JUVENILE JUSTICE SYSTEM IN INDIA A CRITICAL STUDY

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

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I wish her/his success in life.

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LIST OF CASES

1. Sheela Barse VS. Union of India, (1986) 3 SCC 596
2. Ramdeo Chauhan VS. State of Assam (2001) 5 SCC 714
3. Harkit Singh alias Kirat VS. State of Haryana (2008) Cri.L.J.(NOC)1267(P&H)
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6. Ravinder Singh Gorkhi VS. State of Uttar Pradesh (AIR2000 SC2648)
7. Sanjay Suri VS. Delhi Administration (AIR1988SC414)
8. Arnit Das VS. State of Bihar (2000)
9. Om Prakash VS. State of Rajasthan (2012)
10. Krishna Bhagwan VS. State of Bihar (1989)
11. Bhola Bhagat VS. State of Bihar (1998)
12. Pratap Singh VS. State of Jharkhand (2000)
13. Hari Ram VS. State of Rajasthan & Another (2009)
14. Bandhua Mukti Morcha VS. Union of India (1997) 10 SCC 549

LIST OF ABBREVEATIONS

AIR	All India Reporter
Bom	Bombay High Court
Cal.	Calcutta High Court
CBI	Central Bureau of Investigation
Cr.LJ.	Criminal Law Journal
Cl. F.	Federal Court of Claims
Del./NCT	Delhi High Court
DB/ FB	Divisional/Full Bench
Guj.	Gujarat High Court
GLH	Gujarat Law Herald
H.P.	Himachal Pradesh High Court
P./PP./Para	Page(s)/Paragraph
Pat./P&H	Patna/Punjab &Haryana High Court
Ker.	Kerala High Court
Kar.	Karnatka High Court
Mad. L.J.	Madras law Journal
MP	Madhya Pradesh High Court
NOC	Notes of Cases
QB	
Ori.	Orissa High Court
Raj	Rajasthan High Court
Rep.	Represented By
Sec.	Section
SCR/SCW	Supreme Court Reporter/Weekly
SCC	Supreme Court Cases
SCAL E	Supreme Court Alamanac
V/Vs.	Versus

TABLE OF CONTENTS

LIST OF CASES **V**

LIST OF ABBREVEATION **VI**

CHAPTER-1

INTRODUCTION **1 – 8**

1.1 JUVENILE JUSTICE: ORIGIN 4

1.2 OBJECT OF STUDY 6

1.3 RESEARCH HYPOTHESIS 6

1.4 RESEARCH METHODOLOGY 7

1.5 SCHEME OF PRESENTATION OF STUDY 7

CHAPTER-2

HISTORICAL BACKGROUND **9 – 15**

2.1 HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM: INTERNATIONAL PERSPECTIVE 9

2.2 HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE SYSTEM IN INDIA 10

2.2.1 PRIOR TO 1773 11

2.2.2 PERIOD BETWEEN 1773 – 1850 12

2.2.3 PERIOD BETWEEN 1850 – 1918 12

2.2.4 PERIOD BETWEEN 1919 – 1950 13

2.2.5 POST 1950: CONSTITUTIONAL PROVISIONS 13

2.3 INDIAN HISTORY OF JUVENILE LEGISLATION 14

CHAPTER-3

CONCEPTUAL FRAMEWORK OF JUVENILE JUSTICE **16 – 24**

3.1 CONCEPTUAL FRAMEWORK: INTERNATIONAL PERSPECTIVE 16

3.2 CONCEPT OF JUVENILE JUSTICE IN INDIA 17

3.3 DOLI INCAPAX: MEANING 18

3.4 AGE OF CRIMINAL RESPONSIBILITY IN VARIOUS COUNTRIES 19

3.5 MEASURES TO CURB JUVENILE DELINQUENCY 20

3.6 OTHER SUGGESTIVE MEASURES FOR PREVENTING DELINQUENCY AND REHABILITATION OF JUVENILE DELINQUENCY 23

CHAPTER-4

JURISPRUDENTIAL DIMENSION **25 – 44**

4.1 EVOLVING PRINCIPLES AND STANDARDS 27

4.2 INTERNATIONAL PERSPECTIVE 29

4.3 JURISPRUDENTIAL DIMENSION: NATIONAL PERSPECTIVE 36

4.3.1 JURISPRUDENTIAL OBJECTIVES IN ACTION 41

CHAPTER-5

STATUTORY BACKGROUND **45 – 56**

5.1 CHILDREN'S ACT 1960 45

5.2 JUVENILE JUSTICE ACT 1986 45

5.3 JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT 2000 46

5.4 JUVENILE JUSTICE ACT 2015: CHANGING SENTIMENTS TOWARDS THE DISTURBING CATASTROPHE 46

5.4.1 TOWARDS THE TRANSITION IN OUTLOOK 47

5.4.2"JUVENILITY IS MAINLY A STATE OF MIND AND NOT ONLY STATE OF BODY" 48

5.4.3 POST NIRBHAYA POSITION: AFTER AMENDMENT ACT OF 2015 49

5.5 INTERVENTION FOR REHABILITATION OF JUVENILE DELINQUENCY IN INDIA: A HOLISTIC UNDERSTANDING OF COMMUNITY RESPONSES 52

5.5.1 EXECUTIVE INTERVETION AGAINST JUVENILE DELINQUENCY 52

5.5.2 JUDICIAL INTERVENTION AGAINST JUVENILE DELINQUENCY 53

CHAPTER-6

CRITICAL ANALYSIS WITH SPECIAL REFERENCE TO ABUSE OF LAW & JUVENILE JUSTICE ACT 2015 **57 – 77**

6.1 'IS LAW TOO PROTECTIVE OF JUVENILE DELINQUENCY' 58

6.2 LOOPHOLES OF JUVENILE JUSTICE ACT 2015 61

6.3 GAPS IN ADMINISTRATION OF JUVENILE JUSTICE, SPECIFICALLY PERTAINING TO THE ISSUE OF SERIOUS OFFENCES COMMITTED BY JUVENILE 63

6.4 APPROPRIATENESS OF "ADULT TIME FOR ADULT CRIME" 65

6.5 CRITICAL APPRAISAL OF JUVENILE JUSTICE ACT 2015 67

6.6 SUGGESTIVE MEASURES 69

6.7 MISCELLANEOUS 74

CHAPTER-7

EMPIRICAL DATA ANALYSIS RELATING TO JUSTICE FOR JUVENILE **78 - 87**

7.1 HYPOTHESIS 78

7.2 OBECTIVE 78

7.3 SIGNIFICANCE OF FINDING 78

7.4 RESEARCH METHODOLOGY 79

7.4.1 RESEARCH METHOD 79

7.4.2 METHOD OF DATA COLLECTION 79

7.4.3 TIME FRAME 82

7.4.4 CONSTRAINTS 82

7.5 ANALYSIS 83

7.6 CONCLUSION OF EMPIRICAL ANALYSIS 86

CHAPTER-8

CONCLUSION AND SUGGESTIONS **88 – 94**

BIBLIOGRAPHY **95 – 97**

CHAPTER – 1

INTRODUCTION

Abraham Lincoln said: ***"A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands".***

The future and stability of a society depend on the quality of its children. In every child the foundation of a nation is laid. The proper development of child is, therefore, imperative for the proper growth of the nation.

CHILD WELFARE is an expression which means "the general well being of child." In all ages, this has depended principally on the social valuation of children and the care accorded to them.

AT PRESENT TIME, The child is considered as an important social unit and is held to be entitled to all that makes for healthy living, sufficient recreation, schooling adapted to his natural learning methods, intelligent home care and the right to develop his abilities to their fullest extent. It emphasizes the need of continuously taking into account all aspect of child's well-being and dealing with the 'WHOLE CHILD', not some isolated phase of development.

Every nation, developed or developing, links its future with the status of child. If children are deprived of their childhood- socially, economically, physically, mentally- the nation is deprived of its human resources.

CHILD CARE and WELFARE traditionally was treated as the responsibility of family is now shared by the states. The legislations clearly depict the intention of legislators but in reality, only lip service is paid to these legislations due to apathetic social attitude in general and bureaucratic inertia in particular.

The problem of juvenile delinquency is not new. It occurs in all societies, simple as well as complex, that is, wherever and whenever a relationship is affected between a group of individuals leading to maladjustments and conflict.

In a developing country like India the problem of juvenile neglect and delinquency is considerably low but gradually increasing according to the National crime record bureau report 2007. What is worrying more is that the share of crimes committed by juveniles to total crimes reported in the country has also increased in last three years.

Considering the magnitude of the problem and issues involved, analysis indicates that the number of factors for neglect and delinquency are mostly common and interrelated based on socio-economic and psychological reasons. Poverty, broken homes, family tensions, emotional abuse, rural-urban migration, break-down of social values and joint family system, atrocities and abuses by parents or guardians, faulty educational system, the influence of media besides the unhealthy living conditions of slums and such other conditions explain the phenomena of juvenile delinquency.

The neglect of children by their parents, family, society and the nation create detrimental effect on their physical, mental growth and over all development.

NEEDLESS to say that most of the factors causing delinquency are in plenty in the Indian context and any attempt to prevent and control them can be fruitful for society. After all, the children represent the nation and the coming future of the country.

Even international instance like UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985 and UN Convention on the Rights of Child, 1989, are notable and have articulated the global consensus on giving special attention to the children who come in conflict with law.

The modern societies typically disconnect juvenile justice process from criminal justice administration; this was not the custom for much of human history.

For millennia the juvenile justice was merely subsumed under the broader concept of criminal justice and harsh punishment were imposed on juveniles to protect the prevailing social order.

No distinction was made between delinquency and criminality so that juvenile offenders were deemed to be nothing more than young criminals and were treated accordingly.

Most societies simply treated juvenile offenders in the same manner as deviant adults. Even in societies that took into account special status of young people, identical punishments were meted out to juvenile and adults alike.

It was only after centuries of human civilization that what we term now juvenile justice began to develop outside the adult criminal justice system, thus the concept of promoting distinct form of justice for children is relatively new development in the history of civilization and administration of justice.

From 18th century onwards there has been a distinct and laud worthy movement towards child amelioration. A segment of this was aimed towards separating young offenders from hardened criminals and treating them in friendly way with sole of reforming, rehabilitating, and reintegrating them so that they become future useful citizens of their nation.

It was Pope Clement XI, who first introduced, in 1704, the idea of 'the correction and instruction of profligate youth' in institutional treatment.

Subsequently, Elizabeth Fry often referred as Betsy Fry/Angel of Prisons, an English prison reformer and her Assistants mobilized resources to establish separate institutions for juvenile offenders. Consequently, in Britain, Reformatory Schools Act and Industrial Schools Acts were brought on statute book.

The move towards separation of juvenile and adult courts proceedings began in the final decades of nineteenth century. Although none of these efforts created true juvenile court system, they certainly became the forerunners of modern juvenile court systems.

The first juvenile court act, "The Illinois Juvenile Court Act" was passed in July 1899.This was the first comprehensive and modern juvenile justice statute. It officially aimed to regulate the treatment and control of "Dependent, Neglected and Delinquent Children".

In INDIA, the idea of providing separate treatment for juvenile offenders was passed in last quarter of nineteenth century. The Apprentices Act, 1850 is chronologically the first law to deal with the children in distresses that are to be trained for trade and industry.

IT was applicable to children between the age of 10 to 18 years for both boys and girls. The maximum period of apprenticeship for boys was seven years or till the boy attained age of 23 years and for girls till her marriage.

THUS, the law in INDIA followed the British precedents and developed from the primitive and retaliatory approach of rigid criminal courts towards a gradual acceptance of humanitarian concept of re-education and protection of children as a ward of state.

1.1 JUVENILE JUSTICE: ORIGIN-

The term 'Juvenile justice' was used for the first time by the legislature by the state of Illinois, USA, in 1899, while passing the Juvenile Court Act. The approach under laying this law was that juvenile offenders should not be meted out the same punitive and retaliatory treatment as adults but rather given individual attention for their own protection as well as that of the society.

The word 'Juvenile' has been derived from Latin term 'juvenis' which means "Young". The term 'delinquency' has also been derived from the term do (away from) and liqueur (to leave). The Latin initiative "delinquere' translate as to emit in its original earliest sense.

According to Reckless, the term 'juvenile delinquency' applies to the "violation of criminal code and /or pursuit of certain patterns of behavior disapproved of for children and young adolescents".

Thus, both age and behavioral infractions prohibited in the statutes are important in the concept of juvenile delinquency. Caldwell prefers to leave the term vague and includes within it all acts of children, which tend them to be pooled indiscriminately as wards of the state.

'Juvenile delinquency' when employed as a technical term rather than merely a descriptive phrase is entirely a legislative product….', But generally speaking, the term refer to a large variety of disapproved behavior of children and adolescent which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest.

Until the late 19th century, criminal courts tried youth and adults. The 16th century educational reform movement in England that perceived youth to be different from adults, with less than fully developed moral and cognitive capacities, fueled the movement for juvenile justice reform in America.

By the middle 19th century, following the creation of houses of refuge, new innovations such as cottage institutions, out-of-home placement, and probation were introduced. These new approaches were typically the result of enterprising social reformers who sought new and better ways to address the problem of wayward youth.

This collection of institutions and programs were finally brought together with the creation of the juvenile court. First established in 1899 in Cook County, Illinois and then rapidly spread across the country, the juvenile court became the unifying entity that led to a juvenile justice system.

Founded on the ancient legal of doctrine *parens patriae* (the State as Parent) which declared the King to be the guardian of all his subjects, the new court assumed the right to intervene on behalf of youth deemed to be in need of help based on their life circumstances or their delinquent acts. The primary motive of the juvenile court was to provide rehabilitation and protective supervision for youth. The court was intended to be a place where the child would receive individualized attention from a concerned judge. Court hearings were informal and judges exercised broad discretion on how each case was handled.

By the 1950s and 1960s public concern grew about the effectiveness of the juvenile justice system, because of the disparities in treatment that resulted from the absolute discretion of juvenile court judges. Similarly situated youths could receive vastly different sentences based on the mood, temperament, or personal philosophy of individual judges.

In the 1960s, the Supreme Court made a series of decisions that formalized the juvenile courts and introduce more due process protections such as right to counsel. Formal hearings were required in situations where youth faced transfer to adult court and or a period of long-term institutional confinement.

