male and below the age of 16, or female and below the age of 18.

Specific measures have been implemented to ensure that vulnerable children, including those who have been abandoned or come from families incapable of providing care, receive the utmost attention and safeguarding. The well-being of children falls under the purview of the Child Welfare Boards. Following United Nations declarations, the Indian government increased the age of a juvenile to 18 years in the Juvenile Justice (Care and Protection) Act of 2000.

Juvenile Delinquency : Nature and Characteristics

Juvenile delinquency refers to individuals below the age of 18 who have encountered the juvenile justice system as a result of their engagement in criminal behaviour or suspicion of such behaviour. The Juvenile Justice Act of 1986 defined juvenile delinquency based on this criteria, and the reported cases until 2000 were determined accordingly. Under this law, boys males who were below 16 years old and females who were below 18 years old were categorized as juveniles. In the year 2000, the age of under 18 years was established as the threshold for both boys and girls.

Occurrence and Rate of Juvenile Delinquency

Juvenile delinquency rates in India have shown some fluctuations over the years. In 2004-2005, the percentage of all Indian Penal Code offenses recorded in the country related to delinquents was 1.0%. It increased slightly to 1.1% in 2006 and remained the same in 2007. The percentage witnessed a slight

increase to 1.1% in 2006 and maintained the same level in 2007. It further rose to 1.2% in 2008 but reverted back to 1.1% in 2009. In 2010, there was a decrease to 1%, followed by a slight increase to 1.1% in 2011. The proportion then experienced another rise to 1.2% in 2012, remaining stable at that level throughout 2013 and 2014.

Distribution of juvenile crime: Indian Penal Code and Special Local Laws

When considering the share of juvenile crime under the Indian Penal Code and Special Local Laws (SLL), it is observed that the number of IPC crimes against minors increased from 31,725 in 2013 to 33,526 in 2014, marking a 5.7% increase. The most common crimes reported against minors were theft (20.0%), rape (5.9%), and crimes involving grievous pain and attacks on women with the intention to insult their modesty (4.7% each). These four categories accounted for 39.7% of all IPC cases involving adolescents in conflict with the law.

Regarding Special and Local Laws crimes, there was a 21.8% increase in the number of teenagers arrested for such offenses in 2014 compared to 2013. Out of all cases involving minors, the Prohibition Act constituted 41.3% (5,039 instances) of the total SLL cases.

Distribution of Cases registered against juveniles, categorized by states

Delinquency as defined by the Indian Penal Code and Special Local Laws

Special Local Laws

Several states in India, such as Madhya Pradesh, Maharashtra, Rajasthan, and Gujarat, have witnessed a notable number of cases filed against minors under the Indian Penal Code. These seven states account for the majority of juvenile arrests in India. In 2014, there were 121 murder charges against individuals from Maharashtra and 94 from Madhya Pradesh. The states of Madhya Pradesh, Maharashtra, Uttar Pradesh, and Rajasthan had the highest percentages of rape cases involving minors, with 21.8%, 10.5%, 8.8%, and 7.5% respectively, among all the cases registered against minors in India. Among the Union Territories, Delhi reported the highest number of rape cases against children in the year 2014.

Bihar recorded the highest number of kidnapping and abduction cases involving children, followed by Uttar Pradesh, Madhya Pradesh, and West Bengal. These four states collectively contributed to 53.7% of the total reported cases in India, reaching a cumulative count of 1455 cases.

Juveniles involved in cases under special and local laws constituted 55.3% of all recorded cases in the SLL category. Tamil Nadu accounted for 12.0% (604 cases), Bihar accounted for 6.5% (327 cases), and Chhattisgarh accounted for 3.7% (188 cases). When considering offenses under special and local laws (SLL) involving minors, these five states collectively accounted for 82.1% of such cases in the country.

Juveniles Apprehension

Out of the total number of youth held in custody last year, which amounted to 48,230 individuals, nearly half were males, and 1,592 were girls. Girls made up 3.3% of all juveniles, which was a decrease from 4.3% in 2013. The detained juveniles fell into three age categories: under 12 (872 cases), between 12 and 16 (11,220 cases), and 16 to 18 (36,138 cases), accounting for 1.8%, 23.3%, and 74.9% of all detained juveniles, respectively. The arrest figures for the 12-16 age group witnessed a decline of 15.9% (from 13,346 in 2013 to 11,220 in 2014), whereas the arrests for the 16-18 age group experienced an increase of 25.3% (from 28,830 in 2013 to 36,138 in 2014).

In the year 2014, there was a 10.9% rise in the number of children incarcerated compared to the previous year, 2013. Out of the total arrests, 88.3% (42,566 adolescents) were for IPC offenses, and 5,664 were for SLL offenses. Among the IPC offenses, 8,863 teens were arrested for stealing, 3,802 for criminal trespass, burglary, and 2,144 for rape. The highest number of arrests under special and local laws was attributed to the “Prohibition Act” (2,088), followed by “Juvenile Justice (C&P of Children)” (521), and “the Gambling Act” (5,664 minors apprehended in 2014). Collectively, these three categories accounted for 54.8% of all juveniles detained for SLL offenses.

CATEGORIZING JUVENILES BASED ON THEIR ATTRIBUTES

In the year 2014, a significant number of juveniles were found to be illiterate or had only completed primary-level education. Precisely, out of the total number, 10,530 juveniles were illiterate, and 15,004 had primary-level education, comprising a combined percentage of 52.9%. Moreover, the majority of detained adolescents, 38,693 in total, were under the care of their parents or guardians. Only a small percentage, 3.4% out of 1,632 homeless youngsters, were involved in different offenses.

Statistics on juvenile delinquency in 2014 showed concerning figures. In 2013, a total of 2,140 juveniles were apprehended, with 1,148 falling within the age range of 16-18 years and 875 boys and 10 girls between the ages of 12 and 16. The numbers for 2012 were slightly lower, with 1,541 juveniles apprehended, including 860 aged 16-18 years, and 617 boys and 12 girls between 12 and 16 years of age.

Regarding the types of cases, the data for 2013 indicated that 928 cases involved theft/snatchings, 163 cases involved rape, and 76 cases involved murder. In 2012, the figures were 523 cases of theft/snatchings, 63 cases of rape, and 100 cases of murder.

CATEGORIZATION OF JUVENILE DELINQUENCY

Evaluating the extent of the problem in any area of the country is difficult without precise data. The available recorded data alone does not comprehensively reflect the true scope of the issue, as numerous criminal activities remain unnoticed or unreported. It is noteworthy that developed nations have also demonstrated elevated rates of delinquency.

Scholars have categorized juvenile delinquency into several important classes. Here are several essential categories:

Hirsh's classification of adolescent crimes/offenses includes:

- a) Disrespect towards parents and engaging in behaviours like staying up late.
- b) Causing harm to public and private property.
- c) The utilization of weapons, including knives and firearms, to cause harm or injury.
- d) Offenses directed at a victim based on their sexual orientation, including acts like rape and sexual assault.

Eaton and Polk classify delinquents based on different types of offenses, which includes¹⁰:

- a) Offences like driving without a license, drunk driving, and similar violation.
- b) Offences like auto theft, unruly behaviour, and minor traffic violations.
- c) Offences related to alcohol and drug abuse.
- d) Property violations, including theft.

Kvaraceus categorized delinquent juveniles based on three primary variables¹¹:

- a) The specific socioeconomic class.
- b) The comprehensibility of the individual's emotional disorder.
- c) The extent of the individual's participation in their own criminal behaviour.

Sellin and Wolfgang classified delinquent behaviour into two different categories, based on the different criminal acts committed.

In the first category, Ferdinand included:

- a) Damage inflicted upon properties
- b) Stealing or taking someone's property without permission.
- c) Infliction of physical and bodily injuries.

The second category contains:

- a) Forced or compelled action through intimidation or manipulation.
- b) Possible damage or loss of property, as well as potential harm to existing property.
- c) Victimization against individuals.
- d) Victimization targeting businesses.

¹⁰ Eaton, J.W and Polk, K. (1961). Measuring Delinquency. Pittsburgh: University of Pittsburgh Press.

¹¹ Kvaraceus, W.C. (1959). Delinquent Behavior: Culture and the Individual. Washington: National Education Association.

- e) Instances of victimization between individuals, such as rape.
- f) Truancy or any form of victimization

Ferdinand presented two types of juvenile offenders:

a) Neurotic Offenders:

These offenders engage in criminal activity driven by powerful, unconscious urges that often lead to guilt. As an illustration, certain individuals may engage in theft to fulfil the desires of their partners rather than for personal gain.

b) Character Disorder Offenders:

This group of criminals experiences remorse and sorrow even for minor offenses. They lack the drive to achieve their desires due to the absence of positive role models. Their inability to socially regulate their urges stems from growing up in dysfunctional and hostile environments. These delinquents find it challenging to form meaningful connections with others as they exhibit a significant level of self-centeredness.

Trojanovicz categorized juvenile offenders into five classifications¹²:

a) Gang Organized Delinquency:

Youth in this category form groups and engage in criminal activities together. Many come from low-income backgrounds and express themselves through gang affiliation, often due to frustration over unfulfilled middle-class aspirations.

b) Unsocialized Delinquents:

Delinquents belonging to this group are often from households where they experienced neglect or rejection. These children often experience violence within their families. Certain delinquents have encountered an environment of hostility and aggression within their own households and families which contributes to their development of a highly violent demeanour as adults. Insufficient efforts are made to teach these individuals socially acceptable ways of managing their urges.

c) Accidental Delinquency:

This category includes law-abiding individuals who, on rare occasions, commit crimes accidentally. These delinquents pose a nuisance as they cease their criminal behaviour once they realize their mistake or are apprehended.

d) Occasional Offender:

¹² Trojanovicz, R.C. (1973). *Juvenile Delinquency: Concept and Control*. New Jersey: Prentice Hall Inc. (pp. 57-60).

Similar to accidental delinquents, occasional offenders commit infractions sporadically rather than regularly.

e) Professional Delinquency:

Criminals falling into this group engage in theft with the intention of selling the stolen goods for profit. They engage in theft or stealing to address their financial circumstances and meet personal needs.

CHAPTER- 3

CONSTITUTIONAL PROVISIONS FOR JUVENILES IN INDIA

Safeguarding children's rights and ensuring their well-being is of utmost importance. They deserve to grow up free from fear and hunger. Kofi Annan emphasized this responsibility, acknowledging the sacredness of a child's life. However, there is controversy regarding the age classification of children under Indian government programs, despite the government's overall recognition. The term 'childhood' refers to the phase spanning from infancy to adulthood. As per the United Nations Convention on the Rights of the Child (UNCRC), a child is defined as someone under 18 years of age or not yet an adult. The determination of a child's legal age in Indian law is a contentious issue due to the absence of a standardized criterion.

Historical development of Juvenile Law in India from 1773 to 2000

The development of juvenile law in India dates back to the 18th century, where mentions of children and regulations can be found in ancient Hindu texts. Important laws related to juveniles were introduced during the period from 1850 to 1919. The significance of the Apprentices Act of 1850 lies in the fact that it was India's inaugural legislation specifically designed to address the requirements of young individuals.

Section 3 of the Act grants magistrates the authority to serve as guardians not only for orphans or children abandoned by their parents but also for those who have been found guilty of misdemeanours. The scope of their guardianship extends beyond abandoned children.

Constitutional And Statutory Protections For Juveniles In India

Code of Criminal Procedure and Punishment in India, 1860

The Indian Penal Code of 1860 extensively covers criminal substantive principles, which encompass the definition of offenses and their constituent elements. It serves as the primary legislation governing this field.

Exemptions based on age are applicable to the following offenses:

- A child below 7 is not criminally liable under Section 82.
- Section 83 provides protection to children between the ages of 7 and 12 who lack the capacity to understand the nature and consequences of their actions.

IPC 361 deals with abduction from lawful custody, where kidnapping involves taking a child or teenager without authorization. The term "lawful guardian" refers to an individual who has legal custody of a child or another person. However, this provision does not extend to individuals who claim to be the father of an illegitimate child or have a right to custody, unless their actions are deemed immoral or criminal.

In the case of **Thakorlal D Vadgama v. State of Gujarat**¹³, the Supreme Court held that the accused's conduct was not sufficient to hold him liable for kidnapping.

Section 82 of the Indian Penal Code states that no offense can be committed by a child under the age of 7. Section 83 further provides that a child between the ages of 7 and 12, who lacks the capacity to comprehend the nature and consequences of their actions, is not considered criminally responsible.

Under Section 363 of the Indian Penal Code, kidnapping carries a maximum sentence of seven years, including a fine, imprisonment, and legal custody for the abductee.

The Indian Culture

Even if a child was under the supervision of a guardian or relative at the time of the offense, they would not be exempt from charges of abduction. Ultimately, each case depends on the specific facts and circumstances. If a girl willingly leaves her father's care with knowledge of the consequences, it cannot be considered abduction.

The control and supervision of a guardian align with the minor's freedom of action and movement, as indicated by the concept of "keeping usage" in this context. This paragraph clarifies that the authorization of the abducted or seduced juvenile is irrelevant; only the guardian's consent can negate the case. There is no need to prove the use of force or deception to take or entice the minor away. This provision becomes applicable if the accused individual manages to convince the minor to consent to being removed from the custody of their legal guardian.

In 1959, India introduced legislation that criminalized the act of kidnapping or mutilating a child for the purpose of forced begging with the inclusion of Section 363-A in the Indian Penal Code, 1860.

To employ a minor for begging purposes, the minor must be kidnapped or harmed under Section 363-A of the Indian Penal Code:

- (1) Individuals who unlawfully kidnap or take custody of a minor, without proper legal guardianship, can be sentenced to imprisonment for a maximum of 10 years and may also be liable for a fine.
- (2) Inflicting intentional bodily harm on a minor with the purpose of compelling them into begging is punishable by life imprisonment and a fine.

If someone, who is not the legal guardian of a minor, employs or exploits the minor for the purpose of begging, they have either kidnapped or obtained custody of the minor to be employed or used for begging reasons.

¹³ 1973 AIR 2313, 1974 SCR (1) 178

Constitutional And Statutory Protections To Juveniles In India

According to Section 372 of the Indian Penal Code, it is unlawful to engage in the sale, hiring, or disposal of a minor with the intention or awareness that they will be exploited for prostitution, illicit sexual activities, or any other criminal or immoral purpose. It is presumed, unless proven otherwise, that a girl under 18 who is sold, hired, or disposed of is intended for prostitution or the ownership of a brothel. Illicit intercourse refers to sexual activity between individuals who are not married or in a recognized quasi-marital relationship, regardless of personal laws or traditions.

