JUVENILE COURT SYSTEM IN INDIA: A CRITICAL ANALYSIS

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CERTIFICATE

This is to certify that the dissertation titled, " **juvenile court system in india: a critical analysis**" is the work done by under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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LIST OF ABBREVIATIONS

1. Air - All India Reporter
2. Art. - Article
3. CDM - Clean Development Mechanism
4. CL. - Clause
5. CPCB - The Central Pollution Control Board of India
6. CSR - Corporate Social Responsibility
7. DEPT. - Department
8. ED. - Edition
9. EU - European Union
10. GDP - Gross Domestic Product
11. IBM - International Business Machines Corporation
12. IPCC - Intergovernmental Panel on Climate Change
13. IBID - Ibiden or in the Same Place
14. IRDA - Insurance Regulatory and Development Authority
15. P. - Page
16. Pvt. Ltd. - Private Limited
17. S. - Section
18. SC - Supreme Court
19. SCC - Supreme Court Cases
20. SEBI - Securities Exchange Board of India
21. UN - United Nations
22. UNFCCC - United Nations Framework Convention on Climate Change
23. UV - Ultra Violet
24. VOL. NO - Volume Number
25. WWF World Wildlife Federation

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CHAPTER – 1

INTRODUCTION

The term Juvenile Justice is a pervasive term. Only in one sense it has a uniform meaning and that is rehabilitation and social reintegration through any of the legalised measures.

The term juvenile is a stigmatic term which essentially refers to a child under certain prescribed age who has been alleged or found to have committed an offence. The international documents dealing with the human rights of the children has not been successful in replacing this stigmatic term. The United Nations Convention on the Rights of the Child 1989 also uses the term 'children accused of'. In India, for the first time efforts was made to equate the term juvenile with the term child or vice-versa with the idea of removing the stigma attached with the term juvenile through the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000. The term juvenile refers to juvenile delinquent what now is called juvenile in conflict with law and the term child refers to neglected juveniles what now is called children in need of care and protection. The earlier legislations also tried its best to give another meaning to the term juvenile but failed. Juvenile justice legislation in India from 1920 to till the passing of the Act 2000 maintained the clear distinction between neglected juvenile and juvenile delinquent.

There was no separate administration of justice for adult criminal and a juvenile offender. The international community developed interest in helping the poor and destitute children. This sympathetic attitude developed toward the non-delinquent children ultimately developed towards delinquent children as well. So, in the process of helping poor, destitute, orphan children, there developed the sympathetic attitude towards the delinquent children as well because crime came to be viewed in terms of poverty and destitution. Further, it was also realized that children due to their immature mind are not capable of understanding the consequences of their act. So there developed the philosophy of separation of juvenile delinquent from the adult offender and in turn established separate administration of justice for juvenile delinquents.

The differential treatment to young delinquent can be traced back in the moment when segregation of young criminal from the adult in the prison started. This principle of segregation was evolved to prevent the young criminal from being hardened criminal in

association of adult criminals in jail while undergoing the sentence of imprisonment. Thus, the 'segregation' was the first stage of history to provide differential treatment to young persons.

The second stage of providing differential treatment to juvenile delinquents (now juvenile in conflict with law) started with the system of releasing them on parole and licence while undergoing a sentence of imprisonment.

The third stage of providing differential treatment to juvenile offenders was a moment against the sentence of imprisonment awarded to them. This moment led to the formation of separate juvenile courts to handle the cases of adult criminals separately distinct from adult criminal court providing different procedures and techniques of correction and reformation. The ultimate object of their rehabilitation in the society.

The campaign against the prison sentence led to development of various custodial (not jail) and non-custodial measures to provide treatment, care and protection to the juvenile delinquents with the ultimate object of their rehabilitation and social reintegration. For example, reformatories, Borstal schools, special homes, and probation etc. came to be recognised as the method of reformation and rehabilitation of the juvenile delinquents.

Throughout the development of legislation, the magistrate of criminal court was the competent authority to administer the differential treatment principle to young criminals. The magistrate (juvenile court) was the competent authority not only for dealing with the cases of juvenile delinquents but also the cases of neglected juvenile as well.

The fourth stage of development of providing differential treatment to juvenile delinquent can be attributed in the moment of development of human rights of the children through United Nations Convention on the Rights of the Child, the most ratified treaty. This moment emphasized the treatment outside the juvenile justice system as far as practicable. This may be because of curtailment of constitutional due-process rights of a person taken into custody for whatsoever pious reasons.

It is important to note that throughout, the juvenile justice system handled together both the categories of children, delinquent juveniles and non-delinquent juveniles or neglected juveniles earlier through different legislations and presently through sole legislation.

England before 1908 provided treatment to juvenile delinquent under the Reformatory Schools Act and to neglected juveniles under the Industrial Schools Act. The first juvenile court in the world was established by America in the year 1899 and both the categories of children came to be dealt with by the juvenile court. There was single legislation dealing with both the categories of children.

England passed the Children Act of 1908 covering both the categories of children. India followed the pursuit and passed several Children Acts covering both the children together through sole legislation. The repealed Juvenile Justice Act 1986 and the present Juvenile Justice (Care and Protection of Children) Act 2000 covers both the categories of children. This inclusion of both the categories of children into sole legislation appears to be a major stumbling block in the effective implementation of the juvenile justice system in India.

It appears that juvenile justice system in India has not been a continuous process resulting from an uninterrupted concern for children. The timing and content of various developments relating to the juvenile justice system have close relationship with the reforms taking place elsewhere in the[1] world rather than with the demands of children in the country[1].

It has also been voiced that the juvenile justice legislations in India are passed by the legislators merely to please their conscience and to show the international bodies that they too were in the forefront of child protection[2].

It is hard to believe that the state and the law can take the place of parents in providing maternal care and nurturance to the children. Despite of this fact, all the jurisdictions, try to take this responsibility of providing care and protection to children in the form of a mother.

In this regard some pertinent questions may be raised as what are the conditions of life of the majority of children in India and how far the State as a guardian or parent has been serious about these children. The answer to the first question needs no mention. The answer to the second question can be found by answering another question and that is what children

[1] Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights, p.89 (Oxford University Press, New Delhi, 2nd edn., 2010

[2] K.F. Rustamji, 'Note on Legal Measure Relating to Social Defence (Child)— Supportive Measures Needed for Their Effective Enforcement', a paper presented at the Workshop on National Children's Act, sponsored by SOS Children's Villages, Multiple Action Research Group, Joint Women's Programme, Community Aid and Sponsorship Programme, and the Indian Social Institute, held at the Indian Social Institute, New Delhi, 10 August 1986

in India have practically got so far from the State till now. The research study shows that the children in India are continuously being blessed by the state, its machinery including judiciary and its allied civil-society partner with the followings.

Firstly, they have acquired the status of being a human capable of owning certain inalienable rights by birth without owning any disadvantages (duty) as opposed to their earlier status of being a property of their parents or guardians.

Secondly, they have become the subject-matter of human rights discourse, that is, concern of all, leading to general awareness among the masses about their rights of not being exploited, abused, tortured, treated with cruelty or inhuman manner, arrest by police etc. Suffice to say that these all are the abstract or negative rights in terms of civil and political rights.

It appears that the role of the State as a parent or guardian has been limited only in terms of providing philosophical languages of love, best interests, care, protection, training, rehabilitation, health, survival and development along with abstract or negative enforceable civil and political rights less due process rights.

In this background one important question arises as to why the neglected juveniles whose acts are not mala in se came to be handled and treated together under one law more or less by same machinery with the delinquent juveniles whose acts are mala in se?

It appears that there has been and still is some hidden agenda of the state behind inclusion of non-delinquent children in the juvenile justice legislation which is juridically meant for juvenile delinquent. The reasons may be attributed to the followings.

It is in the knowledge of the state that many juvenile delinquents after they have committed crimes go undetected, unapprehended and hence unpunished. It is also within the knowledge of the state that it cannot solve the problem of poverty. In understanding of the state, poverty, neglect and destitution lead to delinquent behaviour.

Thus, the agenda of the state appears to be prevention through custody into juvenile justice institutions and not the one providing care and protection. Therefore, it appears that it is the custody of the non-delinquent children which is the main agenda of the state under the disguise of care and protection of children and in turn dispensing with the constitutional requirements of due process rights.

It is seen that the same hidden agenda does find place in the existing Juvenile Justice

(Care and Protection of Children) Act, 2000 as amended in 2006 but with changes in the terminology used under the system retaining the substance.

The adjudicatory authorities are known as Juvenile Justice Board and Child Welfare Committee. The Juvenile Justice Board adjudicates upon the 6 cases of juveniles who have been accused of or found to have committed an offence. The Child Welfare Committee adjudicates upon the cases of children in need of care and protection. The Juvenile Justice Board consists of one magistrate and two social workers and the Child Welfare Committee consists of five non-judicial personnel that is social workers.

The salient feature of the juvenile justice system in India is presented in brief as under

There is no court, there is board, there is no juvenile offender or delinquent juvenile, there is juvenile in conflict with law; there is no neglected juveniles, there is 'children in need of care and protection'; there is no arrest, there is custody; there is no remand, there is bail; there is no trial, there is adjudication; there is no police investigation, there is social investigation; there is no police, there is child welfare officer; there is no decision or judgment, there is disposition; there is no punishment, there is care and protection; there is no jail, there is home etc.

It is seen that there has been continuous experimentation in the juvenile justice system by making, amending, repealing and again making legislations, developing new schemes and programmes. It is also the fact that the Supreme Court of India has been monitoring the implementation of juvenile justice system from the year 1995. It is also the fact that despite of the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile Justice Acts [many major provisions of the Juvenile Justice Act (repealed) and Act 2000 are same] till today.

There also has been a continuous exercise of suggestions, recommendations and reformations for the past more than nine decades in juvenile justice system to achieve the task of its enforcement and implementation to an acceptable limit.

The Supreme Court of India in Sheela Barse's[3] case itself took the responsibility of monitoring the implementation of major provisions of Juvenile Justice Act, 1986. The case was disposed of with certain directions in 1995. In Sampurna Behrua's case[4], again the Supreme Court took the responsibility of monitoring the implementation (monitoring is still

[3] Sheela Barse v. Union of India, AIR 1986 (SC) 1773
[4] W.P.(c) No. 473 of 2005] (pending)

continue) of major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Despite of the Apex Court's intervention, the central government and the state governments have failed to implement the major provisions of the Juvenile Justice Act, 1986 (repealed) and Juvenile Justice (Care and Protection of Children) Act, 2000.

The ongoing failure of the juvenile justice system is admitted by the Ministry of Women and Child Development and the National Commission for Protection of Child Rights in the various reports published in their respective websites. The Sheela Barse's case[5] and Sampurna Behrua's case[6] also reflects the view of dismal status of implementation of the juvenile justice system.

The fact that the juvenile justice system in India is dysfunctional is proved beyond doubt. This led the investigator to form an opinion that there may be some stumbling blocks other than those researched out so far as to the cause of malfunctioning of juvenile justice system in India.

Juvenile Justice Perspectives

At the international level the concept of juvenile justice has often been discussed from three perspectives: (i) juvenile justice in the sense of social justice for all children and young persons; {ii) children in conflict with law and in need of care and protection; and {iii) Convicted juveniles. Though the formal system of juvenile justice generally concentrates on action after the onset of delinquency, a comprehensive strategy to forestall conditions and factors that generate delinquency is equally imperative (Singh, H., 2001). The current approaches towards juvenile justice are centred around; (i) the 'due process model' which protects the substantive and procedural rights of the juveniles involved in the legal processes, (ii) the 'parens patriae' or 'welfare mode' which aims at providing justice to juveniles primarily through state interventions and promote their wellbeing as they come within the purview of the legal system, and (iii) the 'participatory model' which emphasises a constructive participation of the community in the mainstreaming of the erring juveniles and the minimisation of legal intervention in their lives (Singh, H., 2001). These models were however not adequate by themselves & needed integration. 66 The dilemma between the rights and needs and the conflict that arises due to the gravity of the offence and the degree of

[5] Ibid
[6] Ibid

conflict with the society vis-a-vis a juvenile, has been resolved by the United Nations through its Standard Minimum Rules when the Juvenile Justice System becomes an integral part of the holistic approach towards protecting the rights of the child. Even the efficiency and effectiveness of the Juvenile Justice depends on the measures undertaken to ensure the weBbeing and welfare of the juveniles in the society. This aspect has been forcefully brought out in the United Nations Standard Minimum Rules for the Administration of the Juvenile Justice System {Beijing Rules) adopted in 1985. The fundamental perspectives enunciated therein specify, inter alia, that sufficient attention shal1 be given to positive measures to involve the full mobilisation of alJ possible resources, including the family, volunteers and other community groups as we11 as the schools and community institutions for the purpose of promoting the we11-being of the juvenile and reducing the need of intervention under the law, and to effectively, fairly and humanely deal with the juveniles in conflict with law. The formulation of the Beijing rules symbolizes the commitment of the international community to provide for a separate legal system for juvenile justice. There is also a candid awareness of the reality that no juvenile justice system on its own can undo the aberration of the wider socio-economic system.

Origin of Juvenile Justice in India –

Until the middle of the nineteenth century, the sufferings of children drew little social attention. This was mainly because there was no social recognition given to the person of the child, apart from the family or the community to which s/he belonged. Under such a dispensation children were expected to participate in all family activities such as trade, business or vocation commensurate their physical and mental abilities. Children were not exempt even from the harsh burden flowing from the kinship and caste bonds. For deviant and mischievous children, repressive methods of control were often preferred. However, despite such hardships and denial the child appeared to be better integrated within the family and the society. That is why the incidents of child vagrancy and deviations were less known. With the introduction of the capitalist mode of production leading to industrialization and urbanization, the situation changed · significantly for the children. The weakening of the family bonds let not only to the disintegration of the children but also to the State intervention in matters of child upbringing. State intervention was both direct and subtle. Direct intervention resulted from measures like the Apprentices Act, 1850 that conferred power to the Courts to bind over poor and destitute children to work as apprentices in industries and establishments. in which voluntary child labour was not easily forthcoming. The Act was. in

force in most of the States, especially in those States where Children Acts were in operation. The Act has since been repealed by the Apprentices Act, 1961 {Jain, S.N.,1979).

Research Problem

1. Juvenile penalties are often carried out, and their sentences are frequently mitigated by higher courts.
2. Jetter and spirit implementing legislative laws are for the protection and development of adolescents and children.
3. The police and other stakeholders aware of and sympathetic to the challenges that afflict disadvantaged children and adolescents.
4. Institutional services, as defined by law are well-organized and functional.
5. The procedures used to reintegrate children who have been institutionalized into their communities adequate.

Objectives of the Research

1. To analyze the present status of juvenile justice system in India as compared to other countries.
2. To analyze the defects of legal support system to children regarding care need protection and justice.
3. To find the reasons for the slow process of implementation of juvenile justice system in India and explore the reasons for resistance to change.
4. To identify the gap in the implementation of juvenile justice system.
5. To suggest the reasons for improving the juvenile justice system and give suggestions for effective enforcement of the act.

Hypothesis

In the light of the above objectives, the proposed study intends to test whether the present enactment on Juvenile Justice (Care and Protection of Children) Act 2000 is sufficient. What are the stumbling blocks in the present enactment and what reforms should

be brought in order to remove these stumbling blocks for the effective implementation of juvenile justice system in India. The juvenile justice system handled together both the categories of children, delinquent juveniles and non-delinquent juveniles or neglected juveniles earlier through different legislations and presently through sole legislation. The repealed Juvenile Justice Act 1986 and the present Juvenile Justice (Care and Protection of Children) Act 2000 covers both the categories of children. Despite of the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile Justice Acts [many major provisions of the Juvenile Justice Act (repealed) and Act 2000 are same] till today.

Research Design and Methodology

The research being conducted is doctrinal in nature. Doctrinal research will be used in this project. With the nature of the challenges in mind, descriptive and case studies will be conducted to make the appropriate deductions and conclusions. The current study will be mostly doctrinal in character, and will draw on a variety of primary and secondary sources, including census data, legislative debates, and publications, as well as legislation, government documents, books, articles, research papers, and websites. Court decisions will also be included in my materials.

The current study employs doctrinal methodology, which is based on a survey of primary and secondary sources of information that have been meticulously analysed and examined.

1. Primary data viz. Acts, International Conventions, Judgement Reports.
2. Secondary data viz. Books, Articles, journals, newspapers and the other official data mainly available from libraries and the internet.

Review of Literature

Research work can be possible with the consultation of literature available on the topic under study. Review of related literature aims to acquire clear understanding of the basic body of knowledge consisting of issues, facts, principles, theories, etc., in the problem area. First of all, before starting up the work on the problem the present study aims to review the existing literature on the subject. It is pertinent to mention that no socio-legal research work can be written without consulting latest books, articles, bare provisions, and internet sources for related studies. The review of the existing literature is necessary to avoid repetition and to

provide clarity of concept and better understanding of different aspects of the subject and would help in identifying problem areas and formulating research methodology.

The study has reviewed the works of prominent foreign and Indian writers on the subject of criminal justice and chalked out her program for studying the system of punishments and set the goals of dealing with the issues. Mention may be made of the following treatises, journals and judicial dicta which have been reviewed by the researcher:

Books

The Juvenile Justice (Care and Protection of Children) Act 2015 - Critical Analysis by Ved Kumari This Book critically examines the Juvenile Justice (Care and Protection of Children) Act 2015 primarily from the perspective of child rights as recognized by the Convention on the Rights of the Child and guidelines framed under this Convention keeping in mind the historical development relating to Juvenile Justice system since 1850. It identifies lacunae in drafting of various provisions and suggests child friendly interpretations keeping in view the fundamental and general principles contained in the Act. These include the principles of best interest of child and presumption of innocence and absence of mala fide intention in all children below the age of eighteen years. It also points out contradictions within the scheme of the Act and various omissions and gaps that need to be filled for holistic implementation of the Act. All the provisions of the Act have been critically analysed keeping in view the objectives of the Act of catering to the basic needs of children through proper care, protection, development, treatment, social integration by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established under the Act. The book will provide food for thought to all persons concerned with children falling within the purview of the JJA 2016.

Juvenile Justice in Global Perspective (2017) by Franklin E. Zimring Juvenile justice systems and the plight of youth who break the law throughout the world is one of the least studied aspects of law. This important book provides an unprecedented comparison of criminal justice and juvenile justice systems across the world. The book discusses important issues such as the relationship between political change and juvenile justice, the types of juvenile systems that exist in different regions and in different forms of states, and how they differ. Furthermore, the book uses its data on criminal and juvenile justice in a wide variety of nations to create a new explanation of why separate juvenile and criminal courts are necessary.

The Juvenile Justice System in India: From Welfare to Rights 2010 by Ved Kumar This pioneering work updates about the latest developments in juvenile justice system in India. The data on children continues to be conspicuous by its absence and the rights approach diluted by welfare perspectives. Analyses of the cases from the higher courts bring out some protective approaches but more often the decisions do not reflect quality representation and serious research. Lack of coordination between various juvenile justice agencies renders the whole system less effective. The amendments in the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Model Rules 2006 have brought clarity to many contentious issues but they can be effective only if they are implemented by the courts and enforcement agencies. Looking at these and other factors, Kumari's painstaking research and penetrating analysis strongly advocates increased adoption of rights based and holistic approach to juvenile justice. This book will be invaluable for child welfare agencies, policymakers, lawyers, police officials, members of the judiciary, NGOs working with juveniles, and educationists.

Child Rights in India: Law, Policy, and Practice 2017 by Asha Bajpai Legislation is one of the most important tools for empowering children. It reflects the commitment of the state to promote an ideal and progressive value system. Recent years have seen several key developments in the law, policy and practice related to child rights. Significantly, with the adoption of the United Nations Convention on the Rights of the Child in 1989, a rights-based approach has acquired prominence in the child rights discourse across the world. The book analyses the laws in the light of court judgments and policy initiatives taken in India. It also examines the interventions and strategies employed by non-governmental organizations in recommending legislative reforms in support of children.This fully revised third edition focuses on the new legal developments in India—such as the Juvenile Justice (Care and Protection of Children) Act, 2015; the new Central Adoption Resource Agency guidelines; the Right of Children to Free and Compulsory Education Act, 2009; and the National Food Security Act, 2013—thus attempting to integrate the law in theory and field practice.

Vijay Hansaria and P. I. Jose (2010) "Juvenile Justice System". This book has given better and systematic explanation of the Juvenile Justice Act, 2000 and The Juvenile Justice (care and protection of children rules, 2007).

ARTICLES

Juvenile delinquency in India – a cause for concern B. R. Sharma, Sangeet Dhillon & Sarmadi Bano Childhood experiences are important in the development of criminality, however, not all criminals reveal their criminality early in life. While the origins of criminal behavior in childhood are a complex matter, delinquency is reasonably predictable early in some children's lives. Similarly, antisocial behavior in the form of juvenile delinquency is predictive of adulthood crime. It seems evident, though, that early problem behavior should not be neglected for two reasons – it is predictive of later, more serious, problems and, if it is acted on, then even simple interventions may be effective at reducing future delinquency.

Dr. N. L. Mitra (Professor, National Law School of India University, Bangalore) 1998, "Juvenile Justice Law" In this Paper the Author explains the major changes brought about by Juvenile Justice Act, 1986. Under this Act, offences such as Cruelty to Juvenile, using a child as a beggar, giving intoxicating or narcotic drugs to a juvenile, exploitation of a juvenile employee have been made as the punishable offences to protect children from exploitation and torture. As stated by the Author, even today, 25 percent of the prison population is composed of juvenile offenders; juvenile offenders stayed with the aged and hardened criminals, Juvenile Court and Board have not been consulted everywhere; Judges in such a Court are not properly trained in the correctional method of a treatment.

M. Subramaniam, G.Lisi (2012-13) "Child Rights: Everybody talks about and vet does not understand" Human Rights Year Book -.In this Article the Author has narrated the view that it is everybody's responsibility to enrich the children's life and start focusing on development of our children and nation starting from child rights which would go a long way for prosperity of our nation.

Mrs. Shitala Shreekant Gavand, Dr. Smita Karve , (April 2015) "Human Rights of Children in India", Centum (Multi-Disciplinary Bi-Annual Research Journal) In this Article the Author has explained that for better future of our country it is everyone's duty to strive for welfare of children and child education.

Hon'ble Mr. Justice D. H. Waghela, Judge, Gujarat High Court. (2011) Human Rights Year Book "Enforcement of the Human Rights of the Child" The State will provide protection to children from economic exploitation and move towards total ban of all forms of child labour. The State, the civil society, social workers and NGO's active in the field of child care, the state Legal Services Authority and Courts need to take up enforcement of

Children's rights.

Miscellaneous:

a. Websites

A number of standard websites such as Juvenile Justice Act, Law Commission of India, etc. were visited and consulted for latest information on various issues; a detailed list of all these websites is given in the internet reference section of the bibliography.

b. Newspapers

Some national dailies like The Hindu, The Indian Express, The Times of India, The Hindustan Times etc. were also overviewed on day to day basis for latest news regarding Juvenile justice. A list of these dailies is also given in the newspaper section of the bibliography.

c. Magazines

The legal magazines like Judicial Times, Criminal law journal, Criminal Judgments were consulted for updated information on Juvenile Justice. A list of such magazines is provided in the magazine section of the Bibliography.

Research Scheme

Chapter 1 - Introduction

In this chapter I have discussed the introduction of my research, its aim and object and need to review the law regarding Juvenile Justice in the light of current changing scenario. Further, it gives an overview of literature and describes the methodology employed.

Chapter 2 –Juvenile crime in India

This Chapter deals with the meaning, definition and scope of Juvenile Delinquency.

Chapter 3- Juvenile Justice System in India: Historical Development

This chapter deals with Penal provisions regarding Capital Punishment under the Indian penal code and procedural law under criminal procedure code and Other special or local laws and

also the Constitutional validity of death penalty, clemency in Indian constitution and pardoning power of governor and President.