In the late 1980s the public perceived that juvenile crime was on the rise and that the system was too lenient. Many states passed punitive laws, including mandatory sentences and automatic adult court transfer for certain crimes.

In the 1990s this tough on crime trend accelerated. Tougher laws made it easier to transfer youth offenders to the criminal justice system. By the mid-1990s use of institutional confinement for even minor offenses was growing. Youth correctional facilities across the country were overcrowded and conditions were deplorable.

Beginning the late 1990s the drive to increase rates of youth incarceration began to recede. Led by California, many states began reducing the number of youths committed to youth correctional institutions. Borrowing from the lessons learned from the closing of the

Massachusetts training schools in the early 1970s, the efficacy of the congregate institution was now being questioned.

By the end of the first decade of the 21st century, states such as California were instituting the most sweeping reforms in the history of the juvenile justice system.

THEREFORE, the theory of the juvenile court was to rehabilitate juvenile offenders not to punish them. The doctrine of parens patriae, meaning parent of the country, became the guiding light to allow the state to serve as the guardian of juveniles with physical, legal or mental disabilities. The courts followed the 'best interests of the child' in determining what would help the juvenile become a productive member of society. In some cases, this meant removing the juvenile from the home and placing him in an institution in order to rehabilitate him in the most effective way possible.[1]

1.2 OBJECT OF STUDY-

The object of the proposed study is to critically analyse the juvenile justice system of India and to find out whether there is abuse of justice in the veil of immunity granted to children below 16 years of age or such immunity is feasible in present scenario. The study also aims to know how far the present laws on the subject able to deliver justice and reform the juvenile delinquents.

This study aims to analyze the strength and weaknesses of existing laws and policies related to juvenile delinquency in India.

The study also highlights the areas to be worked upon and problems encountered in effective administration and implementation of laws so that the noble object with which the makers formulated the juvenile justice system can be completely achieved.

1.3 RESEARCH HYPOTHESIS-

The study undertaken is to analyse the feasibility of juvenile law in contemporary scenario. With the increasing incidents of heinous offences by juvenile even after the amendment of 2015 in Juvenile Justice Act, the study hypothesizes that the juvenile immunity is resulting in

[1] Juvenile Justice: History (Apr.19, 2019, 02:30PM), https://www.cjcj.org\education\JuvenileJustice-history.html.

abuse of law in present day context and law needs to be amended in order to maintain the balance between maintenance of law and order in the society and reformation of children in conflict with law.

1.4 RESEARCH METHODOLOGY-

The study undertaken is based on Doctrinal and Empirical research which involves collection of data from juvenile inmates in observation home, officials and staff of observation home, judges of Juvenile Justice Board and general public with the help of questionnaires to analyse the present situation on the subject.

Regarding the analysis of legal provisions the study is based on doctrinal method to analyse the contemporary position of law in the Indian society.

1.5 SCHEME OF PRESENTATION OF STUDY-

The present study is divided into eight chapters. The scheme of presentation of study is as follows:

CHAPTER 1- is Introduction which gives a brief overview of juvenile justice system as to its meaning, origin and developments in India as well as international level.

CHAPTER 2- deals with Historical Background of Juvenile Justice System which comprehensively covers the periodical development of the subject on international as well as national level.

CHAPTER 3- deals with conceptual framework of juvenile delinquency which includes meaning of juvenile delinquency, juvenile delinquency in Indian perspective, factors contributing delinquency, recent policies for juvenile delinquents in India.

CHAPTER 4- deals with jurisprudential dimension including national and international perspectives.

CHAPTER 5-includes Statutory Background which mentions salient features of Code of Criminal Procedure 1973, Children Act 1960, Juvenile Justice Act 1986, Juvenile Justice Act 2000, and Juvenile Justice Act 2015.

CHAPTER 6- deals with statutory analysis with special reference to abuse of law. It critically analyses the provisions of Indian Penal Code as well as Juvenile Justice Act 2015 to know if there is abuse of justice in the veil of immunity given to persons below 18 years of age.

CHAPTER 7- deals with Empirical data analysis with the help of questionnaires asked from children in conflict with law by visit to observation home in Mohanlalganj Lucknow and questionnaires asked from law knowing persons as well as general public.

CHAPTER 8- is the Conclusion and Suggestions

CHAPTER 2

HISTORICAL BACKGROUND

This chapter deals with the historical backgrounds which lead to the evolution of juvenile justice system as a separate justice system and the legal system which was adopted prior to the evolution of juvenile justice system in international as well as national level.

2.1 HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM: INTERNATIONAL PERSPECTIVE–

The **defense of infancy** is a form of defense known as an excuse so that defendants falling within the definition of an "infant" are excluded from criminal liability for their actions, if at the relevant time, they had not reached an age of criminal responsibility. After reaching the initial age, there may be levels of responsibility dictated by age and the type of offense committed.

Under the English common law the defense of infancy was expressed as a set of presumptions in a doctrine known as ***doli incapax***. A child under the age of seven was presumed incapable of committing a crime. The presumption was conclusive, prohibiting the prosecution from offering evidence that the child had the capacity to appreciate the nature and wrongfulness of what they had done. Children aged seven to under fourteen were presumed incapable of committing a crime but the presumption was rebuttable. The prosecution could overcome the presumption by proving that the child understood what they were doing and that it was wrong. In fact, capacity was a necessary element of the state's case. If the state failed to offer sufficient evidence of capacity, the infant was entitled to have the charges dismissed at the close of the state's evidence. *Doli incapex* was abolished in England and Wales in 1998, but persists in other common law jurisdictions.

The Juvenile Justice System in juridical sense, in various countries in West developed through a similar phenomenon.

During 1850's institutions concentrated more on custody and less on reforms. However, this does not proved to be a successful phenomenon. The picture painted of juvenile delinquency was of progression from petty delinquencies to heinous crimes. The failure of prisons and

other similar institutions to control crime and the rapid increase in juvenile delinquency necessitated alternative measures for children. The prison reformers did not want children to be processed as adults and sent to penitentiaries but neither did they want children in conflict with law to be released.

The principle of segregation further led to separate hearings and separate court system. The Juvenile Offenders Act 1847 in England allowed Larcenies and thefts by persons below 14 years to be heard by Magistrate in petty sessions. The Summary Jurisdiction Act 1879 provided summary trial of children under 16 for nearly all indictable offences.

An 1836 report of Inspector of Prisons reiterated that absolute immunity would have been far less mischievous than the confinement of adults and children together.

The Children Act 1908 of England laid two primary assumptions:

1. Juvenile were less responsible for their actions than adults

2. Juvenile treated with adult offenders was likely to be contaminated in same way so the two groups should be treated separately.

In the Twentieth Century, a little distinction was made between adult and juvenile offenders. There was recognition that children were not as mature as adults to understand the nature and consequence of their acts and could not be held responsible for their criminal act. This started the evolution of a separate justice system for juvenile altogether which is known today as Juvenile Justice System. [2]

2.2HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE SYSTEM IN INDIA:

The history of juvenile justice system in India has been divided into five periods by reference to legislative or other landmarks development:

1. PRIOR TO 1773

2. PERIOD BETWEEN 1773 -1850

3. PERIOD BETWEEN 1850 -1918

[2] Ajay Dey, Juvenile Justice: An in depth study on matters relating to children, SC Sarkar & Sons Pvt. Ltd., Calcutta (1989).

4. PERIOD BETWEEN 1919 -1950

5. POST 1950

2.2.1 PRIOR TO 1773-

Both the Hindu and Muslim laws had provision for maintenance of children. The primary responsibility to bring up children was that of parents and family. Charity for the care of poor and destitute has been a noble under both Hindu and Muslim laws and indirectly provided for the care of children in case of failure of the family to do so.

Muslim law makes it compulsory for a person who finds abandoned child to take its charge, if he has reason to believe that it may otherwise perish.

It is generally maintained that neither Hindu nor Muslim laws had any reference to juvenile delinquents.

HOWEVER, a cursory study of Manusmriti and Hedaya show differential punishment to children for certain offences.

2.2.2 PERIOD BETWEEN 1773 AND 1850-

Differential treatment for children can be traced as far back as the code of Hammurabi in 1790 B.C, the responsibility for their supervision and maintenance being vested on the family. During the colonial regime in 1843, the first center for those children called "Ragged school" was established by Lord Cornwallis.

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

In 1825, the society for the prevention of juvenile delinquency advocated separating juvenile and adult offenders. India, as a British colony, did not remain unaffected. The colonial

exploitation had eased out indigenous rural economy, forcing many a class of people to slums in suburbs; it also increased destitution and delinquency among their children.

The first "ragged school" for orphans and vagrant children in India was establishment of the ragged school, Bombay now known as the DAVID SASSOON INDUSTRIAL SCHOOL.

The object of the school was;

(i)The reformation of juvenile offenders arrested by the police, and

(ii) The encouragement of apprenticeship amongst the working classes. All these development together prepared the ground for the introduction of the Apprentices Act, 1850.

2.2.3 PERIOD BETWEEN 1850 AND 1919-

The period between 1850 and 1919 was marked by social and industrial upheavals. The APPRENTICES ACT, 1850 was chronologically the first law which required that children between **ages of 10-18 years convicted in courts**, to be provided vocational training as part of their rehabilitation process.

Many legislation were enacted in this period covering a wide range of matters such as –

(i)Female infanticide act, 1870

(ii)Vaccination act, 1880

(iii)Guardianship and wards act, 1890

The Apprentices Act 1850 was the harbinger of many other legislations to follow, laying down special provision in relation to children ,the Indian Penal code 1860 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.

The Whipping Act 1864 was enacted with object of thinning the juvenile population in jails. However, the Indian Jail Committee was constituted in 1864 pursuant to a minute by the governor general immediately after the passing of the act, which clearly indicated that juvenile offenders should not be exposed to contamination by association within the jail, with

more hardened culprits. In absolute isolation from adults lies the only prospect of preserving the young from corruption during their residence in jail.

The committee unanimously recommended that in every jail means should be receded for separating such an arrangement is practicable, that separate sleeping accommodation should be provided for each juvenile prison inmate.

The report of Indian Jails Committee 1889, reiterated the needs for segregation and classification of offenders according to their age and duration of sentence.

2.2.4 PERIOD BETWEEN 1919 AND 1950-

The most important development in the history of juvenile justice system in India is the report of Indian Jail Committee 1919-1920. It noted that prison administration since 1889 had made great advices in the material aspect of administration such as health, food, labor but little attention was paid to the possibility of moral or intellectual improvement and reformation of prisoners.

It pointed out that ordinary healthy child delinquent is mainly the product of unfavorable environment and that he is entitled to fresh surroundings for reformation. Therefore, the committee recommended special institution devise equipped for the purpose.

The committee further recommended the constitution of children's court with procedure as informal and elastic as possible.

2.2.5 POST1950: CONSTITUTIONAL PROVISIONS

After Independence, the constitutional provisions have inspired the developments in the field of juvenile justice. Part III, IV and Part IV A which deal with Fundamental Rights and Directive Principles of state Policy respectively contain some special provisions with respect to children.

Article 15 (3): Permits the State to make special provisions for children and women.

Article 23: Prohibits the traffic in human beings and forced labor.

Article 24: Forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations

Article 39 (e): Directs the State to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced be economic necessity

Article 39 (f): Directs the State to secure facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

Article 45: Requires the State to provide free and compulsory education to all children up to age of 14 years.

Article 47: states it is the duty of the state to raise level of nutrition and standard of living.

Parliament has enacted the 86th Constitutional amendment in 2002 and made Right to Education a fundamental right under Article 21A of the constitution.[3]

2.3 INDIAN HISTORY OF JUVENILE LEGISLATION-

In India, which has a long history of Juvenile legislation, most statutory provisions have followed, more or less, the British pattern. IT was the direct consequence of western ideas and development in the field of prison reforms and juvenile justice. The changes introduced in India was to deal with delinquent juveniles, however were only limited to those practiced in England.

The English idea of providing separate treatment for juvenile offenders was passed on to India in the last quarter of the nineteenth century. The Apprentices Act, 1850 is chronologically the first law meant to deal with the children in distresses that are to be trained for trade and industry.

Even the penal laws such as the Indian Penal Code, 1860 exempts children under the age of seven years from criminal responsibility (Section 82).

It also exempts children between the age of seven to twelve years, who have not attained sufficient maturity of understanding to judge the nature and consequences of their conduct, from criminal responsibility (Section 83).

The Act also provides some protection to the children from the evil designs of the adults (Section 363-A).

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[3] Ved Kumari, The Juvenile Justice System in India From Welfare to Rights, 2nd Ed., Oxford University Press, New Delhi,(2010),66.

The Reformatory School Act enacted in 1876 and later modified in 1897 was the next landmark legislation in the treatment of juvenile delinquents. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years but they would not be kept in the reformatory schools after they had attained the age of eighteen years. There was also a provision to license out boys over fourteen years of age if suitable employment could be found. In Bombay Presidency, the Act was applicable to boys under sixteen years of age, while elsewhere it applied to boys under fifteen years of age.

The Code of Criminal Procedure of 1898 provided specialized treatment for juvenile offenders. The Code also envisaged the commitment of juvenile offenders up-to the age of fifteen years to Reformatory Schools and provided probation for good conduct to offenders up-to the age of twenty one. Subsequent Indian children Acts passed by the Presidencies and provinces maintained this thinking. These laws contained provisions for the establishment of a specialized mechanism for the identification of handling and treatment of children and juveniles. In this regard, recommendations of the Indian jails committee, 1919-20, gave an added impetus to legislative action.

However, it was only after independence that, various official and non-official developments took place that contributed to the development of Juvenile Justice System in India.[4]

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[4] Ved Kumari, The Juvenile Justice System in India From Welfare to Rights, 2nd Ed., Oxford University press New Delhi, India,(2010),71.

CHAPTER 3

CONCEPTUAL FRAMEWORK OF JUVENILE JUSTICE

Concepts and causes of juvenile delinquency may be new, but the problem of children is as old as in the history as children themselves. Every society has treated its children in accordance with its religious, social and political beliefs. Juvenile Justice System has been adopted differently in various countries. This chapter deals with conceptual framework of juvenile justice system adopted in India as well as internationally.