Under Section 373, it is illegal for any individual to purchase, hire, or acquire possession of a minor with the awareness that they will be utilized for purposes of prostitution, illicit intercourse, or any other unlawful or morally objectionable and is punishable. If a person buys a minor for any of these purposes, they will be penalized under Section 373.

In Section 373 of the Indian Penal Code, it states, individuals who purchase, hire, or gain possession of someone under the age of 18 with the intent to employ or exploit them for any criminal or immoral purposes shall face imprisonment for a year or more as a punishment. Unless proven otherwise, it is commonly presumed that a brothel owner or manager who acquires or hires an underage girl has the intention of involving her in prostitution.

According to Section 375 of the Indian Penal Code the term “rape” is defined as engaging in sexual intercourse with a minor below the age of sixteen, irrespective of her consent. Nevertheless, if a man engages in sexual intercourse with his own wife for the purpose of prostitution, it is not legally classified as rape, even if the woman is above the age of fifteen. The phrase “illicit intercourse” carries the same meaning as defined in Section 372.

In summary, it is against the law to engage in the sale, hire, or provision of a person under the age of 18 for purposes of prostitution, illicit intercourse, or any other illegal or morally objectionable activities. The intent to use a minor for prostitution is presumed unless proven otherwise. Rape is defined as sexual intercourse with a minor under certain circumstances, but an exception is made for consensual intercourse between a husband and wife above the age of fifteen.

Constitutional Provisions For Juveniles In India

Rights of Juveniles under Constitution

Since the enactment of India’s Constitution in 1950, specific protections for children have been guaranteed. The Constitution includes chapters on basic rights and state policy directive principles that encompass children’s rights.

The NEHRU report, which was recognized by the Indian constitution, stated that “every citizen of India possesses the right to receive free primary education without any form of discrimination based on caste or

creed” and that “It is the responsibility of the Parliament to enact appropriate laws to ensure the protection of the health and well-being of all citizens and to promote the welfare of children.” These principles are acknowledged in Articles 15(3), 24(e), 39(e), and 45 of the Indian Constitution. Articles 15(3) and 24 were incorporated at a later stage during the Constituent Assembly Debates (CAD) but did not generate much discussion. The inclusion of “children” in the draft paragraph preceding Article 15(3) was a result of the 1933 Congress Declaration. Even though these specific provisions were not extensively debated during the Constitutional Advisory Committee, the underlying concepts were deliberated upon and endorsed at the All Parties Conference in 1928, indicating a consensus among the participants.

Juvenile rights in India are safeguarded by Article 14 of the Indian Constitution, which guarantees equal treatment under the law and equal protection of laws for all individuals. Article 15(3) of the Indian Constitution permits the state to establish specific provisions for the benefit of women and children. Article 19(1)(a) guarantees the right to free speech, and Article 21 protects the right to life and liberty. Amendment 15(e) recognizes the right to education. According to Article 21-A of the Indian Constitution, it is mandatory to provide free and compulsory education for children between the ages of 6 and 14. Furthermore, Article 45 of the Constitution emphasizes the need for preschool education for children up to the age of 6.

Ensuring a wholesome childhood in India involves safeguarding children against exploitation and abuse, as well as relieving them from the hardships of child labour. According to Article 51(k) of the Indian Constitution, it is mandatory for parents and guardians to provide educational opportunities to children between the ages of 6 and 14. Under Article 24 of the Indian Constitution, the employment of children below the age of 14 in factories, mines, or any hazardous industries is prohibited.

Statutory And Constitutional Protections For Indian Youth

The Constitution of India provides various articles and sections that protect the rights of Indian youth. Article 14 of the Indian Constitution guarantees equality before the law and provides for equal protection of the laws. According to Article 15(3) of the Indian Constitution, the state is empowered to establish special provisions for the benefit of women and children. Article 19(1) guarantees the right to free speech. Article 21 protects the right to life and personal liberty.

Article 21-A of the Indian Constitution stipulates that education is a fundamental right for children aged 6 to 14 and must be provided free of charge and made compulsory. Under Article 24 of the Indian Constitution, the employment of children below the age of 14 in hazardous industries is strictly prohibited.

Article 39(e) and (f) of the Indian Constitution provides the state to protect children from sexual, physical, moral, and material exploitation and to provide opportunities for their healthy development and dignity. Article 46 emphasizes the protection of Scheduled Castes and Tribes from social inequality and exploitation. Article 47 of the Indian Constitution mandates that the state must enhance public health, nutrition, and the overall quality of life for its citizens.

The Probation of Offenders Act which was introduced and enacted in 1958, prohibits the imprisonment of offenders under 21 years of age and allows for the removal of disqualifications imposed by a conviction.

Under the Child Labour Act of 1986, a child is defined as anyone below the age of 14, and an adolescent is considered to be between 15 and 21 years old. Various other acts, such as the Motor Transport Workers Act, the Beedi and Cigar Workers (Conditions of Employment) Act, the Merchant Shipping Act, and the Mines Act, have specific provisions regarding the employment and age limits of children.

The Prohibition of Child Marriage Act determine the age of majority as 21 years for males and 18 years for females. The Indian Majority Act, passed in 1875, and the Guardians and Wards Act, enacted in 1890, also determine the age of majority.

The Juvenile Justice Act of 1986 initially defined a boy as someone under 16 and a girl as someone under 18. However, subsequent amendments in 2000 and 2015 expanded the definition of a child to include anyone under the age of 18.

It is suggested by many that the definition of a child under the Juvenile Justice Act, 2000 should be universally adopted due to its comprehensive provisions and being the most recent legislation on child rights and protection.

CHAPTER- 4

ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

The JJ Act of 2015 was signed into law by President Obama on December 31, 2015, and subsequently released in official publication known as the Indian Gazette. However, as per Section 1(2) of the Juvenile Justice (Care and Protection of Children) Act of 2015, the state of Jammu and Kashmir would remain under the jurisdiction of the Jammu and Kashmir Juvenile Justice Act (Care and Protection of Children) of 2013 until the state legislature enacts a new law.

Terms and Definitions

The JJ Act, 2015 provides rational definitions for various terms, expanding upon the definitions provided in the JJ Act of 2000. There are a total of sixty definitions in the JJA 2015, compared to the twenty-five in the previous act. Notably, the terms “child” and “juvenile” are defined in the JJA 2015.

According to Section 2(12) of the JJA 2015, a child is legally defined as an individual who is below the age of eighteen, while a juvenile is defined as a person who is under the age of eighteen years. It is important to disregard any differential formulation or reasoning that does not pertain to the matters covered by the JJA 2015.

Different Acts have various criteria for determining a child’s age, and these criteria should be considered in each specific context.

Child in Conflict with Law in the Juvenile Justice Act, 2015

In the Juvenile Justice Act of 2015, the term “child in conflict with law” is defined as an individual who, at the time of committing the offense, is below the age of eighteen years. This definition in the JJA of 2015 differs from the Juvenile Justice Act of 2000 in terms of definitions and mechanism for enforcement.

The definition varies in two main aspects in the JJ Act, 2000. Firstly, the term “juvenile” used in the previous legislation has been replaced with “child” in the Juvenile Justice Act, 2015. Secondly, the JJ Act of 2015, the definition encompasses not only minors who are accused of committing an offense but also children who have been found guilty of an offense. Hence, it can be concluded that the Juvenile Justice Act of 2015 has a wider scope compared to the Juvenile Justice Act of 2000.

Child in Need of Care and Protection

The Juvenile Justice Act of 2015 defines a “child in need of care and protection” as incorporates several provisions from the definition in the Juvenile Justice Act, 2000, while also making certain deletions, additions, and modifications. It comprise a total of twelve sections.

Children who are discovered to be “without any fixed place of residence or settled abode” are included, and the clause encompasses those “without visible means of subsistence”. This criterion covers homeless children who lack obvious support. The clause also encompasses children who are "engaged in activities contrary to labour laws, involved in begging, or living on the street”. However, it specifically pertains to minors who are employed unlawfully and does not encompass all children engaged in work.

The law also addresses children who lack appropriate care and are assessed by the Board or Committee as mentally ill, physically disabled, or suffering from an incurable disease without anyone to provide care. In such cases, all children without caregivers have the entitlement to receive care and protection from the state, particularly when they have a mental illness, physical disability, or an incurable illness.

Clause (v) encompasses children whose parent or guardian has been assessed as unfit or incapable by the Committee or Board to provide care and ensure the child’s safety and well-being. A parent or guardian who is deemed unsuitable can be defined as an individual who deliberately and maliciously mistreats or exploits a child for personal gain, as outlined in Section 76(2). It’s important to note that a parent’s imprisonment, which may render them incapacitated or incompetent, does not automatically make them unsuitable.

Clause (vi) refers to a child without parents or anyone to care for them, or whose parents have abandoned or surrendered them. This clause pertains to orphans and abandoned children.

Clause (vii) encompasses children who are either lost, run away, or have parents who cannot be located. This broadens the definition of “children in need of care and protection”. It should be noted that a child who is lost but is eventually found should not be considered “missing”. This provision prohibits action until the child is located.

Clause (xi) includes child victims who have been affected by armed conflict, civil disturbances, or natural disasters. This section is similar to the corresponding provision in the Juvenile Justice Act, 2000, with the replacement of “civil commotion” with “civil unrest”.

In Section 2(14), clause (xii) includes children who are in imminent danger of being married before reaching the legal age of marriage, and whose parents, family members, guardians, or other individuals are likely to solemnize such marriages. Children who have been married off at a young age are now considered children in need of care and protection.

Best Interest of the Child and Child-Friendly Approach

In Section 2(9) of the Juvenile Justice Act of 2015, the term “best interest of the child” is defined. It pertains to making decisions that give primary consideration to a child’s fundamental rights, needs, identity, social well-being, as well as their physical, emotional, and intellectual development. The concept of “child friendly” is encompassed in Section 2(15), which includes humane conduct, attitude, treatment, practices, and surroundings that contribute to the well-being and development of children.

The Juvenile Justice Act of 2015 can be considered more child-friendly than the Juvenile Justice Act of 2000. It takes a broader and more reasonable approach in considering the best interests of the child. These considerations are also expressed in Rule 2(d) of the model rules on juvenile justice formulated in 2007.

Classification of Offences

The Juvenile Justice Act of 2015 introduces a classification of offences into three categories: petty, serious, and heinous. The definitions of these categories can be found in Section 2 of the JJ Act, 2015.

According to the JJ Act, 2015:

- a. Petty offences are defined as offenses for which the maximum punishment under the Indian Penal Code or any other relevant legislation is imprisonment for a period of up to three years.
- b. Serious offenses carry penalties of imprisonment can range from three to seven years of imprisonment under the Indian Penal Code or any other applicable legislation.
- c. Heinous crimes are defined as offenses that carry a maximum punishment of seven or more years of imprisonment under the Indian Penal Code or other relevant laws.

It should be noted that while the concept of petty offences relates to offences with a maximum sentence of three years, the Indian Penal Code (IPC) provides provisions for settling certain matters outside the court as minor concerns under Section 95 IPC. These activities, though falling within the purview of the law, are considered innocent and exempt from criminal culpability. The concept of trifling offence in the IPC can also be applied in the juvenile justice system to uphold the presumption of innocence.

The JJ Act, 2015 also addresses minor offenses involving juveniles are characterized by the presumption of innocence, and it is important to treat them as if they lack mens rea or a guilty mind. The maximum sentence for offenses falling under this category is three years of imprisonment. It is crucial to interpret this definition strictly for offenses that are punishable by imprisonment exceeding three years, even if some offences falling under the serious offences category have a maximum sentence of less than three years.

Furthermore, the definition of serious offences includes offences punishable by seven years of imprisonment, creating a dilemma. In order to qualify as a grave offense, it is imperative that this crime is met with a minimum prison sentence of seven years. However, heinous offences, which have the potential to

result in a minor being prosecuted as an adult, do not include offences punishable by more than seven years in prison, leading to a discrepancy.

Child Care Institution

The provisions under the Children's Home, Open Shelter, Observation Home, Special Home, and Safe Haven Act defines "child care institution" to encompass various establishments that provide care and protection to children in need. This encompasses a range of establishments such as children's homes, open shelters, observation homes, special homes, safe havens, adoption agencies, and similar institutions.

The Juvenile Justice Act of 2015 maintains the same categorization as the Juvenile Justice Act of 2000 concerning Observation Home, Special Home, and Observation Home. In cases where a child's matter is being adjudicated by the Board, If juveniles are not granted bail, they can be placed in an observation home. An observation home, as defined by the Juvenile Justice Act, can be a government-run facility or an NGO-operated facility that is officially registered as an observation house.

Foster Care

Foster care, as defined in the Juvenile Justice Act of 2015, refers to "the act of the committee placing a child in the care of a family that is not the child's biological family". Its purpose is to provide a family-like environment for children.

Adoption

The Juvenile Justice Act of 2015 introduces a new definition of "adoption", which differs significantly from the one in the Juvenile Justice Act, 2000. In the reference of the Juvenile Justice Act of 2000, an adopted child is legally seen as the child of the family which adopted him. According to Juvenile Justice Act of 2015, a child referred to as a "lawful child" has a different definition. The use of the term "legitimate" implies that the child is legally recognized.

Section 2(42) of the Juvenile Justice Act 2015 defines the term "orphan" as children who don't have family whether it is their biological or adoptive parents, legal guardians, or no legal guardians. An orphan, defined as 'a child without any type of family or guardian whether it is biological, adoptive, or foster parents'. This definition of orphan will be same for a child who has parents but not able to take care of them and are strained to give up their child. This section is very much important for the Central Government, State Governments, the JJ Board, and other agencies involved in implementing the Juvenile Justice Act of 2015. It aligns with the provisions and instruction of state policy mentioned in the Indian Constitution.

Children's Home

The term "Children's Home" refers to a facility established and taken care by the State Government. The maintenance of such institution is done directly or voluntary or non-governmental organization, and registered for the aim given in the Section 50 of the Juvenile Justice Act.

Special Juvenile Police Unit

A special juvenile police unit is a authorised unit which function in a district or municipal police force, or any police unit like railway police, responsible for handling matters related to juveniles under Section 107 of the law.

Special home

As per Section 48, a “special home” is an institution established for the purpose of providing shelter and rehabilitation to delinquent juveniles who have been placed there by the Board. These special homes can be established by state governments or non-profit organizations.