Chapter 4- Judicial Trends on Juvenile Justice

This chapter deals with Penal provisions regarding Juvenile Justice under the Indian penal code and procedural law under criminal procedure code and other special or local laws and also the Constitutional validity of Juvenile Justice.

Chapter 5- Juvenile Justice Act, 2015: An evaluation

This Chapter deals with the Juvenile Justice Act, 2015. This Chapter deals with the worldwide perspective of Juvenile Justice and tries to compare and contrast Juvenile Justice on international global trends, movements in favour and against the Juvenile Justice.

Chapter 6 - ***Conclusion and suggestion.***

Some conclusion and suggestions shall be drawn on the basis of this research study and will be incorporated in this chapter. Certain suggestions shall also be made at the end of the study for effective regulation.

CHAPTER – 2

JUVENILE CRIME IN INDIA

The word 'child' first brings to mind a picture of a miniature human being. In the older days that was the only recognized difference between a child and an adult. Criminal law made no distinction between a child and an adult offender. With experience and knowledge, it has been accepted that children are different from adults not only in size but in other respects too. A child's mind is not mature enough to understand the nature of all its acts. It is more dependent on adults for the satisfaction of its needs. Physical and mental immaturity and dependency on others are the most outstanding features of childhood. Yet, most often, the child is exploited and abused because of its physical and mental immaturity. A child attains physical maturity at puberty but puberty is an individualistic factor and is attained at different ages by different persons. 'Chronologically, puberty generally occurs in girls between the twelfth and fifteenth years with the range of about two years on either side of these figures. For boys, puberty tends to occur from one to two years later than it does for girls[55].' There is no standard point to judge the mental maturity of a person[56]. In most cases it is reached by the early 20s, but in many cases it may be as late as 40 years of age, while in some it may never be achieved. Mental maturity is influenced a great deal by the family and social environment of the child, which also have a direct bearing on the development of the child. A child who is protected by its parents may become independent at a much later date than another, who has always been devoid of such protection. Physical and mental maturity are necessarily linked to social, cultural, and other considerations. Childhood influences last a lifetime and therefore a wholesome environment is necessary for their full development and growth.

Despite this realization, an estimated 10 crore children, abandoned by their families, lived on the streets of the world's cities in the 1990s[57]. And street children are only one of the categories requiring attention. Approximately 15.5 crore children wre living in absolute poverty – 4 crore in urban areas and 11.5 crore in rural areas. An overwhelming majority of the 14 lakh children under five who dies could have been saved by easily assessable health care measures. Approximately five lakh women die each year from causes relating to pregnancy and childbirth, leaving over ten lakh young children motherless. These figures

[55] J.E. Horrocks, "The Adolescent' in L. Carmichael (ed.), Manual of Child Psychology), 1968, p. 704
[56] See, generally Id. L Carmichael and S.R. Yussen and J. W. Santrock, Child Development ??An Introduction (1978)
[57] A UNICEF Policy Review : Strategies for Children in 1990s, UNICEF, 1989, pp. 13, 19

were of special significance to all the developing countries but more so for India with its second largest child population[58]. Approximately 40 per cent of all the young children who died in the world each year, 45 per cent of all the children who were malnourished, 35 per cent of those who were not in school, and over 50 per cent of those who lived in absolute poverty, were to be found in just three countries – India, Pakistan and Bangladesh[59].

A decade later[4] there has been a 14 per cent reduction in the under–five mortality rate[5] has, however, been no change in the maternal mortality rate and 5.15 lakh women continue to die every year as a result of pregnancy and childbirth. There has been a 17 per cent reduction in severe and moderate under–five malnutrition in developing countries, reducing the total number of malnourished children from 17.7 crore to 14.9 crore. Worldwide there are an estimated 14 lakh children under the age of 15 living with HIV[60].

The JJS in India, a operationalzed by law, provides for the care, protection development, and rehabilitation of neglected and delinquent children. While official figures are published regarding the number of children committing offences, similar data pertaining the children in need of care and protection are not available[61]. This chapter tries to construct a basic profile of children in India from the fragmented data available from various official and unofficial sources for the purposes of creating an understanding about the number and categories of children in need of care and protection in order to understand the nature and magnitude of the task at hand. It also includes the official figures regarding trends in juvenile delinquency in India. Before proceeding further to create a profile of children in India, it is important to ask who is a child[62] as there is no universal definition of child in India and the word indicates persons of different ages for different purposes. The factors taken into account for choosing the cut–off age to define a child varies from subject to subject.

[58] The State of the World's Children 2002, UNICEF, 2002, pp. 85–90

[59] UNICEF has chosen U5MR as the single most important indicator of the state of children, U5MR is known to be the result of a wide variety of inputs including the nutritional health, the health knowledge of mothers, the level of immunization and ORT use, and the overall safety o the child's environment

[60] Id. p. 72.

[61] The Time of India, 30 January 2000, p. 1, col. 2–5

[62] The Juvenile Justice Act 1986 (JJA) substituted the word 'juvenile' for 'child' used earlier in the Children Act 1960, giving rise to the query whether the two terms differ in their connotation or effect. The dictionary meaning and comparison o the definition and other provisions relating to child/juvenile under the Children Act 1960 and the JJA shows that the two terms were interchangeable, especially as their legal status was identical under the two legislations. The change seems to have been influenced by its usage in the United Nations

DEFINITION OF CHILD

The choice of the cut–off age seems to depend on the range of law, policy and administrative considerations and presupposes coincidence of physical and mental maturity. For example, for labour practices physical growth in terms of body strength and endurance for a specific kind of work should be the prime determinant. For criminal law purposes, however, the mental ability of the person to understand the nature and consequences of one's activities is more important. In relation to the Child Marriage Restraint Act, the cut–off age for marriage was 14 and 16 years for girls and boys, respectively.

A working group appointed by the department of social welfare, Government of India, in 1974, discussed the question of standardization of the definition of child. It concluded that it was not possible to do so for all purposes, though it might be possible to have uniformity of age in particular fields for certain specific purposes[63].

The cut–off ages do not take social environment, class, or caste background into account. They do, interestingly, took the gender dimension into account. The Children Act 1960 introduced the sex–based definition of child in the realm of juvenile justice in India for the first time. Sixteen years was considered to be the right cut–off age for the purpose of juvenile justice in the light of what had been done in other countries. The minister introducing the Children Act 1960 justified the age of 18 years for girls saying that 'by our experience in Bombay and other places we have found that though they attain puberty and maturity earlier, due to our social conditions they require protection for a longer period[64]. In the absence of such data, the definition of child under the JJA was unfavourable, non–benign, sex–based discrimination and violative of the Constitutional principle prohibiting discrimination on the basis of sex[65].

The JJS in India, a operationalized by the JJA, protected delinquent children in many ways. They could not be sentenced to death, or imprisoned, even in case of default of payment of fine or furnishing surety. No information revealing the identity of the child was

[63] S. N. Jain 'Introduction', in Child and the, Law 1979, p. 6

[64] Dr. K.L. Shrimali, Rajya Sabha Debates, 15 December 1960, col. 685, See also, id., col. 762, Rajya Sabha Debates, 8 December 1960, col. 1306

[65] For the sex–based definition of child under the JJA to succeed against a challenge of sex–based discrimination, it must be proved that the classification is founded on an intelligible differential criterion. It should distinguish persons or things that are grouped together from others left out of the group. The criteria for differentiating them should have a reasonable nexus with the object sought to be achieved by the legislation. Such a law may also be impugned on being arbitrary on unreasonable. Article 15(3) permits a law in favour of, but not against, women

permitted unless it was in their interest. It also provided for removal of disqualification attaching to conviction for an offence. The state governments were under obligation to provide for residential and non–residential measures and facilities for their all–round growth and development. Delinquent children were subjected to protective treatment instead of being held responsible for their actions because of their physical and mental immaturity. The sex–based definition of juvenile, however, denied these measures to boys in the age group of 16 to 18. A child was not presumed to be mature enough to take decisions till the age of 18 years according to legislations such as the Indian Majority Act and the Indian Contract Act. Therefore, a cogent explanation based on scientific data was needed to support the presumption that delinquent children attain sufficient maturity earlier (at the age of 16 years) as compared to non–delinquent boys of the same age, and ought to be held responsible for their actions. The statement of the minister, quoted above, gave no rationale for selection of 16 as the appropriate cut–off age for boys. No data or research was referred to provide an intelligible criteria for differentiating girls from boys in the same age group of 16 to 18, or to differentiate boys below 16 years of age from those above 16 years of age.

Other legislations dealing with guardianship[66] and maintenance[67] of children had provided the cut–off age of 18 years for both boys and girls. No explanation was available for exclusion of similar obligation under the juvenile justice legislation to boys of 16 to 18 years of age while retaining it in the case of girls. The cut–off age for culpability under the penal laws had been fixed much lower at 7 and 12 years and could not be said to have influenced the choice for juvenile justice purposes.

In the absence of separate data on boys and girls in the age group of 16 to 18 years, there was little to distinguish them except their sex. Sex alone did not justify differential treatment unless covered under Article 15(3) of the Constitution. Institutionalization of girls could hardly be described as favourable to women and reflected only a patriarchal approach by subjecting women to greater control and regulation[68].

The JJ (C&P) Act has now modified the age to 18 not because of such perceived unconstitutionality in the definition but to bring it in accordance with the definition of child

[66] The Guardians and Wards Act 1890

[67] Section 125, Code of Criminal Procedure 1973

[68] The constitutionality of sex–discriminatory definition of child has been successfully challenged in the American courts. Patricia v. City of New York, 31 NY 2d 83(1972) in E.C. Hooks, 'Recent Decision', 23 Syracuse Law Review, 1257, 1972: Lamb v. Brown, 456 F2d 18 at 19(1972)

in the UN Convention on the Rights of the Child.

PROFILE OF CHILDREN IN INDIA

It is important to have a clear profile of children in India for the planning of programmes and services for children in need of state intervention for their welfare and growth as well as for assessing the adequacy of the state intervention. Their percentage in the total population, survival rate, living conditions, health status, education level, occupational hazards, and so on, indicate the extent and type of state intervention required for ensuring full development of their potential and personality. However, there are many obstacles in creating that picture. In the absence of a general consensus on who is a child, the information on the population survival, health, education, and occupation of children refer to different age limits. Further, the data is not uniformly available on all necessary aspects. Sometimes there is no data, at other times it is not up–to–date, or relates to different ages. Even so, the available data is presented here.

Uttar Pradesh topped, followed by Bihar, Maharashtra, Madhya Pradesh, West Bengal, Andhra Pradesh, Tamil Nadu, Karnataka, Rajasthan, Gujarat, Orissa, Kerala, Punjab, and Haryana in the ranking of major states in India by child population size. The child population has been growing faster than the general population in India. While the total population registered an increase of 187 per cent since 1901, child population grew by 192 per cent[69]. The main reason for this rapid growth is explainable by the increased gap between birth and death rates.

The Government of India mentioned[70] that there were thirty–eight crore children below the age of 14 years. The percentage of population of children in the age group 10–14 and 15–19 years were 11.9 and 10.7 per cent, respectively of the total population. The total number of cases of AIDS in 1998 was 5204, out of which 4 per cent were of children in the 0–14 years age group.

The UNICEF figures[71] indicate that the number of children below 18 years of age was 398,396,000 and below five was 114,976,000. The under–5 mortality rate was 98 per 1000

[69] Child in India – A Statistical Profile, ministry of welfare, Government of India (1985) and Census of India 1991 Provisional Population Totals, Series–1, Paper 1 of 1991

[70] Responses to the List issues identified by the UN Committee on the Rights of the Child from the Initial Report of the Government of India on the Convention on the Rights of Child, Ministry of human resources development, Government of India, pp. 6, 40 (Undated)

[71] Tables in The State of the World's Children 2001, UNICEF, 2001

live births. Latest data on underweight and malnourished children in 1990–4 were not available, but 33 per cent of children in were born with a low birth weight (2.5 kg or less), 21 per cent of under–five children were severely underweight, and 53 per cent were moderately and severely underweight during 1990–6[72]. During the same years, 81 per cent of India's population had access to safe water, 29 per cent to adequate sanitation, and 85 per cent to health services.

Inevitably, more girls than boys suffered from malnutrition and succumbed to diseases. The adverse female to male ratio of 949 girls to 1000 boys was attributed to systematic deprivation and unequal treatment of girls vis–a–vis boys in several parts of the country. The Government of India categorically pointed out that though female infanticide and foeticide continue to be reported in various parts of India, these did not seem to have any major implication on the sex–ratio, for which factors like access to health care and nutrition were of greater consequence[73]. Experts are clear that the large number of 'missing girls', evident in the child ratio in Delhi, is indicative of rampant female foeticide in these areas with the educated families wanting to limit their families to two or one child[74].

Sufficient data is not available to make an assessment of the number of children (or proportion of population) suffering from some form of physical or mental disability. According to generally accepted estimates, the number of disabled children would be 2.5 lakh blind, 2.5 lakh deaf, five lakh with severe orthopaedic disability, and twenty lakh to thirty lakh mentally retarded, including cases due to iodine (thyroxin) deficiency[75], India's Country Report under the Convention on the Rights of the Child[76] mentions that a conservative estimate puts 3.50 crore children in India as disabled, 60,000 children become blind each year, 66 lakh are mentally deficiency.

The literacy rate was 28.47 per cent for girls and 53.48 per cent for boys in the age group of 5–9 years, and in the 10 and above age group it was 28.99 per cent for girls and 56.99 per cent for boys in the year 1981[77]. Total enrolment in schools which was 19.154 and 3.119 million for primary and upper primary stages respectively in 1950–51, went up to 108.782 and 39.487 million in 1997–8. There has also been decrease in the dropout rates –

[72] The State of the World's Children 2020, UNICEF, 2020
[73] Convention on the Rights of the Child Country Report India, 2020, p. 23
[74] Convention on the Rights of the Child Country Report India, 2020, p. 23
[75] An Analysis of the Situation of Children in India, UNICEF, 2020, p. 87
[76] See, supra note 19 on p. 53
[77] Child in India–A Statistical Profile, ministry of welfare, Government of India, 2020

from 64.9 per cent in 1960–1 to 39.58 per cent in 1997–98 at the primary stage and from 78.3 to 54.14 per cent at the middle stage for the same period. While the total enrolment at the primary stage increased 5.75 times, that for girls increased nine times. The increase at the upper primary level was dramatic. While the overall increase at this stage was thirteen times, for girls it was thirty–two times[78].

India has the largest number of working children in the world. According to the 1981 census, there was 1.45 crore child workers, that is, 5.5 per cent of the total population. The participation rate in the rural areas was 6.3 per cent and 2.5 per cent in the urban areas. It was estimated that in rural areas children worked, on an average, 211 days a year while men and women worked 277 and 156 days respectively[79]. Estimates of the number of child labourers vary, depending on what is classified as child labour. The Government of India furnished the following statistics to the UN Committee on Rights of the Child[80].

Available data on employment of children indicate a shift from the organized to the unorganized and self–emplyoment sectors. They were mostly employed in small plantations, way–side restaurants and small hotels, cotton ginning and weaving, carpet weaving, math making, stone breaking, brick kilns, handicrafts, and auto mobile and mental workshops.

In the bidi (leaf cigarette) industry, children, between 8 and 12 years of age, and sometimes even those between 5 and 8 years, put in long hours and often contract chronic bronchitis and tuberculosis. This was due, among other hazards, to the system of piece–rate compensation, making the children work at a feverish pace to increase their earnings[81].

Children from poor families are compelled to join the labour force because of the need to supplement to family income. About 30 per cent of India's population lives below the poverty line. No authentic data is available on the number of destitute children in the country. One estimate had put the figure at 72.2 lakh and another at 11.5 lakh for destitute orphans[82]. Drug addiction among the street and working children is on the increase, which turns them into compulsive criminals to pay for their expensive vice. According to one estimate,

[78] See, supra note 16 on pp. 45–50
[79] See, supra note 21
[80] See, supra 16 on p. 7
[81] The Times of India, 16 July 1992, Capital I, cols. 2–4.
[82] M. Khandekar, 'Residential Child Care ; Some Conceptual and Organizational issues', in Alfred de Souza (ed.), Children in India : Critical Issues in Human Development, 1979, p. 183

in 1988 Delhi has at least 1000 child drug addicts who indulged in picking pockets and petty thefts[83].

No studies have been conducted on the forms of victimization of children or their numbers. However, there is enough evidence to show that children are subjected to violence, abuse, and neglect by society by employers, and even by their own parents. A survey in six metropolitan cities of India indicated that the population of women and child victims of commercial sexual exploitation would be between 70,000 and one lakh. It also revealed that about 30 per cent of them were below 18 yeras of age and nearly 40 per cent of them were below 18 years of age and nearly 40 per cent of them were inducted when they were less than 18 years of age[84].

A considerable number of children are victims of terrorism and natural disasters[85]. 30,000 children were orphaned by terrorism in Punjab. In Jammu and Kashmir terrorism led to a high drop out rate of 48 per cent among boys and 60 per cent among girls. The number of Sri Lankan refugee children born in exile was 75,000, leading to problems of repatriation and refusal of registration by the local authorities. A survey of people affected by earthquake in Latur and Osmanabad districts in 1994 indicated that 55.3 per cent of the deaths in Latur were of people under 19 years of age. of the 1482 orphans of the earthquake, 211 lost both parents. The child victims of offences has been varying from year to year in terms of numbers as well as the nature of offences.

Poverty, neglect, ill treatment, and family discord are forcing an increasing number of children to run away from home and take shelter on the streets. The Government of India has mentioned the number of children living on the streets as fifth lakh[86]. Earlier studies has put the number of floating street children at 3.8 crore, others estimated it to be five crore[87]. As per the joint survey conducted by the ministry of welfare and the UNICEF in eight metropolitan/major cities – Delhi, Mumbai, Kolkata, Chennai, Bangalore, Ahmedabad, Delhi, Kanpur and Indore – the estimated population of street children was 4.15 lakh.

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[83] Sukhmani Singh, 'Catching them young', Indian Express, Express Weekend, 23 April 1988, p. 1, col 1–8

[84] Report of the Committee on Prostitution. Child Prostitute and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, department of women and child development, ministry of human resource development. Government of India, 1998, p. 4

[85] See, supra note 19 on pp. 67–68

[86] See, supra note 25 on p. 21

[87] The Time of India, 7 June 1990, Metro II, cols 2–3

The total cognizable crimes committed by children show a consistent decline in the period 1989–94 with a wave like increase, decrease, and increase during the latter five years.

The share of offences committed by children to the total IPC crimes reported in the country has shown a declining trend ever since, notwithstanding the fact that there is an appreciable increase in the population of the country From 1.2 per cent during 1989, the share of juvenile crimes has steadily gone down. It recorded the lowest at 0.5 per cent during 1994 but increased marginally to 0.6 per cent during 1995 to 1996. It again went down to 0.5 per cent during 1997–99. The rate of arrest of children in the last decade has been constantly going down – from 2.5 per cent in 1989 to 0.9[88].

Crime against property – that is, dacoity, robbery, burglary, theft, and criminal breach of trust – accounts for more than 40 per cent of total cognizable offences by children under IPC. Theft (2172), hurt (1472) and burglary (1344) constituted 56.1 per cent of total arrests of children for IPC crimes.

A break-up by age groups of children arrested, both the IPC and SLL cases, shows that the children in the age group of 12-16 years were most susceptible to crimes and more children were arrested in this age group (55.9 percent). Children in the age group of 7-12 years comprised 21.9 per cent and girls in the age group of 16-18 comprised 22.3 per cent of the total children arrested in the country. A comparative picture of offences by boys and girls in different age groups shows that in both cases the number of children arrested goes up with age. The noticeable difference, however is that while more older girls have been arrested for hurt, more boys in the comparable age groups are arrested for theft.

A majority of the children apprehended in 1999 and earlier years too came from a low education, poor economic background. Of the total children arrested for various crimes, 78.2 per cent were either illiterate (6345) or had education only up to the primary level (8087). Children living with parents (13,638) or guardians (2817) constituted 89.3 per cent of those apprehended. The recidivism rates among children arrested showed a decline of 4.9 per cent over 1998. Significant recidivistic figures come from the states of Bihar (24 per cent), Tamil Nadu (14.1 per cent), Maharashtra (13.7 per cent), and Gujarat (11 per cent).

CATEGORIES OF CHILDREN UNDR THE JUVENILE JUSTICE SYSTEM IN INDIA

It is apparent from the data relating to children presented in Part II that children in

[88] Crime in India, 1989, iv. 1991

India are denied the means and opportunities for their all–round development and growth. The data do not reveal the enormity of such denial with the consequent problem of planning appropriately to meet the challenge presented by it. What the data do reveal is that the number of children committing offences and that the range of circumstances in which children in both categories need sates intervention is vast. They need opportunities for safe birth and survival, health care, recreation, education, protection against exploitation and abuse, as well as facilities and opportunities for their all–round growth and development.

Even though the state has initiated measures in respect of each of these aspects, not all matters have been brought within the ambit of a statutory regime. For example, the matters relating to prenatal, natal and post natal care, vaccination, safe drinking water, hygiene and sanitation, and education have been part of the state's various health care and welfare schemes, but not part of the statutory law providing for care, treatment, and rehabilitation of children in difficult circumstances, beginning with the Apprentices Act 1850, though the period of different Children Acts passed by states, right up to the JJ (C&P) Act. Such statutes have been limited primarily to children found to have committed an offence and others found in circumstances of vagrancy and neglect. During discussion on the Children Bill 1959, some member of Parliament objected to the inclusion of both delinquent and neglected children within the purview of the same Act. They felt that interaction with delinquent children would impart a social stigma to neglected children. The rationale for the inclusion of neglected children in a statute dealing with children committing offences was found in the observations of K. L. Shrimali, the then minister of education who had moved the Children Bill 1959. He said[89] .

It is neither easy nor desirable to exclude any one or the other category of children from the purview of the JJS as all of them do need care and protection. Inclusion of all of them requires measures to check the arbitrary exercise of power of intervention given to the police. The needs of each category and sub–category of children included differ. The state, therefore, will have to conceive of a scheme which can provide individualized care and protection to all these children leading to their treatment, development, and rehabilitation in society. Juvenile justice will need to loose its juridical and crime prevention model and adopt a child's rights and welfare model.

The definition of the neglected child, too, has differed under the Children Acts passed

[89] Lok Sabha Debates, 28 April 1960, col. 14510

by states as well as the three statues passed by Parliament. A comparison of the definitions under the Children Act 1960, the JJA, or the JJ (C&P) Act, however, does not show any clear rationale or the direction of the difference. The JJA modified certain clauses of the existing definition of neglected child given in the Children Act 1960[90]. The definition of neglected child under the Children Act 1960 had come under severe attack for including a child 'found begging' and for being so vast as to include almost the whole of the child population within its purview. The objections held good for the JJA also.

Modifications in clauses (ii) and (iii) did not show a clear intention. Clause (iii) substituted the phrase 'unable or does not exercise control' with 'incapacitated to exercise control'. It was not clear whether 'incapacitated' was intended to include or exclude the children whose parents were unable to or did not exercise control over them. The term 'incapacity connotes 'disability' which is narrower than 'inability' and certainly does not include volitional neglect by the parent. Substitution of 'and' for 'or' in clause (iii) made existence of all the three circumstances specified therein compulsory, thereby narrowing the scope of its coverage. However, the new clause (v) brought them all back within the purview of the definition. It was not only those children who were actually being victimized but also others who were likely to be victimized that had been included by this clause. Clause (v) raised further questions relating to its impact on the scope of definition of delinquent child. For example, given that possession of the prohibited quantity of a narcotic drug is an offence, a child found in possession of such drug would ordinarily be classified as a delinquent child. If there was proof that a girl child was being exploited or abused by the drug supplier for immoral or illegal purposes, she should be classified as a neglected child under clause (v) of Section 2(1) of the JJA. The categorization was important because it determined whether the child was entitled to the legal safeguards to delinquent children or whether she would be sent to the closed regime of a special home or to the comparatively open children home.