3.1CONCEPTUAL FRAMEWORK: INTERNATIONAL PERSPECTIVE-

Juvenile Justice is an aspect of the public policy of *parens patriae*. In the criminal law, each state will consider the nature of its own society and the available evidence of the age at which antisocial behaviors begins to manifest itself. Some societies will have qualities of indulgence toward the young and inexperienced, and will not wish them to be exposed to the criminal law system before all other avenues of response have been exhausted. Hence, some states have a policy of *doli incapex* (i.e. incapable of wrong) and exclude liability for all acts and omissions that would otherwise have been criminal up to a specified age. Hence, no matter what the infant may have done, there cannot be a criminal prosecution. However, although no criminal liability is inferred, other aspects of law may be applied. For example, in Nordic countries, an offense by a person under 15 years of age is considered mostly a symptom of problems in child's development. This will cause the social authorities to take appropriate administrative measures to secure the development of the child. Such measures may range from counseling to placement at special care unit. Being non-judicial, the measures are not dependent on the severity of the offense committed but on the overall circumstances of the child.

The policy of treating minors as incapable of committing crimes does not necessarily reflect modern sensibilities. Thus, if the rationale of the excuse is that children below a certain age lack the capacity to form the *mens rea* of an offense, this may no longer be a sustainable argument. Indeed, given the different speeds at which people may develop both physically and intellectually, any form of explicit age limit may be arbitrary and irrational. Yet, the

sense that children do not deserve to be exposed to criminal punishment in the same way as adults remains strong. Children have not had experience of life, nor do they have the same mental and intellectual capacities as adults. Hence, it might be considered unfair to treat young children in the same way as adults.

In Scotland the age of criminal responsibility is currently eight years, however age of criminal prosecution was raised to 12 in 2010. In England and Wales and Northern Ireland the age of responsibility is ten years and in the Netherlands and Canada, the age of responsibility is twelve years. Sweden, Finland, and Norway all set the age at fifteen years. In the United States, the age varies between states, being as low as six years in South Carolina and seven years in 35 states; 11 years is the minimum age for federal crimes.

As the treaty parties of the Rome Statute of the International Criminal Court could not agree on a minimum age for criminal responsibility, they chose to solve the question procedurally and excluded the jurisdiction of the Court for persons under eighteen years.

Some countries refuse to set a fixed minimum age, but leave discretion to prosecutors to argue or the judges to rule on whether the child or adolescent ("juvenile") defendant understood that what was being done was wrong. If the defendant did not understand the difference between *right* and *wrong*, it may not be considered appropriate to treat such a person as culpable. Alternatively, the lack of real fault in the offender can be recognized by rulings that dispense mitigated criminal sentences or address more practical matters of parental responsibility by adjusting the rights of parents to unsupervised custody, or by separate criminal proceedings against the parents for breach of their duties as parents.

3.2 CONCEPT OF JUVENILE JUSTICE IN INDIA:-

In INDIA, the concept of juvenile justice is confined to the violation of ordinary penal laws of the country so far as jurisdiction of the juveniles who are in conflict with law and children who are in need of care and protection under Juvenile Justice Act 2000. It is primarily designed to give effect to the provisions of UN Convention on Rights of child, 1989. The convention laid stress on social re-integration of child victims, to the extent possible, without resorting to judicial proceeding.

As per sec 2(k) of Juvenile Justice Act 2000- “Juvenile” or “child” means a person who has not completed the eighteen years of age.

The question then is the date to be reckoned for determining the age of juvenile as to whether it is the date of commission of offence or date of arrest or date of trial.

EARLIER, the Supreme Court has taken a liberal stand, holding the age on the day of commission of offence as the relevant age. But some High Courts had taken a view that age at the date of first trial was material for determining the age. This view was supported by Supreme Court in case of:

Arnit Das vs. State of Bihar –where the Supreme Court laid down that crucial date for determining the age of juvenile is the date when he is brought before the competent authority and not date of commission of offence.

But in Pratap Singh vs. State of Jharkhand, a three judge bench of Supreme Court, while considering the question regarding the date on which age to be determined held that the relevant date for the applicability of act is the date on which offence takes place.

The Indian position is in consonance with the principle of "nullum crimen sine lege" and recommendation of UNO body on social defence.[5]

3.3 DOLI INCAPAX: MEANING-

Doli Incapax is a Latin term that means "incapable of doing harm". This term has been used to describe a presumption of innocence for children in Criminal law in mostcountries. The basis of this presumption lies in the theory of Criminal responsibility. Theory has been built upon the theory that a person should be held criminally responsible only for acts he intends to commit.

In the Indian Criminal Procedure, Doli Incapax recognizes that there is a line (age line) below which children are not truly capable of criminal behavior because they are incapable of the requisite moral and cognitive process. In the Indian Criminal procedure this line is 7 years of age.

Criminal Procedure (CrPC) also provides for presumption of innocence in favor of children above 7 and under 12 years of age. In this case, if the prosecution can procure evidence and

[5] Chandana Sarkar: Juvenile Delinquency in India, Daya Publishing House, New Delhi (1987).

prove contrary then even a child below 12 years (12-7yrs) can be prosecuted. This immunity is termed by scholars as “qualified immunity”.

Culpability is required for criminal law to be imposed and this (culpability) is generally assumed to be present. The culpability may be escaped through excuses as insanity or duress. Every person who has the ability to exercise reason and who can distinguish between right or wrong has to bear the responsibility of the wrong that he did while causing damage to another person.

The damage caused by a minor can be just as real as that of a grownup but before coming to a conclusion or trying a minor same as that of an adult a general test needs to be performed to ascertain the child has adequate understanding of the likely consequence of the act. Any contributory negligence by a child is to be judged by the standards of a child and not as per the criterion of reasonable adult.[6]

3.4 AGE OF CRIMINAL RESPONSIBILITY IN VARIOUS COUNTRIES-

The following are the minimum ages at which people may be charged with a criminal offence in each country: -

	COUNTRIES	AGE (in years)
1.	Afghanistan	7-12
2.	Argentina	16
3.	Australia	10
4.	Austria	14
5.	Azerbaijan	14
6.	Bangladesh	09
7.	Belgium	12
8.	Bolivia	14
9.	Brazil	12

[6] Defense of Infancy (Apr.19,2019,12:30PM),https://en.wikipedia.org/wiki/Defense_of_ infancy

10.	Canada	12
11.	Chile	16
12.	China	14
13.	Colombia	18
14.	Denmark	15
15.	Ecuador	18
16.	Egypt	12
17.	France	13
18.	Hong Kong	10
19.	India	07
20.	Israel	12
21.	Italy	14
22.	Japan	14
23.	Kenya	08
24.	Nepal	10
25.	Norway	15
26.	Pakistan	07
27.	Singapore	07
28.	South Africa	10
29.	South Korea	14
30.	Spain	14
31.	Turkey	12
32.	United Kingdom	10
33.	United States	0-11
34.	Uruguay	18

35. Vietnam 14[7]

3.5 MEASURES TO CURB JUVENILE DELINQUENCY:-

The idea of preventing crime and delinquency is based on the premise that an ounce of prevention is worth a pound of cure. The detection, prevention and rehabilitation form the series of intervention essential for reducing the frequency and repetition of juvenile delinquency. For this the primary prevention of delinquency includes action at the school and community level through imparting social skills training, cognitive and behavioral self-control strategies. The secondary is rehabilitation process on the juvenile delinquent by his family or community.

1. Prevention:

It is the first step towards the curbing delinquency. Delinquency is an evolutionary process as the child starts his delinquent acts at an early stage which is evident in the form of petty stealing, neglecting studies and gradually developing other notorious tendencies. Observing such behaviours, teachers and family members should counsel such children. Also prevention of delinquency includes averting delinquent behavior by taking action in terms of individual and environmental adjustments. It includes curing the factors responsible for juvenile delinquency like improving family bonds, better adjustment in schools, and provision of educational and recreational activities.

2. Dealing:

Police and Courts are the two major components of the criminal justice system. Police has a more significant role to play in cases related to juvenile delinquents. Even the statutory provisions provides for the active participation of police in cases concerning juveniles. For this juvenile police units with special training must be set up who will help in discovering delinquents and pre-delinquents.

3. Treatment:

Modification of delinquent behavior is one of the basic purposes of the correctional institutions. The Juvenile Justice (Care and Protection for Children) Act, 2015 gives special attention to the children who are in a situation of social maladjustment. The Act provides for

[7]Defense of Infancy (Apr.19, 2019, 12:33PM), https://en.wikipedia.org/wiki/Defense_of_infancy#Ages_of_criminal_responsibility_by_country.

the constitution of the Board((The State Government has been authorized to constitute for a district or a group of districts one or more Juvenile Boards for exercising the powers and discharging the duties, conferred or imposed on such Boards in relation to Juveniles in conflict with the law under this act. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman; Section 4, the Juvenile Justice (Care and Protection of Children) Act, 2015)) that will hold the inquiry and may make such order as it deems fit.((Section 14, the Juvenile Justice (Care and Protection of Children) Act, 2015)) The juveniles may be kept in observation homes((Section 8, the Juvenile Justice (Care and Protection of Children) Act, 2015)) where juvenile is provided accommodation, maintenance and facilities for medical examination and treatment apart from informal education and moral teaching. State Governments have been empowered to establish and maintain special homes((Section 48, the Juvenile Justice (Care and Protection of Children) Act, 2015)) in every district for the reception and rehabilitation of juvenile in conflict with law. In case of the child in need of care and protection, the State Governments have been empowered to constitute Child Welfare Committees ((Section 27, the Juvenile Justice (Care and Protection of Children) Act, 2015)) for every district. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.((Section 31(1), the Juvenile Justice (Care and Protection of Children) Act, 2015))

4. Rehabilitation and Reintegration:

Social reintegration of children shall be carried out alternatively by adoption, foster care, sponsorship, and sending the child to an after-care organisation.((Section 40, the Juvenile Justice (Care and Protection of Children) Act, 2015)) The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption. After-care organisations ((Section 44, the Juvenile Justice (Care and Protection of Children) Act, 2015)) are set up 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.[8]

[8] K. Kusum, Juvenile Delinquency: A Socio Legal Study, KLM Book House, New Delhi, (1979)

3.6 OTHER SUGGESTIVE MEASURES FOR PREVENTING DELINQUENCY AND REHABILITATION OF JUVENILE DELINQUENTS

The Juvenile Justice (Care and Protection of Children) Act, 2015 is a very good law however the necessary infrastructure is lacking. According to statistics there is a lack of Juvenile Justice Boards, observation homes or special homes for children in various districts. The backup infrastructure of counselors, psychiatrists, medical personnel, trained social workers that help the Board arrive at appropriate decisions is also a great lacking in the implementation of the Act.

Thus it must be ensured that each State constitute them in every District with senstised members within the shortest time period.

The creation of the Juvenile Justice Board acknowledges the principle that a child should not be tried in an ordinary court of law. There are however, instances where child victims have to give evidence in a court of law.

The media attention to children either as offenders or as victims can have a very damaging effect on the child. The Act provides for not disclosing such a child's identity in the media and not publishing a photograph of the child (Section 36 in The Children Act, 1960) Prohibition of publication of names, etc., of children involved in any proceeding under the Act.

(1) No report in any newspaper, magazine or news sheet of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child, nor shall any picture of any such child be published. Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(2) Any person contravening the provisions of sub- section (1) shall be punishable with fine which may extend to one thousand rupees)) but these provisions are often ignored in practice by the police and juvenile units. Strict guidelines and penalties must be prescribed for preventing this.

It must be ensured that child alleged of petty offences shouldn't languish in jail for long. Thrust should be on the treatment, education, health care and their re-socialization. The Juvenile should be counseled, given psychological support, training and education and they need to be sensitized to their social environment, their duties and rights. Rehabilitation and re-integration of the child in the society through adoption, foster care and sponsorship is a very good provision however it should be done with care and caution and with child oriented approach.

Since the welfare and protection programmes for children are implemented by different ministries, it is essential to have a strong inter-ministerial co-ordination. Financial and fiscal resources should be apportioned and preferential allocation for preventing delinquency must be made. Emphasis should be laid on more effective planning, monitoring and evaluation of existing programmes through result oriented mechanism operating at different levels.[9]

[9] Dolly Singh, Child Development Issues, Policies and Programmes, Kanishka Publishers, New Delhi, (1995)

CHAPTER 4

JURISPRUDENTIAL DIMENSION

"Humanity shows itself in all its intellectual splendor during this tender age as the sun shows itself at the dawn, and the flower in the first unfolding of the petals, and we must respect religiously, reverently, these first indications of individuality."

- Maria Montessori

Humanity is indivisible and its global hope and fortunate future is the child sector. From Jesus to Gandhi, before and after, every sublime soul has beheld divinity in juvenility, God writ large on the crying baby as it emerges into life; and yet with the march of mankind this glorious gift has suffered culpable neglect and callous cruelty for so long and so lawlessly that the conscience and compassion of the people of the earth have been awakened to this terrible, harum-scarum inhumanity inflicted upon the toddler bracket which holds in its naughty innocence and unkempt kinks a wondrous potential for great good, given a humane milieu and promotive impetus. A generation which fails to recognize that the baby is its first charge is lost in barbarity and the hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature physical, moral, mental and spiritual. That is the birthright which every child that cries for justice from the world as a whole. Winston Churchill touched the fringe of this duty de profundis when during World War II he said: "There is no finer investment for any community than putting milk into babies". This deep appeal to peoples everywhere, this fundamental faith in juvenile justice, this recognition of the worth of the infant, born and unborn, is the beginning of juvenile justice expressed as enforceable jurisprudence.

Ages of criminal neglect, despite protests by sensitive souls, humanists, thinkers and sages in every country and clime, have given place at long last to a gentler perception of juvenile justice and a chastened jurisprudence of the rights of the child. Human Rights are inalienable and so are the rights of the child. So long as children suffer, are victimised or are not nourished, there is no true humanism or love in the world and the guilty nations decline and fall sooner or later. The tragedy of large-scale affliction, injustice, maiming of personality and criminalization of infants and even reckless infanticide eventually triggered new waves

of compassion translated into universal conventions and legislations. Juvenile jurisprudence, during our heartless century, burgeoned after World War I and blossomed after World War II when the U.N. placed emphasis on the fundamental faith in the dignity and worth of the child as an integral cosmic resource. The catalysed consciousness of a wounded humanity awoke to justice to the child. Thus was born the "Convention on the Rights of the Child", an instrument of infinite significance and profound implication which binds peoples everywhere to co-operate" for improving the living conditions of children in every country, in particular, in the developing countries and to evolve a viable jurisprudence of juvenile justice" the principles of which are spelt out in pregnant diction by the sublime Convention. The rights of the child are part of the World Human Order, viewed in holistic perspective. The Charter of the United Nations is founded on the cornerstone of the inherent divinity, dignity and inalienable values of personhood. This faith in the fundamental human rights of every member of the human family, young and old, is phoney and every Convention and Declaration but boloney if it does not begin with the baby, its immaculate conception and innocent beginning of human personality. When born, every child, boy or girl, cries its presence felt and claims its status and right to development of personality in tender protest. The Universal Declaration of Human Rights and the International Covenants on Human Rights, which together make the magna carta of mankind, confers rights without discrimination of age, race, sex, religion, birth or other freedoms. The Universal Declaration of Human Rights rightly stresses that childhood is entitled to special care and assistance, that the family, as a fundamental unit of society, should focus on children as the new hope of tomorrow and afford all the necessary conditions for growth without which the community will be stunted, moron and remain retarded in every dimension. So it is that the Universal Declaration specificates in Article 24 that:

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality. Much greater strides have been made in the Convention on the Rights of the Child.