Provisions For The Implementation Of The Juvenile Justice Act Effectively

The Juvenile Justice Act of 2015 recommends the establishment of various bodies to ensure the effective implementation of the act. It involves State Children’s Society, District Children’s Units, Special Juvenile Police Units, and Commissions for Protecting Children’s Rights. The commissions are given additional responsibilities to better safeguard children’s rights and monitor the performance of authorized structures under the act. State and district child protection agencies and units play a significant role in the implementation, as outlined in Section 106, which mandates their composition and tasks related to institutional development, notice to appropriate authorities, rehabilitation, and collaboration with stakeholders.

“The National Commission for the Protection of Children’s Rights” and “State Commissions for the Protection of Children’s Rights” are the authority for observing the implementation of the Juvenile Justice Act. These commissions ensure that the provisions of the JJ Act of 2015, specifically Section 109, are effectively executed.

Section 107 of the Juvenile Justice Act of 2015 establishes the role of a welfare police and a juvenile police unit specially established for it. According to this act that specialised police officer for the child welfare and protection should be from the Special Juvenile Policing Unit at the district level. The unit should include at least one female social worker among the appointed officers. The mission of the SJPU is to coordinate all police efforts related to children. These police personnel play a crucial role in the implementation of the 2015 Juvenile Justice Act and receive specializes knowledge and education to accomplished their duty as child welfare police officers.

Assessment Of Functioning Of Structures

The assessment of the Board, Committee, special juvenile police units, and enlisted organisations under the Juvenile Justice Act of 2015 is regulated by the Central and State Governments. Both governments conduct separate evaluations, with the evaluation conducted by the Central Government.

Composition Of The Juvenile Justice Board

According to the Juvenile Justice Act of 2000, the juvenile court will be called the juvenile justice board, magistrate will act as the Principal Magistrate, and the social workers will have the powers of a magistrate. The board consists of three members, as stated in the JJ Act of 2015. Chapters 3 and 4 of the JJ Act of 2015 specifically address violations related to children and the functioning of the Juvenile Justice Board. Each district is required to have minimum of one Juvenile Justice Board to manage cases of minors. Section 4(2) tells us about the qualifications of board members and it mandates a minimum of three years' experience as a First-Class Metropolitan or Judicial Magistrate, excluding the Chief Magistrate. Additionally, two social workers are selected, with at least one of them being female. Section 4(3) talks about the qualifications of social workers who will be on the board, involving mental health professionals for children and individuals with seven years of experience in child health and welfare. Section 4(4) specifies the disqualifications for board members, including individuals who have been removed or dismissed from government service, or convicted of a crime involving moral turpitude without having the conviction overturned or receiving a pardon for crimes like these.

Functions, Powers and Duties of the Board

- a. According to Section 8 and Section 1(4), the board is responsible for handling offenses committed by minors under 18 at the time of the offense. Section 8(2) grants comparable authority to the High Courts and Children's Court for appeals, revisions, or other legal proceedings.
- b. Section 8(3) tells about the duties and authorities of the board, which are incomplete and can include additional functions. These functions include:
 - i. Ensuring parent or guardian involvement at every level.
 - ii. Respecting the rights of children throughout investigations, aftercare, and rehabilitation.
 - iii. Providing legal assistance through legal counsel.
 - iv. Providing an interpreter if the child is unable to comprehend the proceedings.

Within 15 days of the board's initial presentation, a social inquiry must be conducted by a Probation Officer, Child Welfare Officer, or Social Worker, have duty to submit their report.

According to section 14, whenever any child is in conflict with law and need proper care and protection then both the committee and board must be involved in its adjudication.

The board must conduct regular inspections of residential institutions housing children in conflict with the law, making necessary modifications to ensure the suitability of the District Child Protection Unit and the State Government both will be in caring for the children.

The board is responsible for ensuring the prosecution of every child in conflict with the law, protect every child who is in need of proper care and their protection, providing necessary care to children in need, and performing any other role specified by law.

Duties of the Board

According to the provisions in Section 8(3)(a) of the Juvenile Justice Act, 2015, the main duties of the board is to make sure that the involvement of the child and parents and guardian at every levels of the proceedings. It is the responsibility of the board for the protection of any child from any type of injury during the complete process of inquiry, aftercare, and their rehabilitation .

According to Section 8(3)(c), the board also have duty to make sure that the children in conflict with the law have access to free legal aid provided by advocates or law practitioners.

Powers of the Board

The board requires probation officers and social workers to make and give their report within 15 days after the first day of prosecution or the child's first appearance. The report should include the circumstances of the child's alleged offense.

The report must include the circumstances under which the alleged offense occurred. It is important to note that in a social investigation report, the term "circumstances in which the allegation was committed" has other thing than in the inquiry of the police. The latter one mainly keep its focus on investigating that the crime was committed. The former one checks on the social environment of the child during the time of the offense.

Duties and Functions of Police

According to the Juvenile Justice Act, 2015, all police station must have a special child welfare officer who have special training and is responsible for handling situations involving children. The child welfare police officer should have a positive attitude towards children and receive appropriate training and experience in the field. They should also receive training and orientation to effectively collaborate with the police and non-governmental organizations.

Additionally, Section 10 of the JJ Act, 2015 mandates the establishment of a special juvenile police unit (SJPU), known as the Child Welfare Police Officer (CWPO). If there is suspicion of police misconduct, the CWPO should be notified. The responsibilities of the SJPU are outlined in Section 13, which includes investigating offenses committed by children.

Placements throughout Proceedings

According to Section 5 of Juvenile Justice Act, 2015 if a child was below the age of 18 years during the starting of the case but turns 18 during the proceedings, they should still be considered a child. Section 6 is

parallel to this and applies to juveniles who have turned 18 but presented before the board for an offense committed before the age of 18 years. In such cases, the individual should be treated and investigated as a child.

Bail to Children in Conflict with Law

According to the Juvenile Justice Act, 2015, children in conflict with the law have right to get released on bail, except in the following circumstances:

- a. If there is a concern that releasing the child will expose them to crime world.
- b. If there is any chance of moral, physical, or sociological danger.
- c. In case of fear that releasing the child will obstruct justice.

Procedure to be followed by the Board

Section 7 of the Juvenile Justice Act, 2015 states that a magistrate who does not have authority to adjudicate such cases which involves children in conflict with the law will be dealt according to Section 9. It is most important duty of board to conduct meetings and follow the prescribed norms for conducting business during these meetings.

According to section 16, the Board is required to submit its report to the Chief Judicial Magistrate, Chief Metropolitan Magistrate, or District Magistrate regarding the status of pending cases in every three months. These reports are reviewed by the respective authorities.

During board meetings, the environment should not be intimidating or resemble ordinary court proceedings, especially in the absence of a full board meeting. In some cases, a single board member have authority and power to have a hearing and grant an order.

According to section 14(4), if the inquiry of the minor crimes is not completed within the period of six months then the proceedings will be stopped even without granting a specific order from the Board.

For offenses which dealt with the Sections 14(5)(d), (e), and (f) of the Juvenile Justice Act, 2015, a different method must be followed. Summary trial procedures are used for minor offenses, while summons trial procedures are followed when a juvenile executes any type serious offense and he is below 16 years or after 16 years of age. It is duty of the Board to start an initial assessment to determine whether the case should be transferred. The Juvenile Justice Act of 2015 does not provide guidance on how children's courts should proceed when trying a juvenile as an adult, leaving a gap in the legislation.

Special Procedures

The Juvenile Justice Act, 2015, maintains the prohibition of joint trials of children in conflict with the law with adults. This principle applies not only to the board but also to proceedings before the children's court.

Section 23(2) of the Act mentions this provision, but it is not entirely clear. According to this section, it is duty of the board to determine the age of individual and present them before it at the beginning, and when the age is determined, it is assumed that this is the real age of the person under this Act.

Investigation By The Board In Relation To Children In Conflict With Law

The Board has the duty to conduct initial inquiries into minors accused of committing offenses. The first thing which is to be found is whether the accused is below the age of 18 years at the time of the alleged offense has been committed. And if such circumstance arises, the Board move further with the investigation to determine the involvement of the child in the offence and, if such juvenile found guilty then give an most suitable order for the child.

The process of age determination is outlined in Section 94 of the Juvenile Justice Act, 2015, and it is for both the Board and the Committee. Whenever a child is accused of any type of serious crime then the age of the child is the most important thing to take into consideration that he is under the age of 16 years or not at that time. Under the Juvenile Justice Act, 2015, priority is given to school certificates or birth certificates from other states over the one-month allowance provided in the Juvenile Justice Act, 2000 for child's age.

When the investigation or inquiry under Sections 173 and 37 is finished then, it is the duty of Board to record its findings and dispose of the matter accordingly. According to the Act, all findings recorded by the Board are binding, regardless of any conflicting provisions in other legislation. If a child is acquitted, an appeal can only be filed if the offense committed was serious and the child was between 16 and 18 years old at the time. If the Board finds the child guilty, it has the authority to impose any of the applicable orders mentioned in Section 18 of the Act.

According to the first order given under Section 18 is to free the juvenile and their parent or guardian with advice or proper guidance. The board is also authorized to arrange group therapy and other activities, although there is a lack of clarity regarding the individuals involved and how to fulfil this order. Order number three allows for community service under designated organizations or individuals, but its implementation has been limited and poorly understood despite being part of the law.

There are provisions for sending children to parks, hospitals, temples, or mosques to engage in cleanliness activities, which are unrelated to their offenses. During community service, the child is prohibited from participating in other activities as directed by the orders.

The fourth order under Section 18 addresses fines imposed on the child, parent, or guardian. While fines are listed as penalties under Indian criminal law, Section 18 of the Juvenile Justice Act, 2015 does not applicable specific to fine. It is board's decision to release a child on probation under the protection of a parent, guardian, or other suitable adult and that person have duty to give bond insurance and also guarantees the child's good behaviour and well-being. The maximum period of probation is 3 years.

The final part of the paragraph tells us about the provisions for special homes, including education, skill development, counselling, behaviour modification, treatment, and psychiatric assistance. Under Section 18(2) order for the requirements for school attendance, vocational training, therapy attendance, restrictions on visiting certain locations, and participation in de-addiction programs can be issued.

Procedure For 16-18 Year Child Offenders

When a child between the age of 16 to 18 years is accused for a serious offense, the Juvenile Justice Act, 2015 outlines the steps to be followed in Section 15. The Board is instructed to conduct an initial assessment to know that the child will be sent to the Children's Court for trial like an adult. This assessment involves several procedures that must be followed before reaching a final decision.

The Board first verifies whether the child was at least 16 years old but under 18 at the time of the alleged offense. If the child's age meets this criterion, the Board proceeds to determine whether the offense falls under the category of a heinous offense.

If the offense is deemed heinous, the following three basic procedures are followed:

1. The child is transferred to any special home which have facility for the reformatory services which includes education, skill, counselling, behaviour changes, and moral support. This is in accordance with the final order specified in Section 18.

Additionally, Section 18(2) allows for the issuance of additional orders, in addition to those mentioned in Section 18(1)(a) to (g). These additional orders are based on specific subjects, such as:

- a. Mandatory school attendance
- b. Attendance at a vocational training center
- c. Attendance at a therapeutic center
- d. Prohibition from visiting specific places
- e. Participation in a rehab program.

Procedure For 16-18 Year Juvenile In Conflict With Law

When a juvenile who is between the age of 16 to 18 years charged for serious offense, the Juvenile Justice Act of 2015 specifies the measures which has to be taken according to Section 15. The purpose is to know that whether the child should be moved to the Children's Court for where he will be tried as an adult. It is the duty of the Board to begin an evaluation for 16-18-year-olds suspected of committing heinous offenses. Before reaching a final judgment, the Board must go through a series of procedures.

The first step is to establish that the child was at least 16 years old but below the age of 18 at the time of the offense. Once the Board is satisfied that the child was under 18 during the offense, it proceeds to evaluate whether the offense is categorized as heinous, grave and serious in nature or not.

If the Board concluded that the offense is serious then the following three procedures are followed:

- a. The Board checks that the committed offense comes under a provision for which provides minimum sentence for wrongdoer.
- b. If the offense have provision for minimum punishment of seven years or more, a preliminary evaluation is conducted.
- c. If agreement cannot be reached, the first evaluation by the Juvenile Justice Boards (JJBs) is conducted to determine if the 16-18-year-old child is suitable for transfer. The JJ Act, 2015 sets a timeframe of three months for this evaluation, but concerns have been raised regarding the feasibility and legality of this timeline. The evaluation should not be conducted until the police has performed its duty and give their final report of the case and according to the report it has been confirmed that the child's case is of heinous offense.

Children's Court

A "Children's Court" is a specialized court established under the JJ Act, 2015 to handle cases involving minors. The primary objective of establishing Children's Court is to provide care, protection, development, and rehabilitation to children. When the Board refers a case to the Children's Court, it must adhere to the provisions of Section 19 of the Juvenile Justice Act, 2015. The main concern of the Children's Court is to fulfil the requirements of children and providing a child-friendly environment. The Children's Court, presided over by a sessional judge, can also handle cases of adult offenders who commit crimes against children. However, due to the absence of specific guidelines in the law, there is a possibility of arbitrary decision-making in the Children's Court.

Disposal by the Children's Court

According to Section 19(1) (i) of the Juvenile Justice Act, 2015 when Children's Court deems it appropriate to try the child being treated as an adult, appropriate directives should be issued following the trial, in accordance with the guidelines stated section 19(1)(i) of juvenile justice act

The Children's Court is responsible for assessing the unique circumstances of the child and ensuring a fair trial in a child-friendly setting. The Children's Court is not bound by the sentencing guidelines of the Indian Penal Code or any other laws, as Section 19 does not specify such obligations.

According to Section 19 of the JJ Act, 2015, the Children's Court have four directives for giving the final decision. Section 19 does not define a specific timeframe for the placement of the child in a secure facility. It is essential for the court to ensure that educational and skill-building programs, along with alternative

therapies such as psychiatric assistance to cater to the needs of individual are provided to the child during their stay in the place of safety, as directed by the court. The evaluation of the child's progress and ensuring their well-being in the place of safety is the responsibility of a social worker or the district child protection unit. Section 19 of the JJ Act, 2015 also states that minors shall not be held in prison beyond twenty one years age.

Composition Of The Child Welfare Committee

According to Section 27 of the Juvenile Justice Act, 2015, it is mandatory for each district to establish a child welfare committee to address the needs of vulnerable children. The committee consists of one chairperson and four members, all of whom receive training as per the required guidelines. The committee should include at least one woman and one child expert.

Power, Functions, and Duties of the Committee

Section 29 of the Act provides for the powers of the committee, which mainly provides assistance to children in need. The utilization of the Committee's jurisdiction is essential to protect, nurture, empower, and rehabilitate children in vulnerable situations.