No reasons were offered while introducing the Bill or during the Parliamentary debates for the changes that were made retaining earlier formulations or provisions despite known objections. The Background Note for the meeting of state secretaries and directors of welfare held in April, 1992 claimed that the definition of 'neglected child' was construed precisely so as to ensure that only children likely to be abused, exploited, and inducted into criminogenic life and in need of legal support to be weaned away from such situations were processed through the law.

[90] See, Commentary under S. 2(1) in Ved Kumari, Treatise on the Juvenile Justice Act, 1986, 1993

The nomenclature and the categories of children under the JJ (C&P) Act changed to children in need of care and protection and included many more categories within its purview[91]. This definition excludes child beggars from its purview and includes three new categories: namely, children living with guardians posing a threat to their safety, ill and disabled children, and child victims of armed conflicts, civil commotion, and natural disaster. Other clauses are more or less the rearrangement of the categories covered under the JJA. With the exclusion of child beggars from the JJ(C&P) Act without any amendments to the Prevention of Begging Acts, it is important to ask if child beggars now will be dealt with under the provisions of anti–beggary legislation. There are many more questions to be asked in relation to the scope of various categories, the rationale of splitting the existing categories, as well as the inclusion of new ones. For example, whether existence of both or either of the circumstances needs to be proved for a child to be covered within sub–clause (ii)(a) and (b). Or, is it only 'gross' abuse that will fulfil the requirement of sub–clause (vi) ? What purpose is sought to be achieved by further splitting sub–clauses (vi) and (viii)? Whether sub–clause (ix) includes children in the specified circumstances having parents to look after, too? Neither was any explanation given nor did any discussion take place on the changes introduced in the JJ (C&P) Act in Parliament. This all–inclusive definition brings almost all Indian children within the scope of the JJS. Such a definition vests absolute power in the state to subject any child to state action and intervention. This power may be exercised arbitrarily by the state unless counter–balanced by recognizing the rights of children falling within these categories to seek protection and care and an effective system of redressal of their grievances.

The facts and figures, and analyses of the categories included within the ambit of law in the preceding parts show that a majority of children in India are in need of care and

[91] Section 2(d) of the JJ (C&P) Act provides that, 'child in need of care and protection means a child (i) who is found without any home or settled place or abode and without any ostensible means of subsistence, (ii) who resides with a person (whether a guardian of the child or not) and such person ??(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after, (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, (v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and runaway child and whose parents cannot be found after reasonable inquiry, (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, (vii) who is found vulnerable and likely to be inducted into drug abuse or trafficking, (viii) who is being or is likely to be abused for unconscionable gains, (ix) who is victim of any armed conflict, civil commotion or natural calamity.'

protection for a variety of reasons but have remained without it. Some suffer due to failure of the family to provide for their nutrition and growth, others are victims of the state's inertia in the field of compulsory education and prevention of child labour.

Failure of population control programmes not only upsets state plans, but also starts a vicious circle of continuous poverty for the children. The poor parents cannot provide better living conditions to improve the survival rate of their children. Hence, they produce more children but because of their poverty, cannot look after them all[92]. As a consequence the children have not only to fend for themselves but also for their parents. The conditions of child labour being what they are, the children remain out on the streets for most part of the day being exposed to all kinds of influences, exploitation, and abuse. mere struggle for survival may turn them into subjects of the JJS. They have no opportunity to be educated either for their intrinsic good or as a means for improving their future. This cycle continues generation after generation.

Myron Weiner, in his study of state policy towards education and child labour in India[38], has convincingly demonstrated that it is the attitude of people and the state rather than poverty that is responsible for such wide–scale illiteracy and child labour. He points out that education is perceived as a means to an end and hence not considered worthwhile for the children of the poor to be educated. They would be better off by learning the family trade or other vocational skills. Child labour then become morally justified as being necessary for justice to the poor parents and for the child's survival. Its practical rationale is that it protects the employer's interests as well. A comparative analysis of the policy of other developed and developing nations showed that a change in the perception of parents towards children from earners to liabilities, was responsible for education of children and prohibition of child labour. Such a change was brought about by the simultaneous prohibition of child labour and introduction of compulsory primary education and such decisions were not related to the poverty levels or the GNP or the per capita income. The state in India, however, continues to take shield behind the fallacious arguments supporting child labour[93].

The existing data shows that a majority of children are living in circumstances of want. There are regional variations in their population and other indicators of the need for intervention. For example, the state of 'Uttar Pradesh needs to gear up its child welfare

[92] See, generally, M. Weiner, The Child and the State of India, 1991
[93] See, supra note 16 on p. 51

programmes (even though its contribution in the child delinquency is marginal) as it has high child population as also high under give–mortality rate. Similarly, Andhra Pradesh, having a high percentage of child labour, needs to evolve special programmes for the care and protection of its child labour. These regional variations call for regional prioritization of schemes to meet the needs of local children. Data has shown a link between school drop out rate and incidence of delinquency[42]. Therefore, the states with high delinquency rates must strengthen their literacy programmes. The higher illiteracy and school drop out rates among girls necessitates special attention to be given to them[94].

The JJS is limited in its application to the children committing offences and others in need of care and protection and is equally replete with evidence of the state's apathetic attitude towards children. The reasons for the apathetic attitude may perhaps be found in the class and caste bias of the Indian polity as also in the myriad pressure groups, hankering for priority in the allocation of the limited resources of the state. Neither do the children themselves constitute a pressure group nor is the problem of child delinquency so visible as to draw prime attention. With the increasing child population and widely prevalent poverty, illiteracy, and child labour, there is an ever–increasing number of children requiring care and protection.

Newer forms of control and supervision measures practised elsewhere may be experimented in relation to various categories of delinquent and neglected children. The fact that a high percentage of child delinquents live with their parents, certainly indicates the need for a greater focus on families. Further research on the role of families of delinquent children is necessary in order to determine whether future measures should include penalization of the parent of a delinquent or neglected child or provision of income generation programme for the parent would be more suitable[95]. The difference in the ratio of male to male child delinquent focuses attention primarily on the boys, but the gradual increase in the female child delinquent is a contemporary cause for concern.

The questions raised b the profile of children in India are numerous and no single study can seek answers for all of them. This study focuses on decision making in the legislative, adjudicatory, and enforcement processes to find out which issues have

[94] See, supra note 17, Table 6, UNICEF, 2001
[95] See, supra note 19 on p. 40

tormented/attracted attention[96]. What had been the response to those issues? And how have those issues or responses influenced the direction and development of the JJS in India?

[96] Gujarat and Madhya Pradesh and dropout rate above 60 per cent at both the primary and middle level school according to the 1981 census.

CHAPTER – 3

JUVENILE JUSTICE SYSTEM IN INDIA: HISTORICAL DEVELOPMENT

Ancient India though governed by a number of laws hardly had any law specially dealing with juvenile delinquency. As the problem of neglected children and juvenile delinquency grew with times, a need for legislation to that effect was felt. India, a British colony then took inspiration from England, which by then had already passed its own juvenile legislation. The Apprentices Act was passed in 1850 as the first juvenile legislation to deal with children in India. As per the provisions of this act, children between ten to eighteen years of age found indulging in crime were placed in apprenticeship in a trade. The Indian Penal Code came after another ten years had passed. Though it is not a specific legislation dealing with juvenile justice, nevertheless it has some provisions when it comes to underage criminals. Section 82 of the IPC grants blanket immunity to a child below seven years of age imbibing the principle of doli incapax. The Latin term literally means 'incapable of crime'. IPC assumes that a child less than seven years of age does not have the capacity to form a mental intent to commit a crime knowingly. Section 83 of the IPC is an extension of section 82 with a rider attached. It grants qualified immunity to a child aged between seven to twelve years. The next milestone in the history of development of juvenile justice in India was The Reformatory School Act of 1876 which had a provision to empower the government to establish reformatory schools and to keep young criminals there till they found employment. Thereafter, a jail committee was appointed in 1919 following the recommendations of which separate legislations dealing with juvenile delinquency were enacted in different provinces, the first ones being in Madras], Bengal and Bombay. Since then, as Professor B.B. Pande of Delhi University puts it, 'the twin concepts of juvenile delinquency and juvenile justice have gone through a constant process of evolution and refinement.'

For instance, minors did not have a right to "bail, indictment by grand jury and right to a public trial". It is always important to do comparative study with other countries to understand the reforms. Hereinafter, a detail history of US juvenile justice system and critique on the present scenario is described. India while making law on juvenile justice system took its cue from Britain since it was a British colony and Britain had already established its own juvenile legislation, so it will be interesting to have a glimpse of England juvenile system. We shall also look at experience pertaining to juvenile justice in Uganda for small reference to juvenile laws in Africa continent, to understand how other jurisdictions are dealing with children in conflict with the law.

Development of the JJS in India

The history of the JJS in India has been divided here into five periods by reference to legislative or other landmark developments, namely, (a) prior to 1773 ; (b) 1773–1850 ; (c) 1850–1918 ; (d) 1919–50 ;and (e) Post–1950. The year 1773 marked a historical break in the Indian legal system as the Regulating Act of 1773 granted to the East India Company the powers of making laws and enforcing them on a very restricted scale. It was the Charter Act of 1833 which converted the commercial East India Company into a governing body.[97] The period between 1773 and 1850 saw numerous committees examining conditions of jails in India and setting the stage for special focus on children in jails. The first legislation providing for keeping children out of jails was enacted in 1850. The report of the All Indian Jails Committee 1919–20 led to the beginning of complete segregation of children from the criminal justice administration. Let us now examine in more detail the developments in each of these periods.

[97] Guide to the Records in the National Archives of India, Part V, 1–7, 1981

Prior to 1773

Both the Hindu and Muslim laws had provisions for the maintenance of children. The primary responsibility to bring up children was that of parents and family.[50] Charity for the care of poor and destitute has been a noble cause under both Hindu and Muslim laws and indirectly provided for the care of children in case of failure of the family to do so.[51] Muslim law makes it compulsory for a person who finds an abandoned child to take its charge, if he has reason to believe that it may otherwise perish.[52]

It is generally maintained that neither set of laws had any reference to juvenile delinquents. However, a cursory study of the Manusmriti and The Hedaya show differential punishment to children for certain offences. For example, under the Hindu law, a child throwing filth on a public road was not liable for punishment but only to admonition and made to clean it, while and adult in similar circumstances was to pay a find and made to clear the filth.[53] A young body having sex with a consenting adult woman under the Muslim law was not punishable.[54] These provisions show the adoption of the principle of lesser culpability of children for their criminal activities. In addition, general principle of penology, capable of individualization of punishment, are also found in the two sets of laws. The Muslim law has given discretion to the Kazee to determine the degree of Tazeer or chastisement. The purpose of punishment is correction 'and disposition of men with respect of it are different, some being sufficiently corrected by reprimands whilst others more obstinate, require confinement, and even blows.[55] Under the Hindu law, the kind in inflicting punishment was to ascertain the motive, the time and place of offence, consider the ability of the criminal to suffer and the nature of crime, and cause the punishment to fall on those who deserve it.[56] The Hindu law ordained the King, as was the case with the equity court in England, to take care of a child's property till he came of age and became capable of taking care.[57] All these provisions clearly show that children were recognized as separate entities from adults, needing special care form others for their survival, and not fully responsible for

[50] See Mayne's Treatise on Hindu Law and Usage, N. Chandrasekharra Aiyer (ed.), 11th ed., 1953, p. 285. C. Hamiltan (Tr.), The Hedaya, or Guide : A Commentary on the Mussulman Law, 2nd ed., 1870, pp. 138, 146

[51] The principle of Dharma under Hindu law made it incumbent on the king to provide to each on in the society an opportunity to realize his ultimate goal of human existence. R. Lingat, The Classical Law of India, translated from French with additions by J.D.M. Derrett, 1973, p. 39

[52] Id. The Hedaya at 206 ff

[53] Manusmriti, Shloka, 283, p. 390

[54] The Hedaya, p. 187

[55] Id., p. 203

[56] Manu, p. 126, VIII and 16 VII, cited in S.D. Sharma, Administration of Justice in Ancient India, 1988, pp. 61–2

[57] Manusmriti, Chapter Eight, Shloka 28, See note 41, Supra at 39

their acts. But a thorough and comprehensive research in yet to be undertaken to find out whether these laws had a comprehensive system of juvenile justice, or how the differential principles actually operate, or how far the punishment was individualized. Such a research may be useful in explaining the concept of child in Indian culture.

1773–1850

The period between 1773 and 1850 began with the emergence of the East India Company as a governing body form a trading company and ended with the introduction of the first legislations relating to children. This period also saw the conversion of prisons from places for transporting convicts to places for keeping convicts,[58]following the suggestions emanating from the state and internal arrangements of the Bengal Jail.[59] The report of the committee appointed by Lord William Bentinck, pursuant to T.B. Macaulay on the subject of jail discipline,[60] was submitted in 1839. It fearlessly exposed the evils of the jail management existing then.[61]

This was the period when the West was getting engulfed in an all–round reformation movement. India, as a British colony, did not remain unaffected. The colonial exploitation had eased out the indigenous rural economy, forcing many a class of people to slums in the suburbs. It also increased destitution and delinquency among their children. Concern for the welfare of children took many shapes. Krishna Chandra Ghoshal and Jai Narain Ghoshal in 1787 pleaded with Lord Cornwallis, the then Governor–General in India, for establishing a 'home' for destitute children in the vicinity of Calcutta. The first 'ragged school' for orphans and vagrant children in India was established in 1843 through the exertions of an Englishman, Dr Buist, who was instrumental in the establishment of the ragged school, Bombay now known as the David Sasoon Industrial School. The objects of the school were (i) the reformation of juvenile offenders arrested by the police, and (ii) the encouragement of apprenticeship amongst the working classes. All these developments together prepared the ground for the introduction of the Apprentices Act 1850.

[58] Till 1818 references to prisons in the archival material related to either the expense of transporting convicts or for repairing the jails. Capt. Puton, executive officer, reported the state of the jail and several other buildings attached to it and the estimates of repairing it. Cons. No. 2 and 3, date of letter 30 July 2003, Whatbones No. 4 August 1803, Law Index 1801–1810, p. 54 ; Report on Calcutta Jail, Cons. No. 2 and 3, 15 December 1809, Id., p. 167. For the recommendation for the erection of a prison for convicts, see. Marine Board reply for conveyance of convicts, Law proceedings, Cons. No. 3,2 October 1818

[59] Law proceedings, Cons. No. 1 24 November 1820

[60] Legislative, Cons. No. 1, 21 December 1836 4/8. Later T.B. Macaulay was co–opted to be its member, Legislative, Cons. No. 33 to 35, 28 December 1836 4/8

[61] Legislative, Cons. Nos. 5,6,7 B.S., 29 January 1838 and Cons. Nos 43 and 46, 8 October 1838

1850–1919

Many legislations were enacted in this period covering a wide range of matters concerning children. The Female Infanticide Act 1870, and the Vaccination Act 1880 sought to secure life and health of infants ; the Guardianship and Wards Act 1890 made provisions for their continued care and protection. Existence of child labour and need for special provisions for them was recognized by the Factories Act 1881. In the field of criminal justice, a legislation against the forcible abduction of children was proposed in 1848 following the abduction of a 7–year–old girl due to personal vengeance. Under the existing law, the forcible taking of girls without their parent's permission for the purpose of sale or prostitution was an offence and this case was thought to be not covered by the Regulation. But the draft legislation was not approved and it was said that, the case was covered by illegal trespass.[62] The Apprentices Act 1850 was enacted 'for better enabling children, and especially orphans and poor child brought up by public charity, to learn trades, crafts and employments by which when they come to full age, they may gain livelihood.[63] It authorized the magistrates to bind over juveniles between 10 to 15 years as apprentices to learn a trades, crafts, and employments instead of sending them to prison for minor offences. This Act mooted the concept of neglected children for the first time for legislative purposes and provided for a community alternative to imprisonment of delinquent children for minor offences. The Apprentices Act 1850 was the harbinger of many other legislations to follow, laying down special provisions in relation to children. The Indian Penal Code 1860 (IPC) declared children below 7 years of age as doli incapax, while the presumption of mens rea could be rebutted in case of children in the 7–12 age group.

Prison reports in the meanwhile[64] continued to point towards the need or change in policy and administration. Noticing the high rate of recommitals and the remarkable increase in the number of juvenile offenders (Poona reported an increase from one in 1860 to sixty–five in 1861), the government asked for further explanation, as also the names of jails

[62] Original Legislative Consultation (Manuscript) Legislative Nos 8, 9, 8 January 1848

[63] The long title of the Apprentices Act 1850. The Act introduced with the object to meet an increasing demand for skilled craftsman, in the development of the country, has since been repealed by the Apprentices Act 1961

[64] Bombay Governments Resolution on the Report on the Jails of that Presidency for 1861. Home Department, Judl. Con. No. 7–9(a), 12 January 1863. See also, Report on Criminal Justice in the Bombay Presidency for 1857, Home Department, Judl. 7 (6 August 1858) ; Annual Report on Criminal and Civil Justice in the Central Provinces for 1863 ; Id., p 8A, 1 November 1864 ; Report on Administration of Justice, Oudh Provinces for 1863, Id., pp. 37–40(A), 6 October 1864 ; Annual Report on Jails for 1861–62 in N.W. Province, Id., p. 52(13) (25 July 1864)

having separate provisions for juveniles.

The Whipping Act 1864 followed as a consequence. It was hoped that the Whipping Act would prove to be of eminent service in thinning the juvenile population of the jails.

The applicability of the punishment of whipping to the classes of offences usually committed by the young, and the peculiarly deterrent effects it will, in all probability, have upon them, encourage us to believed that the class of juvenile offenders will not henceforward, considerable enough to render the establishment of Reformatories necessary.[65]

The Indian Jail Committed was constituted in 1864 pursuant to a Minute by the Governor General immediately after the passing of the Whipping Act. The constitution of the Committee was intended to intimate that the Act was not supersede the necessity for the larger measures of prison reform.[66]

Juvenile delinquents and reformatories were among the issues connected with jail management on which some legislative action appeared to be immediately called for. Many members of the Indian Jail Committee believed that if education was offered through urging their children to commit crimes to obtain government education. They also believed that the measure of payment towards reformatory expenses by parents, practiced in England to prevent such course, was not feasible in India for 'every subterfuge would be resorted to by native parents, to avoid such a payment.[67]

The segregation of juveniles from adult offenders was secured within prisons by modifications in the prison codes of Madras, Bombay, North Western Provinces, and Bengal.[64] Each of these codes, however, adopted a different cut–off age for defining a child..

In the period 1872–75, Poona Juvenile Prison was reported to be running satisfactorily, with good health and conduct of juveniles, scholastic and mechanical education, and after–care facilities, but at other places the proportion of children to the total imprisoned was as high as 10 per cent, making segregation essential.[68]

The idea of a reformatory school for delinquent children was the air for long in view

[65] Indian Jail Committee Report, 1864, p. 19
[66] Minute by the Governor General, p. 3, dated 3 March 1864
[67] Indian Jail Committee Report, 1864, p. 20
[68] Statement Exhibiting the Moral and Material Progress and Condition of India during the Year 1872–75, p. 12 (Presented Pursuant to Act of Parliament), 2 June 1874. In the only other reference to children, it pointed out that there were schools for the children of convicts, Id., p. 39

of the bad prison conditions and the felt need for segregating delinquent children from adult offenders. The immediate impetus for enacting the Reformatory Schools Act 1876 was provided by the Government of Bengal's contemplation.

The non–delinquents were excluded from the scope of the Reformatory Schools Act 1876. The Act permitted that a youthful offender (a child not above the age of 15 years) sentenced to imprisonment or transportation or undergoing imprisonments, may be sentenced to a reformatory school instead of being detained in a prison.[69] It was amended in 1897 to empower the local government to effect the reformation in a more cohesive manner. A year later, the Code of Criminal Procedure 1898 authorized magistrates to send juvenile offenders to reformatories instead of prisons in the specified circumstances along with provisions relating to grant of probation and trial of children by the juvenile court.[70] Children of members of criminal tribes also received special attention around the same time under the Criminal Tribes (Amendments) Act 1897. It provided for the establishment of industrial, agricultural, and reformatory schools for children of members of the criminal tribes who were in the age group 4–18 years. The local governments were empowered by this Act to remove such children from criminal tribal settlements and place them in a reformatory.

The report of the Indian Jails Committee, 1889, reiterated the need for segregation and classification of offenders according to their age and duration of sentence. While emphasizing that younger juveniles should never be punished with curtailment of diet, it recommended daily exercise and compulsory education for them. It also emphasized that habitual juvenile offenders should not be sent to reformatories as they 'take with them to the schools the worst traditions and practices of the convict prisons.[71]

In view of the expertise required of a magistrate to select appropriate cases for sending to reformatory schools, certain modifications in judicial procedure were introduced by some states in this period. The Government of the United Provinces passed a resolution for the appointment, in every district, of a special magistrate to try children's cases in order to secure more intelligent treatment for them.[72] The Bengal G0vernment c0nstituted a juvenile c0urt th0ugh children charged j0intly with an0ther human being 0f above 15 years 0f age were n0t t0 be dealt with by this c0urt. Alth0ugh the functi0ning of the c0urt required

[69] Section 8, 10 Reformatory Schools Act 1897. Report of the Indian Jail Committee, 1889, April 1889, p. 71
[70] Section 29B, 399 and 562, CrPC 1898
[71] Report of the Indian Jail Committee, 1889, April 1889, p. 71
[72] Resolution No. 2985, dated 2 August 1913, cited in Report of the Indian Jail Committee, 1919–20, 30 Cmnd 1303, 1921, p. 197

impr0vement, it has been p0inted 0ut as the ‘m0st praisew0rthy attempt t0 grapple with the questi0n.’

1919–1950

One of the most significant developments in the history of the juvenile justice system in India is the Report of Indian Jail Committee 1919–20. It undertook the most comprehensive exercise for the overhauling of the entire prison system after visiting numerous jails and reformatory schools in the country and aboard. Preparation for a Children Act were underway in Madras since 1917 and it passed the legislation in June 1920,[73] and the recommendations of this Committee provided the impulse for the enactment of similar legislations by other states too.

The Jail Committee 1919–20 noted that prison administration, since 1889, had made great advances in the material aspects of administration, health, food, labour, and so on, but little attention was paid to the possibility of moral or intellectual improvement and reformation of prisoners. The Committee added that the ‘primary duty of keeping people out of prison. If it can possibly be done, needs to be more clearly recognized by all authorities and, not least, by the courts.’ Juveniles in jails became prominent among the persons to be relieved from the jails. Its recommendations relating to them deserve to be stated in some detail as they have resounded in subsequent reports, policy statements, and other fora, and are equally relevant today.

The Report pointed out that the ordinary healthy child criminal is mainly the product of an unfavourable environment and that he is entitled to a fresh chance under better surroundings. There is a general consensus that as youth is the time when habits have not become fixed, the prospects of reformation are then most hopeful. From both points of view it has come to be agreed that the child offender should be given a different treatment from the adult. The committee found it undesirable to familiarize the young with the sight of prison life or to blunt their fear of prison which is one of the most powerful deterrents of crime. As specialized training could not be provided in prisons, the committee recommended special institutions devised and equipped for the purpose.

Children with defective intellect should, after examination of their physical and

[73] For Statement of Objects and Reasons, see Fort St. George Gazette, Part IV, 18 December 1917. Pp. 1156–8. For Report of Select Committee, see Id., 26 December 1919, pp. 1213–16. For proceedings in Council, see Id., 23 December 1919, p. 1367, and Id., 8 June 1920, pp. 690–704

mental condition, be sent to institutions specially provided for them. For young offenders above the age of 15 years, it recommended Borstal Schools.

The committee emphasized the need for aftercare as well as maintenance of records and statistics of failure or success of inmates discharged from institutions, which would be valuable for those directing policy and controlling the working of the schools.