Even prior to this solemn pledge, the Declaration of the Rights of the Child, way back in 1959, had made a breakthrough. Rightly has the Convention recognised that for the full and

harmonious development of all his or her personality the child should grow up in a family environment, in an atmosphere free from friction and in a milieu of affection and understanding? This is the precious essence of juvenile justice, the well-spring of the Jurisprudence of the Rights of the Child.

This seminal source is not a post-war consciousness but has taken shape and been enunciated even in the Geneva Declaration of the Rights of the Child in 1924. Later, in November 1959, as stated earlier, the Declaration of the Rights of the Child was adopted by the General Assembly. In the child lies latent the richest human resource and so does the future of the nation and of the world. Infants are helpless but are a people's trust and this fiduciary obligation shall not be betrayed. The voiceless child has title to legal protection before or after birth, according to canons of international justice. But the harsh truth is that the welfare of the child ranks 'tragically low in the agenda of State action. The child has no vote, no militant note nor muscles to fight. What is worse, in our present day world, the trauma and torture, the illiteracy and deprivation, the hard labour and gross neglect which are the Third World's juvenile generation's fate call for sensitive social action, united mass mobilisation and affirmative justice processes. The development of the child is a foremost human right which it is ruinous to ignore. The youngest human maybe, but the child deserves the eldest care, regardless of age gap geographical hiatus and developmental distance.

Remember, we deal with the divine component, the formative stage of early childhood. We cannot draw divisions of developed and developing countries as separate segments of humanity. Every child everywhere belongs to one global family and is entitled to a universal minimum of rights and title to fullness of expression and development of faculties. Such is the Preambular Perspective of the Jurisprudence of Juvenile Justice illumined by a finer humanism, higher morality and loftier spirituality. And so it is that 113 nations, by consensus, promulgated the Vienna Declaration and Programme of Action where the rights of the child and of the girl child in particular, have justly received humane emphasis worldwide.

4.1 Evolving principles and standards-

Economic and social advancement, rooted in the equal rights of men and women and of nations, large and small, can never blossom unless the human bud, the child form birth onwards, becomes the cynosure and central subject of human rights and fundamental

freedoms. The Vienna Declaration and Programme of Action, with a spiritual touch and moral reach, make a humanist summons on nations in the articles relating to the rights of the child. If jurisprudence is not a mere blend of legalese and verbalese, but is a demand for implementation of pledges, Part D of the Vienna Declaration (dealing with the rights of the child) must become the locomotive of Juvenile Jurisprudence. It is perhaps tautological yet bears repetition that the World Conference at Vienna emphasises the principles of '"FIRST CALL FOR CHILDREN", "underlines the importance of major national and international efforts, especially those of the United Nations Children's Fund (UNICEF), for promoting respect for the rights of the child to survival, protection, development and participation," and makes special mention of the girl child, the most tortured person. The Conference makes further demands as spelt out in items 2 to 9 excerpted here: Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Summit Declaration and Plan of Action, as well as their effective implementation. The World Conference urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the convention or otherwise contrary to international treaty law. The World Conference urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plane. By means of these national action plans and through international efforts, particular priority should be placed to reduce infant and maternal mortality rates, reduce malnutrition and illiteracy rates and to provide access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty. The World Conference urges all States with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse. The World Conference supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child. The World Conference strongly supports the proposal that

the Secretary-General initiate a study into means of improving the protection of children in armed conflicts. Humanitarian norms should be implemented, and measures taken in order to protect and facilitate assistance to children against indiscriminate use of all weapons of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment to armed forces. The Conference further recommends that matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant United Nations' system organs and mechanisms and by the supervisory bodies of the specialized agencies in accordance with their mandates. The World Conference recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child. The World Conference recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enable to expeditiously and effectively meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission of country reports."[10]

4.2 INTERNATIONAL PERSPECTIVE:

An area of concern identified by UN has been treatment of children within state juvenile justice system. Hence, United Nations has been drafting various norms and standards for child justice.

Key international standards and norms for the administration of justice for children-

These include:

1. **UN Convention on the Rights of the Child (CRC)**

2. **UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**

3. **UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)**

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[10] V.R Krishna Iyer , Jurisprudence of Juvenile Justice :A Preambular Perspective,(Apr.,24,2019,04:12p.m)http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf

4. **<u>UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Rules)</u>**

5. **<u>Guidelines for Action on Children in the Criminal Justice System</u>**

6. **<u>Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime</u>**

7. **<u>Guidance Note of the Secretary-General: UN Approach to</u> justice for children**
8. **African charter on the rights and welfare of the child**[11]

Few of them have been discussed below:

1. <u>The UN Convention on the Rights of the Child (1989)</u>

Articles 1 to 4 of the CRC, spell out the major obligations of States parties. Article 1 defines "child" as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". This definition varies in other instruments: The JDL Rules refer to children as "juveniles", while the Beijing Rules, article 2(2)(a), defines "juvenile" as "a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult".

Article 2 deals with the State's obligation to treat children equally and to protect them from discrimination. In addition, criminal codes in the region still contain provisions that criminalize certain acts by children –they can be penalized for committing a status offence or an act which is not considered an offence for adults (vagrancy, truancy, running away from home, etc.). Article 56 of the Riyadh Guidelines also calls for the abolition of status offences.

Article 3: The best interest of the child is a primary consideration According to the Committee on the Rights of the Child in its General Comment 10 (2007) on "Children's Rights in Juvenile Justice", "all decisions taken within the context of the administration of juvenile justice" must be taken in the best interest of the child, especially since children have different psychological, physical, emotional and educational needs. It is for this reason that the Committee felt that children must be treated differently in the criminal justice system: they should be considered as being less culpable and their treatment processes should be geared towards social reintegration, applying principles of restorative justice.

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[11]Key International Standard Norms for Administration of Child Justice(Apr.22,2019,04:30AM), https://www.penalreform.org/resource/key_international_standard_norms_administration_justice_children/

Article 4 emphasises the obligations of State Parties to implement the rights recognised in the CRC "to the maximum extent of their available resources". Articles 5 to 10 spells out various rights, duties and responsibilities that State Parties must respect of parents, extended family, the community and other legal guardians. Articles 13 to 17 highlight the rights of children to participation, privacy and to appropriate information. Articles 19, 20 and 21 address the right of children to protection from abuse and neglect; while Article 24 addresses the right of the child to health and health services, and Article 29 addresses education.

Article 37: Children shall not be subjected to torture, or other cruel and inhuman or degrading treatment or punishment, or to be deprived of their liberty arbitrarily or unlawfully. They have a right to be treated with dignity and humanity while they are in detention Article 37 emphasises that children: should not be subjected to torture and cruel and inhuman punishment –this includes corporal punishment, solitary confinement, capital punishment and life imprisonment without release or parole; should not be arbitrarily arrested and imprisoned –if children must be arrested or imprisoned, it must be done for the shortest possible time and as a measure of last resort; and they must have the right to legal counsel, and to be separated from adults while in detention.

Article 40: Children in conflict with the law have the right to treatment that promotes their dignity and worth. Children's age must be taken into account and their treatment plan must promote their reintegration into society. Children are entitled to due process rights Due process rights such as: the presumption of innocence; to be promptly informed of charges in the presence of parents or guardians; the right to legal counsel; the right for parents or guardians to be present in court; for their case to be fairly determined, without force and without delay by an impartial tribunal, to have witnesses and for a review of their offence; the right to an interpreter if necessary; and the right to privacy at every stage of the proceedings. Article 40 also addresses the need: for States to set a Minimum Age of Criminal Responsibility (MACR); for diversion from judicial proceedings and from the courts; and for children to be dealt with in "a manner appropriate to their well-being and proportionate to the offence".

2.The UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines)

These Guidelines were adopted in 1990 --one year after the CRC was adopted, and they are considered to be supplementary to the CRC. The first phase in the child justice system is the

area of prevention. Programmes must be put in place to prevent children from becoming entangled in the justice system. In addition, diversion programmes cannot be successful on their own, and must be coupled with prevention programmes in order to prevent high rates of recidivism. Apart from prevention programmes for all children, the Guidelines emphasize the holistic nature of child justice by pointing to the important role that civil society can play in preventing all children from coming into contact with the law. The Guidelines stress the need for a multi-disciplinary approach and for proper recruitment and training of personnel who work with children. The general prevention policies are based on the following principles: The institution of comprehensive prevention plans at every level of government, In-depth analysis of the problem and preparing lists of programmes, services, facilities and resources available. A definition of responsibilities for all role players, The coordination of prevention efforts between government and civil society groups, Continuous monitoring, A reduction in the number of opportunities for committing offences, The involvement of the community, Inter-disciplinary collaboration, The participation of children; and Trained personnel who specialise at all levels The prevention measures are aimed at promoting human rights in general and children's rights in particular. The general aim is to promote the well-being of children, which is expected to prevent juvenile delinquency.

The Guidelines point to the need to make specialised programmes available for children who are: "at social risk" (article 24); "school drop-outs" (article 30), and for street children (article 38). Part IV of the Guidelines emphasise the importance of "the successful socialization and integration" of children through the family, school, vocational training, peer groups and community-based organisations. Family, including the extended family, is viewed as the central unit responsible for the socialization of children. The society has a responsibility to assist the family with providing care and protection, including day-care facilities for young children. At the same time, families must be provided with opportunities to learn about parental roles and obligations, and to promote positive relationships between parents and children. Measures must be taken by governments to "promote family cohesion and harmony and to discourage the separation of children from their parents". In cases where a stable family relationship is lacking, and the extended family or community cannot provide care, then alternative placements that are "stable and settled" have to be considered.

Article 46 points out that institutionalisation must always be a last resort and for the shortest possible 10 time. Institutionalisation is limited to cases when the child has suffered harm; has been sexually or physically abused; has been neglected, abandoned or exploited; or has been

threatened by physical or moral danger by the parents/guardians. A multi-disciplinary approach should be used for prevention programmes. This requires collaboration with schools, vocational training centres, faith-based and community based organisations, health centres, substance abuse programmes, and the media. It is important to note that participation in these programmes needs to be voluntary, and this is emphasized in

Article 50 of the Guidelines: Training of law enforcement officials to respond to the special needs of young people is absolutely essential, and they should also familiarize themselves with all of the diversion programmes available in various communities where they work, so as to be able to use them effectively. Governments are also expected to enact and enforce specific legislation and procedures to ensure the promotion and protection of the rights and well-being of children.

Lastly, Part VII points to the need for the exchange of information, experience and expertise; for regional and international cooperation on issues of delinquency prevention and child justice, and technical and scientific co-operation on issues of policy and training.

3. The UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules)

These Rules, which list standards for the administration of child justice in a comprehensive manner, were adopted by the United Nations in 1985 in Beijing, China. They detail the development of a separate and specialised child justice system. The Beijing Rules are not legally binding, but many of the principles have been incorporated into the Convention on the Rights of the Child, making it legally binding. These Rules are divided into six parts: fundamental principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation. This set of Rules addresses fundamental principles such as:

1. The fair and humane treatment of children, who come into conflict with the law,

2. Conducting proceedings in the best interest of the child and ensuring their full participation in the proceedings,

3. The application of the principle of proportionality to the offender and the offence,

4. The application of community programmes for diversion from court procedures,

5. Detention as a measure of last resort and for the shortest possible time,

6. Deprivation of liberty only for serious offences,

7. The abolition of corporal and capital punishment,

8. Continuous and specialised training for law enforcement officers working with children,

9. The application of alternatives where possible,

10. The provision of educational and other social re-integrative services for those children who are institutionalised.

These principles aim to promote the welfare of the child, minimise intervention by the child justice system, and to reduce any further harm that may be caused by such intervention. The Beijing Rules are formulated so as to be applicable to different legal systems while at the same time, it sets 11 minimum standards for responding to offenders under any definition of "juvenile".

Rule 2 defines "juvenile" as "a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult", while Rule 4 urges states not to fix the age of criminal responsibility "at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". According to the Beijing Rules, the major aims of the child justice system are: proportionality and promotion of the well-being of the child. Proportionality responds not only to the nature of the offence, but to the circumstances of the offender. This requires discretion on the part of personnel. The Rules also call for the child's right to privacy and for due process rights to be respected.

Part II of the Rules deals with investigation and prosecution. It carefully details the process: from the time of the offender's initial contact with the justice system – contact with the police; giving consideration to dealing with juvenile offenders without resorting to formal trial; the need for specialised training of the police; and the treatment of children who are in detention pending trial.

Part III addresses adjudication and disposition: trial by a competent authority; ensuring legal counsel and the presence of parents and/or guardians; the preparation of social enquiry reports; principles that should be followed in adjudication and disposition; types of

disposition measures; the need to ensure the least possible use of institutionalisation; avoidance of unnecessary delay, and the need for professionalism and training.

Part IV focuses on non-institutional treatment, while Part V focuses on institutional treatment. These aspects will be dealt with in detail later on.

Part V is vital to the region since it concerns research, planning, policy formulation and evaluation. Keeping track of the trends and problems of delinquency is of critical importance for improving the child justice system. Without this data, it is impossible to keep informed of developing problems in the child justice system, and to establish interventions that are adequate and effective.

4. <u>The UN Rules for the Protection of Juveniles Deprived of their Liberty 1990-</u>

These Rules were adopted by the United Nations in 1990 and have come to be known as the JDL Rules or the Havana Rules since they were adopted in Havana, Cuba. It is important to note that these Rules are not only applicable to custodial settings, but to police stations where children are often held in custody. The major purpose of the Rules is to ensure that the rights of the detainee are respected at all times.