Procedure of the Committee in Relation to Children in Need of Care and Protection

As per Section 28, the committee is required to hold meetings at least once every twenty-one days to monitor the functioning of institutions and the well-being of children under their care. A child can be brought before an individual member of the committee even if the entire committee is not available or not in session. In the event of unavailability of any Committee member, the committee is still authorized to make decisions and pass orders. The committee's decisions are determined by majority vote, and in case of a tie, the chairperson's decision prevails.

Inquiry

The committee has two key responsibilities related to inquiry. First, it conducts an inquiry to determine the age of a child, which is done in accordance with Section 94 of the Act. Second, it conducts an inquiry to ascertain whether the child is in need of care and protection.

Orders

During the course of an investigation, the committee is responsible for issuing both intermediate and final directives regarding the care and protection of the child. If the child requires immediate care and protection, the committee may issue interim orders. In the case of children under the age of 6, the committee may direct their placement in an adoption agency. In other instances, the committee may recommend placement in a children's home, fitting institution, with most suited individual, or in a foster family until a permanent solution is reached.

Adoption

Adoption refers to the legal process by which a child getting apart from their real parents who gave him birth and becomes the legitimate children of their adoptive parents.

According to Section 63 of the Juvenile Justice Act, upon adoption, the adoptive father assumes the legal status of the child's parent. The child is acknowledged to have been born to the parents who adopted them after the adoption process is completed, for all purposes including inheritance. Through adoption, the child's ties to their biological family are severed, and new legal relationships are formed with the adoptive parents. Any property or assets belonging to the child are transferred to them, subject to any applicable conditions or obligations, without any claim from the real family or the parents who gave them birth.

Shortcomings of the Hindu Adoptions and Maintenance Act

Section 56 of the Juvenile Justice Act clearly states that the Hindu Adoptions and Maintenance Act of 1956 is not applicable on the provisions of the Juvenile Justice Act of 2015. The Hindu Adoptions and Maintenance Act is specifically applicable to Hindus and governs adoption within the Hindu community. However, the Juvenile Justice Act does not impose such restrictions. As a result, adoptive parents who already have a biological child of the same gender are allowed to adopt a child who is of the same gender of child who is already in the family, as long as it is deemed to be in the favour of the child and for his good.

A law governing the adoption of orphan and children who are abandoned by their family.

The Act classify the children who are qualified for adoption into three groups. These groups include:

1. Orphans: This category includes not only children who have lost both parents but also children whose parents are incapable of caring for them.
2. Surrendered children: These are children whose parents can be traced but have voluntarily relinquished their parental rights due to their inability to provide care.
3. Abandoned children: These are children who have been deserted by their parents, even if the parents can be located. The Act provides specific provisions and procedures for abandoned children under Sections 38 and 35, respectively.

Capacity of prospective adoptive parents

According to Section 57 of the Juvenile Justice Act , the eligibility criteria for individuals wishing to become adoptive parents. These criteria include:

- a. Prospective adoptive parents should be in good physical health, financially stable, mentally capable, and genuinely committed to adopting a child.
- b. In the case of a married couple, the consent of both spouses is required for adoption.

c. Single individuals, including divorced individuals, are also eligible to adopt based on the requirements set by the authorities.

d. Single men are not permitted to adopt girls.

e. Additional conditions specified in the adoption regulations of the governing authority may apply.

Procedure for adoption

Under the JJA, adoption processes are categorized into three types:

a. In-country adoption: This refers to the adoption of an Indian child by Indian parents.

b. Inter-country adoption by Non-Resident Indians (NRI): This refers to the adoption of an Indian child by an NRI parent.

c. Inter-country adoption by foreigners: This refers to the adoption of an Indian child by a foreign parent. There are no religious restrictions on adoption.

Residential Care

The Juvenile Justice Act incorporates various categories of residential care. These options can be broadly divided into two categories:

1. Homes: This includes observation homes, places of safety, and children's homes. These types of homes are built and monitored to give children institutional care either during the legal proceedings.

2. Community-based care: In this category there are open shelters, suitable facilities, and most appropriate individuals who give residential care within the community.

Compulsory registration of child care institutions

Under the Juvenile Justice Act 2015, registration of all child care institutions is compulsory and it must be done within six months of the enforcement of the JJA 2015. This requirement applies to institutions that provide care for children in conflict with the law, regardless of whether they are governed by the government or any other type of organizations whether it is voluntary organizations, or non-government organizations.

Offences Against Children

Offences against children have been a longstanding issue, and their prevalence has been increasing at an alarming rate. Despite making all offences under the JJA 2000 cognizable, the reporting of such offences has remained minimal. This is due to the lack of familial support for child victims to file complaints before the

courts. Section 89 of the JJA 2015 clarifies that if a child commits an offence listed in Chapter IX of the Act, they will be considered a child in conflict with the law. It would have been beneficial to include a clarifying clause stating that all such children in conflict with the law will be controlled by the Board in way which provisions of act prescribed them to.

Punishment

Section 75 of the Act tells us about the punishment given for the cruelty against any child. Cruelty is very broad in meaning. It includes assault, abandonment, abuse, exposure, or neglect that results in emotional or physical suffering to a child. Any individual who has custody or control of a child and commits such acts is considered to have committed cruelty. However, biological parents who voluntarily relinquish custody of their child are exempt from criminal prosecution and responsibility.

Employment of a child for begging

Section 76 of the Act states that if a child is employed with the purpose to make him beg then it will be considered as a criminal offence. Punishment for such activity according to this act will be five years in prison and a fine up to one hundred thousand rupees.

Giving intoxicating substances to a child

It is illegal to provide a child with alcohol, narcotics, or psychotropic substances. This act is considered a criminal offense and have provisions for punishment of seven years imprisonment, and fine one hundred thousand rupees. Bail is not granted for this offense.

Use of children for vending or peddling of illegal substances

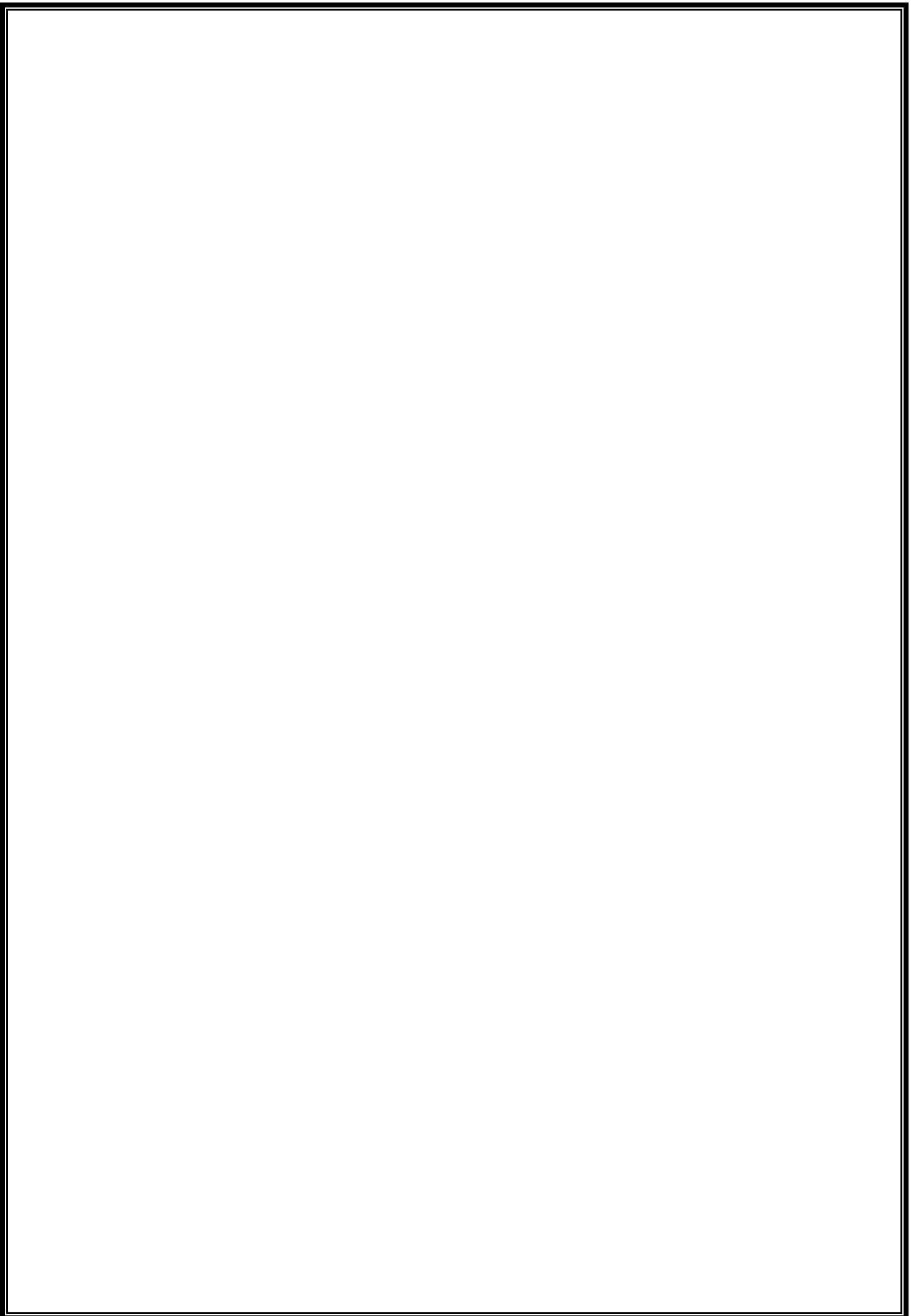
Section 78 introduces a new offense that is cognizable and non-bailable. It is illegal to involve minors in activities such as vending or peddling alcoholic beverages, narcotic drugs, or other illegal substances. Penalty for this crime in this act is of seven years in prison and a fine of one lakh rupees

Child employees and their exploitation

Section 79 establishes the offense of exploiting child employees, which is cognizable and non-bailable. This provision aligns with Article 23 and 24 of the Indian Constitution, which prohibits child labour and exploitation.

Corporal punishment

Physical torture, commonly known as corporal punishment, is a prevalent practice in child care institutions. Section 82 of the JJA makes it punishable by law to inflict corporal punishment on children.



CHAPTER- 5

JUVENILE JUSTICE AND INDIAN JUDICIARY

Significant decisions have been made in Indian courts in support of children's rights. These decisions have established a strong foundation for the juvenile justice system in India through the implementation of three key acts. Additionally, specific laws have been enacted to safeguard neglected or delinquent children. It is worth noting that children below the age of seven are not held criminally accountable. However, if they are found to be "doli in capax", which means lacking the mental capacity to understand the consequences of their actions, Section 83 extends this exemption to children between the ages of seven and twelve.

The Indian Penal Code considers both the intent (mens rea) and the age of the child when investigating cases. As per the ruling in **Emperor v. Valli Mahammad**¹⁴ and two other cases, children as young as five or eight years old is generally protected under the IPC for act like throwing stones on the train. From the case **Emperor v. Dharam Prakash** we know that children who are too young should not be given capital punishment. In the case of **Parbati Dasi v. Emperor**, the court stated that children with the age of three or younger than it should be returned to their parents or guardians if it is possible because it will be best for them. It is necessary for the court to have substantial evidence of a child's age before they can be sent to a reformatory school.

According to the law, individuals below the age of 18 should not be imprisoned, and upon their discharge from the institution, they should be kept under the guidance and proper care and protection of a parent or guardian. The most important duty of the court before assigning them to a reformatory school is to consider the age of child. Additionally, children cannot be sent to school without a court order explicitly stating this requirement, including the stipulated timeframe for their stay in the reformatory school.

In the case of **State v. Jahlu**, it was determined that an order of institutionalization, meaning incarceration, was required for a child to be admitted to a reformatory school. Furthermore, the duration of their stay in the school could not be shorter than what was specified by regulations.

The Madhya Pradesh High Court, in the case of **Ramgopal v. State**¹⁵, held that the application of the Reformatory Schools Act, and the Criminal Procedure Code to child who had committed crimes punishable by death or life imprisonment. There were differing views among the High Courts regarding whether juveniles could be sentenced to death or life imprisonment under these acts. While some High Courts did not consider it applicable to capital punishment or life imprisonment, others had concerns about the facilities given to the juvenile sentenced to life imprisonment and who are major now means attained the age of 18

¹⁴ (1947) 49 BOMLR 618

¹⁵ CR Appeal no. 1489 of 2012

years. According to Section 433-A of the CrPC, the Supreme Court ruled that it did not apply to individuals assigned to a borstal school under the AP Borstal Schools Act of 1926.

In the case of **Hava Singh v. State of Haryana**, the interpretation of the term “offence” in the Punjab Borstal Act, which excluded acts punishable by death, was overruled in **Subash Chand v. State of Haryana and others**. The Code of Criminal Procedure affirmed the jurisdiction of the juvenile court in determining whether the sessions court had authority in such matters.

Although these statutes are not the main focus of this chapter, they are frequently referenced and utilized in cases involving juvenile offenders, highlighting their significance. This chapter provides an in-depth examination of cases under the Children Acts and the Juvenile Justice Act (JJA), which have been pivotal in shaping the judicial approach to juvenile justice. It is noteworthy that, the implementation of the Juvenile Justice (Care & Protection) Act, it has been utilized in only two instances within the span of a year and a half.

Expeditious Disposal of Cases Expeditious

In the case of **Umesh Chandra v. Rajasthan**¹⁶, a full panel of the Supreme Court emphasized the importance of expeditiously resolving issues involving children for the purpose of their rehabilitation and reformation. The court concluded that, regarding the age of the accused claiming to be a child, the date of the incident at the place of trial date, is important for the implementation of the Rajasthan Children Act of 1970. It requires a clarity that the date of the offense is the date for the consideration of Act’s application. The most important thing is to consider that the child is growing day by day and he may not be seen as a child by the time the matter reaches trial due aging which is involuntary. To address this concern, sections 3 and 26 were introduced, which explicitly state that the date or time on which incident occurred is the applicable date for the Act. This shows that the date of the incident happening is the relevant date for the accused who claims to be a child under the Act and not the date of the trial in court.