The committee further recommended the constitution of children's courts with procedures 'as informal and elastic as possible.' Taking note of the practical difficulty in creating children's courts in view of the small number of children committing crimes, it suggested that the regular magistrates should sit at special hours, and if possible, in a separate room to hear charges against juvenile offenders. 'The main object is to produced in the mind of the magistrate a clear recognition of the fact that he is dealing with a case of a special character in which he is expected to assume a different standpoint, a more paternal attitude, to adopt the American idea, from that which he would employ in trying a case against an adult.'[74]

Differential handling of the juvenile and prohibition of infliction of imprisonment, in the committee's opinion, would compel the magistrate to think what best is to be done. 'In order to arrive at a wise decision it will be very desirable that the magistrate should have before him the largest amount of information obtainable regarding the child, him home, his habits, and the circumstances which have led him into crime.' Such a report compiled by a probation officer should be considered before passing the final order in all except unimportant offences. The child should be released on bail during proceedings, unless impossible, in which case he should be sent to a remand home, but in no case to a jail.

It suggested that the most satisfactory solution to the problem was to entrust the child to the relatives if they were likely to take better care of him in the future than in the past. The scope of probation under the CrPC needed to be extended to children. The probation officer 'may be a paid officer working under the orders of the court or he may be a private individual interested in philanthropic or social work…'[75]

The committee drew attention to the desirability of making provisions for children who had not committed crime yet, but were living in criminal or vicious surroundings or

[74] Id., p. 197
[75] Id., p. 199

without proper guardians or homes. Special enactment for children in immoral surroundings, and especially female children likely to be brought up to habits of prostitution, was also needed.

Madras (now Tamil Nadu) had already passed the first Children Act on 20 June 1920. Its provisions relating to age limit of childhood, prohibition against imprisonment of child offenders, remand homes, certified schools, and non–criminal children in bad surroundings were recommended for adoption by other states.

Children Acts in Bengal and Bombay were enacted in quick succession in 1922 and 1924 respectively. Pursuant to the recommendations of the Indian Jail Committee, 1919–20, the Madras Children Act 1920 was adopted in the Andhra area.

The spirit of reforms sweeping the world did not leave the French colonies unaffected. Pondicherry promulgated a decree in 1928 instituting special jurisdiction and the probation system for the European infants and those assimilated in the French colonies (other than Anlilles and la Reamion), in the protectorates, and mandated territories under the ministry of colonies.[76]

More states followed suit in the years to follows : namely, the Delhi Children Act 1941, the Mysore Children Act 1943, the Travancore Children Act 1945, the Cochin Children Act 1946, and the East Punjab Children Act 1949.

Notably, India did away with the American model rather than the British that had the same procedural safeguards and standard of proof as an adult criminal court. The Acts differed in the finer details, such as the definition of juvenile, neglected juvenile, and so on. The most important difference that had far–reaching consequences for children was the differential age limits for defining the child. It varied from 13 to 18 years under these Acts, and a person could be dealt with as a child in one state bit not so in another. The different perceptions about child, first noticed in the jail codes, persisted in the era of the Children Acts too.

Another enactment, the Vagrancy Act 1943, also provided for the care and training of

[76] Order No. 992, dated 30 November 1928

children below 14 years who lived on begging, were under unfit guardianship, or under the care of parents of drinking or criminal habits, frequently visited prostitutes, were destitute, or subjected to bad treatment.

Juvenile justice in its juridical sense did not get prime political attention of Indian nationalist movement leaders, perhaps because of its invisibility due to segregation in prisons and also because of separate institutions for child offenders. Juvenile welfare, elementary education for children, and child labour, however, were specifically mentioned in the All–party Conference in August 1928 and the Congress Declaration, 1933. Mass migration of people between India and Pakistan on the eve of independence aggravated the problem of juvenile delinquency and destitution, leading to sporadic political activities.

In 1920, Balkan–ji–ai with headquarters in Bombay was perhaps the first children's organization to be created… In that year a number of experiments were started by pioneers like Gijubhai who created the Nutan Bal Shikshan Sangh in Gujarat and Maharashtra, and the Guild of Service, which has built up five child welfare organizations throughout the South…

In 1927 the Children's Aid Society in Bombay was founded to take vagrant children off the streets and put them into residential care… In Bengal the Moni Mela movement was started, in Bihar the Kishor Dal, which still maintains excellent services and training programmes for preschool children; in Assam the Maina Parijat was created and in Andhra Pradesh the Balnanda Sangam. Many small centres which did not develop into any notable movement, but took care of some of the immediate problems of children in Karnataka, Kanpur and Dehradun, were an indication of the trend in public consciousness to undertake activities that improved the life and entertainment of children.

Post–1950

Various official and non–official developments have contributed to the development of juvenile justice since 1950. The following section highlights some processes, including legal, which have contributed to the development of care and welfare measures for children in this period.

FIVE YEAR PLANS

With the establishment of the Planning Commission in 1951, the Five Year Plans were started and provisions for children were made under these Plans though implementation

of services under juvenile justice has not been a specific head of expenditure in the Five Year Plans. Implementation of state as well central Acts relating to neglected and delinquent children has remained with the states. In relation to these Plans, a secretary to the government said :

Since India has the ultimate goal of a socialist society, the ultimate aim of economic development is the welfare of the family. And in the family, the most precious asset is the child. Therefore, in the strategy of planned national development, India focused its foremost interest in the young child[77]

In response, Tara Ali Baig succinctly observed that this 'was a laudable thought, but if it was present in the minds of the planners, it was certainly not evident in their planning.' She was more positive a decade later in view of the fairly large–scale budgetary provisions; setting up of the Working Group on Welfare of Children to help formulate the Eighth Five Year Plan; and separation of child care from the women and children slot.[78] Though there had been a phenomenal increase in the budgetary allocation for social welfare under the seven Five Year Plans – from Rs. 4 crores in the First Plan to Rs. 29,350 crore in the Seventh Plan – the matters falling within the purview of social welfare, too, increased accordingly.[79]

The Ganga Sharan Sinha Committee in 1968 had estimated a non–recurring cost of Rs. 160 crore, and recurring cost of Rs. 4866 crore for programmes recommended by it for the care of children alone. The Seventh Five Year plan allocated Rs. 799.97 crore only for central and centrally sponsored schemes like the Integrated Child Development Services (ICDS), services for children in need of care and protection, prevention and control of juvenile maladjustment, crèches and day–care centres for children of working/ailing mothers, and training of ICDS and non–ICDS funcationaries.[80]

The Eighth Plan recognized the 'Girl Child' as an important target group, demanding attention of the government for her development and to fight against the prevailing gender discrimination. In pursuance of the National Policy on Education 1986 and the Programme of

[77] UNICEF Les Carnels de L'Enfance. No. 24, January/March 1975, cited in Baig, p. 54
[78] T.A. Baig, "We are still far from true investment in the child', The Times of India, 22 September 1988, Sec. 2, p. 3
[79] Under the Seventh Plan, social services included health, family welfare, housing and urban development, water supply and sanitation, welfare of Scheduled Castes/Scheduled Tribes and other backward classes, special central additive for schedule caste component plans, social and women's welfare, nutrition, labour and labour welfare, education, culture, and sport. The Seventh Five Year Plan 1985–90, vol. 1, Table 3.4(b
[80] The Seventh Five Year Plan 1985–90, vol. II

Action 1992, various steps were taken during the Eighth Plan to universalize elementary education and expand early child care education. This included a step–up of various programmes such as operation Blackboard, Minimum Levels of Learning, and non–formal education. In the field of women and child development, ICDS[81] continues to be the major intervention for the overall development of children. Out of the 5614 ICDS project sanctions till 1996, 4200 became operational during the Eighth plan contemplated universalization of the ICDS by the end of 1996–1996 by expanding the services all over the country.[82]

The thrust of the Ninth Plan is on strengthening the early, joyful period of play and learning, specially that of the girl child, through effective expansion of day care services and linkages of child care services and primary schools to promote developmental opportunities for the girl child. To achieve this, special linkages between the ICDS and primary education are to be developed, seeking to reinforce coordination of timing and location based on community appraisal and micro–planning at grass roots levels.

The Ninth Plan takes note of the persistent discrimination against the girl child and aims to put concerted efforts into action to eliminate all forms of discrimination and violation of the rights of the girl child. These include strict enforcement of laws against pre–natal sex selection and the practice of female foeticide/female infanticide; child marriage; child abuse; child labour; or child prostitution etc. 'Long–term measures will also be initiated to put an end to all forms of discrimination against the girl child through providing special incentives to the mother and the girl child so that the birth of a girl child is welcomed and the family is assured of state's support for the future of the girl child.'[83]

The main targets of its programmes will be children with no familial support, children with families in crisis, abused children, children with special needs, children of commercial sex–workers, children in conflict with law, and children affected by disaster or conflict. The strategies for implementing the objectives include national, state, and district–level consultations for partnerships between the government and NGO sectors; placing of child protection on the state's agenda; determining the extent of the problems of children in need of care and protection by collection of macro–and micro–level data; evolving specialized

[81]It caters to pre–school children below six years and expectant and nursing mothers with a package of services viz., immunization, health check–ups, referral services, supplementary nutrition, pre–school education, and health and nutrition education

[82] The Ninth Five Year Plan, para 3.8.104

[83] Id., para 3.8.96

services for children in need of care and protection ; establishing a network of CHILDLINE services covering every district ; building a preventive system to stem the numerous problems faced by the children of country ; identifying training needs and facilitating training at various levels ; sensitizing the allied systems and the community at large to recognize the individuality of each child and the special requirements of children in need of care and protection ; and developing a system of child care Accreditation.

Policy and Programmes

In 1974, India declared Its National Policy for Children – recognizing children as a nation's supremely important asset and that their programmes must find a prominent place in the national plans for the development of human resources. Preventive and promotive aspects of child health, care, education, protection of children against neglect, cruelty and exploitation, facilities and services for physically and mentally handicapped children, and spotting and encouraging gifted children, particularly those belonging to weaker sections of society, formed the core of the policy declaration.

Though there had been a considerable increase in the provision of services for children, the policy recognized that these still needed a focus and a forum for planning and review, and proper coordination of the multiplicity of services striving to meet the needs of children. As a consequence, in 1975 a National Children's Board under the chairmanship of the prime minister was constituted and it was hoped that its existence would assure far greater important to child development programmes.[84]

The Eighth Five Year Plan of India recognized 'Human Development' as the core of all developmental efforts. Child survival and development received high priority. Two National Plans of Action in 1992 were adopted during the Eighth Plan – one for children and the other exclusively for the girl child.

These plans of action committed themselves to achieve the goals of the World Summit, namely, survival, protection, and development of Children. In line with these National Plans, fifteen states – Andhra Pradesh, Bihar, Goa, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal – had already prepared their own State Plans of Action for Children/the Girl Child. Other states were being pursued to expedite action for finalizing their

[84] Baig, p. 63

draft plans of action.[85]

Due to rapid urbanization and unabated migration of the rural poor, the population of destitute, especially that of street children, in urban centres is increasing. In order to tackle this problem, a scheme for the welfare of street children was launched during 1992–93, to provide community–based, non–institutional services for the care, protection, and development of street children. The scheme is being implemented through eighty–one voluntary organizations in twenty–three cities, covering approximately 24,000 street children under the guidance of a city–level task force composed of the secretary, social welfare, the police commissioner, the municipal commissioner, and the directors, social welfare of the concerned state government.[86]

Other child development programmes developed by the government include supplementary nutrition feeding under the ICDS, children homes, bal bhawans, remand homes, observation homes, services to destitute children and children in need of care and protection,[87] and CHILDLINE.[88]

The Government of India submitted its Country Report under Article 44 of the Convention on the Rights of the Child to the UN Committee in 1997 which included references of the above–mentioned programmes. The Committee suggested that India should adopt comprehensive national plans of action based on a child rights approach, to develop a comprehensive system for collecting disaggregated data as the basis to assist the progress achieved in the realization of children's rights, and to help design policies to be adopted to implement the Convention, to establish a statutory, independent, national commission for children with the mandate of, inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the Central, state, and local levels. It also recommended review of the legislative framework of domestic and inter–country adoption, measures for compulsory elementary education, and protection of

[85] See, supra note 86 at 3.8.110

[86] Id., para 3.10.69

[87] Id., para 3.8.100

[88] The department of family and child welfare of Tata Institute of Social Sciences established India's first, 24–hour emergency phone service CHILDLINE 1099 in Mumbai in 1998 to help children is distress. The ministry of social justice and empowerment adopted the project and officially appointed CHILDLINE India Foundation to support the development of CHILDLINE services across India. CHILDLINE aims at responding to the needs of every child in need of care and protection throughout the country and ensure that there is an integrated effort between government, non–governmental organizations, academic organizations, bilateral agencies, the corporate sector, and the community in protecting the rights of children. On the basis of calls received, CHILDLINE provides a platform for advocacy on issues relating to children

children against physical, sexual, and substance abuse. It further recommended that India should ensure compatibility of domestic legislation with the Convention and to take all necessary measures including the required resources (that is, human and financial) to ensure and strengthen the effective implementation of existing legislation.

GOVERNMENT BODIES

The first national organization to mobilize voluntary activity in every state in favour of all aspects of children's needs, the Indian Council for Child Welfare, was formed in 1952. The credit for introduction of a specific child welfare plan for the first time in the Third Five Year Plan goes to this Council.[89]

In 1953, the Central Social Welfare Board was established which was wholly financed by government. 'Child care programmes and projects, such as rural Balwadis, holiday homes, and grants to over 7000 non–governmental agencies, orphanages, crèches, women's homes, etc. eventually became part of its programmes for improving the lives of women and children.'[90]

A committee for the preparation of a programme for children, with Ganga Sharan Sinha as its chairperson, submitted its report in 1968 and reported, 'It is not possible to examine the needs of children without considering conditions in the family in which they grow.' Accordingly, its recommendations ranged from health and nutrition for mothers and children, educational programmes for children, common services for strengthening the family as a unit for ensuring the well–being of the child, and programme for the socially and emotionally handicapped children.

Two other equally important institutions were also created simultaneously. The Institute of Public Co–operation and Child Development (NIPCCD) was to deal with research, training, seminars, and studies relating to the child, and the National Institute of Social Defence (NISD), with the problems of social defence. The NIPCCD continues to be the nodal agency for training of social workers and for research in the field of child welfare and development. The NISD is responsible inter alia, for training of institutional personnel, persuading the states to implement provisions and infrastructure necessary for child welfare,

[89] See Baig, p. 56

[90] T. A. Baig, 'Overview of Child Welfare', in Profile of the Child in India Policies and Programmes, ministry of social welfare, Government of India, 1980, pp. 5–6

and for collecting nation–wide data.

In 1985 the department of women and child development was set up in the ministry of human resource development to ensure development of women and children. The department, besides the ICDS, implements several other programmes, undertakes advocacy and inter–sectoral monitoring, and caters to the needs of women and children.

The Union HRD minister had said that a National Commission for Children, consisting of seven members with a retired Supreme Court judge as its head, would be constituted to implement the rights for children as enshrined in the Constitution.[103] However, that still continues to be in the realm of promises.[91]

Legal Provisions

The Constitution has secured special status for children in the Indian polity since its adoption in 1950. Children figure in the chapters containing fundamental rights and the directive principles of state policy, both of which are fundamental to the governance of the country.

The Nehru Report[92] which contained the 'principles of the Constitution for India' provided inter alia that (i) all citizens of India have the right to free elementary education without any distinction of caste or creed, and (ii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, and welfare of children. These principles accepted 'in principle' by the All Parties Conference held at Lucknow at the end of August 1928, are now incorporated in the Constitution in Articles 15(8), 24, 39(e) and (f), and 45. The draft provisions recognized inter alia the principles of (i) free elementary education without any distinction of caste or creed, and (ii) Articles 15(3) and 24 were introduced at later stages during the Constituent Assembly Debates (CAD) but evoked no discussion. While there is no explanation available for introduction of 'children' in the draft provision preceding Article 15(3), the draft provision proceeding Article 24 was introduced pursuant to the Congress Declaration of 1933.

In addition to fundamental rights which children enjoy along with adults, the Constitution guarantees to children below 14 years of age the they shall not be employed to

[91] 'Panel to protect rights of children on the anvil', The Times of India, 26 March 2002

[92] Prepared by a committee with Motilal Nehru as its chairman, appointed pursuant to the All Parties Conference meeting in May 1928 in Bombay. See. B. Shiva Bao (ed.), The Framing of India's Constitution Select Documents, vol. I, 1966, pp. 58–60

work in any factory or mine or engaged in any other hazardous employment. An employment that interferes with the education of the child or exposes her/him to exploitation is hazardous in the light of Articles 39(e) and (f) and 45 of the Constitution.[93] The Constitution directs the state to protect children of tender age against abuse and also ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength. By virtue of Article 39(f) the state is also to ensure :

That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.

Article 45 of the Constitution obligates that state to endeavour to provide for free and compulsory education to all children until they complete the age of 14 years.

The constitutional concept of the children in India is of a healthy childhood with opportunities for all–round growth and development, protected from exploitation and abuse, and unburdened by child labour forced on them by economic necessity. This vision, however, was a little blurred when it came to distribution of subject matters between the centre and the states for purposes of legislation. Unless welfare of children was understood to be an integral part of social planning (which it was not as proved by the subsequent pattern of legislation on children), important subject heads like education, administration of justice, reformatories, and other institutions of like nature were left with the states. It perpetuated non–uniformity of approach and legislative provisions. The constitutional picture became clear with the transfer of education and administration of justice to the concurrent list by the 42nd Constitution (Amendment) Act 1976.

A decision of the Gujarat High Court[94] striking down a provision prohibiting a lawyer in juvenile court proceedings, as well as other difficulties experienced over the years in the functioning of the CA60 led to the Children (Amendment) Act 1978. It permitted lawyers in a children court ; made provisions for inter–transfer of cases between the board and the children court ; and for wider community involvement through measures like a panel of social workers to assist the children court, fit person, fit institution, and place of safety.

In the International Year of the Child all states except Nagaland, Orissa, Sikkim, and

[93] See, 'An Abstract of Professor Upendra Baxi's Keynote Address', delivered at the Seminar on Child labour in India, held at the Indian Social Institute, New Delhi, 14–16 November 1985

[94] Kario alias Mansingh Malu and others v. State of Gujarat (1969) 10 Cri. LJ 66. See Statement of Objects and Reasons, The Children (Amendment) Bill 1978

Tripura enacted their Children Acts. Bihar already had a Children Ordinance.[95] But the centre's efforts to persuade the states with differential provisions[96] to modify their Acts to bring them in conformity with the Central Act bore little result. Only Karnataka and Andhra Pradesh amended the definition of child on the lines of the Central Children Act. Children continued to be subjected to differential treatment originating from the varying conceptions of child and childhood. The constitutional guarantee of equal protection of the law became a casualty of the legislative autonomy of the states.

The age below which a person was considered to be a child differed in at least six states. West Bengal and Gujarat had prescribed 18 years for both girls and boys. In Maharashtra, Punjab and Uttar Pradesh it was 16 years for both. Tamil Nadu described persons below 14 years as children and those above 14 but below 18 as young persons, and institutions for them were established on this basis. Difference in age led to differential treatment being meted out to children of the same age group residing in different states. A delinquent child of seventeen years was entitled to all the benefits of the Children Act in Gujarat or West Bengal but if she belonged to Maharashtra or was transferred there, she would have been treated as an adult offender and might have ended up in its jails.

By 1984–1985[97] the Children Acts, though enacted, were not enforced at all in Sikkim, Tripura, Arunachal Pradesh, Chandigrah, and Lakshwadeep and were enforced partially in Assam and Jammu and Kashmir. Even at placed where the Acts were enforced the specialized machinery had either not been constituted at all or not constituted in the prescribed manner.

The need for a uniform Children Act continued to be emphasized at official and non–official fora, but the Central government shows its inability to enact one on the ground that the subject matter of Children Act fell in the state list of the Seventh Schedule of the Constitution. The judiciary, too, time and again emphasized the need for a children Act in

[95] Towards Delinquency Control, NISD, 1979, p. 26

[96] Namely, Madras, Andhra Pradesh, Gujarat, Maharashtra, Karnataka, East Punjab, Uttar Pradesh and West Bengal

[97] 'Statistical Survey Children Homes/Fit Persons Institutions 1984–85', 96, Social Defence, 43 Table 1, April 1989, pp. 44–45

every state.[98]

Parliament enacted the Juvenile Justice Act, 1986 and brought it into force on 2 October 1987 in all the areas to which it was extended. Though the JJA extended to the whole of India except the state of Jammu and Kashmir, it virtually brought about a uniform system of juvenile justice in the whole country.[99] In addition, the JJA provided for prohibition of confinement of children in police lock–up or jail, separate institutions for the processing, treatment, and rehabilitation of the neglected and delinquent children, a wide range of disposition alternatives, to family/community–based placement, and a vigorous involvement of voluntary agencies at various stages of the juvenile justice process.

Dr Hira Singh voiced the general concern that there was a wide gap between the cherished principles and the actual practices under the JJA. Most of the states had not set up the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and after care homes. For want of adequate measures for non–institutional care such as non–institutional probation, foster care, sponsorship, etc., institutionalization continued to be used, with all its ill effects.

The new Act has received a mixed response. One meeting of NGOs and others working for children concluded that this Act was not in the best interest of children. The atmosphere of criminal justice administration permeated the entire Act. The act was drafted in hurried and secretive manner without any participation of the children who would be affected by it.[100] Another meet hailed the new legislation as the blueprint for child welfare inspired by the UN Convention on the Rights of the Child. A petition has already been filed in the Delhi High Court challenging the validity of certain provisions of the JJ (C&P) Act.

The Juvenile Justice (Care and Protection of Children) Amendment Act 2006

The civil society played a key role in keeping the focus on the JJA 2000 through social action litigation as well as through other measures. Continuous monitoring of the problems faced in proper implementation of the JJA 2000 by civil society led to wide scale and crucial amendments in the JJA in 2006 setting at rest many a legal issues that had been

[98] For example, Sheela Barse v. Union of India, AIB 1986 (SC) 1773 ; Nuruddin v. State of HP, 1984 Cri LJ 1712 ; Moti v State, 1981 Cri LJ 45 (NOC

[99] The provisions of the Jammu and Kashmir Children Act 1970, in force in Jammu and Kashmir, were more or less similar in approach to the JJA

[100] Rema Nagarajan, 'Juvenile Justice Act not good for children', The Hindustan Times, 21 March 2001

agitated in various cases before the Supreme Court and the High Courts.[101] The most significant changes introduced in 2006 were the amendments made in Sections 2(1), 20, 64 and 68 and insertion of new Sections 1(4) and 7A.

Insertion of sub–section (4) to Section 1 gave overriding effects to the provisions of the JJA 2000 over the contrary provisions in any other law for the time being in force.[102] This change set at rest the cases in which applicability of the JJA 1986 to the child who had committed an offence under special legislations like the Terrorist and Disruptive Activities Act (hereinafter referred as TADA), Prevention of Terrorism Act (hereinafter referred as POTA). Narcotics Drugs and Psychotropic Substances Act (hereinafter referred as NDPSA) providing for special courts and procedure for such offences, was challenged.

Section 7A was inserted to lay down the procedure for age determination and it in most clear terms provided "that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case." This provision set at rest the differential approach followed in different cases by courts sometime permitting and at other times refusing the plea of juvenility when raised at a subsequent stage.

The Supreme Court in Pratap Singh's Case had given a narrow interpretation to Section 20 of the JJA which had provided for application of the JJA to pending cases by holding that the JJA 2000 was to apply to the pending case of a body who was above the age of 16 years but below the age of 18 years if such boy remained below the age of 18 years on the date on which the JJA 2000 came into force, i.e., 1 April 2001. The explanationadded to Section 20 squarely overrode that decision.

In view of Pratap Singh decision, Section 64 that laid down provision for released of persons under going imprisonment if they were above 16 but below 18 years of age on the date of commission of offence in accordance with the JJA 2000 would have been subject to similar narrow applicability. The explanation added to Section 64[103] expanded the scope of the Section to also apply to all cases of children who were above the age of 16 but below 18

[101] For details of the amendments and their impact, see, "Epilogue – New Developments" in Ved Kumari, The Juvenile justice system in India from welfare to rights (2nd Edition, 2010)

[102] S. 1(4) reads : Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.