Section III applies to children under arrest or awaiting trial 'who are presumed innocent and should be treated as such". As a general rule, detention before trial should be avoided, and is limited only to exceptional circumstances.

Rule 12 specifies that the "deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles".

Section IV addresses the management of juvenile facilities. Emphasis is placed on the need to encourage social reintegration of offenders by allowing children to continue their education and/or vocational training in the community as far as possible, since receiving education in a place of detention usually has a stigma attached to it. Recreational activities are also encouraged for the well being of the child in custody.

Section V also addresses the need for cells to be in proper condition and for general hygiene to be maintained –clean bedding, adequate medical and health care to be provided. Importance is given to the need for the rights of the detained child to be respected and for them treated with dignity at all stages of the child justice system. As such, the application of physical force is restricted, and cruel and degrading treatment or punishment is prohibited. In

an effort to monitor the treatment of children in custody, it is proposed that qualified, independent inspectors conduct inspections "unannounced". Qualified medical officers who are "attached to the inspecting authority or the public health service" are also expected to participate in the inspections.

Section VI addresses the need to have qualified personnel, and a sufficient number of specialists working at the facilities where children are held in custody. It calls on personnel to: minimise differences "between life inside and outside the detention facility"; to respect the Rules and to report any violations to their superior officers or organs "vested with reviewing or remedial power"; to ensure the full protection of the physical and mental health of children; and for personnel to continuously improve their knowledge and professional capacity by attending in-service training courses.

Thus, all the international instruments are in consonance with the idea that, any child primarily on account of his dependence and vulnerability deserves to be completely looked after by others. As a child, he needs support and care to survive since the nature does not provide to the human infant any protection at all. The need to survival and protection continues till the child attains maturity and adulthood. The child being the nursery of all civilization and all human potential has to be provided with various institutional and non-institutional system of development which consists of programs pertaining to education, life skills, nutrition, health, and shelter and most important, the right to childhood.[12]

4.3 JURISPRUDENTIAL DIMENSION: NATIONAL PERSPECTIVE-

The vision projected is phraseologically marvellous, covering as it does a comprehensive health programme, nutrition service, formal or informal free and compulsory education, suitable to their requirement, games and sports, special attention for the children of weaker sections and those who are socially handicapped, delinquent or otherwise deviant, necessitating rehabilitation. Indeed, the facilities and opportunities and programmes intended to assist gifted children are a tribute to the draftsman of the National Policy. Even in litigation involving them, children's interests are to be given paramount consideration. The panorama of the provisions in the Policy Paper dealing, as it does, with the Constitution of a National Children's Fund, assignment of a role for voluntary organisations engaged in the field of child

[12]Children in Conflict with Law-UNICEF(Apr.22,2019,12:30AM), https://www.unicef.org/easterncaribbean/Working_with_children_in_conflict_with_the_law.pdf

welfare and the readiness to resort to legislative and administrative action for the fulfillment of these noble objectives - too enchanting and incredible if past performance is a token of the shape of things to come! What a tragic irony that we have 'miles to go and promises to keep' in the process of actualization of these constitutional mandates and international commitments speaking specifically of education, which is the cornerstone of the developmental edifice of the children, the National Policy makes a glorious commitment: Free and Compulsory Education. Strenuous efforts should be made for the early fulfillment of the Directive Principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14. Suitable programmes should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child, who is enrolled in school, successfully completes the prescribed course. Education facilities for the physically and mentally handicapped children should be expanded and attempts should be made to develop integrated programmes enabling the handicapped children to study in regular schools. Special attention should be given to books for children in regional languages. But the majority of Indian children remain illiterate and uneducated, although nominally a National Children's Board was constituted in 1974 and re-constituted in 1981.

Unfortunately a social audit of the implementation of the policy statement will convince anyone that the status of the Policy is but' 'words, words, mere words, no matter from the heart." 'Dressing old word show is not what the nation expects of a Government running a •Socialist Republic' which has jurisdiction over the largest number of the illiterate children of the world. Do remember, even in 1971 child population in India of the age group 0-14 is two hundred and thirty million which constitute 42% of the total population. Substantially the majority of those children belong to the vulnerable sections and poverty stricken families. 1979 was the International Year of the child and a whole decade was dedicated for the redemption of children from their neglect, destitution and deprivation. The International Year and the decade have come and gone, the statistics escalates and the dimension of the problem remains frighteningly colossal.

Tinkering with problem and cosmetic treatment like the constitution of committees and declaration of awards are all that is happening. In a moderate sense, Articles 14 and 45 remain betrayed, with none to protest even in support to the Constitution. Quite recently an ironic event, 47 years after Independence, the Prime Minister and Chief Ministers met with a firm resolve to make children's education universal. The next century will witness the

bonafides of this national resolution. Although the Constitutional obligation has been unimplemented and the International Instruments like the Universal Declaration and the two Covenants and the Convention and Declaration regarding the rights of the child have persuasive force on the State, their fulfillment is yet a low priority.

Nevertheless, we may notice with comfort at least one step forward taken in the shape of the National Policy for Children to which Government is committed. It emphasises the importance of education in Human Resource Development and has recommended that:

Special efforts will be made to reduce the prevailing wastage and stagnation in schools particularly in the case of girls and children of the weaker sections of society. The programme of informal education for pre-school children from such sections will also be taken up. Children who are not able to take full advantage of formal school education shall be provided other forms of education suited to their requirements. Physical education, games, sports and other types of recreational as well as cultural and scientific activities shall be promoted in the schools, community centres and such other institutions. We may recall the U.N. Convention on the Rights of the Child, particularly

Article 28: States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

a) Make available primary education; compulsory and free to all;

b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

c) Make higher education accessible to all on the basis of capacity by every appropriate means;

d) Make educational and vocational information and guidance available and accessible to all children;

e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. It is heartening that the Supreme Court has taken serious note of some of these

obligations of the State towards the child and the Parliament has passed a grandiose legislation titled the 'Juvenile Justice Act'.

India's 1981 census tells us that 80 million out of 150 million or 52 per cent of India's 6 -14 age group were not attending school, and less than half of the 6 - 11 group were in school. Among those in the primary schools, only 40% finish four years of schooling and only 23 per cent reach the VIIIth Standard. Future shock to democracy if education diminishes progressively, "Education makes people easy to lead but difficult to drive; easy to govern, but impossible to enslave". (Henry Peter).So there is a vested interest for leaders to keep the masses uneducated.

We thus see that not merely is national illiteracy continuing to be chronic, the absolute number of juvenile illiterates has increased from 294 million in 1951 to 482 million in 1991. Unblushingly, we must agree India is the largest producer of the world's illiterates and the largest number of children without education, the Constitution notwithstanding. The incidence of poverty is often used as an alibi for children not going to school, having been diverted to do child labour. Thus we have child illiteracy and child labour, mutually interacting, which makes a mockery of the promise (in the Preamble) of the Republic that Justice, Social, Economic and Political is the title of the young and old. The young flowers are blighted before they bloom and the unfolded talent is a lost hope. The vicious circle of child illiteracy, cheap child labour, and poverty catalyzing both cannot be used to deny the child its basic right to develop as a full human being. In fact, other countries with rampant poverty have fared better. China is far ahead of us. African countries have advanced beyond us. Amongst the 21Iargt',st developing countries, India ranks 15 in the overall literacy and 12 in the percentage attending primary schools. The denial of education is the denial of the creative potential of the child and a culpable deprivation by the State since education of the young is a categorical imperative. Prodigal waste in administration and other institutions and incumbants, colonial paper logging in disposal of matters and imitations of the West as the best to suit the affluent and elite groups plus reckless investments invited from abroad and imports galore push the child who is the first charge on the Republic as the last and the least in the budged and operational priorities. What a shock and shame India's future, bearing in mind that there are over 20 million children below 14 years of age, depends a great deal on juvenile justice in its developmental dimensions. The National Policy is a printed tribute; but if, alongside of it, flourishes ill-health and illiteracy, child labour, squalor, shanties and infant mortality, the future is bleak and the breach with the nation's tryst with destiny with

juvenile justice an ominous shock. Successive governments have displayed callous absence of political will, insouciant financial parsimony and meagre mobilisation of the participation of Social Action Organisation in implementation of Project Universalisation of Children's Education. The challenge of the child continues and the denial of justice dies hard.

Therefore, the recent Conference convened by the Prime Minister to give all children educational opportunity before the turn of the century is a pledge writ in water. In 1979 (The International Year of the Child), Government set up a Committee under the Chairmanship of Gurupadswami to submit a report on child labour, that most traumatic tearing-up of the rights of the child. That Committee notwithstanding, the Ministry of Labour has harshly accepted child labour as a "harsh reality", taking the view that abolition of child labour is not an economic feasibility, a stand which is a blatant disregard of the Constitution. The blame belongs to Treasury benches and Opposition parties for this state of affairs. The culpability of the establishment is aggravated by the fact that, far from withdrawing children from labour, provision for training of children to labour better, is being organised.

For example, in 1978, the Handloom and Handicrafts Exports Corporation (HHEC), a Delhi based Government body had set up a training centre to train children between ages 7 to 14 to weave carpets.

This job is declared hazardous and forbidden by law since the woollen fibres around are dangerous for child's lungs, eyes and skin. These children at different ages after undergoing training eight hours a day or one year enter into carpet industry for employment. And also, in 1985, the Ministry of Labour, Government of India has worked out a Rs. 45 crore scheme to 'help' the children working in the match factories Sivakasi and in the carpet factories of Mirzapur-Bhadohi belt. The scheme was launched on November, 14, 1985. Under this scheme children below the age of 14 years are being recruited to the carpet training centres etc. to further increase the number of child workers. The child workers are also being given looms under IRDP to promote self-employment of children. During Feb. and May , 1983 a series of reports appeared in the newspaper regarding the rampant child labour in the fireworks and match factories of Shivakasi, a town in the District of Rmnathapunsmin the state of Tamil Nadu. The children in these factories are made to work nearly 15 hours a day, inspire of the occupation being scheduled as hazardous for children, this issue of child labour in Shivakasi has ignited a national debate on the question of the legitimization of child labour. Once again in April, 1984, all the major newspapers of the country exposed the

shocking form of forced child labour prevailing at Mirzapur carpet industries. The report was about the abduction and sale of children from Palamu district of Bihar to a carpet weaver of Mirzapur district of U.P. Subsequently, Bandhua Mukti Morcha as association devoted to the release and rehabilitation of bonded labour filed a writ petition in the Supreme Court against Union of India and others for the prosecution of the carpet weavers who had confined the children to forced labour, and also for the sanction of welfare measure etc. to the affected children.

As a follow up the Supreme Court had appointed Sri Prembhai of Banwasi Seva Ashram of Mirzapur district to submit a report on the state of child Labour in carpet industry in Mirzapur-Bhadohi belt. After the submission of the report, in June 1985, a national workshop was organised on Child Workers in the Carpet Industry, their problems and Relief Strategies at Benaras Hindu University Varanasi by Banwasi Seva Ashram and Centre for Integrated Rural Development. This workshop was sponsored by Ministry of Labour, Government of India and UNICEF. Representatives from carpet manufacturers and exporters had also participated in the proceedings of the workshop among other.

Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a slate's duty toward children.[13]

4.3.1 JURISPRUDENTIAL OBJECTIVES IN ACTION-

"Words are also actions and actions are a kind of words."

(Emerson)

The finest hour of Juvenile Justice Jurisprudence arrived in India when the Juvenile Justice Act 1986 was passed. Prior thereto, there were many initiatives Children Acts producing chaos and callousness in operation. It was, therefore, right that a Union legislation should have been passed dealing with the Indian child.

[13] V.R Krishna Iyer, Jurisprudence of Juvenile Justice : A Preambular Perspective,(Apr.,24,2019,04:12p.m)http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf

The objectives of the 1986 legislation are commendable but verbal wonders and printed excellence vanishes when we view the ground realities of law-in-action. The Children Act, 1960, was preceded by the United Nations Declaration of the Rights of the Child in 1959. Concepts became more refined and juvenile justice was adopted by the U.N. General Assembly in 1985 followed in India by the Juvenile Justice Act, 1986. There is more scientific and comprehensive treatment of the subject in the 1986 law which deals with neglected juveniles as well as delinquent juveniles. Prostitution, narcotic drugs and psychotropic substances, Observation Homes and places of safety are topics relevant in the juvenile context and have received legislative attention now. The pharmacopeia of juvenile penology includes many therapeutic processes and the Juvenile Justice Act is a valiant attempt to deal with the subject in all its dimensions. Juvenile Courts and Juvenile Homes and the appointment of 'fit persons' and 'fit institutions' are curative in their objectives. Without dwelling at greater length on the anatomy of the statute one might feel relieved that the law textually lives up to the expectations of the United Nations Instruments, except for the fact that draftsmanship, imitative of earlier acts and obsolete English practices, makes the simian legislation confusing to the laity and logomachist to the lawyer. The Indian Jurisprudence of Juvenile Justice is the wayward victim of legislative chaos or statutory slumber. And even when a fine piece has been put on the statute book, meaningful execution is distances away. If inaction is a form of action, the executive is culpable of non-enforcement of the law as any serious student of the subject will agree. The child deserves compassion and bestowal of the best care to protect this burgeoning human resource, since a nation's future depends upon this young generation.

So it is that the noted Nobel Laureate, Gabrial Mistral long ago observed: “We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is 'Today'.”

A child is born innocent and if nourished with tender care and intelligent concern for its development will blossom, with faculties physical, mental, moral and spiritual, into a person of stature and excellence. When noxious surroundings, neglect of basic needs, criminal company and other abuses and temptations for which society, parental delinquency and most regrettably, the insensitive soul of the State, in its trinity of instrumentalities must be blamed, spoil the child, retrieval and rehabilitation are urgent obligations.

Criminologists, with humanist perspectives and theories, stressed the need for reformative approaches, both to salvage the juvenile and to defend society, and, more critically, to regain the lost resource of the young offender, The multiplicity of laws, the unscientific and deficient implementation and untrained personnel, and the confused and ignorant care homes, poor investment in conscientising the law and harvesting fine talents from condemned and criminally branded juveniles awakened the Ministry in charge of child development to the imperative of comprehensive legislation which would fulfill the progressive thought and programme of action in the field would have demanded.