In the case involving **Arnit Das**¹⁷, **R.C. Lahoti, J.** applied the Juvenile Justice Act based on the accused’s initial appearance before the court. The division bench held that the use of “is” in Section 32 of the Juvenile Justice Act, in relation to “a person presented before it”, shows that the assessment of the accused’s age should be based on their appearance before the court for judgment. The court determined that applying the Act based on the commencement of the inquiry or trial did not violate Article 20, despite the claims made by Dilip Saha. This ruling sparked controversy and was considered as incurium since no judgment had been previously rendered on this issue, as the accused in this case was found to be an adult at the time of the offense. Due to the failure of the two-judge panel to consider a prior ruling by a three-judge panel, the case was referred to a constitution bench. The constitution bench, in this specific instance, declined to address the issue as it was considered only academic because the accused was already considered himself to be an adult

¹⁶ 1982 AIR 1057, 1982 SCR (3) 583

¹⁷ AIR 2001 SC 3575, 2001 (49) BLJR 2101, 2001 CriLJ 4238, JT 2001(7) SC (157), 2001 (5) SCALE 500, 2001 7 SCC 657

and not child during the time of offence. In this petition, neither the date of the offense nor the incident or the date of the first presence in court at the time of investigation procedures was very much necessary under the 1986 Act.

Position of the Child

“The legislation does not clearly specify the consequences of not raising the issue of a child’s status at the earliest opportunity. There is ambiguity regarding whether the act applies solely when the child explicitly express its application. The jurisdiction to which juvenile courts and juvenile welfare boards are bound by the principle of *parens patriae* in the Juvenile Justice Act remains uncertain. Different courts have handled these issues differently under both the JJA and previous Children Acts. The legislation pertaining to Juvenile Justice (Care and Protection) also fails to solve these problems and issues. Despite the Supreme Court has already accepted child status claims after being raised for the first time, it has not consistently implemented this approach, and courts still argue the sincerity of pleas instead of fulfilling their responsibility.

Failure to raise a plea regarding child’s status prior to the trial court, High court or within the initial grounds of a special leave petition may result in the court dismissing the plea as an afterthought. In the case of **Hari Om v. the State of UP**, the Supreme Court found nothing which support or collaborate the claim of the defendant being minor during the time period of the trial and also before the High court. In this situation, a certificate was considered insufficient, and no mention was made of previous incidents involving the defendant. The juvenile court in the case of **Abdul Mannan and others v. State of West Bengal** was not able to move further with the case because of their own mistake and causing delay in the trial.

Similar to **Krishna v. State of Bihar**¹⁸, where N. Singh J. wrote, Section 32 of the Children's Act is very important clause. Section 32 of the act gives power to the juvenile court to investigate efficiently the age of the offender at the time of the offense and determine whether they were a juvenile or not. However, this court cannot assess the defendant’s age without sufficient evidence and other factors, in order to make a fair decision, the court cannot solely rely on written statements from testifying physicians. It is important to consider supporting documents presented in court, and cross-examine medical or forensic specialists who gives their expertise on the matter of the age of the accused. With the help of cross-examination, prosecutors can tell or confirm that the accused was a juvenile at the time of the offense or not.”

It is crucial to recognize that children should not be deprived of the protection offered by progressive and beneficial laws simply because they did not assert their child status at the appropriate moment. Children involved in the juvenile justice system are often living in poverty, lacking education, and unaware of their rights and responsibilities towards others. Given these circumstances, it is unreasonable to expect them to be knowledgeable about the law or to request its application at the earliest opportunity. Therefore, it is necessary to adopt a flexible approach to ensure that the law safeguards their rights.

¹⁸ AIR 1989, Pat 217, 1991 (39) BLJR 321, 1991 CriLJ 1283

Determination of Age

The age determination of child is very much crucial and most important thing to find whether an individual stating himself to be a child under the cutoff age specified in the Juvenile Justice Act, this was held in the case of **Mukarrab vs the State of U.P.**¹⁹ Minors who fall under the jurisdiction of the Juvenile Justice Act lack birth certificates, presenting a significant challenge in age determination. For juveniles involved in legal disputes, the absence of age documentation makes it difficult to determine the age in borderline cases.

There are two primary reasons why determining the age of a child under the Juvenile Justice Act is crucial.

Determining the age of an individual is crucial to establish whether they are below the minimum legal age of majority and eligible for the benefits provided. Additionally, accurately recording the child's age is important in determining the duration of their stay in a facility. Courts have reviewed the evidential strength of age determination in various cases under the Children Acts.

However, age determination can be a challenging task, particularly in cases where there is ambiguity. Section 26 of the Indian Penal Code establishes that a Registrar acting according to the Act of 1969 or any applicable rule or order is recognised as a public servant as defined under Section 21 of the Indian Penal Code. In the case, the certificate fulfil the conditions for admissibility as mentioned under Section 35 of the Evidence Act. It accomplished the necessity to be in a public record containing the date of birth, expressing a fact in issue, and formed by a public servant in the discharge of their official duty.

In the case of **Shyam Narayan Singh v. State of Bihar**, the Patna HC acknowledged the accused to be a juvenile based on their own testimony regarding their age at the time of the crime, which was not disputed by any other party.

However, it has been clarified by the Supreme Court that an opinion on age cannot be considered binding if it is solely based on visual perception without conducting a thorough inquiry into the evidence. In a specific instance, the opinion rendered by the High Court or Court of Sessions was found to be erroneous as it was solely based on a visual inspection. The Delhi High Court ruled that relying solely on a visual inspection was an unlawful basis for rejecting the plea of the accused who claimed to be children.

The requirement for judges to assess a person's age based on visual inspection may stem from the use of the term "appears" in the relevant Acts. The decision of the Punjab High Court indicated that the term "appears" suggests that there should be something visibly apparent and observable in the person's external physical appearance that can be utilised for age identification.

In the case of **Milap Singh v. State of UP**²⁰, the Allahabad High Court held that the age in the school leaving certificate must be given more importance than the findings of the Medical Officer, except when

¹⁹ 1991 WLN UC 4

²⁰ 2000 CriLJ 3059

there is proof of fabrication or manipulation of the document. The court held that the school leaving certificate should be taken as most authentic evidence of age than the medical report.

In the case of **Raja Singh v. State of Bihar**, the Patna High Court rejected the claim of the accused being a minor based on the earlier assessment by a medical board that indicated he was above 18 years of age. The court also considered the conclusion of the sessions judge, which determined the accused to be twenty years old, further supporting the classification of the accused as major.

In **Kumar Satyanand v. State of Bihar**, the Patna High Court held that matriculation certificates, school exit certificates, and entries in school records are the most authentic and trustworthy evidence of age and must be accepted by the courts. The court emphasized that these records cannot be disputed or challenged based on the argument that they were produced solely for the benefit of the accused. The absence of any record created specifically for the accused's benefit further strengthens the authenticity of these documents.

In **Umesh Chandra v. State of Rajasthan**²¹, the appellant's age was supported by two school records that were verified by the father of the appellant and before to the trial. The court had nothing to suspect the originality of these documents. The appellant's age was clearly recorded when he was enrolled in school at a young age, and there was no motive for his parents to falsify his age. The school itself had a reputation for maintaining accurate records

In the case of **Bhoop Ram v. State of UP**²², the Supreme Court contradicted with the sessions judge's denial to recognise the certificate and established the one's age on medical opinion. The Supreme Court held that medical evidence which is on the basis of an report of radiology and physical features, which means there is a possibility of an estimation error. The text suggests that diplomas should be trusted unless there is evidence to the contrary.

Although there was a two-year margin of error found in medical certificate, it was ignored completely. In the paragraph 56 of the session judge's judgement, the offender was deemed to be eighteen years old at the time of the hearing. The defence presented evidence in court suggesting that the accused was at least fifteen years old, making it impossible for them to have been twelve years old at the time of the alleged incident.

According to the provisions given under Juvenile Justice Act 1986, a person should be minimum of sixteen years old during the occurrence of the incident to be eligible for protection. However, the session judge chose not to take into account a one-year buffer when calculating the present age, considering it is an additional year for the lower age range but including it within the upper age range. This increased the range of age of the offender which is now from twelve to seventeen, there should be gap of five years, the Supreme Court decision permitted for a range of four years. It appears that the Supreme Court ruling emphasized addressing the uncertainty. Justice Sethi in his judgement depended on the evidence collected which

²¹ 1982 AIR 1057, 1982 SCR (3) 583

²² AIR 2019

includes statement recording also by the investigating officer, which is found to be in accordance with previous judgments of the Supreme Court.

According to the Calcutta High Court ruling in **Dilip Saha v. State of West Bengal**²³, the court should utilize medical and other evidence to determine a person's age. When an individual is presented before the court, it is their responsibility to bring the need for a proper enquiry into their age, and the court's duty is to establish and record the defendant's age for trial and sentencing. This becomes particularly important in areas with specific legislation targeting juvenile crime. If magistrate think it is necessary than he can send the offender to the Medical Board to obtain credible evidence regarding their age, depending on the circumstances. The Magistrate also has the authority to request the accused to provide proof of their age, and it is at this stage that the Magistrate should adhere to the law.

In **Bhola Bhagat v. State of Bihar**²⁴ case, the Supreme Court emphasized that any court presented with a plea relating to socially oriented legislation has a duty to diligently investigate the validity of the plea. The court cannot dismiss the accused's claim without first determining its merit. It is the duty of the court to start an inquiry for giving authentication or not to age which is claimed by the accused. The High Courts and lower courts are held to this standard.

In the case of **Arnit Das v. State of Bihar**²⁵, the Supreme Court clearly stated that technical perspective must not be used during the evaluation of the evidence of the accused's juvenile status. In situations where there is ambiguity, the Court should lean towards considering the accused as a juvenile, even if there are two plausible opinions based on the evidence.

The Rajasthan High Court held in **Balbir Singh v. State of Rajasthan**²⁶ that the age determination must be carried out by the authentic authority who is competent to do so, which allows both parties to present the evidence. It is imperative to permit cross-examination in accordance with the prescribed procedures for summoning a case. In instances where the magistrate possesses the requisite jurisdiction, it becomes necessary to carry out an investigation, and in such situations, it is crucial to report the matter to the relevant authorities. When the proceedings advance to the High Court or the court of sessions for appeal, review, or any other purpose subsequent to the case being committed, each court retains the authority to initiate its independent inquiry.

The following guidelines can be interpreted regarding age determination:

- a) The determination of age should be based on adequate and proper evidence.
- b) Oral evidence can be used to clarify existing contradictory evidence.

²³ 1979 CriLJ 88

²⁴ 1997 (2) ALD Cri 645, 1998 (1) BLJR 628, 1998 CriLJ 390, JT 1997 (8) SC 537, 1997 (6) SCALE 558, (1997) 8 SCC 720, 1997 Supp 4 SCR 711

²⁵ AIR 2001 SC 3575, 2001 (49) BLJR 2101, 2001 CriLJ 4238, JT 2001(7) SC (157), 2001 (5) SCALE 500, 2001 7 SCC 657

²⁶ 1994 CriLJ 2750, 1994 (1) WLC 487, 1994 (1) WLN 215

- c) Authentic documentary evidence is given preference over radiological examination and physical features.
- d) School certificates should be considered reliable and genuine unless there is evidence to cast doubt on their authenticity.
- e) Every effort should be made to ascertain the most accurate age.
- f) When an accused person appearing before a magistrate seems to be approximately 21 years old or below, the magistrate should conduct an inquiry to determine the age, either by seeking a medical opinion or by calling for evidence of age.
- g) The standard of proof required for age determination is that of a degree of probability, not proof beyond reasonable doubt.
- h) In cases where there is doubt regarding age determination, the courts should lean towards declaring the accused as a child.

These rules reflect the protective approach of the higher judiciary and highlight the importance of awareness and adherence to these standards by the lower judiciary, particularly in safeguarding impoverished and uneducated children.

Dealing With Children Engaging in Heinous Offences

The question of whether a juvenile court possesses jurisdiction in cases involving criminal offenses punishable by the death penalty or life imprisonment was first addressed in 1932 in the case of **Lakhi Sahu v. Emperor**²⁷, presented before the Calcutta High Court. Since then, this matter has been the subject of numerous cases spanning until the 1990s.

According to the relevant laws, any juvenile offender who commits a crime not punishable by death or life imprisonment can be prosecuted in a chief judicial magistrate's court, the jurisdiction of a juvenile court, as well as any other court established under the Children Act or similar legislation responsible for handling the care, education, and reformation of juvenile offenders, as stipulated by the Code of Criminal Procedure.

In the case of **Rohtas v. Haryana**²⁸, the SC overturned the ruling of the High Court, which asserted that the 1973 Code had invalidated the Haryana Act, and thus the appellant should have been prosecuted under the Code. The Supreme Court affirmed the viewpoint of the Sessions Judge, stating that the appellant's case should have been referred to the Magistrate as per the provisions outlined in the Haryana Act.

In **Ragbir v. State of Haryana**²⁹, it was contended that the decision in Rohtas failed to take into account Section 27 of the Criminal Procedure Code. Nevertheless, the Supreme Court upheld its previous ruling in Rohtas, asserting that Section 27 does not contain a provision explicitly superseding any Children Act

²⁷ 1910 ILR 37 Cal 221

²⁸ 1979 AIR 1839, 1980 SCR (1) 151

²⁹ 1980 AIR 1087, 1980 SCR (3) 277

enacted by a State Legislature. Hence, Section 27 does not meet the criteria of “specific provision to the contrary” as stipulated in Section 5, which would have rendered the specific legislation pertaining to children inapplicable. The appellant’s counsel also invoked Article 254 of the Constitution, which grants primacy to central law over state legislation in case of unconstitutionality. However, the Supreme Court dismissed, relying on the dissenting opinion of Justice Verma in the case of **Devi Singh v. State of Madhya Pradesh**³⁰ as a supportive basis for its decision. The Court held that Article 254 would only come into play if the provisions of both legislations were incongruous. However, the special state law was upheld and preserved owing to the operation of the central legislation itself.

Article 254 was determined to be inapplicable, and as a result, the provisions of the Children Act, which confer exclusive jurisdiction upon juvenile courts for all offenses, including those that carry life imprisonment or death penalty, continued to remain in force. The Supreme Court emphasized that the Children Act was a unique local Act in the state, and thus, it would take precedence over the general legislation. Juvenile courts have the authority to hear all offenses committed by a child, regardless of their severity. This approach by the Supreme Court upheld the progressive intent of the Children Act of 1960.

Moreover in the case of **Sheela Barse and Others v. Union of India and Others**³¹, the Supreme Court called for the Central Government to enact legislation that would bring uniformity to the provisions concerning juvenile offenders across India, especially if each state has its own unique Children’s Act with differing procedures.

The issue of prosecuting a juvenile under the provisions outlined in Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act was raised in the case of *In re Sessions Judge Kalpetta*. The case involved allegations of rape and other crimes committed by a juvenile against a girl from a Scheduled Tribe.