[103] Explanation added to S. 64 read, "In all cases where a juvenile in conflict with law in undergoing to sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) of section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date

years on the date of commission of offence, irrespective of their age on the date of coming into force of the JJA 2000.

Rules framed under the parent Act are the key to its implementation. The JJA 2000 had authorized the States to make Rules but many States did not framed their Rules under the JJA 2000. The Central Government had framed the Model Rules to be followed by the States as early as 2001 but they were declared to be not binding on the States by the Supreme Court in Pratap Singh's case. In order to overcome this difficulty, Section 68 of the JJA 2000 was amended and it not only authorized the Central Government to make Rules but declared them to be binding on the States till the States framed their own Rules.[104] The Rules framed by the States were also directed to be in accordance with the Central Rules as far as possible. Pursuant to the amendment, the Central Government framed fresh Model Rules in 2007.

The Juvenile Justice (Care and Protection of Children) Amendment Act 2011

Another amendment was introduced in the JJA in 2011 to provide for inclusive and non–discriminatory practices relating to children suffering from leprosy, TB, mental and other disabilities.

Despite enactment of two Central Acts governing the field of juvenile justice in 1986 and 2000 applicable to the whole of India expanding the scope of protection for children post Sheela Barse, the state of their implemention remained lackadaisical. The Supreme Court was approached again through two writ petitions filed in public interest, namely, Bachpan Bacho Andolan[105] and Sampurna Behrua[106] seeking direction for implementation of the JJA 2000. Bachpan Bachao Andolan was field "in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman condtions." Sampurna Behrua was filed in view of the non–implementation and mal–implementation of the JJA. These social action litigations resulted in various orders by the Supreme Court for better implementation of the JJA. The Supreme Court roped in other bodies like the National Commission for Protection of Child Rights, National Legal Services Authority and State Legal Services Authorities for coordinating and cooperating in implementing various provisions of the Act. It impleaded the National Commission for Protection of Child Rights and national Legal Services

[104] Proviso was inserted in Section 68 and it reads : provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section

[105] Writ Petition (C) no. 51 of 2006

[106] Writ Petition (Civil) No. (s) 473 of 2005

Authority as parties to report on implementation of the Act and to seek appropriate directions in the matter. The State Legal Services Authorities were directed "to coordinate with the respective Child Welfare Departments of the States to ensure that the Juvenile Justice Boards and Child Welfare Committees were established and were functional with the required facilities."[107]

Not much changed in the way the JJA 2000 was getting implemented as various directions of the Supreme Court in these cases gave one the feeling of déjà vu. The pattern of reports and the manner of implementation was not much different than it was in Sheela Barse's case[108] when the Supreme Court had passed many orders to ensure implementation of the JJA 1986.The only difference that could be noticed was that this time the State seemed to be also pitching in with its Integrated Child Protection Scheme 2009–10.

However, it may be noted that the numerical figures of implementation given by the government in these cases were not focused on the functioning of the bodies constituted or established under the Act and the quality of services provided by them. It was the acknowledged position of the Government itself that the quality of case in Homes needed significant improvements in relation to "provision of adequate and trained staff; improvement in quality of infrastructure ; provision of special care for special needs children ; provision of age appropriate education and suitable vocational training and a focus on non–institutional care."[109] The order of the Supreme Court in Bhachpan Bachao Andolan contained in details the various maladies in the functioning of the JJA.

Pursuant to this Resolution, each High Court constituted a Juvenile Justice Committee to oversee the implementation of the JJA providing further impetus to its implementation and check on the quality of services provided under it. In Delhi, the meetings of this Committee were held once every two months. Once of the visible consequences of its deliberations had been the establishment of three JJBs in view of the pendency of large number of cases relating to children before the single JJB in Delhi. The High Court of Delhi had taken suo motu cognizance of many matters concerning violation of children's rights from the news reports or letters sent to it by social workers, in addition to many writ petitions filed by various NGOs. These matters include police practice of compelling and forcing children to

[107] Orderdated 19th August 2011 available at http://judis.nic.in/temp/473200539822011p.txt
[108] Writ Petition (Cri) no. 1451 of 1985
[109] Department Related Parliamentary Standing Committee on Human Resource Development. Two Hundred Thirty Fifth Report on the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2010, available at http://prsindia.org/uploads/media/Juvenile%20Justice%20 SCR.pdf.

give statements and then using them before the JJB;trafficking of children by placement agencies; attacks on NGO during rescue of child labour, missing and run away children; and home for pregnant and lactating women.[110]

The Juvenile Justice Committees still exist in each High Court and it is expected that they will continue to provide the leadership and supervisory role on the implementation of the current Juvenile Justice (Care and Protection of Children) Act 2015.

The Juvenile Justice (Care and Protection of Children) Bill 2014

The most note–worthy feature of all the enactments since 1850 has been that they were all moving in one direction of bringing an increasing number of children within the protective umbrella of juvenile justice. However, the gang rape of Delhi girl, Jyoti Pande (named Nirbhaya by media) on 16th December 2012 resulted in social media organized spontaneous protests against the gruesome rape. It resonated in different parts of India. Soon media coverage shifted the focus from women's safety to the involvement of a 17 years old child in this gang rape. The newspapers and multi–media screamed with flashing headlines that the 'juvenile' was 'the most brutal' among all the accused in this rape. The media created and promoted the frenzy around this lie despite having published itself that the order of the JJB had categorically noted that neither the victim woman nor her male friend in various statements made to different persons had singled the juvenile out as being the most brutal.[111]

Despite the passing of the Criminal Law Amendment Act 2013, aimed at making the rape law more stringent, the media continued to highlight every single case in which a child was involved and propagating the myth that 'juveniles' were going scot free under the JJA despite committing serious offences. Newspapers and multi–media flashed more lies of 50% increase in juvenile crime, 60% increase in sexual offences by children, etc., undermining the National Crime Record Bureau statistic showing that there had been no increase in juvenile crime and that majority of sexual offences were the result of consensual sex counted as statutory rape with the raising of the age of consent by the Protection of Children against Sexual Offences Act 2012 and widening of the definition of rape in the POCSO Act[112] as well as in the Indian Penal Code by the Criminal Law (Amendment) Act 2013. Even

[110] Court on its own Motion, WP(C) 5913/2010

[111] http://timesofindia.indiatimes.com/city/delhi/Nirbhaya-case-juvenile-wasnt-most-brutal/articleshow/23426346.cms,

[112] It increased the age of consent for voluntary sexual intercourse from 16 years to 18 years

petitions were filed in the Supreme Court challenging the constitutionality of definition of child[113] and for lowering of cut–off age for defining child but were dismissed by the Supreme Court with cogent reasoning.

Despite all these developments, the Juvenile Justice Bill 2014 was introduced in Lok Sabha on 8th August 2014 taking a big step backward introducing the possibility of sending 16–18 year old children to jail in exceptional circumstances. This position was the same as was contained in 1920s in the Children Acts passed by various State Governments which permitted selective transfer of children to jails while usually they should be kept in the remand homes for children. In 2014–16, the Government in proposing and ensuring its passing by the Parliament, chose to ignore all the knowledge produced in the last one hundred years in fields like criminology, penology, psychology, psychiatry, social behavioural sciences, and more significantly the findings of the neuroscientists regarding the adolescent brain which changed the direction of juvenile justice in America since 2005. In the year 2005, the team of neuro–scientists led by Laurence Steinberg[114] presented uncontroversial evidence through brain scans, etc., that the adolescent brain was substantively different from that of children and adults in its structure and functioning. They successfully argued that treating adolescents as adults was unconstitutional being against the guarantee of equality.

The JJ Bill 2014 was uploaded on the Ministry of Women and Child Development on 18th June 2014 inviting comments within a short period of 15 days.[115] Various concerned groups and individuals sent their comment supporting or opposing the Bill. These comments have not been uploaded on the Ministry's website and no changes were made in the JJ Bill and it was introduced in Lok Sabha as originally uploaded on the website.

Now that the JJA 2015 has been enforced, it is essential to clearly understand the scheme of the new Act and the challenges presented by its various provisions while implementing the law. This book examines all the important provisions of the Act. These provisions have been examined and analysed with a view to offer interpretations that promote the objectives of the Act while observing the fundamental principles contained in the JJA

[113] Salil Bali v. Union of India and another, Writ Petition (C) 10 of 2013 decided on 17th July 2014, available at : http://judis.nic.in/supremecourt/imgs1.aspx?filename- 405777, last visited on 20th July 2014

[114] See, Laurence Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy?" Issues in Science and Technology, Spring 2012, available at http://www.issues.org/28.3/steinberg.html.

[115] It was contrary to the 30–day time–period prescribed by the Pre–Legislative Consultation Policy adopted in the meeting of Committee of Secretaries held on 14th January 2014

2015 that need to be kept in mind by all agencies involved in the implementation of the Act at all stages.

The JJA 2015 is a major step backward in the progressive and forward looking philosophy of juvenile justice initiated with the enactment of the Apprentices Act 1850. By providing the use of prisons in certain circumstances, it has taken India back to 1920 when the initial Children Acts provided for the use of prisons for keeping children only in exceptional circumstances. In 1920, sending children to jail in exceptional circumstances was as progressive step as it reversed the policy of exceptional use of Reformatories and Borstal to exceptional use of prisons. The same cannot be said about the JJA 2015 which has adopted that approach 100 years later ignoring the developments in knowledge bases of disciplines like criminology, penology victimology, psychology, psychiatry, neuroscience, rehabilitation, restorative justice which have equipped us better to deal with persons committing offences and victims of offences.

While restorative justice is being successfully practiced in many countries even for such serious offences as murder and rape by adults, leading to decrease in repeat offences by them, the Indian Parliament buckled under the political and emotional pressure created by one bad case of barbaric gang rape in which one of the accused happened to be a child on the verge of attaining majority. It is well–accepted principle that one bad case never makes for a good law. Ignoring that sound practice, India chose to take the most regressive step of introducing retributive approach for young children as a knee jerk reaction despite the experiences of countries like United States of America and United Kingdom which have reported that children tried as adults end up committing more offences in their later life compared to children who were treated within the juvenile justice system. This book is an effort to identify the problems posed by the new Act and the possible solutions that will promote the objects of the Act of ensuring care, protection, development and rehabilitation of children falling within its purview.

CHAPTER – 4

JUDICIAL TRENDS ON JUVENILE DELINQUENCY

This chapter highlights role of the Supreme Court and various High Courts in development of Juvenile Justice System in India. At primary stage, the cases of the juvenile delinquent are dealt with by the lower courts but their judgments being not binding on the other courts are not able to reflect on any policy. So the trends of the judicial approach towards a juvenile in conflict with law, reflected by the judgments of Hon'ble Supreme Court and various high courts are being examined. The juvenile justice board are under statutory and Constitutional duty to deal with the juveniles in conflict with law who are produced or brought before it. The competent authority in deciding the cases has to make due enquiry and give full opportunity to the juveniles to put his case not only at the time of enquiry regarding the commission of offence he/she is charged with but also at the initial stage of the case when the question of determination of his/her age comes up before the court or the Board concerned. Since the early seventies, the Supreme Court has played a crucial role in protecting the rights of undertrials and prisoners. It has also shown quite a protective attitude towards delinquent children and on numerous occasions exhorted the defaulting states to enact a Children Act. A public interest litigation against torture of children in Kanpur jail was already before it in which it has been issuing necessary directions, when Sheela Barse, a journalist, filed a petition for the release of 1400 children incarcerate illegally in jails in various states. The petitioner had pursued the matter of release of the imprisoned children with the central government at various levels for about a year but failed, despite an assurance of personal intervention by the then Prime Minister himself. She then took recourse to the Supreme Court had filed a writ petition.

4.1. Judicial Trends on Juvenile Delinquency :

Judicial trends set by various courts relating to child delinquency can be examined under following heads :

- ***(i) Determination of age of juvenile.***
- **(ii) Jurisdiction of the Board/Court.**
- **(iii) Apprehension and production of juvenile.**
- **(iv) Bail to juvenile.**
- **(v) Disposition of the juvenile.**

Determination of Age of Juvenile :

It is primary duty and responsibility of the court that before convicting a person it must determine the age of such person whether he is juvenile or not. The courts have held that very young children should not be sent to prison[116] In *Smt. Prabhati* v. *Emperor*[117] it was held that as far as possible such young children should be released under the supervision and care of their parents or guardians. The court must have clear evidence of the age of a person before sending him/her to reformatory school. It was clarified that a child could not be sent to a reformatory school unless an order of institutionalization, that is, of imprisonment, was made.After recognizing the need for segregation of juveniles from the adult offenders not only during trial but also at the investigation stage, the constant view of the beneficial juvenile legislation and also the judiciary has been to protect the child from hardships of adversarial trial and punishment system which mainly deals with the adult offenders. So the important point which requires a determination at the very initial stage is the age of person charged with commission of an offence.

In *Sushil Kumar* v. *State of U.P.*[118] the question of age at the time of occurrence was raised. However, the Supreme Court refused to allows the plea of child status and dismissed the petition believing the plea to be an after thought because it was not raised before the trial court or before the High Court or even in grounds of special leave petition as originally filed. Further, the Supreme Court took into consideration two statements of petitioner made by him relating to deceased being his aunt wanting to adopt him and suspicion of deceased's husband of illicit relation between him and deceased and said that such a stand would not have been taken if it petitioner was a child at the crucial time.

The question before the Supreme Court in Arnit das[119] was whether a person is juvenile and crucial date is the date when he is brought before the competent authority and not the date of commission of offence. After considering all the trends and material in this regard, the court held that as far as the present context is concerned the crucial date for determining the question whether a person is Juvenile, is the date when he is brought before the competent authority. So far as the finding regarding the age of the appellant is concerned, it is based on appreciation of evidence arrived at after taking into consideration of the material on record and valid reasons having been assigned for it.

[116] Emperor v. Dharam Parkash AIR 1926 (Lahore) 611
[117] AIR 1921 (Oudh) 190
[118] Sushil Kumar v. State of U.P. AIR, 1984 SC 1232
[119] Arnit Das v. State of Bihar, AIR 2000, SC 2264 A

In case of Krishan Bhagwan[120] a question arose as to what procedure should be followed where a child within the meaning o the Children Act is being tried and convicted by the ordinary criminal court and plea regarding bar of his trial by the ordinary court was taken for the first time at the appellate stage.

Similarly, in Jayendra's case[121] where accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under S. 2(4) of U.P. Children Act and sent to an approved school, the accused having crossed the maximum age of detention in an approved school i.e. 18 years the court sustained the conviction of the appellant under all charges framed against him but quashed the sentence awarded to him and directed his release forthwith. The appeal was therefore partly allowed by the Supreme Court.

In *Bhola Bhagat* v. *State of Bihar*[122] it was held that where plea is raised by accused in any court that he was a child at the time of commission of offence it is obligatory for the court to examine the plea and hold enquiry if necessary to determine the age and give a finding in the regard. The court cannot overlook beneficial provisions of Acts on technical grounds. The Patna High Court in *Krishna Bhagwan* v. *State of Bihar*[123], in complete disregard to the intendment of the JJA for keeping children away from adult offenders even during trial, laid down that in case the plea of child status was taken up in appeal. This appellate court should proceed as if the JJA did not apply, and record its finding on the charge. Only if it found the accused guilty and prima–facie a child on the date of commission of offence, then it should ask for a finding of age from the juvenile court under Section 32 of JJA.

In Bhoop Ram's case[124] Supreme Court was confronted with the question whether the appellant who had been convicted and sentenced along with adult accused should have been treated as a child within the meaning of the U.P. Children Act and sent to the approved school for the detention instead of being sentenced to undergo imprisonment in jail. The court after considering the material on record opined that appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment. The Supreme Court ruled that since the appellant is now aged more than 28 years of age there is no

[120] Krishan Bhagwan v. State of Bihar AIR 1989 PAT 217 (FB)
[121] Jayendra v. State of U.P. AIR 1982 S.C. 685, 1982 Cri. L.J. 1000
[122] Bhola Bhagat v. State of Bihar, 1998 Cri. L.J. 1990
[123] 1991 Cri L.J. 1283 (Pat) (FB)
[124] Bhoop Ram v. State of U.P. 1989. 3 SCC (AIR 1989 SC 1329)

question of appellant now being sent to an approved school under the U.P. Children Act for being detained there.

In *Pratap Singh* v. *State of Jharkhand and another*[125]first information Report was filed charging the appellant for causing the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the Chief Judicial Magistrate (CJM) Chas on 22.11.1999.

The intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e. the date on which the 2000 Act came into force, the person was a 'juvenile' within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age. The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

Jurisdiction of the Board/Court :

In Raghbir's case[126] the question for consideration before Supreme Court in the appeal by special leave was whether a person under 16 years of age and accused of offence under section 302 can get benefit of Haryana Children Act.

In case of *Sant Das* v. *State of U.P. and others*[127] the principal issue was in the absence of the setting up the Juvenile Justice Board as per the requirement of section 5 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which authority should exercise

the powers of the Board. After being taken into custody for offence committed under section 302, IPC, the writ petitioner had moved two applications, one for declaring him as a juvenile as he was only 16 years 5 months and 4 days old on the date of the offence and second for Bail.

In *Nanhu* v. *State of U.P.*[128] the conflict between the two Acts – Juvenile Justice Act, 1986, and Dacoity Affected Areas Act, 1983 – was attempted to be resolved. The juvenile in that case was aged about 10" years. The Sessions Judge rejected the Bail on the ground that under section 10 of the Dacoity Affected Areas Act the Bail cannot be granted unless no

[125] JT 2005 (2) SC 271
[126] Raghbir v. State of Haryana. 1981 Cri. L.J. 1497
[127] 2003–(109)–CRLJ–3424–ALL
[128] 1990 All L.J. 496

offence is made out.

In *Raj Singh* v. *State of Haryana*[129] appellant was born on 9.12.1974 as per the certificate issued by the Board of School Education which stood reaffirmed by another certificate produced before the Court. He was convicted under section 20 of the NPDS Act, 1985 with regard to an offence that was committed on 22.5.1990 on which date he was less than 16 years of age. The Apex Court held that his trial and conviction by the Sessions Court stood vitiated because un section 22 of the aforesaid Act a different procedure for trial of the juvenile was provided. The trial was quashed and the Court directed that his trial should be conducted in accordance with the provisions of the Juvenile Justice Act.

In case of *Sunil Kumar* Vs. *State of Haryana*[130], the petitioner was an accused in FIR No. 233 dated 17.5.1990 registered under Sections 376, 366 and 201 IPC at P.S. Sadar, Hisar. He was accused of committing rape on the prosecutrix on 16.5.1990. Petitioner was sent to face trial for the aforesaid offence and was convicted to undergo R.I. for 7 years under Section 376 IPC alongwith other offences.

Apprehension and Production of Juvenile :

Juvenile Justice (C & P) Act has defined and imposed special duties on the police keeping in view the sensitivity of the issue of juvenile's apprehension and detention. Broadly the following duties have been imposed on police by the Act.

tIn *State of Bihar* v. *Kapil Singh*[131], the Bench held that it was not safe to base any conviction on the solitary testimony of Manti and, consequently, they gave Kapil Singh benefit of doubt, set aside his conviction and sentences, and acquitted him. This criminal appeal was brought by special leave by the State of Bihar against the acquittal of Kapil Singh. The crucial question to e determined was whether the evidence of Manti can be relied upon the purpose of convicting Kapil Singh.

In *Supreme Court Legal Aid Committee* v. *Union of India and others*[132] which was follow up of Sheela Barse (I), the court took note of the fact that Juvenile Justice Act had come into force. Every District judge was therefore directed to report to the Registry of the

[129] (2000)6 SCC 759
[130] 2010 (4) RCR (Criminal) 414
[131] (1968) 3 SCR 810
[132] (1989) 2 SCC 325

Supreme Court s to how many juveniles homes, special homes, and observation homes have been set up as required under Section 9, 10 and 11 of the Juvenile Justice Act, 1986. The court also took note of the fact that the number of children in regular jails was the highest in West Bengal and Bihar.

Bail to Juvenile :

The trend of judicial opinion can be examined in the cases given below.

In *Brijesh Kumar* v. *The State*[133], entries in the school leaving certificate were rejected on the ground that parents understated the age of the children at the time of admission to School. The Juvenile Court on the basis of the material on record appreciated the evidence and declined to accept the evidence of the father of the petitioner claiming to be juvenile.

In two decisions of the Supreme Court, namely, *Rajinder Chandra* v. *State of Chhattisgarh and Anr*[134] and *Pratap Singh* v. *State of Jharkhand and Anr.*[135] the Court declared JJ (C&PC) Act, 2000 to be a beneficial legislation for the benefit of the juvenile and the Act must be construed as such. In this line, when Section 12 makes it mandatory for a juvenile, even if he is "apparently a juvenile" to be released on bail, then this Court and all the courts dealing with a such a situation must give full meaning to the provisions of the said Section as also the object of the Act.

In *Master Niku Chaubey* v. *State*,[136] it was observed by the Court that the nature of the offence is not one of the conditions on which Bail can be granted or refused to the juvenile. It was held that Bail in respect of the juvenile has to be considered purely under the parameters of Section 12 of the said Act which requires Bail to be granted mandatorily unless the court feels that the released of the juvenile is likely to bring him into association of any known criminal or expose him to moral, physical or psychological danger or that release would defeat the ends of justice. In *Arvind* v. *State*,[137] the Court had observed that the gravity of the offense is not a criteria or impediment for the release of the juvenile on Bail.

[133] 98 (2002) DLT 63
[134] MANU/SC/0051/2002
[135] JT 2005 (2) 271
[136] 2006 (2) JCC 720
[137] 1999 (2) I CC Delhi 311

In *Master Abhishek (Minor)* v. *State*[138], exact meaning of the expression 'defeat the ends of justice' has been explained. In this case it has been held in that decision that the factors for determining as to what amounts to defeat of the ends of justice in the context of Section 12 of the said Act have also t be located in the context of the purpose of the Act.

Final Disposition of the Juvenile :

In *Kakoo* v. *State of H.P.*,[139] Kaoo, aged 13 years, was convicted for committing rape on a child of two years and was sentenced to four years' rigorous imprisonment. His conviction was upheld by the High Court of Himachal Pradesh. Reference was made to the Supreme Court contending that if the main object of punishment is to reform the prisoner and to reclaim him to society, his prolonged detention in the company of hardened criminals would be subversive of that object.

In *Umesh Singh and another etc.* v. *State of Bihar*[140] one of the appellant–Arvind Singh was convicted under Section 302 IPC read with Section 149 and sentenced for life imprisonment. He was further convicted under Section 324 read with Section 148 IPC and under Section 27 of the Arms Act by the trial court as affirmed by the appellate Court. His only contention put forward before the Supreme Court was that on the date of incident he was hardly 13 years old, and on that basis he was a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with other accused who are not children is not in accordance with law. However, this contention had not been raised either before the trial Court or before the High Court.

The Supreme Court called for report of experts being placed before the Court as to the age of the appellant, Arvind Singh. The report proved that on the date of the incident he was 13 years old. The Court relying on its earlier judgments,[34] while sustaining the conviction of the appellant, set aside further sentence, imposed upon him and he was set at liberty.

The Indian Parliament showing its solidarity with International Community and in compliance with its commitment to International Obligations has enacted Juvenile Justice (Care and Protection of Children) Act, 2000 in conformity with the international standards

[138] 2005 VI AD Delhi 18
[139] (1976) 2 SCC 21
[140] 2000 SOL case no. 346

and rules providing for up–liftment of the children in need of care and protection and for better treatment and early disposition of juveniles in conflict with law. Role of Supreme Court of India and various High Courts has been very appreciable in interpreting the provisions of the new enactment in such a way that advances the cause of the juvenile justice. The judicial trends set by the Supreme and High Courts are guiding factors for the lower judiciary. The beneficial provisions have been applied and benefit has been given to a number of juveniles whose cases had even attained finality and they were undergoing sentences. It has also been the efforts of the courts at the time of final disposition of the case than an opportunity for reforming himself is provided.