The tragic irony is that the State Children Acts continue de facto in many parts of the country, because the JUVENILE JUSTICE ACT visualises various structures and functionaries and expenditures and States may not be ready for these matters. We have, therefore, a strange situation of a glorious national legislation adorning the statute book, but not yet effective in large parts of India on account of the laggard behaviour of the States. This unhappy lapse notwithstanding, there is juvenile paradise at least in print There is no doubt that the legislation, in its comprehensive wisdom, contemplates the creation of institutions and authorities. Welfare Boards and Juvenile Courts, Juvenile Homes and Special homes, Observation homes and after care organisations now have statutory status (provided they come into being). Neglected juveniles and delinquent juveniles fall under different categories and punitive provisions regarding each must necessarily be different. Many miscellaneous matters regarding duties of parents, appointment of officers, people's participation through Advisory Boards, and Health care for juveniles and the like find specific statutory expression in the Juvenile Justice Act Had this juvenile justice legislation been brought into force throughout the country, protection, development, correction and re-habilitation of younger delinquents would have received therapeutic jurisprudential attention sufficient to meet the obligations under the Constitution. An inquiry should be made as to the number of States which have successfully setup the institutions under the Juvenile Justice Act and the manner of implementation thereof. Governmental insouciance and implementational culpability in regard to welfare legislation, especially when it deals with young persons, cannot be forgiven. Nor are sham substitutes anything more than deception of justice and State skullduggery. There are many sins committed by the State which cannot be forgiven but those which relate to the welfare of children deserve condign public censure because the child is the first charge on the State's resources. Because children are voiceless and voteless they are neglected with impunity by those in power who will be held guilty by the future. An ombudsman for

Juvenile justice with statutory presence and powers for oversight and report, inspection and audit imparts a democratic dimension to a social sector which cannot be solely entrusted to the bureaucracy. Justice is sensitive, particularly at the juvenile level. Perhaps a caveat as early as 1855 by Josiah Warren still remains a guideline. Children are principally the creatures of example –whatever surrounding adults do, they will do. If we strike them, they will strike each other. If they see us attempting to govern each other they will imitate the same barbarism. If we habitually admit the right of sovereignty in each other and in them, they will become equally respectful of our rights and of each other's. All these propositions are probably self-evident, yet not one of them is practicable under the present mixture of the interests and responsibilities between adults and between parents and children. To solve the problem of education, children must be surrounded with equity and must be equitably treated, and each and every one, parent or child must be understood to be an individual, and must have his or her individual rights equitably respected.[14]

[14]V.R Krishna Iyer ,Jurisprudence of Juvenile Justice : A Preambular Perspective,(Apr.,24,2019,04:12p.m)http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf

CHAPTER 5

STATUTORY BACKGROUND

This chapter aims to highlight the important juvenile legislations and the developments which took place in law from time to time to make it more effective law.

5.1 CHILDREN'S ACT 1960-

The Government of India was seized of the problems among others, of juvenile justice particularly in the centrally administered union territories. This is what led to the Children Act.1960. The law was in full force in all the UTs, but the states, not having juvenile legislation, were free to adopt it. As would be expected, at this stage, juvenile justice in the country was uneven and had varying standards, norms and practices. These problems were sought to be removed through the Juvenile Justice Act 1986. The law was in force throughout the country.

The children act was passed to function as model legislation and for use in union territories. This Act established separate Child Welfare Boards to handle cases relating to neglected children. It also created the position of a probation officer who could "advise and assist neglected or delinquent children."

In addition, it established separate Children's Courts for cases related to delinquent juveniles, thereby separating the judicial process for delinquent and neglected children.

OBJECT OF CHILDREN'S ACT 1960:

"An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories."

5.2 Juvenile Justice Act 1986-

The Juvenile Justice Act, 1986, was enacted to provide for care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication

of certain matters related to the disposition of delinquent juveniles. It repealed all other Children Acts and provided for a uniform legal framework for the juvenile justice system throughout the country.

5.3 JJ (CARE & PROTECTION OF CHILDREN) ACT 2000-

The Government of India enacted the Juvenile Justice Act in 1986. In 1989, the General Assembly of the United Nations adopted the Convention on the Rights of a Child. India ratified the UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC) in 1992. The convention outlines the right of the child to reintegrate into the society without judicial proceedings, wherever avoidable. Hence, the Government, to fulfill the standards of the convention, felt a need to re-write the law. Hence in 2000, the old law was replaced by the Juvenile Justice (Care and Protection of Children) Act.

The concept, approach and methodology of juvenile justice were undergoing some basic changes, as is indicated by the Beijing rules and the UN Convention on Rights of the Child. This led to the formulation of the Juvenile Justice (Care and Protection of Children) Act, 2000, which was exhaustively amended in 2016 by the Juvenile justice (Care and Protection of children) Act 2015 which was passed by Lok Sabha on 7th MAY 2015 and by Rajya Sabha on 22nd December 2015 and received Presidential assent on 31st December 2015.

5.4 JUVENILE JUSTICE ACT 2015: Changing sentiments towards the disturbing catastrophe

The Nirbhaya aftermath witnessed wide and loud hue and cry from many quarters that the protection of juvenile from regular criminal justice system must be done away with along with lowering of age of juvenility. Their corroboration was that unlike INDIA which uses the same yardstick for various offences committed by juveniles in countries like England and USA have recognized the culpability in case of heinous crime.

Most countries of the world are keeping their criminal laws in pace with contemporary requirements of social justice unlike in India where a seventeen and a half year old yanks out of intestine of helpless girl and is left off with a few months confinement in juvenile home.

Rekha Sharma a former high court judge rightfully said, "Considering the fact that society is fast changing and children are exposed to all kinds of things our law need to revisit the age bar in exceptional cases. The better way to do it is to give space to Juvenile Justice Board to decide the gravity of offence. This way the courts after talking to the juvenile can know his state of mind and after looking at the gravity of the offence can punish the person accordingly.

Mr. Azam khan posed a question to the society-"What would such unpunished juveniles who commit rarest of rare crimes do when they mature?"

A senior counsel based in Chennai C.A Sunderam said; "It can't be that a person 17 years and 364 days old when commits rape escapes severe punishment and had he committed one day late could be liable to life imprisonment."

Senior lawyer Manoj Goel suggested- "A judge must be allowed to decide whether a young offender has the maturity, awareness and consciousness of crime being committed and then try such a person in the regular criminal courts under provisions."

In recent times the National Crime Records Bureau had shown that most of juvenile were committed by those in the age group of 16-18 and that too with depravity unmatched for their age mental and physical both.

Justice Usha Mishra when submitted a report on Nirbhaya case slamming the government for dithering on a strong anti-rape law and recommended that juveniles who commit heinous crimes shocking the society's conscience should be treated at par with adults was strongly supported. Same sentiments were echoed by Nirbhaya's family who constantly appealed for death penalty for the juvenile accused in the crime of utter depravity and cruelty against their brave daughter.

The NCRB data between 2011-12 alone showed a massive increase in instances of rape by juveniles by nearly 300 which were almost as much as increase in such cases over the entire preceding decade.

5.4.1 <u>TOWARDS THE TRANSITION IN OUTLOOK-</u>

In September, 2013 the Indian government mulled graded approach for juveniles in heinous crimes. It finally was coming to the view that juvenile above 16 years involved in heinous

crimes like murder or gang rape should be tried as adults under the Indian Penal code. This outlook was supported by Supreme Court's request to the parliament to get tough on juveniles in heinous crimes.

A bench of Justice Dipak Mishra and Prafulla C Pant said- "A time has come to think of an effective law to deal with the situation. It is apt to note that there can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences but in cases of rape, dacoity, murder which are heinous crimes, it is extremely difficult to conceive that juvenile was not aware of its consequences."

Finally, the Juvenile Justice Act 2015 was passed on 31st Dec 2015 and came into force from 15th Jan 2016. [15]

5.4.2 "Juvenility is mainly a state of mind, and not only a state of body"-

Even as the nation pushes and the government debates lowering the age limit in juvenile crimes in the light of the Delhi gang rape, National Crime Records Bureau (NCRB) data shows that most juvenile crimes are committed by those in the age group of 16-18 years. Notably, the minor accused in the Delhi gang rape, who was allegedly the most brutal among the six accused, is 17 and a half years old

The NCRB data also shows rapes committed by juveniles have jumped by 188%. The only categories of crimes involving juveniles for which growth figures are higher are theft and robbery which recorded a growth rate of around 200% and abduction of women which recorded an exponential rise of 660%.

In 2011 the growth in rape by juveniles (34%) over 2010 was again among the highest. Other growth figures that were higher than this included dowry deaths (63.5%) and abduction of women (53.5%) – both crimes against women. According to NCRB data for 2011, 64% of all juvenile criminals fall in the age group of 16-18. In 2011, 33,887 juveniles were arrested for 25,178 instances of crime. Of these, 1,211 juveniles fell in the 7-12 years age group, 11,019 fell in the 12-16 years age group while 21,657 fell in the 16-18 years age group. In Delhi

[15] Dr. Abdul Rayees Khan, Orient Journal of Law and Sciences, R.K Printing Press and Publication Centre, (2016).

itself, of the 925 boys arrested for juvenile crimes in 2011, 567 were in the 16-18 years age group.

Again, while the debate on the issue of revising age limit in juvenile crimes has focused on the juvenile justice act being a reformatory tool, the NCRB data is not very encouraging, especially in case of Delhi. Close to 22%, out of all juvenile criminals in Delhi, were repetitive offenders in contrast to the national average of 11.5%. Sources say even this data gives a very conservative figure as only those convicted earlier are called repetitive offenders. Also, those who have turned adults and continued in crime are not included. The grim picture this paints is a reflection of the failure of remand homes to reform juveniles.

Even the argument that broken families and children without parents lead to more juveniles taking to crime falls flat if the NCRB data is any indication. It shows that in 2011, only 5.7% of all juveniles arrested were found to be homeless. The rest either stayed with their parents (81.3%) or relatives.

However, socio-economic conditions have been a factor. A large chunk of the offenders come from extremely poor families making for close to 57% of all juvenile criminals. Lack of education is another important factor with over 55% juvenile criminals being with illiterate or limited to primary education.

Across the country, Madhya Pradesh, Maharashtra, Chhattisgarh, Andhra Pradesh, Rajasthan, and Gujarat accounted for close to 70% of all juvenile crimes registered in 2011. Madhya Pradesh led the pack in rape cases with 271 cases followed UP (146) and Maharashtra (125). Delhi recorded 47 cases of rapes by juveniles. All together make for over 50% of all rape by juveniles.

5.4.3 POST NIRBHAYA POSITION: AFTER AMENDMENT ACT OF 2015-

(i) RYAN INTERNATIONAL SCHOOL CASE (2017)

(ii) BRIGHTLAND SCHOOL CASE (2018)

(iii) KATHUA RAPE CASE (2018)

Recent years have seen sustained public and academic interest in criminality and mental health, with attention often focused on antisocial behavior by children and adolescents. The scale of the problem of juvenile delinquency has provoked mixed responses from governments and the media across the world, with calls for improved rehabilitation and support for juvenile offenders competing with voices advocating more punitive approaches. Meanwhile, decades of rigorous academic scrutiny have shed light on the complex and diverse needs of children who come into conflict with the law. Much of the growing body of literature on juvenile offenders shows considerable overlap between criminological, social and biomedical research, with a consensus emerging around the significance of a developmental understanding of the emergence of juvenile delinquency.

Importantly, juvenile offenders have consistently been identified as a population that suffers from a markedly elevated prevalence and severity of mental disorder compared with the general juvenile population. Meeting the needs of these young offenders presents practical and ethical challenges concerning treatment and management, including liaison with other agencies.

It is widely proved that early-phase intervention represents the best approach to preventing juvenile delinquency. In order to prevent juvenile crimes, we have to deal not only with maladjusted children whose difficulties bring them before Law, but also with those who while not violating laws are disturbing others in school and other places. First of all, we should identify such juveniles and give them treatment. Prevention requires individual, group, organizational efforts that aim at keeping juveniles from breaking the law.

From the above discussion, it can be said that, serious crimes like rape and murder also go unpunished with the offender wearing the grab of juvenility. Juvenile crimes cannot be stopped only through the proper implementation and amendments of the Juvenile Justice Act. In order to reform the juvenile in conflict with Law, the juvenile system as a whole needs to be reformed first. The ramshackle conditions of observation homes and juvenile justice boards need to be addressed immediately. The nation must strike to provide education, health care, sanitation and housing to every child. Apart from multiple laws governing children, there exist many other problems at the grassroots level. Government-sponsored children’s homes are often unable to accommodate neglected children. Children are sometimes even kept in jail. Thus, there is a problem in the execution of laws pertaining to children and the

maintenance of children's homes due to both a lack of awareness of child rights and India's burgeoning child population.

Juvenile crimes cannot be stopped only through the proper implementation and amendments of the Juvenile Justice Act. It is vital to make aware of civil society about this disease that exists in our sick society. Juveniles involved in crimes are not criminals, in fact, they are victims of society. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home and in school. Parents and teachers play a significant role in nurturing the mind of a child. Instead of labeling them as "criminals" or "delinquents," steps need to be taken to give them a scope of rectification and it would be better if the errors in their lives (involving social and psychological) are brought to their notice. The problem of child crime like many other social evils is linked up with the imperfections and maladjustment of our society. The idea is gradually gaining wider acceptance that juvenile delinquent needs the sympathy and understanding of our society and not the heavy hand of the law.

While pleading for the maintenance of status quo in juvenile law, the reformists seems to have ignored two important aspects related to juvenile crimes. Firstly, society, especially women, also need protection from a juvenile who has got sufficient mental maturity and understanding of the nature and consequences of his action, but still commits the same intentionally and in cold blood because of his criminal bent of mind. Such hardened juvenile mostly belong to the age group of sixteen to eighteen years.

Secondly, one of the basic object of granting befitting punishment is to create a deterrent effect, both upon wrong-doer as well as on others members of Society. Mere knowledge of the fact that one can escape any punishment may make a juvenile more reckless and dangerous. It may also encourage adult accomplices in such crimes to push the onus for the gravest aspects of such crimes on the juvenile, thereby escaping full punishment themselves.[16]

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[16]S.L Goel& R.K Jain, Social Welfare Administration: Organisation and Working, Deep & Deep Publications, New Delhi, 1989.