The approach adopted by the Madras High Court in the matter of **Ramchandran v. Inspector of Police** presents an alternative approach that does not eliminate minors from the jurisdiction of the Juvenile Justice Act. In this case, the primary focus was not on assessing the gravity of the offense committed by the underage individual, but rather on deliberating whether the adult defendant should be categorized as a goonda (a term for habitual offenders) due to prior offenses. The court determined that there was no need to analyse the dominant impact of the power of detention under the particular Act in question, as it only applied to goondas, bootleggers, drug offenders, and other similar cases, did not apply to the children according to the meaning of goonda. The court emphasized the importance of timely and effective action by the authorities when a child commits a serious crime, to prevent further criminal behaviour and maintain law and order.

The Juvenile Justice (Care and Protection) Act (JJ (C&P) Act), being a later and special legislation, does not exclude any category of offenses committed by minors. It can be seen as settling the dispute and controversy

³⁰ 1999 CriLJ 3045

³¹ JT 1986 136, 1986 SCALE (2) 230

in this regard. However, the Act remains silent on the matter, leaving room for attorneys and courts to address the issue through comprehension and empathy.

Procedural Issues

The implementation of the Children Act 1960 brought about changes in the processes concerning children under the Juvenile Justice Act. These changes included the establishment of special courts for children's cases, restrictions on public participation, prohibition of combined trials, the appointment of competent authorities, and the creation of a separate juvenile court system to ensure the segregation of minors from the regular criminal justice system.

In the case of **Mata v. Rajasthan**, it was held that the court cannot deny bail to a delinquent adolescent. The court further emphasized the importance of considering the best interests of the child and promoting their rehabilitation and reintegration into society. This decision serves as a significant precedent in ensuring that the rights and welfare of delinquent adolescents are protected within the criminal justice system, so a juvenile must be granted bail regardless of the alleged crime. However, in **Amit v. State of UP**, the session judge emphasized that being a minor alone is not sufficient justification for granting bail. The High Court, while granting short-term release, emphasized the importance of addressing both the issues of age and bail. It was clarified that the session court has the authority to address the matter of bail to the juvenile court as mentioned under Section 8 of the Juvenile Justice Act.

In the case of **Shokat Ali v. State of Rajasthan**³², the High Court examined the issue of whether a juvenile brought before the session court, as opposed to the juvenile court, could be eligible for bail. Given that the court had jurisdiction to exercise the powers of the juvenile court, it answered affirmatively. While Section 33 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act allows for the release on probation of offenders under the age of 18, Section 37 does not provide the same provision. Concerns were raised regarding the presence of a lawyer and their ability to cross-examine in a juvenile court. In the case of **Mohomed Alan v. The Crown**, raised concerns about the trial's fairness, specifically pertaining to the cross-examination of the complainant. The accused's legal counsel in the juvenile court was denied the opportunity to question the complainant. Furthermore, the appellant's attorney failed to adequately argue that the decision made was not in the child's best interest, and shockingly, even concurred with the judge on this matter. The remarks of Tyabji J., the former Chief Justice, in this case, emphasizing the distinct nature of the juvenile court and the goal of treating juvenile offenders in a remedial rather than punitive manner.

The constitutional infringement of prohibiting the presence of an attorney in the children's court was first raised by the session judge in Rajkot in **Kario alias Man Singh Main v. State of Gujarat**. Although the High Court had issued summonses to all the lawyers representing the defendants, none of them, including

³² 1992 CriLJ 1335, 1991 (2) WLN 398

the Advocate General, attended the court hearing. The only person present was the Assistant Government Pleader, who argued the following points:

- a. The ban on the presence of an advocate in a juvenile court was not absolute and could be lifted in the interest of the public.
- b. The provisions of the Criminal Procedure Code (CrPC) regarding the right to be defended by a pleader were superseded by the Children Act, which was enacted in the best interest of the child offender.
- c. The ban was not invalid as no child delinquent could be sentenced to death, transportation, or imprisonment.
- d. The denial of an advocate did not cause prejudice to the accused.
- e. The objective of the Children Act was to rehabilitate the child offender rather than punish him.

The Supreme Court's split bench decision in the case of **State of Madhya Pradesh v. Shobharam** played a significant role in the ruling. The clause in the Saurashtra Children Act that restricted the presence of a lawyer before a juvenile court was deemed unconstitutional, violating Article 22(1) of the Constitution. The court concluded that Article 22(1) provided an unrestricted and unquestionable right, which could not be curtailed by any law. Unlike the essential rights outlined in Article 19, Article 22(1) had no limitations, rendering the purpose of the Act ineffective. The right to legal representation commenced upon a person's arrest and extended until they were held accountable for their confinement, regardless of whether bail was granted. Even if the individual was found guilty of the offense leading to their imprisonment, this right remained intact. In situations where the accused person was sentenced to institutionalization or faced fines, their individual freedom was at stake. Therefore, children were entitled to the right to defend themselves with the assistance of an attorney, and any legislation denying them this right would be deemed unconstitutional. This pivotal judgment by the division bench comprising Justices A.D. Desai and J.M. Sheth led to the amendment of the Children Act of 1960 in 1978, allowing for the presence of an attorney in front of juvenile courts.

In contrast to the provisions of the Criminal Procedure Code, the Acts governing juvenile justice specify that the competent authority must follow the summons process in all cases, including those concerning the determination of an individual's age. While the higher courts have upheld the validity of this differentiated process, they have not allowed deviations from the prescribed procedure for cases involving summons. In the case of Anthony, it was argued that Article 14 of the Constitution allows for a non-standard approach. The Madras High Court recognized that the distinction was necessary for the welfare of the child and allowed for a more informal and compassionate approach to dealing with offenses committed by young offenders. The Madras High Court justified the distinction as being in the best interest of the child.

However, it should be noted that the issuance of summonses does not imply informality in the proceedings. Any order solely based on the report of the probation officer was deemed invalid as it violated the prescribed process.

In the case of **Sultan Singh v. State of MP**³³, it was ruled that it is unlawful for the chief judicial magistrate to determine an individual's age on their own as they do not have the authority to establish a juvenile court independently. Building on the precedent set by Sunil Kumar, it was reiterated that when a juvenile court has been constituted, all magistrates forming the juvenile court must be involved in the orders and inquiries, and orders made by only one magistrate are considered invalid. This ensures the prevention of potential errors by a single magistrate.

Under the summons process, a preliminary investigation was not permissible. As a result, the Madras High Court declared the magistrate's decision to commit the child to an institution as unlawful and set aside the order. However, it should be noted that once a trial has been conducted and a sentence has been imposed, the courts have consistently upheld the trial itself, although they often overturn the punishment.

In the case of **Shyam Narayan Singh and others v. State of Bihar**³⁴, the court upheld the defendant's conviction despite his young age. However, the court ordered that he serve his sentence on probation and pay a fine to the victim's family. The Juvenile Justice Act and the Children Acts prohibit the joint trial of a child and an adult, which is permitted under the Criminal Procedure Code. This procedural difference has led to appeals and references by several judicial authorities arguing against the joint trial of a child and an adult, claiming it is contrary to the law and would cause significant delays.

In the Sessions Judge, **Tirunelveli v. Perumal** case, the Madras High Court issued a directive stating that a session's judge should not announce a decision in either case (involving an adult and a child) until both trials are concluded, as they were being tried for the same offense. Multiple courts have reached the same conclusion that the joint prosecution of a child and an adult is unlawful and violates the provisions of the Children Acts.

In the **Vinod v. State of UP** case, it was determined that the child's trial conducted alongside their father and guardian was legal, and the court found that the child was not prejudiced by the joint trial.

Similarly, in the **Mukhtiar Singh v. State of Punjab**³⁵ case, it was concluded that the joint trial of a child with an adult was not invalid according to the requirements of the East Punjab Children Act. The process to be followed for ongoing cases at the time the new law came into effect was also examined.

In the **Lallan Singh v. State of UP** case, the court clarified that Section 20 of the Juvenile Justice (Care and Protection) Act (JJ (C&P) Act) stipulated that pending cases should proceed as if the act had never come

³³ 2000 (1) MPHT 278

³⁴ 1993 CriLJ 772

³⁵ 1995 AIR 686, 1995 SCC (1) 760

into existence. If the accused was found responsible for the crime, the case was to be transferred to the juvenile justice board for resolution in accordance with its requirements. Section 64 of the JJ (C&P) Act did not apply to ongoing litigated matters and was specifically applicable to juveniles serving sentences in jail. The current cases being examined by higher courts revolve around a significant issue, namely the lack of clear distinction between cases involving children and cases involving adults. These cases have failed to address the various concerns raised, such as the duplication of court proceedings, conflicting decisions from different forums handling the same matter, and the potential bias that arises when one forum's findings impact the other in the absence of a joint trial.

CHAPTER- 6

APPREHENSION

In most cases, the responsibility of taking a juvenile delinquent into custody lies with the police, although there are instances where a community school authority may also be involved. It should be noted that police intervention usually occurs when specific allegations have been made against a minor.

Diversions

A child can be released from custody under various conditions, depending on the circumstances of their arrest. In some cases, they may be referred to a social agency for treatment, while in others, they may be released without any specific terms. To prevent the incarceration of first-time offenders, certain courts offer diversion programs. These programs typically involve the child and their family agreeing to a set of conditions, such as regular school attendance, improved grades, and partial payment of restitution, over a designated period (e.g., six months). The child and their family must consent to these stipulations in order to secure their release.

Police Procedures

In dealing with youth who have been apprehended, police officers have various options to consider. They can either choose to discipline and release the detained individual or act as a mediator between the affected party and the youth or their parents. When addressing the issue informally, the complaint is typically documented in a written report. Informal disposition is often an available course of action for less severe offenses. Many police agencies have specialized units known as Police Juvenile Units, which handle cases involving juveniles. Once a complaint has been lodged, the Police Juvenile Unit may attempt to mediate any conflicts between the complainant and the child or parents involved if the child has been taken into custody and brought to the unit.

In reality, non-judicial resolution is more common. Within the Police Juvenile Unit, there is a designated juvenile officer assigned to the case. The juvenile officer has several alternatives to consider for closing the case:

1. releasing the youth to their parents with an official reprimand,
2. releasing the youth with an official report of the field interrogation,
3. transferring the case to another juvenile agency,
4. referring the case to juvenile court without detention, or
5. referring the case to juvenile court with detention.

Detention

Following an incident involving a juvenile, an intake officer collects relevant information about the young person, their family, and their circumstances. If the intake officer deems it necessary to detain the juvenile, an official written report must be prepared and presented to the juvenile court. In many jurisdictions, a minor can be held in custody for up to forty-eight hours without a court-issued warrant. Within the first 48 hours of the juvenile's confinement, a detention hearing takes place. During this hearing, the court must:

- a. Promptly schedule the time and location of the hearing.
- b. Appoint a guardian ad litem if the child is not represented by legal counsel.
- c. Provide written notice to the juvenile's parents (or guardian) at least 24 hours prior to the detention hearing.

The judges are responsible for determining whether or not the juveniles will be detained while awaiting their plea and adjudicatory hearings in the detention proceedings. In some courts, the intake counsellors praise the judges for making informed decisions based on reasonable grounds to suspect that the alleged offense was committed by the juvenile. These judges assess whether detention is necessary during the period leading up to the plea and adjudicatory hearings. Courts often have intake counsellors who commend judges for determining if there is probable cause to believe that the juveniles have committed the crimes they are accused.

The Judicial Process

Once the counsellor and judges have made their decisions regarding legal proceedings, a charge sheet is prepared. The court also takes into account the upcoming trial. The pretrial procedural steps in the juvenile court typically follow this sequence:

- a) Complaints are submitted to the court clerk.
- b) A probation officer is assigned to the case.
- c) The probation officer conducts interviews with the parents.
- d) The probation officer investigates the circumstances surrounding the alleged issue.
- e) Arraignment takes place.
- f) The probation officer presents the complaint.
- g) A public defender is appointed to represent the juvenile (Emerson, 1969).

In many states, the juvenile justice process consists of four distinct hearings: detention, plea, adjudicatory, and dispositional. However, it's worth noting that in some states, the judge may combine the plea hearing, adjudicatory hearing, and disposition hearing into a single proceeding. Before the adjudicatory hearing takes place, two detention hearings are typically conducted.

During the detention hearing, both the prosecution attorney and defence attorney present their testimonies before the juvenile court judge. The guardian, who serves as the court-appointed representative of the minor, plays a crucial role in safeguarding the minor's rights and informing them about the determination of guilt or innocence, including the possibility of being found not guilty by reason of insanity.

If the judge determines that the minor is responsible for the alleged crime during the adjudicatory hearing, a dispositional hearing is conducted. In cases where the adjudicatory decision is made concurrently with the alleged crime and the child's social background, the judge has access to all relevant information. In certain situations, the juvenile may be transferred to adult court. Prior to the transfer of jurisdiction, waiver hearings are conducted, and the criteria for transfer to adult court are outlined in the Kent decision. If the minor is convicted in adult court and receives a sentence to an adult prison, they may become eligible for parole.

During the dispositional hearing, the juvenile court judge evaluates the child's social history, which includes information about previous offenses, current charges, family relationships, school records, prior interactions with the police, and recommendations from the probation officer. The judge's guiding principle in making a ruling during the final hearing is the "best interests of the child and community".

Various options are available for disposition, including probation, placement in a state juvenile institution or youth center, foster care, placement with a commercial agency, or placement in a community-based facility. These options are considered based on the specific circumstances of the case and the best interests of the child.

Private institutions may be requested by parents in certain states, although this option is not available to most families. Typically, the juvenile remains in the community and is supervised by a probation officer during the probation period. If the child's current residence is deemed unsuitable, foster care or placement in a private institution may be considered. The decision to send the minor to a juvenile facility depends on the severity of the offense and the repetition of such behaviour. When the juvenile is released from the facility, they are often placed under the supervision of a parole officer. In most cases, the ultimate goal is for the juvenile to reintegrate into the community at some point in the future.

Age Determination in the USA

Age inconsistencies and variations exist in the determination of age in the United States. While some countries differentiate between terms such as "infant", "child", "teen", "youth", "juvenile" and "young person" in their legal systems, these terms are often used interchangeably in the US. Adults are not subject to the same limits, fines, and protections that apply to minors under the law.

According to the United Nations, individuals under the age of twenty-one are considered children. In the context of juvenile delinquency, minors and youths under the age of 21 fall under the jurisdiction of Juvenile Delinquency. In the United States, Presidential Order No. 603 defines a juvenile offender as someone who is above 9 years old but below 21 at the time of the offense. Children who are nine years old or younger are

typically not held criminally responsible. In cases where necessary, the court may supervise the child's parent or guardian. It is worth noting that all countries except for the United States and Somalia have ratified the 1989 UN Convention on the Rights of the Child. According to the Convention, a child is defined as an individual under the age of 18, unless the child's national law specifies an earlier age of majority.