4.3 The case laws regarding juvenile delinquency and social background of the juvenile delinquency:

Numerous orders of the Supreme Court in the Sheela Barse[141] Case and the responses of the states provide a recent chronology of implementation of the infrastructure under the JJA.

Issues in The Sheela Barse Case

According to the information supplied by the ministry of home affairs and ministry of social welfare, there were about 1400 children under 16 years of age in jails of eighteen states and three UTs. These ministers could not do anything in this respect since the state governments has exclusive jurisdiction in these matters. The laws applicable to children at that time did not uniformly prohibit the imprisonment of juvenile in jails. Nagaland has no Children Act. Some of the Children Acts permitted imprisonment of juvenile delinquents in exceptional circumstances. In areas where a Children Act had not been enforced, the delinquent juveniles were dealt with by the ordinary criminal courts applying the general criminal law and were sent to imprisonment in the ordinary course along with adult offenders.

The petition alleged that absence of a Children Act in Nagaland, non–establishment of alternate custodial institutions for children and proceeding of delinquent juveniles by ordinary criminal courts due to non–constitution of juvenile courts resulted in violation of the fundamental rights guaranteed under Article 14 and 21 of the Constitution. The petition pleaded :

[141] 1986 SCC (3) 596

In matters of life and liberty, failure to act in such a manner, for any reason, which do not stand the tests of Articles 14 and 21 and which are impermissible even under the various laws relating to children would be per se, arbitrary and unconstitutional. Such unconstitutional detention in jails, which are far more unconstitutional than preventive detention of anti□socials, need to be interfered with in all haste and the children entitled for immediate release. The argument of consequences cannot be of any avail to the delinquent states, who could not be fair and reasonable, just and humane to their children (delinquent or not).

The Supreme Court was of the opinion that implementation of the JJA needed overseeing by the court in view of the implementation scenario and the response of various state agencies so far. In the interest of juveniles, it undertook the responsibility of co–ordinating between the Union Government and the state governments and between authorities within the state. This order of the court brought with in the purview of the Sheela Barse Case, various issued raised so far relating to the implementation of the Children Acts. Did the various orders made by the Supreme Court pursuant to this onerous responsibility, reflect awareness of these issues? Did the implementation exercise following the court orders, show a different pattern ? What had been the response of the states to the court's initiative ? What was the impact of this litigation on children ? These are the main questions analysed in this chapter.

Orders in the Sheela Barse Case

Pursuant to the filing of the petition, notices were issued to twenty–five respondent states, but as the issues raised by the petition concerned children of the whole country, the remaining states and Union of India were impleaded as parties by the courts' order. In its subsequent orders the Supreme Court sought information on various important aspects relating to institutionalization of juveniles and implantation of the services under the JJS, and made orders for their improvement.[142]

The court also issued direction to the State Legal Aid Boards and any other legal aid organization to arrange visit of two advocates to custodial institutions once every week.

In its subsequent orders, the Supreme Court asked for information on certain other matters also. These included the conditions of homes under the Children Acts, reasons for

[142] Notices to original twenty–five respondents were issued in the case on 24 September 1985 and the petition was finally disposed of on 15 March 1994. The Supreme Court passed twelve orders of which five are reported

non–enforcement of the Children Acts, names of government and non–government homes and organizations for the care of mentally and physically handicapped juveniles.

After the enforcement of the JJA the court asked for fresh information on the juveniles in jails, the existence of rules, juvenile court and juvenile welfare board, observation homes, children homes, and special homes. Emphasizing the need for an adequate and immediate action for care and protection of juveniles, it took over the responsibility of overseeing the implementation of the JJA in view of the apathetic response of the state in this respect. In pursuance of this responsibility, it directed a committee of senior advocates to prepare a scheme for overseeing such implementation.

Subsequent orders of the court related to the acceptance by the states of the draft scheme submitted thereto. It further directed the states to frame and enforce rules under the JJA, appoint an adequate number of probation officers, establish ad recognize various categories of homes under the JJA, constitute the juvenile courts and juvenile welfare boards, and set up advisory boards.

The court refused the second prayer of the petitioner also. It prohibited the petitioner to publish the information gathered the purposes of the case and pursuant to the directions of the court during the pendency of the case.

Directed by the court to establish homes for juveniles, states notified a wide variety of homes as observation/juvenile/special homes under the JJA. In some instances, however, the categories of homes so notified by the states were questionable from the point of view of adequate facilities for the care, protection, and rehabilitation of juveniles. Gujarat, for example, notified a blind school ‘as juvenile home for handicapped, blind, mentally retarded children as per section 9(2)’ of the JJA. The notification was a positive sign only to the extent that the state had responded to the court’s direction for recognizing residential places for physically and mentally handicapped children. The negative fallout was that it completely ignored the fact that needs of each category of handicapped children differ – a ‘blind school’ is not the right place for mentally retarded children.

Section 53 of the JJA spells out the important functions to be discharged by an advisory board in a state but these functions can be discharged only if its meetings are held on a regular basis, reviewing the progress made pursuant to its earlier decisions. The importance of implementation of this provision, both in terms of constitution of advisory

boards and their meetings, does not seem to be appreciated and has been ignored by most of the states.

The orders of the court are replete with references to non–submission of reports within time by DHs, forcing adjournments after adjournments of the proceedings. Certain other reasons for adjournments pointed out by the petitioner reflect upon the frivolousness with which the petition was treated by some state counsel.

Impact of the Sheela Barse Case on Juveniles

The proceedings and orders in the Sheela Barse Case had mixed implication for juveniles falling within the purview of the JJS in India. The most important and far–reaching consequence of the Sheela Barse Case on juveniles was the introduction and enactment of a uniform legislation for the care and protection of the children of the whole country except the state of Jammu and Kashmir. The minister who moved the Juvenile Justice Bill 1986, stated that it was being introduced pursuant to the order of the Supreme Court against imprisonment of juveniles.

The case certainly proved to be a boon for hundreds of children illegally detained in various jails all over the country. All these children were either released or transferred to homes established or recognized under the Children Acts or the JJA. The insistence of the court for reports on juveniles in jails from all districts, at the minimum, generated awareness about the illegality in detaining juveniles in jails. This awareness is a precondition to prevent imprisonment of juveniles. But the impact of this awareness was not clearly ascertainable. After the court recorded that no juvenile was to be detained any more in a prison, a write–up did appear alleging the presence of several undertrial and convicted juveniles in a Bihar jail. The Supreme Court asked its legal aid committee to take up the writ petition filed pursuant to the report. No information is available if any action was taken pursuant to that directive.

The case may not be credited with success in the implementation of various provisions of the JJA but it can certainly claim to be among the initiators of the process for its implementation. A majority of the states framed rules under the JJA, which marked one step forward in the direction of standardization of juvenile justice services for children. The case has results in the creation of various functionaries under the JJA. Though the response could not be termed as overwhelming, it surely ensure processing of juveniles by the juvenile justice machinery at several places.

Another important achievement of the case is the acceptance by the state of Jammu and Kashmir of the scheme for overseeing the implementation of the JJA by the Supreme Court was successful in persuading it to accept the scheme to ensure protection to its children. It implied that the state of Jammu and Kashmir had agreed to implement the orders as and when passed by the Supreme Court for the implementation of the provisions of the JJA.

The ban on the original petitioner to publish information collected by her was imposed perhaps to reassure the states that the information so supplied would not be used by the petitioner for her personal or professional benefit. But the ban resulted in keeping the lid firmly intact on the non–performance or ill performance of the states in the completely invisible system of juvenile justice.

Conclusion

The Sheela Barse Case presents many insights for person working in the field of children's rights and welfare. First, the information supplied by various agencies in the Sheela Barse Case confirmed that there was widespread ignorance of the concept as well as the content of JJS in India. Children cannot get a fair deal and necessary protection from the enforcement agencies in the absence of such knowledge and empathy. Generation of sufficient knowledge and awareness of the philosophy and legal provisions of the JJS, therefore, becomes a prime task for individuals and bodies working for children.

Second, the petition revealed a range of reasons for the imprisonment of juveniles,[143] illegal practices, and absence of empathy and understanding of children's problems. Child victims of kidnapping on rape, in the absence of homes, found themselves in regular jails. Any number of children's residential institutions in a state is no guarantee that children may still not be sent to jails.[144] These facts show the wide range of areas in which a lot of work is needed to ameliorate the condition of children.

Third, the case showcased the Supreme Court's remarkable persistence, patience, and

[143] Children were sent to prison for failing to pay fine contrary to the provisions of the Children Acts, for travelling without ticket, or under Section 109 of the Code of Criminal Procedure 1973, none of which provided for imprisonment at all. In West Bengal, eleven children below seven years of age were charged under the Passport Act and the Foreigners Act contrary to the general exception recognized by Section 82 of the Indian Penal Code that nothing done by a child below seven years if an offence

[144] In Maharashtra, children were found in jails despite forty–four government aided observation homes, ninety–eight approved institutions, and eighty–five government classified centres

restraint to get its orders implemented in consonance with its deep commitment to justice, ideology of the Constitution, and awareness of the plight of children. At the same time is also showed that the Supreme Court needed to adopt different tactics to get its orders implemented by a recalcitrant executive. It issued a contempt notice after continuous flouting of the deadlines fixed by it for filing compliance by the states. Some states, for example, Orissa, cooperated by implementing the directions and filing compliance promptly within the specified time limit. Despite the contempt notice issued by it, the Supreme Court decided not to prosecute the defaulting officers. Instead of seeking compliance of its orders it assumed acceptance of its directions if no objections were filed within the specified time.[145]

Fourth, he process in the Sheela Barse Case is marked by periodical amnesia of the case. At times, hearings were held after long gaps.[146] These gaps may be partially explained by reference to that fact that children were not the only group needing the court's attention and intervention. There were phases when the petitioner had some personal problems or the judges were away. In the later period of the case, the original petitioner was no more there to nudge the court for action. No one else has petitioned the court for further action. The SCLAC, which replaced the original petitioner, Sheela Barse since her outster from the proceedings, did not show any enthusiasm in pursing the matter.

Fifth, the case brought forth the limitation of the Supreme Court's endeavour in the absence of a similar commitment on the part of the executive. The court could not prevent fragmented and routinized implementation–the typical pattern so far. Not all states implemented the orders, and those that did, primarily utilized the existing personnel and services by notifying them as such under the JJA. The new infrastructure, wherever created, did not follow the scheme of adjudication and institutionalization as prescribed by the JJA.[147]

Sixth, the Supreme Court's initiative in the implementation of the JJA did not change either the direction or the pattern of implementation of juvenile justice services, though it did increase its pace in some cases. Orders of the Supreme Court primarily emphasized the establishment of institutional paraphernalia. The role of non–governmental persons and

[145] On the issue of acceptance of the monitoring scheme, the court presumed acceptance on the part of the states that failed to raise any objection against it.

[146] The matter was pursued vigorously till December, 1986 since its filing in September 1985. Then for two year nothing happened. The case gathered momentum again after more than two years in March 1988 and the court made frequent orders for a year and a half. Again, the Supreme Court did not take up the matter after its order 5 September 1989 till its final disposal on 15 March 1994

[147] A report stated that because an observation home was established in one district and the juvenile court in another, the children were not produced before the court for long periods

organizations was focused upon with regard to physically and mentally handicapped children only. The emphasis on institutions for children, perhaps, was the natural outcome of the need to provide alternative accommodation to the imprisoned children. But once the scope of the petition was enlarged to oversee the implementation of the JJA, the Supreme Court ought to have focused on the development of community resources and their integration in the juvenile justice services.

Last, the case brought forth the fact that the government failed to cooperate fully with the Supreme Court in this mammoth exercise aimed at improving the lot of children.[148] The response of various agencies to the orders of the court continued to be apathetic and fragmented. Not only did a majority of the responding agencies fail to file their reports promptly,but the reports, as and when filed, did not contain information on all the areas on which information was asked for. The response pattern of states showed that the suggestions or directions that did not impose an additional financial burden on the state were implemented much faster compared to others needing finances.

The case could have led to better implementation of the JJA with cooperation from the government as both the government and the Supreme Court were equally keen to see the JJA implemented. The Government of India, despite its best intentions and efforts, lacked the power to order implementation. On the other hand the Supreme Court had such power but was ill equipped to sift through the all–india data submitted for the case. The National Institute of Social Defence, a subordinate office under the ministry of welfare, which published national–level data on the implementation of juvenile justice services, had the skilled manpower to handle such mass–scale data. Cooperation between the Supreme Court, the NISD, and other national level agencies dealing with child welfare would have led to better analyses of available data for determining the direction of implementation and identification of problematic areas and their solutions.

The courts have continued to deal with matter concerning children either on their own motion[52] or on petitions moved by concerned people.[149] Some of the challenged in taking recourse to courts as a strategy for lobbying for the rights of children are fatigue and

[148] The affidavit filed by the Union of India in response to the monitoring scheme, in fact, disclosed its somewhat adversarial stance vis–a–vis the implementation initiative undertaken by the Supreme Court. In response to the monitoring scheme, it stated that the government itself was pursuing the matter of implementation of the JJA with the states and the suggested scheme would only duplicate its work

[149] 'HC notice to Government on child ragpickers PIL accuses Delhi government of failing to provide compulsory education to those under 14 years of age', The Time of India 21 September 2002, p. 3, cols. 2–5

disillusionment with the inadequacy of the enforcement mechanism. The only way to overcome these is to forge partnerships with others.

The Supreme Court needs to have concentrated the most on involving the community in the operations under the JJA. The JJA provided ample scope for involving voluntary social workers and organizations at various stages and bodies related to the JJS. The Supreme Court could have also ensured implementation of those provisions by asking the voluntary organizations to depute one of their workers for various activities under the JJA. A direction by the Supreme Court was not likely to be ignored by the voluntary organizations. In addition, the Supreme Court could have directed the creation of district level committees constituted by voluntary social workers or organizations to act as watchdogs of the children's interest. It would have not only increased community participation but also worked as a measure of quality control, specially important in the case of children who themselves cannot raise a voice against deficient services.

The highly commendable judgments of the Supreme Court in Rohtas Singh and Raghvir's[150] case brought all delinquent children including those charged with offences punishable with death or life imprisonment with the protective jurisdictions of the Juvenile Courts. These two judgements go a long way in meeting out separate treatment to delinquent children in trial, conviction and punishment for offences including offences including offences punishable with death or imprisonment for life.

In fact whole the philosophy juvenile justice and the basic concept thereof such as making separate law and procedure for juveniles, separate trained staff and judges to deal with children cases etc., would have frustrated if the Supreme Court would not have reversed the judgement of Punjab & Haryana High Court.

In the case of Rohtas V. State of Haryana[151] the Supreme Court observed:

> 'Section 5 (of the code of 1973) carves out a clear exception to the provision of the trial of an offence under any special or local law for the time being in force it is not disputed that the Haryana Act was in force when the Code of 1973 was passed, and therefore, the Haryana Act far from being inconsistent with section 5 of the Code of 1973 appears to be fully protected by the provision of Section 5 of the Code of 1973.[62]

In the case of Raghbir v. State of Haryana[152] the Supreme Court referred to Rohtas

[150] Raghubir v. State of Haryana AIR 1981 SC 2037
[151] AIR 1979 SC 1839

Singh's case" in which it held that the trial of child under the provisions of the Children Act was not barred. In that case, however, it appears that Sec. 27 of the Code was not brought to the notice of the Court. The Apex Court observed :

Thus, the Apex Court prevented the march of the juveniles, accused of offences punishable with death or life imprisonment, to the adult jails.

In the case titled as 'State(Government of NCT of Delhi vs. Ram Singh (deceased) and others'[153], (known as Delhi gang rape), Additional Sessions Judge, Special Fast Track Court, New Delhi convicted all the accused persons namely, Akshay Kumar Singh @ Thakur, accused Vinay Sharma, accused Mukesh and accused Pawan Gupta @ Kaalu under section 120–B IPC for the offence of criminal conspiracy ; under section 365/366 IPC read with section 120–B IPC for abducting the victims, with an intention to force the prosecutrix to illicit intercourse ; under section 307 IPC read with section 120–B IPC for attempting to kill PW1, the complainant ; under section 376(2)(g) IPC for committing gang rape with the prosecutrix in pursuance of their conspiracy ; under section 377 IPC read with section 120–B IPC for committing unnatural offence with the prosecurtrix ; under section 302 IPC read with section 120–B IPC for committing murder of the helpless prosecutrix ; under section 395 IPC for conjointly committing dacoity in pursuance of the aforesaid conspiracy ; under section 397 IPC read with section 120–B for the use of iron rods and for attempting to kill PW1 at the time of committing robbery ; under section 201 IPC read with section 120–B IPC for destroying of evidence and under section 412 IPC for the offence of being individually found in possession (retention) of the stolen property which they all knew was a stolen booty of dacoity committed by them. The proceedings against accused Ram Singh, since deceased, has already been abated and the JCL has not been tried by this court.

Law on Juvenile in India :

Legal basis for fixing the Age :

The JJCPCA, 2000,[154] is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at

[152] AIR 1981 SC 2037

[153] Date of judgment, 10th September, 2013

[154] The Juvenile Justice Care and Protection of Children Act, 2000

eighteen years in the JJCPCA, 2000, was Article 1 of the Convention of the Rights of the Child and that the description in Article 1 of the Convention was a contradiction in terms.

While generally treating eighteen to be the age till which a person could be treated to a child, it also indicates that the same was variable where national laws recognize the age of majority earlier.

Scientific Basis for Fixing the Age :

In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, is assessing the maturity of a person below the age of eighteen years.[155]

Social Background of Juvenile Delinquent :

The social context also influences the practice of juvenile justice. Indeed, as noted previously, different explanations of delinquency are associated with different juvenile justice responses. Other aspects of the sociopolitical environment influence the practice of juvenile justice as well. Social, economic and political context affect not only delinquent behavior, but also the explanations, or theories of delinquency that gain prominence during particular historical period. A theory of delinquency is a statement or a set of statement that is designed to explain how one or more events or factors are related to delinquency. Such theories are important for two primary reasons. First, they help us make sense of delinquency and understand why it occurs. Second, they guide us in our attempts to reduce crime. Importantly, hypotheses about why delinquency occurs suggest actions are might take in order to reduce it. Theories of delinquency, like other theories, can be sharp conflict. Some of them are based on the assumption that political and economic conditions play a crucial role in generating delinquency within American society, whereas others treat delinquency as primarily the product of rational choices made by individual youths. Our object here is not to review these theories (an object more fitting for a book on criminological theory or juvenile delinquency) but to emphasize their role in helping us understand how and why particular

[155] Salil Bali vs. Union of India & Anr., Writ Petition (C) No. 10 of 2013, Date of Judgment July 17, 2013

factors appear to be related to juvenile crime and what their role is in guiding responses to the problem of delinquency.

Theories of delinquency, like delinquency itself, are products of a particular historical context. Most people, including those who study delinquency, have ideas about why youths engage in delinquency behavior, ideas that are Europe favoured explanations that treated deviant behavior as a product of otherworldly spirits. Such explanations made perfectly good sense to people within that particular historical context. Today, influenced by ideas derived from the social and behavioral sciences and by popular notions about human behavior, people are much less inclined to explain delinquency in ways that would make sense to medieval Europeans.

This does not mean that, at present, there is general agreement over the cause of delinquency. Indeed, the historical context within which we live is conducive to the promulgation of a variety of theoretical perspectives on delinquency and considerable debate over its causes. Moreover, the differing theoretical perspectives on delinquency lead to differing, sometimes opposing, and responses to delinquent behavior. A theory based on the idea that delinquency is the product of choices made by rational actors leads to policies that stress punishment as a logical response. In contrast, a theory based on the idea that delinquency is the product of the oppression of youths calls forth a different type of policy response, as would a theory that views delinquency as the product of abnormal thinking patterns. In short, social context influences theoretical explanations of delinquency, which in turn suggest various juvenile justice responses to the delinquency problem.

It is evident from this study that there are some social background patterns that are correlated with juvenile delinquencies. Even though some of the findings of this study are consistent with what exist in previous literature in criminology and sociology, there are some findings that appear to be at variant with already accepted notions. In–depth understanding of the pathways of these factors will lead to dealing with some of the problems and delinquencies that emanate from them. Besides, meaningful and expected outcome based rehabilitation and training of the juveniles will be achieved by instituting appropriate intervention programmes that are tailored according to the prevalent background factors or attributes of these juveniles. In other words, the ongoing social engineering process should

target towards altering the social background.

4.4 Various Remedies Provided to Juvenile Delinquent :

Remedies provided under the Juvenile Justice (C & P of Children), Act, 2000 :

For reformation of Juvenile various remedied are available under the Act after there are as under :

Child Welfare Committees

It is enshrined in the Act that the Child Welfare Committees should be formed in every district or group of districts. Any child in need of care and protection can be produced before the committee. The committee shall have the final authority to dispose of the cases for the case, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights (Sec. 19).

Shelter Homes

The Central Juvenile Justice Act explicitly states that the State Government may recognize reputed and capable voluntary organizations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required. (Sec. 30).

Special Juvenile Police

The Juvenile Justice Act 2000 states that for dealing with the juveniles or children Special Juvenile Police will be constituted to be specially trained and instructed. It also states that in every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co–ordination with the police.

The Rehabilitation and Social Reintegration

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children home and it shall be carried out alternatively by (i) adoption (2) foster care (3) sponsorship and (4) sending the children to an after care organization.

Adoption

Adoption means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of adoptive parent with all right, privileges and responsibility. To safeguard malpractices and deviations from prescribed guidelines for adoption notified by Government of India Supreme Court of India has appointed an independent Non–Government Organizations with experience in child adoption. 'The Indian Council of Social Welfare' with head quarters in Mumbai and branches in all states as scrutiny agencies. (Sec. 41) Central Adoption Resource Authority (CARA) is another authority which has been setup to keep check on the adoption policies. It is the National Level Body under Ministry of Women and Child Development for all matter relating to adoption.

Foster Care

The Foster Care may be used for temporary placement of those infants who are ultimately to be given for adoption. In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes. (Sec. 42).

Sponsorship

The sponsorship programme may provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life. (Sec. 43).

After Care Organisations

After care organizations may be established by the State Government for the purpose of taking care of juveniles or the children after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life. (Sec. 44). The primary institution for the development of a child is home. Home conditions affect him a lot. So suitable home conditions should be provided to a child to prevent him to be a juvenile delinquent. In the modern world today there are still many people who can not recognize the important of education. In addition to the steps to make higher education attainable for poor, there is a need of some youth awareness program that can highlight the important of education in youth. Higher education will increase the probability of the person

to get employed which can reduced the chances to him to involve in crime. Schools should play an effective role in the prevention and control of delinquency because the school is the second institution where the child spent the time for their development. Government should maintain record of every individual with his criminal activities and asset possession etc. as it is done in developed nations like United Kingdom all vehicles should be registered with active National Identity Cards so that tracking the criminals could be made easy. It is necessary that in observation homes and after care organizations homes the authorities should create spiritual atmosphere. The yoga and meditation classes should be organized there. Availability of dangerous drugs is needed to be curtailed so that fewer people get access to it. A drug addicted person can not work and hence can not finance his/her drug expenses as a result he steals other's assets and sells them in the market to buy the drugs. Drug mafia is needed to be targeted so that the existing drug addicts can be cured other can be saved from getting involved in drugs usage. Increased opportunities of employment can help in making the crime rate fall. Employment opportunities can be increased by promoting small scale industries which are suffering due to the high electricity rates and high cost of production. Events in cinema projecting violence, robbery, rape and the theft which stimulate the innocent children to indulge in such activities must be censored strictly. To keep an eye on the both and court there should be high power committee to observed the pending cases of juvenile in the juvenile justice board.