5.5 Interventions for Rehabilitation of Juvenile Delinquents in India: A Holistic Understanding of Community Responses

5.5.1 Executive Interventions against Juvenile Delinquency

(i) Reaffirming the Constitutional provisions, the National Policy for Children 1974 is the first policy document adopted by the Union government that concerns the needs and rights of children. It is a very brief document that outlines services the state should provide for the complete development of a child, before and after birth and throughout a child's period of growth including health and nutrition programmes, free and compulsory education, protection from abuse, neglect, cruelty and exploitation with special focus on children from marginalised backgrounds or children with social handicaps. The policy calls for the constitution of a National Children's Board to be incharge of planning and upholding the rights of children. Voluntary organisations also need to be recruited to help ensure the above provisions.[17]

(ii) The National Charter for Children, 2003 that was adopted on 9th February 2004, emphasized upon State obligations for securing inherent right to the child so that they enjoy a healthy and happy childhood. The National Policy for Children, 2012 affirms the State's commitment to ensure that all children grow in an environment with respect for their dignity, free from any discrimination, violence, exploitation, exclusion and have equal opportunities for developing their potential. This Policy is applicable to children below 18 years of age and guides laws, policies, plans and programmes affecting children of national, state and local Government.[18]

(iii) In order to better implement the various programmes for child welfare, Union government has established Ministry of Social Justice and Empowerment which formulates policies, oversees the implementation of programmes and coordinates the welfare activities.

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[17] National Policy for Children 1974(Apr.24,2019,05:45PM), http://www.childlineindia.org.in/national-policy-for-children-1974.html,

[18] National Policy For Children(Apr.24,2019,06:15PM), http://www.ekalavvya.com/national-policy-for-children/

The union and state governments have adopted various schemes for the welfare and holistic development of women and children that includes the various outreach programme like Integrated Child Development Services (ICDS)((It provides a package of services comprising supplementary nutrition, immunisation, health check up and referral services, pre-school non-formal education)) and Kishori Shakti Yojana (KSY) ((It has launched a nutrition programme for adolescent girls, establishment of the establishment the Commission on Child Rights))

(iv)Even the first five year plan (1951-56) identified health, nutrition and education as major areas of concern with regard to children. The second five year plan (1956-61) formulated proposals, relating to juvenile delinquency, social and moral hygiene, vagrancy or beggary and probation. During the third five year plan (1961-66) the child was recognised as a human being with special needs and special efforts were made to coordinate between sectors to ensure these needs. The fourth five year plan (1969-74) focused on getting basic services to children and two major child policies came into existence i.e.: the National Education policy in 1968 and the National Policy for Children in 1974. The sixth five year plan (1980-85) took into consideration the needs of working children and the eighth five year plan (1992-97) India ratified the UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC) and continued work in areas of day care, education, health, etc. The ninth five year plan (1997-2002) introduced the Sarva Shiksha Abhiyan (SSA) and in 2001-02 adopted the new Juvenile Justice (care and protection of children) Act. By the tenth five year plan (2002-07) the approach shifted to right-based and provided for ensuring survival, development and protection of children through scheme such as ICDS and universal immunization. The eleventh five year plan (2007-12) clearly stated that "Development of the child is at the center of the Eleventh Plan".[19]

5.5.2 **Judicial Intervention against Juvenile Delinquency-**

The judicial decision has also tried to give beneficial interpretation to the provisions concerning juvenile delinquents:

[19]National Policy for Children(Apr.25,2019,02:30 PM),http://www.ekalavvya.com/national-policy-for-children/

1. In case of *Sheela Barse* v. *Union of India,*[20] The Supreme Court has condemned and discouraged the detention of children below 16 years in jail as the atmosphere of the jail may have injurious effect on the mind of child estranging him from society.

2. In case of *Ramdeo Chauhan* v. *State of Assam*[21], It was held that whenever any delinquent juvenile accused of an offence is produced before a Magistrate or a Court and if it is brought to its notice or observed that the accused produced before it was under the age of 16 years, shall refer the accused to the Juvenile Courts if the Act is applicable in the State and the Courts have been constituted or otherwise refer the case to the Court of the Chief Judicial Magistrate who will deal with the matter in accordance with the provisions of law.

3. In case of *Harkit Singh alias Kirat* v. *State of Haryana*[22], the Hon'ble Supreme Court of India held that Section 12 of the Act provides for bail to juvenile which is mandatory and is subject to few exceptions.

4. In case of *Prahlad Gaur* v. *State of Uttar Pradesh,*[23] It was observed that denial of bail to the juvenile on the single instance of a child delinquent joining company of some known criminal or criminals would not be sufficient to satisfy the definition of the word "Association" used in Section 12 of the Act.

5. In case of *Jabar Singh* v. *Dinesh & Anr.*[24]*,* It was observed that under Section 49 the claim of juvenility due inquiries must be made it was observed that the insertion of Sec. 7 (A) in the Act shows legislative intent not to oust the jurisdiction of the court to decide a claim of juvenility raised before it.

6. In case of *Ravinder Singh Gorkhi* vs. *State of Uttar Pradesh*[25]*,* It was observed that the determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case to be determined on the basis of the material on records and in a manner laid down under

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[20] 1986, 3 SCC 596
[21] 2001, 5 SCC 714
[22] 2008, Cri.L.J. (NOC) 1267 (P&H)
[23] 2009, Cri.L.J. 1563
[24] 2010, JT 2 SC 603
[25]AIR 2000 SC 2648.

a statute. It will be the duty of the court of law to accord the benefit to a Juvenile so that no injustice is caused to the victim.

7. In case of *Sanjay Suri & Ors.* vs. *Delhi Administration* [26], It was observed that no child should be sent to the jail otherwise the whole object of protecting the child from bad influence of jail life would be defeated. Juvenile must be kept in separate ward and shouldn't be allowed to intermingle with adult prisoners as that would also expose them to bad influences which may prevent their proper rehabilitation.

8. In *Arnit Das vs. State of Bihar*,[27] The Supreme Court has, on a review of judicial opinion, held that while dealing with the question of determination of age of accused for the purpose of finding out whether he is a juvenile or not, a hyper technical should not be adopted while appreciating the evidence adduced on behalf of accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favor of holding to be a juvenile in borderline cases.

9. In *Om Prakash vs. State of Rajasthan,*[28] The Supreme Court held that, in a situation where school record itself is not free from ambiguity and conclusively prove the minority of the accused, medical opinion cannot be allowed to be overlooked or treated to be of no consequence. In this case, statement of the medical jurist who conducted the ossification test of the accused and opined that the accused was of 19 years of age is of significance since it specifically states that accused was not a juvenile on the date of commission of offence. The statement of Radiologist cannot be overlooked since he opined that on the basis of x-ray films, the age of accused is above 18 years and below 20 years of age. Thus, in a circumstance where the trial court itself could not arrive at a conclusive finding regarding the age of accused, the opinion of the medical experts based on X- Ray and ossification test will have to be given precedence over the shaky evidence based on school records and plea of circumstantial inference.

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[26] AIR 1988 SC 414.
[27] AIR 2000 5 SCC 488.
[28] AIR 2012 (77) ACC 654 SC.

10. In *Krishna Bhagwan vs. State of Bihar*[29], the full bench of Patna High Court observed that for determination of the age of juvenile for the purpose of trial under the Juvenile Justice Act, the relevant date should be the date on which the offence was committed.

Reiterating the same view, the Supreme Court in *Bhola Bhagat vs. State of Bihar*[30] held that, for being entitled under the Juvenile Justice Act, the age of accused on the date of occurrence of offence should be taken into consideration and it is immaterial if he exceeds the prescribed age on the date of his being produced before the court.

But, the Supreme Court in its decision in *Arnit Das vs. State of Bihar,*[31] overruling its earlier decision, held that the crucial date to decide the issue whether a person is a juvenile or not, is the date when he is brought before the competent authority and not the date of commission of offence.

However, in *Pratap Singh vs. State of Jharkhand*[32], a three judge bench of the Supreme Court, while considering the question regarding the date on which age to be determined held that the relevant date for applicability of the act is the date on which offence takes place.

After the Amendment of 2006, in *Hari Ram vs. State of Rajasthan & Another*[33], held that conjoint reading of sec 2 (k), 2(i),7-A,20 and 49 read with rules 12 and 98 of Juvenile Justice Act, makes it clear that all persons who were below the age of 18 years on or before the date of commission of offence even prior to April 2001, would be treated as juveniles even though the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the act and were undergoing sentence upon being convicted.[34]

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29 AIR 1989 Pat. 217.
30 AIR 1998 SC 236.
31 AIR 2000 5 SCC 488.
32 AIR 2000 SC 2731.
33 AIR 2009, 13 SCC 211.

CHAPTER- 6

CRITICAL ANALYSIS WITH SPECIAL REFERNCE TO ABUSE OF LAW AND JUVENILE JUSTICE ACT 2015

This Chapter deals with the analysis of cases which indicate the need of change in approach towards juvenile justice system so as to maintain the balance between justice and immunity granted to juvenile. In recent years, remarkable change has been seen in the maturity and understanding of children below 18 years while acting in conflict with law, resulting into huge dissatisfaction and hue and cry among the society when the offender gets released due to the immunity granted under the juvenile justice system, irrespective of the barbarous nature of the act clearly indicating the hardened criminal psychology behind it which needs to be punished. This has raised a big question in front of the law makers as well as the society as a whole whether such immunity given to juvenile is resulting in abuse of justice or the law is being abused in the name of immunity given to persons below 18 years committing heinous crime.

There are several obvious reasons for the rise, which transcends socio-economic boundaries. Besides poverty, ignorance, breakdown of traditional values and the tendency to defy norms, one major factor contributing to teenage crime is something very crucial, which is being missed by most agencies. Behind every adult crime and serious juvenile crime, there is invariably a track record of petty crime that has gone unchecked.

The growing phenomenon of teenage violence may include delinquent aggression, petty revolts and stone-pelting to heinous crimes such as murder, rape, riots and even taking to arms as insurgents and participating in ‘fidayeen’ attacks. The phenomenon is called juveniles in conflict with law within the Juvenile Justice (Care & Protection of Children) Act 2015.

They are to be given differential treatment under Indian law despite the emotion-driven 2015 changes in the juvenile justice act which permit children in the 16-to-18 age group to be tried

as adults. The change came about because of the public outrage caused by the December 2012 rape and murder of a young student in Delhi by a group of men who included a juvenile. Recent incidents of a teenager slitting the throat of a younger child to put off an examination and another boy killing a principal have caused huge concern about teenage crime.

Teenage crime is changing with times; juveniles are now turning to more dangerous, violent and tech-savvy crimes.

Our socio-economic profile and disturbing human development indicators — with half of India's 1.3 billion people deep in poverty, half the children who constitute 40% of India's population never being able to reach school or dropping out, 20 million of them being orphans or without family care — are already threatening to convert our demographic dividend into a demographic disaster.

Decidedly, 2.5 million Indian policemen, their hands already full with daily law-and-order duties and routine crimes, coupled with regulatory and VIP functions to serve the privileged and powerful, are bound to be confronted by a crisis unless they change their approach and job profiles to accommodate the youth.

Whether at home under weak guardianship and adverse family circumstances or in schools and institutions under inept and inefficient teachers and caretakers, such young vulnerable people tend to get carried away. The breakdown of Indian family norms due to poverty or parental neglect and an indisciplined school system that is unable to rein in teenagers who are heavily influenced by the media and the evil underbelly of the internet tends to encourage juvenile behaviour that could eventually turn criminal.

6.1 'Is Law too protective of juvenile delinquents'

Are the provisions in the Juvenile Justice (Care and Protection of Children) Act, 2015 regarding the trial of juveniles as adults in tune with the ground realities?

Law is always warranted to be in tune with the changing scientific and forensic context coupled with prevalent conditions and circumstances. The IPC cases involving juveniles rose 47 % from 22,740 in 2010 to 33,526 in 2014. From 2002 to 2012, there has been a 143% increase in the number of rapes by juveniles.

In the same period, figures of murders committed by minors went up by 87% and there has been a whopping 500% increase in the number of kidnappings of women and girls by minors. After the Nirbhaya case, we had an opportunity to mandate a stringent legislation for juvenile offenders, but we failed to legislate accordingly to tackle the emerging new age of offence. Instead of a scientific legislation, we ended up promulgating a welfare legislation failing to address the issue of advancement of the age of puberty.

Is the law on juvenile delinquents in India different from the law in other countries?

The juvenile laws in the United States and many European countries are far more stringent. The United States incarcerates more of its juvenile offenders than any other country in the world. Between 1990 and 2010, the number of juveniles in adult jails in the US went up by nearly 230 %. Juveniles were even sentenced to death in the US till recently when its Supreme Court held it unconstitutional. In the United Kingdom, juveniles between 10-18 years are tried in adult courts. In France, those between 16 and 18 years are tried in adult courts whereas juveniles between 13 and 16 years are awarded half the sentence they would have gotten as adults.

What changes do you suggest in the Juvenile Justice Act with regards to juveniles involved in heinous crimes, especially in view of the Ryan case?

The present legislation is more focused on the criminological issues pertaining to care and protection of juveniles.

It is not matured enough to deal with heinous offences like Nirbhaya or Ryan case which are extremely barbaric, dastardly and fall in the category of 'rarest of rare'. The amendments should be made from the perspective of the victim as well.

Is the present day law too protective of juvenile delinquents involved in heinous crimes and too complicated?

Yes. The present day law, although in its infancy, is too protective of juvenile delinquents involved in heinous crimes and complicated. For instance, under Section 15

of the Juvenile Justice Act, any juvenile between the age of 16-18 years cannot be tried as an adult by default for heinous crime. Instead, there has to be a preliminary assessment with regards to his mental and physical capacity, ability to understand the consequences of the offence and the circumstances of the crime.

Even if the Juvenile Justice Board declares the juvenile as an adult, it is the statutory obligation of the Child Sessions Court under Section 19 (ii) of the said act to review it afresh and then, as per Section 20, either grant him/her bail or transfer them to a jail with annual follow-up reports.

Under Section 19 (3), the juvenile is to be kept in a correction home till the age of 21. Besides, he cannot be sentenced to death or life imprisonment.

Child offences are increasing between the age-group of 12 to 16 years, but the present law is completely silent on this. It is very baffling. It appears that the new Act has been promulgated casually and lacks equipment to tackle child offences in the age group of 12 to 18 as a whole.