Causes of Juvenile Delinquency

The causes of juvenile delinquency in the USA are similar to those in India. Here are some of the major factors contributing to juvenile delinquency in the USA:

- A. **Peer Influences**: Peers play a significant role in shaping a young person's behaviour. Negative peer influences, such as involvement in gangs or delinquent activities, can lead to delinquent behaviour.
- B. **Family Influences**: Family dynamics and the environment in which a child grows up can greatly impact their behaviour. Factors such as parental neglect, abuse, substance abuse within the family, or lack of parental supervision can contribute to juvenile delinquency.
- C. **Race as a Factor in Delinquent Behaviour**: Disparities in the criminal justice system, socioeconomic factors, and systemic inequalities can disproportionately affect certain racial or ethnic groups, potentially leading to higher rates of juvenile delinquency among those populations.
- D. **Self-Esteem as a Factor in Delinquent Behaviour**: Low self-esteem or feelings of inadequacy can drive some juveniles to engage in delinquent acts as a means of gaining recognition or acceptance among their peers.
- E. **Trauma and Delinquency**: Children who have experienced trauma, such as physical or sexual abuse, neglect, or witnessing violence, may be more prone to engaging in delinquent behaviour as a way to cope with their experiences or express their distress.

Preventing Juvenile Delinquency

The protection of children's fundamental human rights is jeopardized by the violence associated with juvenile delinquency, a concern that applies to individuals of all ages. It is crucial for individuals and organizations with the means to contribute their time, finances, expertise, or other resources to combat this global threat. The United Nations places significant emphasis on social ideals rather than solely relying on the legal system to address this issue.

The Riyadh recommendations emphasize that reducing juvenile delinquency is the first step toward reducing overall crime rates in society, a sentiment echoed in the Beijing regulations.

The Beijing guidelines advocate for effective measures to promote the overall development of juveniles, recognizing that the state should not solely assume the role of law enforcement.

Early intervention is widely acknowledged as the most effective strategy for preventing delinquency in young individuals. Legislation focused on prevention should prioritize a reformatory approach to discourage various forms of delinquent and criminal behaviour.

The punitive preventive strategy, which relies on intimidating prospective offenders through severe punishments, should be reserved for repeat offenders among juvenile delinquents. However, this strategy lacks a humanitarian foundation.

The implementation of punitive measures involving horses should be limited to repeat offenders within the juvenile delinquent population. However, this approach lacks a humanitarian basis. It is crucial to prioritize the rehabilitation of juvenile offenders, and this can be achieved through various strategies, programs, and projects that will be discussed in detail below. One promising initiative is the establishment of professional development programs within the economic sector, which offer alternative avenues for income generation.

Creating opportunities for acquiring economic benefits and providing education and training to professionals can lead to new employment prospects. Assisting in the development of entrepreneurial skills might be a crucial step in preventing involvement in criminal activities. Additionally, specialized school programs may be necessary to effectively address and eliminate antisocial behaviour.

By actively participating in these educational programs, young individuals can develop the ability to engage in constructive self-assessment and effectively manage their aggressive tendencies.

The educational programs aim to dispel the notion that a life of crime is appealing. Education not only facilitates personal enlightenment but also disseminates information about positive aspects, inspiring other youth to adopt constructive behaviour. In the United States, a specialized training program has been implemented to educate local communities that have experienced a rise in juvenile delinquency rates. This program focuses on informal management of teenage behaviour and engaging young individuals in positive endeavours. The involvement of youth can significantly contribute to resolving the issue of juvenile delinquency. Additionally, non-governmental organizations (NGOs) may play a crucial role. Implementing a program that involves structured group activities for children and young people can help curtail criminal activities associated with gangs.

To achieve this objective, the involvement of social service institutions and organizations like the YMCA, YWCA, Girl Guides, and Boy Scouts can be instrumental. Encouraging children and juveniles to engage in self-directed activities is another effective method.

To effectively reduce criminal activity, it is crucial to engage all members of society in the development and implementation of diverse prevention strategies. The Society for Youth Advancement may focus on activities that strengthen the youth in the United States. Collaboration between non-governmental organizations, local citizens, and law enforcement officers is essential to combat crime in neighbourhoods with high crime rates. In these areas, various programs have been initiated to foster positive attitudes among

young individuals. The collaborative efforts of these organizations and law enforcement have led to the establishment of a youth sports league.

A discussion group has been established to facilitate problem-solving among young individuals in the community. Additionally, several other initiatives have been implemented, leading to a decline in juvenile crime rates. The implementation of these strategies, activities, and methods resulted in a 29% decrease in crime within targeted neighbourhoods, contributing to an overall decrease in the city's crime rate.

Institutional programs aimed at providing psychological and social support to individuals and groups played a significant role in achieving these positive outcomes.

Furthermore, the provision of educational resources, physical health support, and mental health services improved the well-being of both individuals and groups. Counselling programs for young people were particularly effective in motivating positive actions. The family unit and institutions play crucial roles in the socialization of children and juveniles. However, their effectiveness in preventing adolescent misbehaviour is contingent upon active participation from families.

Juvenile Delinquency in India

India comprises multiple states, each with its own set of "Children's Acts". The primary objectives of these acts are as follows:

- Enhancing the effectiveness of existing law enforcement mechanisms.
- Ensuring the protection of neglected children.
- Providing rehabilitation and treatment for delinquent juveniles.

The fundamental assumptions underlying the Indian juvenile justice system are as follows:

- The necessity of segregating juvenile and adult offenders to facilitate crime prevention efforts, treatment, and correctional policies.
- The belief that juvenile deviance stems from societal shortcomings and, therefore, should be addressed through social defence approaches rather than punitive measures.
- The belief that the juvenile justice system can tailor its services to meet the specific needs of distinct sub-groups of juveniles.

The juvenile justice system can be divided into two main categories:

- a) Offenders: This category comprises individuals who have violated the law.
- b) Non-offenders: Non-offenders come under the purview of the system due to social disadvantages or being uncontrollable, or because they have been victimized.

There is a lack of consistency regarding the definition of the age of a juvenile in India. The juvenile laws in the country encompass the following features:

- 1) Separate trials for juveniles and adults.
- 2) Strict confidentiality in court proceedings and hearings related to juvenile cases.
- 3) Juveniles convicted under the Children Act are not subjected to disqualification.
- 4) Provision for protecting young girls from seduction, prostitution, as well as children without means of subsistence or shelter.
- 5) Legal protection for probation officers, who are recognized as public servants.

In cases involving juvenile offenders, the juvenile court is responsible for hearing the matter after the offender is arrested by the police or a probation officer and brought before the court. The juvenile offender is usually held in secure detention for the next twenty-four hours and is required to appear before the juvenile court.

Once the matter is registered with the court, a probation officer is ordered to produce an evaluation report on a specified date, which coincides with the scheduled hearing. Until that point, the young offender may be held in custody or allowed to post bail. Bail is granted only if the court determines that the youngster's parents or home conditions are suitable. When making a decision on a case, the court often considers reports from medical professionals, clinical tests, and any other relevant information provided by the police.

If there is any delay from the involved employees, such as the police, probation officer, medical officer, or mental health expert, it could result in a postponement of the disposition and unnecessarily prolong the remand stay of the juvenile. The court relies on the report prepared by the medical officer to assess the mental state of the juvenile. Once the hearing concludes, the court issues a disposal order. This order may either release the juvenile offender on bail or dismiss the case with a fine and or reprimand. The court has the authority to order the detention of the juvenile by law enforcement or admission to a treatment facility. The judge overseeing the case can decide to place a non-offender in appropriate custody or commit them to an institution.

CHAPTER- 7

COMPARATIVE ANALYSIS OF JUVENILES IN USA, UK AND INDIA

When considering the seriousness of juvenile offenses, various social, economic, and cultural factors play a significant role. There is a noticeable increase in juvenile criminality, particularly in low-income areas of major cities, during times of economic decline. Juvenile justice is a matter that affects everyone, regardless of their place of residence. This chapter explores the **Children and Young People Act, 1969** (UK), as well as relevant legislation in the United States and India.

In most states of the United States, the age of juvenile jurisdiction ends at 18 years, although a few states set the limit at 17 or 16 years. Depending on the gravity of the offense, it is possible to prosecute and sentence a 16-year-old as an adult for murder in many jurisdictions. Prior to 2005, numerous juveniles were executed for capital offenses, but the Supreme Court of the United States, in the case of **Roper v. Simmons**, ruled that the death penalty for crimes committed while under the age of 18 was unconstitutional and therefore illegal.

In the United Kingdom, individuals between the ages of 10 and 18 are considered adults for criminal purposes and may be tried in adult courts based on the severity of their offense. In France, no criminal charges can be brought against a child under the age of 10, and minors between the ages of 10 and 16 are sentenced to half the adult term for offenses committed between the ages of 13 and 16. Furthermore, a person under the age of 18 may be transferred to the Criminal Court and may lose their juvenile status.

The case of **L v. DPP** correctly determined that there was sufficient evidence to refute the appellant's claim of being doli in capx. Other cases, such as **IPH v. Chief Constable of South Wales** and **J.M. v. Runeckles**, involved 11-year-old boys who were aware that their actions were causing damage. In the case of **Director of Public Prosecutions v. K & B**, minors under the age of 14 or above the age of 14 were found guilty of rape and indecent assault because they demonstrated a guilty mentality, indicating mens rea. **Powell's case** illustrates how courts strive to find a balance when dealing with young offenders by sentencing a 16-year-old with a previous indecent assault conviction to six years in prison under Section 53(2) for raping a 15-year-old girl.

In the case of **Harilal Mallick v. State of Bihar**, it was established that a child under the age of 12 must not only be proven to be a minor but also shown to lack maturity at the time of the crime. If there is no evidence to the contrary, it is presumed that the child intended to do what they actually did. In this particular case, a 12-year-old boy and his two brothers were convicted of murder because there was no evidence of his age, immaturity, or comprehension.

This means that children under the age of 12 are not held criminally responsible if it can be demonstrated that they are unable to understand the consequences of their actions. The presumption of applies to children, as it is believed that “the younger a child is, the less likely they are to have evil intent”. The concept of *militia suppletaetatem* suggests that malice compensates for age, but this principle becomes less relevant as we grow older. Without evidence to the contrary, a child between the ages of seven and 12 is considered as accountable for their crimes as an adult offender. One can assess the child’s level of understanding based on the nature of the act, subsequent conduct, behaviour, conduct, and presence in court.

The **State of Bihar v. Harilal Mallick** case ruled that in order to establish a child’s age under 12, evidence of immaturity and lack of awareness at the time of the incident is required. Merely proving the child’s age is not sufficient to demonstrate their immaturity. In the absence of evidence of immaturity, it is presumed that the child acted with full understanding. Therefore, in the aforementioned case, when a 12-year-old boy and his two brothers were convicted of murder using a sharp sword and there was no evidence of their age, immaturity, or comprehension, they were found guilty.

According to Section 2(h) of the Juvenile Justice Act, 1986, a juvenile is defined as a boy under the age of 16 and a girl under the age of 18. This definition is broader than the definitions provided in Section 82 and Section 83 of the Indian Penal Code. The law prohibits the death penalty or imprisonment for a juvenile who fails to pay a fine or provide a security deposit. As per the law, the juvenile is to be released on probation of good behaviour and placed under the care of a parent or guardian. Alternatively, the juvenile may be committed to an institution for specific treatment.

The age of the accused at the time of the offense is a crucial factor that needs to be established in court. In the case of **Bhoop Ram v. State**³⁶, the discrepancy between the accused’s medical records indicating he was 16 years old and his school certificate stating he was still under 16 years old was raised. Considering the possibility of inaccuracies in age estimation and the absence of evidence of misrepresentation in the school certificates, the age was determined to be below 16. The accused, who was suspected of murder and had initially been sentenced to life imprisonment, had his conviction overturned by the Supreme Court after it was established that he should have been treated as a juvenile. He was released pending appeal. This case, **Gopinath Ghosh v. State of West Bengal**³⁷, marked the first instance where the defense of being a minor was raised.

In the case of **Bhola Bhagat v. State of Bihar**³⁸, it was established that if an accused pleads the defense of infancy, the court must take into account their age at the time the offense was committed. Section 82 provides protection to children, absolving them of legal consequences for their actions. Juveniles accused of

³⁶ AIR 1989 SC 1329, 1990 CriLJ 2671, 1989 (2) Crimes 294 SC, JT 1989(2) SC 105, 1989 (1) SCALE 799, (1989) 3 SCC 1

³⁷ AIR 1984 SC 237, 1984 CriLJ 168, 1983 (2) Crimes 937 SC, 1983 (2) SCALE 756, 1984 Supp (1) SCC 228, 1984 1 SCR 803, 1984 (16) UJ 166 SC

³⁸ 1997 (2) ALD Cri 645, 1998 (1) BLJR 628, 1998 CriLJ 390, JT 1997 (8) SC 537, 1997 (6) SCALE 558, (1997) 8 SCC 720, 1997 Supp 4 SCR 711

bailable or non-bailable offenses can be granted bail under Section 18 of the Juvenile Justice Act, 1986, with or without surety.

Furthermore, a child cannot be detained or imprisoned. In exceptional circumstances, the police may decide to hold the child in custody instead of releasing them on bail, and the parents must be promptly notified of this decision. As seen in the case of **Mahendra Singh v. State of Rajasthan**³⁹, the date of the crime is used to determine the age of the child involved.

According to Section 20 of the Juvenile Justice Act, it is mandatory for all juveniles who commit an offense to appear before a juvenile court, and they cannot be presented before any other court. Cases brought before the Sessions Judge must be examined to determine the juvenile status of the accused, as demonstrated in the case of **Arjun Ram v. State of Rajasthan**⁴⁰, where it was established that Arjun Ram was a juvenile at the time of appearing in court. In the case of **Daljit Singh v. State of Punjab**⁴¹, it was deemed an error in jurisdiction when a juvenile was not transferred to the Juvenile Justice Court after it was determined that the accused was a minor.

In another case, even though the accused was 14 or 15 years old at the time of the murder and therefore not considered a juvenile under the 1986 Act, the conviction was upheld. However, the sentence imposed on him was quashed under Sections 20 and 21 I (d). The ruling imposing a fine was overturned, and his bail bond was released.

The Supreme Court, in the case of **Bhagan v. State of Pepsu**, ruled that juveniles should not be prosecuted or charged along with adult defendants. Section 22 of the Act states that no minor shall be executed, imprisoned, or transferred to a jail for failure to pay a fee or be sentenced to death. If a minor is detained and not brought before the court within 24 hours, any involuntary confession would be deemed involuntary and inadmissible.