CHAPTER – 5

JUVENILE JUSTICE ACT, 2015: AN EVALUATION

Juvenile Justice Systems in United States and India

Every child has a right to joyful, elated and jubilant childhood, the right to grow in a harmless and nurturing environment, the right to be free from the intricacies and convolutions of life etc but there are some unlucky and doomed children who are deprived of these things and they grow out to be children not wanted for or to term it other way juvenile delinquents.[156] The word "Juvenile is derived from Latin term "juvenis"which means "young". As far as the word delinquent is concerned, it is derived from do (away from) and liqueur (to leave). A delinquent child is considered as a "wayward, irredeemable, inveterate, incorrigible, unable to rectify or habitually disobedient child. Juvenile delinquency basically can be meant as such an irresponsible and disapproved behaviour of children which is not allowed by society and in the interest of the public some kind of reproachment, admonishment, punishment or corrective measures is given to the child or adolescent to rectify them. These juveniles are not mature enough to realize the consequences and outcome of the crime they have committed and in law such human beings are considered as doli incapax meaning thereby incapable of c0mmitting crime

The practice of juvenile delinquency is not the norm of the present day society. It has existed since ages. This is endorsed by two quotations given by Edward H. Stulken

"An Egyptian priest almost 6000 years ago wrote on the walls of a tomb: Our earth is degenerate in these latter days. There are signs that the world is coming to an end because children no longer obey their parents. Socrates wrote a paragraph over 2400 years ago that might well have appeared in the morning paper of today: Children now love luxury, they had bad manners, contempt of authority, they show disrespect for elders, and love chatter in place of exercise. Children no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs and tyrannies over their teachers. These quotations given by the author many years ago are very well the factual situations today. Juvenile delinquency is a matter of serious consideration which really requires contemplation and pond ration as it is mounting up not only in developing or

[156] Juvenile delinquency in a layman's language is crimes by children. No precise definition can be provided due to difference in approach of sociologists and persons with legal acumen. Sociologists maintain that legal definitions won't be of any use because they vary from time to time and place to place. Another problem is laws defining crimes relating to juveniles are very vague and uncertain. Due to this ambiguity nothing can be said with certainty whether a particular act by a juvenile is a crime or not.

underdeveloped nations but this has plagued and has trapped even developed nations. Of late it is seen that these juveniles are not only committing mild and serene crimes but are also indulged in ferocious, heinous and wicked crimes. We consider children below 18 years of age as persons who do not have sufficient maturity and if they indulge in any kind of crime they are sent to reformatory schools to get rectified, reformed and transformed. The question- can they actually be called as innocent persons if commit heinous crimes seriously require deliberations. When they can commit crimes like murder, rape, dacoity etc –where is the innocent part?"

Aren't they taking the benefit of the laws enacted for their betterment? No doubt in United States also reformatory schools were established and are till date serving these off the track gone children but seeing the demand of the time United States has in some cases changed its policy and are heading towards tough reforms for the interest of the public. In India, as far as juveniles are concerned we bank upon Juvenile justice System which talks about care, protection and reformation of such children. United States have changed its policy seeing the types of crimes committed by these so called juveniles. India is still clinging on reformatory part. It is quite surprising that even after much horrifying, much horrendous Nirbahya's case we have not budge and nudge an inch. The paper would be focussing on Juvenile justice systems prevalent in United States and India, what are the lacuna, should age factor of a person play an important role in determining his culpability and what can be done . To begin with, here it will not be out of place to first discuss the juvenile justice system prevalent in United States of America Position in United States Since America has been ruled by England for number of years, the laws in America are highly influenced by the Common law of England. Blackstone in his commentaries had talked about people who were incapable of committing crime. In order to commit a crime mens rea and actue reus are the two essential elements. For the want of any of these, a man cannot be held liable. According to Blackstone, children could be divided into two categories. Children below the age of seven years are doli incapax i.e. incapable of committing crime and children above the age of fourteen years . If they commit crime, they would be liable in the same manner as an adult i.e. no distinction between a child above fourteen years committing a crime and an adult guilty of crime as both of them would be treated at par. Now the question is about the child committing a crime aged between seven and fourteen years. In normal circumstances, children between such ages would be considered as incapable of committing a crime.

However if they understood the nature of crime, then of course they are liable and would

suffer the consequences of crime.[157]

Nineteenth century witnessed a drastic change as far as treatment of Juveniles in United States was concerned. Big cities like New York and Chicago opened New York House of Refuge in 1825 and Chicago Reform School in the year 1855 respectively for juveniles to separate them from adult hardened criminals. Not only this opportunities of rehabilitations were also provided to deter them from committing future and prospect crime. The first juvenile Court in United States (US) came into existence in the year 1899 in Cook County, Illinois. After this within a span of 25 years most states in US had established juvenile court system. As far as these early juvenile court systems were concerned their main aim was to rehabilitate and reform the offender rather than impose punitive and penal measures on them.[191] In the rehabilitative model of juvenile system, the immaturity of young offenders played an important role.[192]

The Juveniles require different treatment to rectify them and therefore their correctional methods should also be different from adults. Both of these cannot be treated at par. The protagonist of this also believed that the criminal acts committed by young offenders reflect their immaturity and thus similar procedure and punishment should not be meted out to the juveniles as is inflicted on the adults.[158]

Not only this, some people also believed that juveniles should be less accountable because sometimes due to impulsiveness or malleability of youth a crime may be committed. Impulsiveness presumably contributes to incapacity because it impedes the ability to weigh the consequences of behaviour, while malleability might make juveniles vulnerable to bad influences, particularly from peers.

During the 1970's and 1985, all the states adopted juvenile policies relating to decriminalization and deinstitutionalization. However such policies were not longlived and in the mid 1980s due to change in the nature of crime by young offenders, increase in violence etc, criminalization of delinquents were revived. During the early 1990s several states in US

[157] Acknowledging the main principles of juvenile courts, Judge Julian Mack observed: "the child offender…..should received at the hands of the law a treatment differentiated to suit his special needs; that the courts should be agencies for the rescue as well as the punishment of the children". Julian Mack, The Juvenile Court, 23 Harv. L. Rev. 104, 115(1909). According to him, the main aim of the juvenile courts should be to do everything which is in the interest of juvenile and the state and to safeguard the career of the juvenile. See also Elizabeth S. Scotland & Thomas Grisso, "The evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform: the Journal of criminal Law and Criminology (1973), vol.88, No.1 (Autumn 1997) at 141, 143

[158]See also Martin R Gardner, The right of Juvenile Offenders to be Punished: Some Implications of Treating kids as Persons, 68 NEB.L.REV,182,191(1989

had called for special legislative session to deal with youth crime. Presently, in United States, slogan 'adult crime adult time' is being adopted. In 38 states of US, upper age of juveniles is seventeen years while in other three states it is fifteen years.

There is unanimity in almost all US States on the point of trying juveniles at par with adults on juvenile attaining the age of fourteen years in certain circumstances barring states like Vermont, Indiana, South Dakota where a child of even ten years can be tried as adult. As far as punishment part is concerned there are various forms of penalties that are given to the juveniles. In heinous crimes even life imprisonment can be granted to child aged twelve years which is considered to be the maximum punishment. Juveniles who have the potential to try serious offences are detained in secured and tenable environment and are made to take part in rehabilitative programme. All this is done to control young juveniles. Additionally rigorous punishments relating to drugs and gang related offences, stringent treatment such as boot camps and blended sentence have also been introduced to put them right. As far as the jurisdiction part is concerned if a child usually 13 or 15 commits a grave and grim crime then their case is automatically shifted to adult court. Jurisdiction of juvenile courts is automatically waived in such cases. Position in India As far as position of Juveniles in India is concerned, since ages there has been a trend of providing different treatment for juvenile offenders . In the year 1843, i.e. during colonial regime, Lord Cornwalis established Ragged School for such children. The Apprentice Act.[159], which talked about juvenile legislation came in the year 1850. After a decade, Indian Penal Code was enacted. Though the Code doesn't specifically talked about Juvenile offenders nevertheless there are certain provisions in the Code which deals with underage criminals. 2. According to section 82, IPC, children who are less than seven years of age are doli incapax i.e. they are incapable of committing crime. They do not have mens rea or intent to commit a crime. Section 83 basically talks about children between seven to twelve years of age. These children while committing crime if they can understand the nature of crime, they are punishable. Additionally sections 27 and 360 of Code of criminal procedure, 1973 also talk about young offenders.

Then came in the reformatory School Act of 1876[160]After this, the reformatory school Act of 1876 and 1897 were the next milestones for treatment of juveniles in India and with it there was a shift of penal philosophy from punitive to reformatory measures i.e. now the main aim

[159] According to the Act, children in the age group of ten to eighteen years who committed crime were placed in apprenticeship in a trade

[160] According to this the government was empowered to establish reformatory schools and to habitat criminals till suitable job was found for them 16Article 15(3) Constitution, India: Nothing in this article shall prevent the State from making any special provision for woman and children

was to reform the juveniles rather than imposing punitive measures on them. The present juvenile justice system is governed according to several International Covenants. For example: UN Conventions on the Rights of the Child(CRC), UN Standard Minimum Rules for administration of Justice (Beijing Rules) .Also in India Article 15(3. of the Constitution talks special provisions for children. This article has been specifically framed in the constitution for protection of children. Not only this, Article 21, 23 and 24 , deals with fundamental rights and are also available to children. Additionally Article 39(e) and (f) and article 45 also talks about children.

Also National Policy for Children which talked about training and rehabilitation, destitution, neglected and exploited children came in the year 1974 A comprehensive legislation on juvenile known as Juvenile justice Act was passed in the year 1986[161].

In the year 2000, the Juvenile Justice (Care and Protection of Children) Act was enacted. The Act provides that a child who has not completed the age of 18 years is a juvenile.

This 2000 Act has been amended several times in the years 2006, 2010 and 2011 i.e. in the years 2006, 2010 and 2011 amendments have been made. The 2006 Amendment Act included 26 amendments. The Act provides for legal system for care, protection, treatment and rehabilitation of both the categories of children i.e. children in conflict with law and children in need of care and protection. Presently also the Govt of India is further contemplating for various amendments and a draft bill is pending before ministry of Law and Justice for scrutiny. There is no doubt about a fact that India hails in a comprehensive legislations and in spite of the fact that a detailed, comprehensive and several times amended legislation is prevalent in India, the crimes committed by juveniles are swelling and mounting up every day. Isn't the liberal and open minded approach on juveniles one of the reasons why such crimes are elevating and escalating every day[162]. The total number of crimes in different years committed by juveniles clearly endorse this view. How can one forget ever burning case of Nirbhaya. In the said case, a 23 years old woman was gang raped by six men, one of whom was a minor, in the moving bus. The woman was dragged to the rear of bus and was beaten with rod and simultaneously raped in the moving bus. According to medical reports she suffered serious injuries in her abdomen, intestines and genitals. The doctors stated that some blunt object (may be iron rod) was used for penetration. According to the International Bureau Times, a police spokesman said, the minor in the said case was the nastiest, brutal,

[161] Under the Act, the juvenile age for boys and girls is 16 and 18 years respectively

[162] The child apprehended by the police under juvenile justice Act is brought within a period of 24 hours before JJB. The child is sent to the observation home for safe custody.

fierce attacker and had sexually abused his victim twice and had ripped out her intestines with bare hands. The woman struggled for so many days to beat death but unfortunately she succumbed to injuries on 29th December, 2012 after suffering from brain damage, pneumonia, abdominal infection etc.

Nirbhaya is one of those cases where innocent people are tormented, anguished and persecuted by juveniles for no fault of theirs. In the said case minor was described as the most vicious, unruly and fierce attacker who was actively involved in the crime. He was the one who had sexually abused woman twice and had ripped out her intestines with bare hands. Now the question is doesn't he know the nature of crime and what act he is committing? The answer is probably 'Yes' he knows everything. Is he really innocent? Perhaps No. Nirbhaya is not the only case. There are catenas of cases where innocent people are agonised and pestered by juveniles without any fault on their part[163]. These juveniles are involved into heinous and odious crimes like murder, rape, theft, robbery etc and the worst part is they are taking the protection of the Act accorded to them.

Nobody is born criminal from the womb of mother but due to certain circumstances, misfortune and adversity as already mentioned some children or adolescents are distracted and sidetracked. In order to set them right most countries had adopted reformatory approach but of late it is seen that this approach is not working well with these incorrigible and inveterate young offenders. In order to sort and unravel this, the laws and policies in United States (US) have changed as the time progressed. The practice of liberal approach in US has presently shifted to tough reforms in some cases seeing the nature of crime committed by juveniles. What are we waiting in India for? When so called juveniles can commit heinous, nasty, ferocious crimes as already mentioned can they be seriously called as juveniles who are innocent. If we talk about Nirbhaya case, the question which keeps on haunting us and every time raises our eyebrows is can the so called juvenile be really called innocent when it is a known fact that he was actively involved in such ferocious, nasty and brutal act.

Presently, in India it is seen that much importance is given to age factor of accused and when the person is below 18 years of age howsoever he might be guilty, he is sent to reformatory school for a period of three years and is let free, courtesy, Juvenile Justice (Care and Protection) Act, 2006.It doesn't make any difference that he had with full knowledge

[163] 33 year old nurse gang raped in the fields of Gurna village near Budladha town in Mansadistrict (at http://timesofindia.indiatimes.com/city/chandigarh/gangrape- survivor-nurse-senthome/articlelshow/42205095.cms

and acquaintance actively played a part in the crime, it doesn't make any difference that his co-accused are getting life imprisonment or maybe they are hanged. Is it justified? Doesn't the act committed by them clearly speaks of their intent? Recently, there has been issue regarding the age of juveniles whether it be 18 or should it be reduced to 16 years. The point here is should age factor be given that much importance? Shouldn't intention of the person play an important role in making the person culprit and culpable irrespective of the age, should person less than 18 years of age be considered as less culpable and less blameworthy than 18years of age person when both have committed similar crime with similar intent? Shouldn't the degree of atrocity be considered as important factor in making a person liable? All these and many more questions keep on cropping up and bring frown on our faces. Why it is forgotten that crime is crime, be it committed by adult or a juvenile. Why is it forgotten that heinous crimes like rape etc totally ravishes and shatters not only the woman but also her family and near ones throughout their lives and a person who is actually responsible for such barbaric act is let free after a meagre punishment of three years. It is not understandable that why our society is more sympathetic towards the person who had actually ruined, wrecked and devastated the life of another person? As already said skimpy punishment of three years for such atrocious act clearly endorses this. Isn't it high time now that parliamentarians and our society should also look from the angle of the girl who dies every day and night after such not called for crime is committed.

When a person can commit such scary, terrible and dreadful crimes like murder, rape, dacoity etc the common sense speaks, that he is no more above suspicion. He is a very much developed man with very much developed mind and is not a naive.

There are so many cases which endorse this. In one of such cases the juveniles had actually taken law into their hands[214]. Such persons should not be allowed to take advantage of the laws which were enacted for their benefit because they are not solving the purpose for which they came into statute books.

When United States and other developed nations can change their approach from liberalism to tough and sturdy practice seeing the nature of the crime, atrocities, mental level etc, why can't India adopt the same approach and policy. It is high time now that we should not run after the age of person rather should focus on the severity of the crime, mens rea, level of understanding etc otherwise innocent people will continue to suffer in the hands of these not so naive and not so guiltless persons. The worst part is that these persons will continue to take advantage of the lacuna(three years punishment) which the present juvenile Justice Act is

bestowed with as it is not carrying any deterrent impact on the minds of these young offenders. They very well know that even after committing such heinous crimes, they are let loose after a period of three years. This is a staid and sombre issue which requires attention, deliberation and definitely a change is required for the betterment of the society as a whole.

Juvenile Justice Systems in India and France

Delinquency is a kind of deviation. When an individual deviates from the course of usual social life, his behaviour is called "delinquency". When a juvenile, below an age specified under a statute exhibits behaviour which may prove to be hazardous to society and to him he may be called a 'Juvenile delinquent'. Each nation has its own specific definition of the age range covered by the word 'juvenile'.

Friedlander says, "Delinquency is a juvenile misconduct that might be dealt with under the law".

The Second United Nations Congress on the Prevention of Crime and Treatment of Offenders (1960) states, "By juvenile delinquency should be understood the commission of an act which, if committed by an adult, would be considered a crime."

In the past twenty-five years, laws concerning children have multiplied all over the world. These laws generally use the term “minor” instead of “child”; the Civil Code defines “minor” as “an individual of either sex who has not yet reach eighteen years of age.” The recent changes aim at developing a greater legal status for minors, to reflect their place in today‟s society. The new legislation has also been geared towards the implementation of the fundamental rights and obligations enshrined in the 1989 UN Convention on the Rights of the Child. The government and Parliament of both India and France have tried to strike a balance between children‟s rights, the protection of children, and the parents‟ rights and duties.

Juvenile delinquents are those offenders including boys and girls who are usually under 18 years of age. A juvenile delinquent is a young person consistent, or habitually defiant. Acts of delinquency may include (1) running away from home without the consent of parents, (2) habitual absence beyond the control of parents, (3) spending time indolently beyond limits, (1) use of offensive languages, (5) wandering about rail-roads, streets, market places, (6) visiting gambling centers, (7) committing sexual offences, (8) shop-lifting, (9) theft etc. Juveniles may do such activities singly or through a team.

The comparative study of laws related to Juvenile delinquency in India and France will help in inferring about what reforms should be introduced in Indian laws in order to make them at

par with the current International Laws. In this paper we will have a broad look of the laws and provisions regarding Juvenile offenders and Juvenile delinquency in India and France and a comparative study of the same.

Laws and Statutes in France Regarding Juvenile Delinquency

Background Before proceeding to the legal system of France, the vital point to identify with is that the French legal system has gradually evolved to consider juveniles as children to be protected. Legal proceedings also are founded on this basis, which is primarily modified to civil matters. Even for offences unswerving by juveniles in France the juvenile court judge refers to the Order of 2 February 1945, thus giving precedence to educative measures rather than to penal ones. This is why a whole programme of alternatives to incarceration and of actions aiming at educating juveniles to good moral principles has been developed during the last 50 years.

France has a unique system of youth justice. Until the late 1600s, parents could have their children locked up without validation[164]. For the next two hundred and fifty years, there was no tangible system of youth justice and no legislation to guide the handling of youth delinquents. French juvenile justice started to take figure in 1945 with the passage of the Order of 2/2/1945. The Order recognized "educative options" as the preferred action for youth offenders and called for the use of incarceration only when necessary. Educational measures stress training and treatment that is individualized to the needs of youths[165]. professional judges and nine jurors. It adjudicates the most serious offenses perpetrated by minors over sixteen.[166].

Current Legislation

The French Parliament recently adopted Law 2007 of March 5, 2007, on Prevention of Delinquency, that mainly targets young offenders. It emphasizes the role of local authorities, in particular the mayors, in the fight against crime. Security and Crime Prevention Councils have been created in cities with more than 10,000 inhabitants; each is presided over by the mayor or his designated representative. In addition, Councils for the Rights and Duties of Families, also chaired by the mayor, is established to give official admonitions to minors for any disorderliness, or impose "parental supervision" on parents the Councils consider are

[164] Blatier 1999.
[165] Castaignede and Pignoux 2010
[166] Ministère de l"Éducation Nationale, La scolarisation des enfants handicapés, http://www.education.gouv.fr/ cid207/ la-scolarisation-des-eleves-handicapes.html

"failing in their duties." Mayors duly notify the juvenile justice court of families and minors in difficult social and/or psychological situations

Penalities

Penalties, generally, are personalized to the age of the child. The Penal Code distinguishes five categories:

- Children under ten with discernment: the child may be found criminally responsible before a juvenile justice court. He/she cannot receive either a criminal penalty or an educational sanction. Educational sanctions are a new tool introduced in 2002. They fall between educational measures and criminal sanctions. The judge may only order an educational, protection, or assistance measure.
- Children from ten to thirteen: the judge may order the following educational sanctions: exclusion of the object used in the commission of the offense, ban on associating with the victim or the accomplices, forbidding going to the place where the offense took place, compensation of the victim, and mandatory civic education. In the event of non-compliance with these sanctions, the judge may order placement in an organization. The sanctions will appear on the child's criminal record. Children from thirteen to sixteen: the criminal penalties incurred are half the ones stipulated for adult offenders. The juvenile justice court may combine criminal penalties with educational measures.
- Children from sixteen to eighteen: they may benefit from the same penalty reduction than children from thirteen to sixteen receive, but in their case, this reduction is optional.

Role of Juvenile Courts

The Order of 2/2/1945 gave Juvenile Courts two primary interventions for youth delinquents: custodial sentences and educational measures, which involve youth participation in academic or vocational activities. With the passage of the Law of 9/9/2002, the French government added an intermediary sanction between education measures and custodial sentences. Educational sanctions are available for youths age 10 to 18 and include reparation, participation in civic education, bans on associating with victims or accomplices, or bans on visiting the place of offense[167]. Judges can also order interventions such as supervision, remise (return to custody of parents), fines, community service, electronic monitoring, and

[167] Castaignede and Pignoux 2010

suspended sentences. The Law of 9/9/2002 calls for the construction of youth detention centres, which hold up to 60 juveniles ages 13 to 18. However, the Law reinforces the use of imprisonment as an exceptional measure to be utilized only when necessary.. If a juvenile is not acquiescent with an educational sanction, the magistrate has the authority place him or her in secure custody.

French police are usually the first point of a youth‟s contact with the legal system, but Juvenile Courts retain the authority to order custody. Police cannot hold a juvenile in custody without consent from the prosecutor‟s office. Juvenile Courts can order custodial sentences but legislation puts limits on youth imprisonment to ensure that custody is reserved for serious offenders who are not responsive to alternative orders. Judges can typically order custodial sentences only for juveniles over the age of 16. Juveniles age 13 to 16 cannot serve a custodial sentence unless the potential sentence is at least five years and they have served a previous educational measure, educational sanction, or custodial sentence. A recent law allows judges to incarcerate any juvenile without a criminal history who commits an offense punishable by seven or more years. Juvenile Courts use custodial sentences primarily for the highest risk offenders. Judges order custody for approximately 95 percent of youths convicted of a serious offense. The duration of custody cannot be longer than half the length of sentence that an adult faces for committing the same crime. Juvenile Courts have reduced the average duration of custodial sentences to minimize youth custody.

Rehabilitation

There are various inhabited youth facilities in France, some of which are more rehabilitative than others. Educational action centres and social children‟s homes offer long-term placements, academic and vocational support, and help transitioning out of custody. Secure education centres and closed educational centres house juveniles serving suspended and conditional release sentences. A problem with the latter placements is that such facilities are often distant and separate youths from their families.

A study analyzed judicial sentences in four Juvenile Courts and found that the Courts ordered custody in 16 percent of cases, observational methods and probation in 64 percent, compensation orders in nine percent, care placement in five percent, and return to family in five percent. Courts ordered custodial sentences for 55 percent of repeat offenders. France has a variety of prevention programs that seek to identify at-risk youth and address their criminogenic needs, but the French youth justice system does not use evidence-based

programs nor do they have a system for evaluating the effectiveness of youth treatment programs. France has also recently adopted restorative measures to expand diversionary options which includes a program called school monitoring helping juvenile dropouts.

Laws and Statutes in India Regarding Juvenile Delinquency

Background

Though there were a number of laws in ancient and medieval society guiding the actions and behavior of people of India, none of these laws had any specific references to juvenile delinquents or neglected children.[168] The Apprentices Act, 1850 was the first legislation dealing with children in conflict with law[169] , providing for binding over of children under the age of 15 years found to have committed petty offences as apprentices. Under the Act of 1986, Section 2(a) defined the term juvenile as a 'boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years' but later on the parliament enacted Juvenile Justice Act, 2000 (herein after 'JJ Act') and the age bar was raised to 18 years for both girl and boy. Consequently, the Reformatory Schools Act, 1897 provided that children up to the age of 15 years sentenced to imprisonment may be sent to penitentiary cell. Juvenile Justice Act, 1986 was enacted by the parliament in order to provide care, protection, behavior, development and rehabilitation of neglected or delinquent juveniles and for the arbitration of certain matters relating to, and disposition of, delinquent juveniles as a uniform system of juvenile justice mechanism throughout our country.

The JJ Act, 2000 lays down that juvenile in clash with law may be kept in an observation home while children in need of care and protection need to be kept in a children home during the pendency of proceedings before the competent authority. This provision is in contradistinction with the earlier Acts which provided for keeping all children in an observation home during the pendency of their proceedings, presuming children to be innocent till proved guilty. The maximum detention could be imposed on a juvenile is for 3 years remand to Special Home irrespective of the gravity of offence committed by him and JJ Act, 2000 immunes the child who is less than 18 Years of age at the time of the commission of the alleged offence and from trial through Criminal Court or any punishment under Criminal Law in view of Section 17 of the Juvenile Act. The Juvenile Justice Act, 2000 is the primary law for children in need of care and protection.

[168] Winterdyk John (2002), Juvenile Justice Systems : International perspectives
[169] Unithan. P. (2013), Crime and Justice in India p.306

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

The Juvenile Justice Act, 1986 has been replaced[170] by a new Act called „The Juvenile Justice (Care and Protection of Children) Act, 2000". This new law is more childfriendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child.

The other salient features of this enactment are: (i) it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children (ii) the Act directs that the cases related to juveniles should be completed within a period of four months (iii) it has been made compulsory to set up a Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for a District or a group of Districts. (iv) special emphasis has been given for rehabilitation and social reintegration of the children and the alternatives provided for this are adoption, foster care, sponsorship and aftercare. The new Act allows for adoption of a child within the purview of this Act by any community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child.

Programmes under the Juvenile Justice Act

The programme for Juvenile Justice endeavors to provide for full coverage of services envisaged under the Juvenile Justice Act so as to ensure that no child under any situation is lodged in prison; to bring about qualitative improvement in the juvenile justice services and to promote voluntary action for the prevention of juvenile social maladjustment and rehabilitation of socially maladjusted juveniles. The Juvenile IPC crimes in 2001 rose significantly by 78.1 percent as compared to the data of earlier years.[171]

Under the Programme for Juvenile Justice, the Government of India provides assistance to the State Government for establishment and maintenance of Observation Homes, Juvenile Homes, Special Homes and after-care institutions for children in conflict with law and children in need of care and protection. The cost of maintenance of the inmates of the Observation Homes is borne by the State Government and Central Government on a 50:50 sharing basis under a Centrally Sponsored Plan Scheme. The number of inmates in these Observation/Special Homes during the year has been varying between110-120.

[170] Krohn Marvin & Lane Jodi (2015) "The Handbook of Juvenile Delinquency and Juvenile Justice".
[171] Criminal Justice India Series Vol. 20 , 2005

As per the provisions of the Juvenile Justice Act (Care and Protection of Children Act) 2000 (amended in 2006) State governments are required to establish a Child Welfare Committee or two in ever district. Each Child Welfare Committee should consist of a chairperson and four members. The chairperson should be a person well versed in child welfare issues and at least one member of the board should be a woman. The Child Welfare Committee has the same powers as a Metropolitan Magistrate or a Judicial Magistrate of the first class. A child can be brought before the committee (or a member of the committee if necessary) by a police officer, any public servant, CHILDLINE personnel, any social worker or public spirited citizen, or by the child himself/herself.

Role of Child Welfare Committee

The Child Welfare Committee usually sends the child to a children's home while the inquiry into the case is conducted for the protection of the child. The Child Welfare Committee meets and interviews the child to learn his/her background information and also understand the problem the child is facing. The probation officer (P.O) in charge of the case must also submit regular reports of the child. The purpose of the Child Welfare Committee is to determine the best interest of the child and find the child a safe home and environment either with his/her original parents or adoptive parents, foster care or in an institution. A final order must be given within four months of the admission of the child before the Child Welfare Committee. The Child Welfare Committee also has powers to hold people accountable for the child such as in the case of child labour, the employers are fined or made to give bonds to the children. Child Welfare Committee also has the power to transfer the child to a different Child Welfare Committee closer to the child's home or in the child's state to dispose of the case and reunite the child with his family and community[172].

While analyzing the statutes of both the nations, it may be inferred that the emphasis is given on rehabilitation and reformation. Yet, the legal system of France, at some place seems to be stricter and emphasizing on reformation as well as punishment while in case of India, the same is reform-oriented only. It has also been observed that in case of France, the penalties are pronounced on the basis of various age slabs while in India, it is apparently generalized. As a general rule, children in France enjoy all the rights and liberties enshrined in the 1989 UN Convention on the Rights of the Child. The state plays an important role in the social welfare and protection of children, along with local authorities. The ombudsman

[172] Srivastava. S.P (1989). Juvenile justice in India: Policy, Programme, and Perspective

for children and several governmental and non-governmental organizations and associations closely monitor the children‟s welfare. They regularly identify problem areas and make recommendations to the President of the Republic or to the government for improving the legislation in force. In India, there is a need for reviewing and updating the laws regarding juvenile delinquency. In France, Parliament presently is debating a draft law on minor and adult repeat offenders. If passed, the law would set automatic minimum sentences for repeat offenders (minors and adults) higher than the minimum penalties already set forth for each offense. In both the nations, the courts, however, emphasis is given on rehabilitation guarantees. Rehabilitation guarantees are guarantees that the offender gives to show that he will be able to be part of society again. Thus, we see that in some cases France seems to be much ahead of India while in others, the Indian Laws are more justified.

Juvenile Justice System in UK

We should not be surprised if the penalties are tougher we have been given the opportunities but don't take them-'Prime Minister Tony Blair.

The UN Convention on the Rights if the Child stipulates that children should be protected from custody whenever possible and when deprived of liberty should be treated with humanity and respect. In Article 37 of the convention it is stated that imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate of time.

Juvenile crime and punishment can be different from the types of punishments that are ordered in adult criminal cases. The first court established expressed for juvenile was built in Chicago in 1989 to address the issue of juvenile crime and punishments. Juvenile crime and punishments peaked in 1994. The 1990s saw a swell of public scrutiny over the perceived juvenile crime epidemic. In an effort to crack down on juvenile crime and punishments, many state legislatures have adopted harsher laws regarding juvenile crimes. In 2002, 2.3 million juveniles were arrested for committing crimes. The 1908 Children Act created as separate and distinct system of justice board on the juvenile court; the 1993 Children and Young Persons Act formally required the court to take account of welfare consideration in all cases involving child offenders, And the 1969 Children And Young Persons Act Advocated the phasing out of criminal in favour of civil proceedings. England and Wales adherence to principles f children's rights clearly does not clearly preclude the pursuit of policies with exacerabate structural inequlities and punitive institutional regimes.

REASONS FOR JUVENILE COMMITIING CRIME:

Over the years, criminologist have put forth a wide variety of motives for what causes crime. People who deal with young people cite the following root conditions: poverty, family factors, the environment, media influence, and declining social morality. These will be taken up in order:

1. Poverty
2. Family factors
3. Media influence

Age factor of the Juveniles:

A child under the age of 10 should not be arrested according to the Section 16 of the Children and Young Persons Act. And if a juvenile arrested and later he turns out to below the age of 10 years he should be released immediately according to Section 34(2) of Police and Criminal Evidence Act. A child may be only kept in police custody for 72 hours and as soon as possible the constable concerned should make arrangements for investigations to take place. After a juvenile has been charged and if he is detained he must be brought in front of the magistrate's court in accordance with the provisions of Section 46(1), as soon as practicable and if any event, in all circumstances not later than the day of following charge. A juvenile who has been arrested under a warrant should not be released according to schedule 6m, para 19(b) of the Police and Criminal Evidence Act. A juvenile must not be detained in a police cell unless no other accommodation is available and custody officer does not think it is practicable to supervise him if he is not placed in a cell.

Section 50 of the Children and Young Persons Act 1993 it has been stated that it shall be conclusively presumed that no child under the age of 10 can be guilty of an offence. Between the ages of 10-14 yewars a child is presumed to know difference between right and wrong and therefore incapable of committing a crime because lack of mens rea. Wrong means gravely wrong, seriously wrong, evil wrong or morally wrong. This is rebuttable presumption and the Burdon of rebutting it is upon the prosecution as was also held in the case of JM v. Runeckles. From the case of C v. DPP, CH v. DPP there were five relevant principles laid down which are not contentious:

1. The presumption of doli incapax can only be rebutted by clear positive evidence that a

child knew that his act was seriously wrong .

2. Evidence of the omission of the acts amounting to the offence itself is not sufficient to rebut the presumption.
3. Interviews with the child are capable of proving the necessary insight into the mental functions of the child from which inferences with may be drawn to rebut the presumption.
4. Conduct of the child is and more obviously wrong the act, the easier it will generally to prove guilty knowledge.

In the case of L v. DPP the youth court was correct to find that there was sufficient evidence of the presumption that the appellant was doli incapax to be rebutted. In IPH v. Chief Constable of South Wales a 11 year old boy was said to have enough knowledge that his act was causing damage to the motor vehicle and also in the case of JM v. Runeckles where a 13 year old who attacked under kid with a milk bottle, must have known that it was seriously wrong to engage in such a behavior. In the case of Director of Public Prosecution v. K and B children below 14 years of age or of 14 years of age were convicted for rape and indecent assault as the children were found with guilty mind leading to mens rea. In Powell's where a 16 years old with a previous conviction for indecent assault received sex years. Section 53 (2) detention of rape of a 15 years old girl, illustrate the courts attempt to balance the various considerations posed by very youthful offenders.

Criticism of the present system come from all sides. Much of the discussion about reforming the system centers on lowering the age of 14 or even 12 so that younger murders may be sent to adult court.

Attempts by several legislators in the 1993-1994 session to adjust age provisions resulted in some changes, although not the sweeping across-the-board reforms many had argued for. Taking effect on January 1 is a law that lowers the applicable age Provisions to 14 (from the present 16) and allows the use of the process 707b-c process for 14-and -15 years olds who are accused of committing murder(although not for the other serious crimes listed in 707b).

On June 2, 2004 an 11 year old girl at Okubo Elementary School in Sasebo led a fellow sixth grader to an empty classroom during school lunch hour and stabbed her to death with a box cutter. Even in Japan a 12 year old Nagasaki boy was accused of kidnapping and molesting a 4 year old boy and killing him by shoving him off the roof.

Warnings and Punishments;

A single police reprimand for non-serious offences, this is to be followed by a final warning according to Section 65(1) of the Crime and Disorder Act, if another offence was committed. Any subsequent offences would automatically lead to prosecution, unless two years had elapsed since the earlier, final warning would be required, and the offence was a minor one neither the reprimand nor the final warning would be required should the police decide that the offence was sufficiently serious for immediate prosecution. In the Reynolds it was seen that when two co-offenders were convicted of domestic burglary were differentiated on the basis that one had previously convictions for that kind of offence receiving a custodial sentence where as the other one not having any previous conviction received a community service order. If an 8 years old girl found shoplifting with a group of older girls in the local shopping center might be referred by the police to social services. The local authority could apply to the court for a child safety order. The orthodoxy of the 1991 Act said that if the offence is too serious to be properly punished by financial penalties alone; the punishment should be partial restrictions on liberty and freedom of movements.

Section 91 speaks about detention on grievous crime has been committed by a child of 14 or under like murder, Section 14 of Sexual offence Act 1956, Section 15 of the Act related to indecent assault on the man, Section 1 of the Road Traffic Act 1988 causing the death of a person due to rash driving, or under Section 3A causing a death by rash driving while drunk or drugged the court is of the opinion that if there is no other method in which the case may legally be dealt with suitable, the court may sentence the offender to be detained for such period not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

There are instances where sentence of definition of detention or study for life has been upheld. In the case of Bell the offender aged 16 was convicted of assault for an intend to rob and indecent assault, having approached the women while she was pushing her two year child in a pram, pointing a knife at her stomach and demanding for money. She had submitted and had been forced to take his penis in her mouth. The offender has previous convictions for indecent assaults. In Attorneys General's Reference a 20 year old man was given life imprisonment he had an untreatable Psychopathic disorder with a propensity to commit sexual assaults. In Carr a girl aged 15 has committed grievous bodily injury under section 18 by stabbing another girl in the back. She was also held for two other of attempting to strangle other girls to be taken in to consideration. A 42 months sentence was awarded keeping in

mind the psychiatric advice. In Sheldon where the boy aged 13 attempted to a murder a girl aged 10 by tripping her and then applying pressure on her neck which made her unconscious. He then committed sexual abuse by inserting and object into her vagina. He was sentenced to four years of punishment keeping in mind the ray of hope of redemption.

CHAPTER-6

CONCLUSION AND SUGGESTIONS

The term “Juvenile Justice” is a pervasive term. Only in one sense it has a uniform meaning and that is rehabilitation and social reintegration through any of the legalised measures. The term juvenile is a stigmatic term which essentially refers to a child under certain prescribed age who has been alleged or found to have committed an offence.This Chapter deals with conclusions and suggestions arrived at as a result of discussions in the previous chapters. In conclusions, an appraisal of whole study is given. It is earnestly hoped that the conclusions drawn and the suggestions presented on the basis of the critical study in this discourse will be a real contribution to the field.

A. Conclusion

Chapter I deals with the introduction of my research, its aim and object and need to review the law regarding Juvenile Justice in the light of current changing scenario. Further, it gives an overview of literature and describes the methodology employed. The United Nations Convention on the Rights of the Child 1989 also uses the term 'children accused of'. In India, for the first time efforts was made to equate the term juvenile with the term child or vice-versa with the idea of removing the stigma attached with the term juvenile through the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000. The term juvenile refers to juvenile delinquent what now is called juvenile in conflict with law and the term child refers to neglected juveniles what now is called children in need of care and protection. The earlier legislations also tried its best to give another meaning to the term juvenile but failed. Juvenile justice legislation in India from 1920 to till the passing of the Act 2000 maintained the clear distinction between neglected juvenile and juvenile delinquent.

The differential treatment to young delinquent can be traced back in the moment when segregation of young criminal from the adult in the prison started. Thus, the 'segregation' was the first stage of history to provide differential treatment to young persons. The second stage of providing differential treatment to juvenile delinquents (now juvenile in conflict with law) started with the system of releasing them on parole and license while undergoing a sentence of imprisonment. The third stage of providing differential treatment to juvenile offenders was a moment against the sentence of imprisonment awarded to them. This moment led to the formation of separate juvenile courts to handle the cases of adult criminals separately distinct from adult criminal court providing different procedures and techniques of

correction and reformation. The campaign against the prison sentence led to development of various custodial (not jail) and non-custodial measures for example, reformatories, Borstal schools, special homes, and probation etc. The fourth stage of development of providing differential treatment to juvenile delinquent can be attributed in the moment of development of human rights of the children through United Nations Convention on the Rights of the Child, the most ratified treaty.

It is important to note that throughout, the juvenile justice system handled together both the categories of children, delinquent juveniles and non-delinquent juveniles or neglected juveniles earlier through different legislations and presently through sole legislation. England before 1908 provided treatment to juvenile delinquent under the Reformatory Schools Act and to neglected juveniles under the Industrial Schools Act. The first juvenile court in the world was established by America in the year 1899 and both the categories of children came to be dealt with by the juvenile court. There was single legislation dealing with both the categories of children. England passed the Children Act of 1908 covering both the categories of children. India followed the pursuit and passed several Children Acts covering both the children together through sole legislation. The repealed Juvenile Justice Act 1986 and the present Juvenile Justice (Care and Protection of Children) Act 2000 covers both the categories of children. This inclusion of both the categories of children into sole legislation appears to be a major stumbling block in the effective implementation of the juvenile justice system in India. The timing and content of various developments relating to the juvenile justice system have close relationship with the reforms taking place elsewhere in the 1 world rather than with the demands of children in the country. It has also been voiced that the juvenile justice legislations in India are passed by the legislators merely to please their conscience and to show the international bodies that they too were in the forefront of child protection.

The research study shows that the children in India are continuously being blessed by the state, its machinery including judiciary and its allied civil-society partner with the followings Firstly, they have acquired the status of being a human capable of owning certain inalienable rights by birth without owning any disadvantages (duty) as opposed to their earlier status of being a property of their parents or guardians. Secondly, they have become the subject-matter of human rights discourse, that is, concern of all, leading to general awareness among the masses about their rights of not being exploited, abused, tortured, treated with cruelty or inhuman manner, arrest by police etc. Suffice to say that these all are the abstract or negative rights in terms of civil and political rights. It is seen that the same

hidden agenda does find place in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 but with changes in the terminology used under the system retaining the substance.

The salient feature of the juvenile justice system in India is presented in brief as under: There is no court, there is board, there is no juvenile offender or delinquent juvenile, there is juvenile in conflict with law; there is no neglected juveniles, there is 'children in need of care and protection'; there is no arrest, there is custody; there is no remand, there is bail; there is no trial, there is adjudication; there is no police investigation, there is social investigation; there is no police, there is child welfare officer; there is no decision or judgment, there is disposition; there is no punishment, there is care and protection; there is no jail, there is home etc.

It is also the fact that the Supreme Court of India has been monitoring the implementation of juvenile justice system from the year 1995. It is also the fact that despite of the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile Justice Acts [many major provisions of the Juvenile Justice Act (repealed) and Act 2000 are same] till today. The Supreme Court of India in SheelaBarse's case itself took the responsibility of monitoring the implementation of major provisions of Juvenile Justice Act, 1986. The case was disposed of with certain directions in 4 1995. In SampurnaBehrua's case, again the Supreme Court took the responsibility of monitoring the implementation (monitoring is still continue) of major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Origin of Juvenile Justice in India: Until the middle of the nineteenth century, the sufferings of children drew little social attention. This was mainly because there was no social recognition given to the person of the child, apart from the family or the community to which s/he belonged. Under such a dispensation children were expected to participate in all family activities such as trade, business or vocation commensurate their physical and mental abilities. Children were not exempt even from the harsh burden flowing from the kinship and caste bonds.

C. SUGGESTIONS

1. Community participation should be increased

The Juvenile Justice System will continue to function in isolation from the mainstream and the majority of children brought within the system will continue to be institutionalized unless the community is involved in the process. The sate governments should give priority to

authorizing persons and organizations to take charge of neglected juveniles. More voluntary institutions, persons and places should be recognized as places of safety, fit persons, fit institutions, observation homes, juvenile homes, and special homes. The appointment of social workers as members of the juvenile justice board, the children welfare committee, and the advisory board, as well as their training, needs to be given a place of priority while implementing the Juvenile Justice (Care and Protection of Children) Act.

A numbers of voluntary organisations, working with street and working children, have shown that 'care' primarily does not involve provision of forty cubic feet of sheltered various grant-in aid schemes to encourage placement of children in the 'care' of persons and organizations promising love and supervision, though ill equipped to provide shelter.

Close supervision of the community-based programmes would be required to ensure that the child and the person in whose care she/he is placed fulfill their obligations under the placement orders. This requires ensuring of a substantive increase in the number of probation officers/social workers, and case workers and strict adherence to the standardized ration between such workers and children. The savings in institutional expenses will more than compensate for the cost of a high staff to client ratio.

It is essential to ensure that the standards relating to workload are followed. An over-burdened probation officer, social worker, case worker, may not be able to pay individualized attention to each child, something that is ftmdamental for the success of the programmed. Voluntary probation workers from, among college students in a given area, may be attached with the probation officers after scrutiny and orientation training.

Experiments in involving ex-beneficiaries in the community-based programmes of juvenile justice have proved to be quite beneficial in America. Ex-beneficiaries along with qualified social workers worked as teams in the locality of the ex-beneficiaries. That reduced the differences between the probation workers and the community, which are usually major impediments to effective counseling. These community workers exemplify success despite their stigmatized past. The technique not only keeps them out of trouble but also projects them as models of behaviour before other children. Expansion of probation services for children may be coupled with involvement of ex-delinquents and neglected juveniles in establishing contract and gaining trust of the community to which such children belong.

Provisions relating to foster care, shelter homes, and sponsorship in the JJ (C&P) Act contain ample opportunities for participation of the community in the Juvenile Justice System; and should be utilized for involving larger sections of society.

2. Training Programmes for Personnel functioning under juvenile justice system

Orientation training and in-service refresher courses for the decision-makers as well as for the various others categories of personnel functioning under the Juvenile Justice System is most essential for implementing the spirit behind the various services and programmes under the system. Implementation without spirit may, in fact, be counterproductive in many instances, as has been the case with the homes established so far under the Juvenile Justice System. Orientation courses, seminars and awareness programmes should be organized by government on juvenile justice on regular intervals to enable the functionaries imbibe the message discussed and conveyed to them.

3. **Right to Education for Children, especially for those in the Juvenile Justice system**

The CCL strongly recommend for dropping the idea of reducing the age of the juveniles from the present 18 years to 16. Rather, I at the centre strongly feel that the solution lies in the extension of the age limit for Fundamental Right to Education up to 18 years from the present 14 years. This will ensure that the children of that age group are retained in common neighbourhood schools until age 18 or completion of Class XII, instead of being subjected to risk and exploitation at a very tender age and facing the risk of getting into situations of neglect, abuse or exploitation and/or turning to crime.

4. Establishment of Advisory Board

Many of the problems related to the Juvenile Justice System will be solved by bringing about coordination and cooperation among various organs of the Juvenile Justice System which are under the administrative control of the ministries of home, law and justice, education, health, labour, and welfare. Therefore, it is imperative that the state governments should give utmost priority to the establishment of the central, state, district, and city advisory boards under Section 62 of the JJ (Care and Protection of Children) Act. To ensure that the advisory boards function effectively, its chairperson and a couple of other members should work full-time on it. It hardly needs to be emphasized that the quality of juvenile justice services depends

heavily on the calibre and competence of the professional leadership available at the supervisory level. The creation of a database is equally essential for need-based policy formulation and effectiveness of implementation by the advisory board.

5. Public Awareness

It is observed that there is little awareness among the people about the Juvenile Justice System. The system lacks public cooperation and support. Hence it is suggested that a mass awareness Programme should be carried on because without public cooperation and support no system including Juvenile Justice System be sustained.

6. Coordination among various organs

It is observed that Juvenile Justice System has suffered due to lack of effective inter and inter-system coordination. Three main and interdependent power centres- the police, the magistracy and personnel involved in managing institutions, in effect pool their resources in ad hoc system of co-operation. They are governed by different agencies and instead of working in co-operation to achieve a common goal justice to Juvenile-work at cross-purpose. Hence, it is suggested that there must be an effective co-ordination among these agencies meant for achieving the goal of Justice to Juveniles.

7. Reducing pendency and building faith in the Juvenile Justice system

Vigilance and dedicated attention is required by the Judiciary and government functionaries to reduce pendency. Victims of juvenile offences need to know that justice will be speedy, fair and just. Juveniles in conflict with law, and all those who think that they can use this group of children to commit crime and get away, because of the long drawn out inquiries, need to get the message that speedy and effective justice is the hallmark of the juvenile justice system.

8. Monitoring and Review

The various inspection and monitoring authorities under the Juvenile Justice Act and other legislation need to be established through transparent and fair selection procedures, and the reports submitted by them need to be given the serious attention warranted to ensure

implementation of Action Taken Reports. Special attention needs to be given to monitoring and reviewing the progress of each and every child in the system, but more so, those juviniles alleged to or found to have committed serious crime. This needs to also be done Post the passing of final orders by the Juvenile Justice Board .

9. Drug-De-addiction Centres for children to be established and customized to deal with juveniles alleged or found to be in conflict with law

The high rates of substance abuse and the dire lack of services to respond to this unique group need to be taken note of The recent amendment to Sec 48 and 58 of the Juvenile Justice Act provides for transfer of children to specialized institutions, and these need to be enforced through setting up of such centres.

10. A time limit should be fixed for investigation

Juvenile police officers, who investigate the case, must submit the final report within 60 days or 90 days depending upon the nature of the offence from the date of complaint. A social worker may be associated in the investigation made by the police officer.

11. Provision for legal aid

There is no provision of providing legal aid under Juvenile Justice (Care and Protection of Children) Act. No assistance is provided by the lawyer to a juvenile facing a criminal charge before the Board. This is a serious loop hole in the Act, which requires immediate attention.

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