In the event that a minor commits an offense under the jurisdiction of this or another state law and receives a sentence, the individual should be subjected to the more stringent law. A similar provision can be found in Section 45 of the now-defunct 1986 statute.

Section 9 of the Juvenile Justice Act, 1986, mandates that courts ensure the safety of a juvenile girl until she reaches the age of 18. If the girl is not claimed by anyone or deemed a delinquent juvenile, the court must keep her under its protection. This requirement was demonstrated in the case of **R. Rathinam vs. Kamala Vaiduriam**⁴².

³⁹ 1998 CriLJ 1314

⁴⁰ 1998 CriLJ 4375, 1999 (3) WLC 292, 1998 (1) WLN 261

⁴¹ AIR 1998

⁴² 1993 CriLJ 2661

The Juvenile Justice (Care and Protection of Children) Act, 2000, which is aimed at safeguarding and promoting the welfare of children, is not without flaws. Even after its re enactment, certain gaps still remain. The Act grants the state government the authority to establish a system in accordance with its provisions. It is hoped that the state administration will work towards filling these gaps and actively engage with children's rights organizations. Section 70 of the Act empowers the central government to remove any hindrances to the proper implementation of the Act within two years of its enactment.

It is essential to prioritize the well-being of children in all aspects of the Juvenile Justice (Care and Protection of Children) Act. This Act serves as the primary legislation for the care, protection, and resolution of conflicts involving children in legal matters. The Juvenile Justice System exclusively deals with minors who have committed offenses or pose a threat to themselves or others.

CHAPTER 8

CONCLUSION AND SUGGESTIONS

Establishing the definition of juvenile delinquency proves to be a challenging task, lacking a clear and universally accepted formulation. Several reasons contribute to the difficulty in arriving at a logical and reasonable definition. This challenge shares similarities with the broader issue faced in defining crime, as it involves reconciling social and legal perspectives.

Consequently, sociologists have posited that relying solely examining the legal definitions of delinquency and juvenile offenders offers only limited understanding of the fundamental nature of delinquency and fails to effectively identify individuals as juvenile offenders. They argue that legal definitions vary across different jurisdictions and evolve over time, thereby limiting their applicability to scientific research. The arguments against establishing strict legal definitions align with those critiquing the definition of crime as a whole.

The legal definition of a juvenile delinquent fails to present a distinct and comprehensive portrayal of juvenile delinquency, leading to a standard definition. According to the legislation, any crime committed against individuals under the age of 18 is categorized as a juvenile offense. A juvenile delinquent is defined as an individual who has been convicted of a crime by a court.

Unlike the United States and certain other countries, juvenile delinquency is not a significant concern in India. The jurisdiction of a juvenile court is limited to cases involving offenses against children that are covered under the criminal code applicable to the country as whole. The JJ (C & P) Act of 2015 oversees matters related to youth who are in conflict with the law and children who require care and protection.

The Juvenile Justice (Care and Protection of Children) Act, 2015, which supersedes previous legislation, was enacted with a focus on upholding the principles outlined in the 1989 United Nations Convention on the Rights of the Child. India ratified this convention in December 1992. The Act places particular emphasis on reintegrating child victims into society, aligning with the Convention's objective of promoting the well-being and reintegration of children without resorting to judicial processes.

In recent times, there has been a growing debate on whether juvenile criminals who commit heinous crimes should be subject to sentencing regardless of their age. The argument raised concerns on two grounds. Firstly, it questioned the potential under classification of juveniles if all are treated uniformly, disregarding their level of mental development. Secondly, it argued that such an approach would deviate from the core constitutional principles. The proponents of this argument contended that juveniles who demonstrate sufficient maturity to comprehend the consequences of their actions ought to be exempted from the provisions of Juvenile Justice Act. Nonetheless, the Supreme Court has affirmed the compatibility of Article 14 of the Juvenile Justice Act, which prescribes that juvenile offenders should receive penalties akin to

adults but within a separate system of trial and punishment. This case falls within the ambit of Articles 14 and 21 of the Constitution of India.

With the exception of the absence of a right to a jury trial, the rights afforded to an accused person in India are comparable to those safeguarded by the American Constitution. Although India does not guarantee the right to a speedy trial under Article 21 of the Indian Constitution, it ensures the protection of various significant rights, including safeguarding against self-incrimination, the right to legal representation of choice, and the right to lawful detention.

One notable difference between India and the United States is the structure of Juvenile Courts. In India, Juvenile Courts are criminal tribunals, similar to those in the United States and England, but in the latter two countries, they are classified as civil courts. Consequently, young offenders in India have been granted the same protections as adult offenders. For instance, when a neglected child is taken into custody by a police officer, it is necessary to present a child before the Welfare Board within a 24-hour timeframe. In a similar vein, a child in a reformatory school cannot be held in detention beyond the prescribed maximum sentence permissible for the committed offense.

Indian courts have set specific benchmarks to ensure the welfare of children, with particular emphasis on the well-being of girls. The Supreme Court of India emphasized the importance of prompt and decisive judicial intervention against individuals who profit from the exploitation of children in prostitution when evaluating the threat posed by such activities. In such cases, the court must treat the issue seriously and impose appropriate sentences based on the evidence presented. Both the state and federal governments in India have demonstrated their dedication to safeguarding the interests and well-being of children and girls, as evidenced by the ruling in the case of **Vishal Jeet v. Union of India**⁴³.

Under the Indian Constitution, in accordance with the law, it is possible for an individual's life or liberty to be deprived, as long as it does not infringe upon fundamental rights. The Indian courts are likely to maintain certain limitations on the rights of juvenile offenders, although reasonable restrictions may be placed on their basic rights. American courts possess greater flexibility than their Indian counterparts when it comes to declaring certain methods as "unconstitutional" under the due process clause. Nevertheless, the Indian courts have reached a level of judicial scrutiny that is nearly as stringent as that of the United States.

Children are disproportionately affected by the circumstances of their lives compared to adults. Children frequently experience the consequences of the decisions and omissions made by governments and society, placing them at the forefront of such effects. Regrettably, there exists a widespread notion that children are either possessions of their parents or mere individuals in the process of development, with minimal contributions to make to society. Consequently, their decisions and expressions are frequently determined by adults rather than being respected and guided by them. Children lack significant political and economic

⁴³ 1990 AIR 1412, 1990 SCR (2)861

influence, and they are not eligible to vote. As a result, their voices are often marginalized and not given the attention they deserve. Regrettably, children are particularly vulnerable to exploitation and abuse.

However, both our country's laws and international treaties we have ratified recognize that minors possess equal rights and are entitled to the same standards as adults. In India, the Constitution includes explicit safeguards for children, offering constitutional guarantees to protect their rights. For instance, Article 21(A) guarantees all children between the ages of 6 and 14 have the entitlement to access primary education that is both mandatory and provided free of charge. Moreover, Article 24 ensures that children under the age of 14 are protected from engaging in hazardous occupations. Furthermore, international declarations like Article 39(e) and Article 39(f) of the United Nations Declaration on the Rights of the Child and Adolescent provides protection to children against exploitation and neglect, ensuring they are protected from being compelled to undertake unsuitable activities due to economic necessity. These constitutional provisions and international commitments aim to protect children from exploitation and ensure their well-being.

In India, there is a prevailing belief that the theory and practice of juvenile justice are distinct. However, the reality of juvenile justice falls far short of the ideals set by ancient laws. Several factors contribute to this disconnect:

- 1) Heavy workload: There is a significant workload burden on courts, police, and probation services, leading to challenges in effectively handling juvenile justice cases.
- 2) Lack of planning and resources: Insufficient planning and inadequate allocation of resources have adversely affected the quality and functioning of the juvenile justice system.
- 3) Lack of public interest and support: There has been a lack of public interest and support concerning juvenile delinquency and its control, which has hindered the development of effective measures.
- 4) Inadequate evaluation and follow-up: Proper and comprehensive evaluation of the work related to juvenile justice has been lacking, making it difficult to implement effective follow-up actions and remedies.

However, the situation is expected to improve with the implementation of the Juvenile Justice and Delinquency (JJ) Act of 2015. This new legislation aims to address some of the shortcomings and enhance the functioning of the juvenile justice system in India.

It is challenging to provide a definitive definition of adolescent delinquency. Various factors contribute to this ambiguity. The distinction between social and legal interpretations poses a common obstacle in defining crime as a whole. According to sociologists, various unpredictable factors influence the arrest or conviction of a child, making it challenging to rely on legal terminology for comprehending misconduct and identifying juvenile offenders. Additionally, the differences in laws across different regions and time periods make them unsuitable for scientific research purposes. On the other hand, legal definitions are preferable because they provide clarity. The legal system provides a clear definition of juvenile delinquency, categorizing it as any

prohibited conduct applicable to individuals below 18 years of age. Consequently, a juvenile delinquent refers to an individual who has been pronounced guilty of committing such an offense by a court of law.

Under the amended Justice Act, Juveniles aged 16 to 18 who commit serious or heinous crimes and are caught beyond the age of 21 can be tried as adults. However, this provision raises concerns about its compatibility with Article 20(1) of the Indian Constitution, which prohibits subjecting an individual to a punishment greater than what was prescribed by law at the time the offense was committed. It is argued that this clause violates the principle of equality.

The Indian Constitution mandates that the state treats all citizens equally before the law and ensures the enforcement of laws without discrimination. However, India recognizes that not everyone is equal, and the concept of proportional equality is employed instead of adhering solely to a concept of strict formal equality. The state has a responsibility to intervene in favour of the vulnerable and disadvantaged segments of society. According to the principle of proportional equality, every individual has the right to fair treatment in parallel scenario, but it may be necessary to provide differential treatment to those who are unfortunate. Within the Constitution, Article 14 recognizes the need of safeguarding the weaker and more vulnerable segments of society, while Article 15(3) grants the state to pass specific or targeted legislation for the protection of minors against abuse.

As a result, it could be contended that the Supreme Court has persistently prohibited the transfer of juveniles offenders to the adult criminal justice system and to ensure they are not subjected to discriminatory treatment or punishment. However, it appears that the opinion and rulings of the Supreme Court have been largely disregarded in this matter.

Furthermore, there is a lack of an adequate number of Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs), and many existing CWCs and JJBs are not functioning effectively. In addition, districts with higher populations are likely to have larger caseloads for CWCs and require more of these committees to handle the workload.

There are government-managed residences available for Child in Need of Care and Protection and Child in Conflict with Law, but unfortunately, there is a shortage of such facilities to accommodate all those who require them, despite the efforts made.

At both the state and national levels, there is a lack of an established institution responsible for monitoring and supporting child protection mechanisms. According to the Juvenile Justice (JJ) Act, all parties involved in child care are required to undergo training and capacity development simultaneously.

In the JJ Act of 2015, Section 2(35) provides a definition of “Juvenile” as an individual under the age of 18. However, the term “juvenile” carries negative connotations and may not be considered appropriate. Therefore, it may be necessary to exclude its definition from the clause, while including the definition of the term “kid” instead.

SUGGESTIONS

To effectively implement the Juvenile Justice Act of 2015, it is necessary to implement the targeted measures at both the national state levels. The conversation regarding legislative provisions pertaining to juvenile delinquents brought attention to the following concerns that require attention and rectification:

1. There is a need for a centralized organization to oversee the various aspects of juvenile law, including the Juvenile Justice Act of 2015. The Indian government could establish the National Commission for Children to effectively supervise the implementation of social policies that impact children.
2. Currently, many states have not yet established juvenile courts as required by the Juvenile Justice Act. This results in authorities lacking specialized expertise in child psychology and welfare when handling cases related to juveniles. While this situation may be legally permissible, it goes against the spirit of the law. The Act permits the establishment of Juvenile Courts in any state to cater to various districts.
3. All states should promptly adhere to the mandate of ensuring the presence of an honorary social service practitioner on the panel of Juvenile Courts is essential.
4. According to the Juvenile Justice Act, judges appointed to juvenile courts are required to possess specialized expertise in the area of child psychology and child welfare.
5. In accordance with the act, separate observation houses may be established for neglected and delinquent juveniles taking into consideration their age as well as the nature and seriousness of their offenses.
6. It is possible for law enforcement officers to be empowered to issue warnings and release juvenile delinquents, considering the nature and severity of the offenses committed by the children. Modification to the existing Juvenile Justice law might be required.
7. In major cities, a specialized cadre of police officers could be established to effectively handle juvenile matters.
8. Adequate and trained professionals, particularly those responsible for magisterial treatment and rehabilitation, should be assigned to ensure the proper functioning of the juvenile justice system.
9. Opportunities for advancement and professional growth should be provided to Juvenile Justice System workers, especially probation officers, given the unique nature of their work.
10. Effective coordination between the police, magistrates, and social services is crucial for the successful functioning of the Juvenile Justice System.
11. To ensure effective implementation of the Juvenile Justice Act and monitor its execution, the Indian government might contemplate proposing the establishment of a State Level Commission dedicated to Children. This commission would work in collaboration with the state government and provide quarterly updates on the progress and challenges faced in the implementation of the Act. This step

would help in monitoring and evaluating the juvenile justice system at the state level and ensuring that necessary measures are taken to protect and rehabilitate children in conflict with the law.

12. By promoting coordination among key stakeholders and establishing mechanisms for regular updates and monitoring, the Juvenile Justice System can become more efficient in its operations and better fulfil its objectives of safeguarding the rights and welfare of children.

Elevating the status of a juvenile court can be achieved by establishing a collaboration between a team of medical officers, educators, and case workers.

1. The government holds potential legislative responsibilities in terms of offering aftercare and rehabilitation services for juveniles. And there exist a likelihood of favourable amendments being implemented to the law.
2. The vital importance of schools, families and education in framing the future of children should be duly recognised. Education is one of the most effective ways to secure success in modern society. Hence, it is important to make endeavours towards enhancing the income of disadvantaged families through the creation of employment opportunities, enhancing working conditions, establishment of schools and provision of recreational facilities.
3. It is imperative to focus on restructuring family dynamics as it plays a vital role in children's development.
4. Upon careful examination of various provisions pertaining to the functioning of diverse agencies entrusted with handling juvenile delinquents, as outlined in the Juvenile Justice Act of 2015, it is evident that this legislation marks a significant advancement in the realm of Juvenile Justice in India.
5. When a young individual lacks the cognitive ability to comprehend the nature and repercussions of their actions, it would be unjust to hold them accountable for any offence committed. This is due to their innocence, inability to discern between right and wrong, and their limited understanding of the consequences. Recognizing children as invaluable assets for the future of the nation is crucial. The approach taken towards juvenile delinquents should be forward- looking progressive, devoid of any narrow or restrictive viewpoints.

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