It is argued that juveniles, despite being involved in heinous crimes, are still immature and young and the law's approach should be to reform them and not to punish.

We need to see the juvenile offender from the perspective of a criminal. He is a danger to society and humanity for the heinous and barbaric offence he commits and be dealt with by stringent laws instead of welfare legislation.

Society's recognition of this problem has re-energized has an age old debate regarding juvenile crime and its solution. Is rehabilitation, punishment or prevention the best method to reduce the crime rate? At one extreme lies the system best described by the concept of parens patriae, a doctrine which emphasizes "helping" the child and intervening in his or her best interest because the parents are unable to provide adequate guidance. At the other extreme, lies the more formal legalistic system which focuses not on the offender but on the offence committed, punishment for present crimes and past criminal history.

Government policy on juvenile delinquency must often struggle with the appropriate balance of concern over the healthy development of children and adolescents who violate the law and a public desire to punish criminals. This tension between rehabilitation and punishment when

dealing with children and adolescents who commit crimes results in an ambivalent orientation toward young offenders. Criminal acts must be suppressed, condemned, and punished. Nevertheless, children and adolescents who commit criminal acts must be educated and supported in a growth process that should be the objective of government policy for all young people, including young offenders.

A number of cognitive and social features of childhood and adolescence influence the content of juvenile crime policy. Historically, children under the age of seven have been considered below the age of reason, and therefore unable to formulate the criminal intent necessary to be held accountable for criminal offenses. In practice, children younger than age 10 are rarely involved in the juvenile justice system, arrests of those younger than 10 years old account for less than 2 percent of all juvenile arrest.[35]

Most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy. Most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy. Most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy. Most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy. Most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy. Top of for most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts. How to deal appropriately with those who commit crimes between the ages of 10 and 17 is the issue faced in juvenile crime policy.

6.2 <u>LOOPHOLES OF JUVENILE JUSTICE ACT 2015:</u>

[35] W Paul Tappan: Juvenile Delinquency, Mc Graw Hill, Book Company, New York, 1960.

The Act of 2015 does not take into interest the special needs and requirements of certain sub-groups among juveniles in conflict with law. For instance, fails to formulate guidelines or policy directions for dealing with juvenile sex offenders, recidivists, female juveniles and child or other victims of juvenile crime.

(a) Juvenile sex offenders: Adolescence is a time of dramatic change. During this time period there is increased sexual interest, many youth indulge into smoking and drinking habits and there is increased willingness in them to engage in rule breaking behavior which may not persist into adulthood.

However, young people do commit serious and violent sexual crime. Research indicates that juveniles who sexually offend are a diverse population with complex treatment needs; sexual arousal is dynamic and not "fixed" in the majority of cases; those who sexually offend are responsive to treatment interventions and such juveniles are more similar than different to other delinquent youth Provisions relating to management, reformation or treatment of juvenile sex offenders are however conspicuous by their absence in the Juvenile Justice Act and Rules.

(b) Juvenile Recidivists: Our experience has shown that there are some young adolescents who are trapped in a cycle of crime and frequently re-enter the proverbial revolving door of the Juvenile Justice system. These children are most often those with complex unmet needs, and pose enormous challenges to the staff, the judicial officers handling the case, and also to the community. Here again, provisions concerning how functionaries and the JUVENILE JUSTICE BOARD need to deal with juvenile recidivists do not feature anywhere in the legal framework – a serious flaw that prevents effective remedies for this group.

(c) Girls who commit serious crime: While boys and girls entering the system may share many common characteristics, research confirms that girls overwhelmingly have childhood histories of mental and physical trauma, sexual abuse, health disorders, emotional instability and family separation. In addition, girls are more likely to be involved in prostitution-related offenses. Though only 6% of all juvenile apprehended in the year 2011 were girls, they face much graver battles in their journey towards rehabilitation and re-integration into the community. The law is largely silent on girl juveniles, though there are rules providing for segregation based on sex, and for re-integration into society through customized after care programmes. There are no legal standards however, for specific kind of services that are to be provided to girls in Special Homes resulting in statutory functionaries and civil society actors

finding it extremely challenging to deal with this special group of children. The Juvenile Justice team's experience in handling one such girl, who, having apparently earlier got trapped into prostitution herself, and later apprehended and charged as a co-accused with eight adults, and finally found guilty for a series of crimes including those that are punishable with life imprisonment if committed by an adult, is a vivid case in point.

(d) Victims of serious crimes committed by juveniles: The juvenile justice system does not reflect an understanding of the plight or the rights of victims of juvenile crime. Restorative Justice programmes that enable victim – offender reconciliation is increasingly gaining ground around the world (even in cases of juveniles who commit serious/violent crime), attempting to balance competency development, accountability and public safety goals in an effort to restore victims, communities and offenders, and restore broken relationships.

The Juvenile Justice team has painfully experienced the unique challenges that emerge when a juvenile is found to have committed a serious offence against another child. There are little or no services or systems in place to ensure that the needs and rights of victims of juvenile offences are respected and realized. Victims and their families who have had to navigate through the system without any legal, psycho-social, or financial assistance or support end up disillusioned and embittered by the process as well as the outcome of JUVENILE JUSTICE BOARD proceedings. This contributes to a negative perception of the juvenile justice system. Increasing the effectiveness of reformation and rehabilitation of such juveniles needs to be prioritized in order to build accountability and faith in the system, and prevent reactionary legislative measures.

6.3 Gaps in administration of juvenile justice, specifically pertaining to the issue of serious offences committed by juveniles-

Lowering the age of the juvenile or incorporating a waiver system to enable JUVENILE JUSTICE BOARDs to transfer juveniles alleged to have committed serious crime to the adult criminal justice system will not help for protection of women from juvenile offenders. The most urgent and critical area of reform therefore, is not of the law, but the way it is being implemented. If the law is implemented in letter and spirit, and services are given by devoted professionals from different fields, can prevent juvenile from committing serious crimes and help them in their rehabilitation and reformation. At present, the system is bogged down by infrastructural insufficiencies and untrained staffs that render the legislative goal of

reformation and reintegration of juveniles a distant dream. This is borne out by the NCRB data, according to which 6122 of the juveniles apprehended in 2011 were illiterate, 12, 803 had education up to primary level and 56.7% hailed from poor families whose annual income was upto Rs 25,000. These juveniles are largely treated as hardened criminals at the Observation Homes, Special Homes, or the place of safety. There are no specialized cadres in the Juvenile Justice system; either it is Probation Officers, Public Prosecutors, Police officials, or even Social Workers, even the Principal Magistrates of the JUVENILE JUSTICE BOARD.

The method used in collection of data and quality of social analysis reports, counseling, supervision and mentoring through probation officers and social workers etc., are largely awful. Authorities are always de-motivated and generally consider their posting in this department as punishment and even they do not get the necessary training to deal with exceptionally challenging situations in the Observation Homes and Special Homes, and they blamed when any child run away or if commit suicide. Though most State governments do have some kind of training offered for authorities, JUVENILE JUSTICE BOARDs, SPECIAL JUVENILE POLICE UNIT s and others, these are sporadic and lack a vision for competency building, a comprehensive curriculum, or cutting edge training material. There are only 30 Special Homes in the country. Several States have not even established any Special Home. There is hardly any data available on whether juveniles committing serious crime are indeed receiving the treatment and reformatory services that are necessary for rehabilitation and re-integration. The inclination of the government to protect children is highly suspect given that the overall allocation has dropped from 4.76% in 2012-13 to 4.64% in 2013-14. Further, the allocation for the Integrated Child Protection Scheme has dropped from Rs 400 crore to Rs 300 crore. Child protection remains an area of neglect as it constitutes a measly 0.04% of the total budget. In the absence of adequate allocation, the reformation, rehabilitation and treatment envisaged under the Juvenile Justice Act cannot be actualized. It will then be unfair to declare that the Act has failed to prevent juvenile crime, deliver justice to victims of juvenile crime or reform juveniles who commit serious offences given that the infrastructure and resources necessary to do so have not been made available. The National Crime Records Bureau (agency under the Ministry of Home Affairs), collects data on crime and recidivism. However, one serious gap is that it does not collect data on juvenile recidivists, an issue that becomes a major hurdle in either ensuring a suitable response to such children or in assessing the impact of the juvenile justice system. The

Central Government/State Governments therefore need to takes measures to execute the legal provisions effectively and take seriously the recommendations made by committees/authorities to achieve the results. It is the duty of the Courts including the Juvenile Justice Committees and boards set up by the High Courts in the states to enforce the law and rules. The most urgent need is to build the faith of victims, families of juveniles and general public in the Juvenile Justice system through effective implementation of the rules and law.

6.4 Appropriateness of "Adult Time for Adult Crime"-

All children need to be educated that must tell them about the consequences for the acts done by them, and for which they will be held liable. However, the means for ensuring such liability, there is a need to be grounded in child psychology and need to understand the circumstances that led to such action/behavior. The Committee on the Rights of the Child has gone to the extent of stating that the overriding factor in responding to severe offences by children must be "the need to safeguard the well-being and best interests of the child and to promote his/her reintegration In this light, it must be examined whether subjecting children who commit serious offences to the adult criminal justice system would be an appropriate response and whether such juveniles should be sentenced to life imprisonment or death. The United Nations Convention on the Rights of the CHILD (UNCRC) clearly prohibits the imposition of death penalty and Life Imprisonment without the possibility of release upon child under the age of eighteen years.

The Committee on the Rights of the Children encouraged States "to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counseling, probation, foster care, educational and training programmes, and other alternatives to institutional care (Art.40 (4))."Emphasizing that detention or imprisonment of children must be used as a last measure, the Committee stressed on the need for a robust probation service "to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centers, and the possibility of early release from detention."

In conformity with the UN Convention on the Rights of the Child, the Juvenile Justice Act prohibits the JUVENILE JUSTICE BOARD from giving a sentence of LIFE

INPRISONMENT or capital punishment. By dealing with juveniles as adults and sending them to adult prisons, the State will effectively deny them access to rehabilitative and reformative interventions under the Juvenile Justice Act that are absent in the adult system. Further, the adversarial mode of adult criminal trials is distinct from the "child friendly hearing" provided under the Juvenile Justice Act. As an under-trial or convict in prisons housing adults, the juvenile will invariably be exposed and inducted into the adult world of crime and violence, negatively impacting his chances for reform. In such a scenario, neither is the juvenile going to be reformed, nor is society going to be at any less risk when a juvenile exits a prison even after successfully completing the terms of his sentence.

The principles of equality and non-discrimination and the best interests of the child would constitute core of the Juvenile Justice System. The Committee on the Rights of the Child emphasized that all State Parties must adhere to Article 40 of the Convention which stipulates rights of accused children, or recognized as having violet the penal law. It recommended that States which have adopted a narrow construction of juvenile as a person below 16 years or which regard 16 or 17 year-olds as adult criminals in exceptional situations, amend their law with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. Under Rule 3(2) (x) of the JJ Model Rules, "Equality of access, equality of opportunity, equality in treatment under the Act shall be guaranteed to every child or juvenile in conflict with law." This signifies that the equality principle cannot not be altered, relaxed or undermined even if the juvenile offender commits a heinous crime. Developmental factors and international standards support the basis for treating children including adolescents differently, especially in the context of culpability.

The Indian Constitution guarantees the right to equality and also expressly recognizes the vulnerability of children by empowering the State to make special laws for children. Article 14 allows reasonable classification of persons. In order to be reasonable, the classification should be based on intelligible differentia and the differentia must have a rational or reasonable nexus with the object required to be achieved by the legislation. The Juvenile Justice Act therefore clearly satisfies the test for reasonable classification, as it is premised on the understanding that children are more amenable to rehabilitative interventions and because of their developmental immaturity, the standards of culpability mounted for adults cannot be applied for them. A proposal to amend the Act is to keep out the juveniles in the age group of 16-18 years or to transfer juveniles who commit violent crimes to the adult system, then it would disallow all children in their adolescent years the caring provisions of this legislation,

which is necessary for the interests and needs of this exposed group and also necessary for the interests of society. It would also suggest that even first time offenders of this age group would have to face the cruel realities and outcomes of the adult criminal justice system that is not designed to deal with children or adolescents. This would constitute a violation of Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) as well as the right to equality and the right to life guaranteed under the Indian Constitution. The demand for a revision in law on the basis that juvenile crimes are on the rise is also without any foundation. According to the National Crime Records Bureau's, the percentage of IPC crimes committed by juveniles to total IPC crimes reported in the whole country is a just 1.1%. In 2014, a total of 48,230 juveniles were held, out of which 46,638 were boys and 1,592 were girls and 74.9% of the juveniles were in the age group of 16-18 years. Approximately, 73.9% of juveniles were apprehended for IPC offences punishable with more than seven years imprisonment. The overall increase in juveniles recorded at the national level was 4724 in 2014 over 2013. These numbers point to a modest but very vulnerable population that requires to be handled with much more care and caution so as to prevent recidivism, engineer reform and reintegration, and counter the regressive and outdated idea that children who commit adult crimes, deserve adult times.[36]

6.5 CRITICAL APPRAISAL OF JUVENILE JUSTICE ACT 2015:

Uniformity on the national level with regard to different treatment and other procedures relating to juvenile is still lacking. Prescribed institutions for custody and adjudication, trial and treatment of juveniles prescribed under the acts have not yet been properly created which is a major setback to successful implementation of Juvenile Justice Act, 2015. Various factors like lack of training on the part of officials in handling the force relating to children, lack of coordination among various institutions and also the financial crunch running in the institutions all together act as a discouraging factor in implementation of beneficial legislation. The Act has not prescribed minimum age below which the Act would not be applicable. The Act fails to expressly lay down the age of innocence. The definition of juvenile delinquency provides almost no scope for any acts to be dealt within the community.

[36]Juvenile Crime : A New Age Offence(Apr,27,2019, 07:45 AM), https://www.dailypioneer.com/2018/sunday_edition/juvenile_crime_a_new_age_offence.html.

(a) The concept of parental responsibility encouraging child delinquency is also missing in the Act. It has been noticed that many a times parents are responsible for putting their children where they are exploited and abused.

(b) The education, recreation and training of the children in observation homes have not been properly provided for. The Act has also failed to consider basic or school education. Besides this higher education and training of these children should also be considered and included in the Act.

(c) The Act has failed to provide for procedural guarantees like right to speedy trial. Though the Act provides for time frame for conclusion of the trial but it is observed that a number of a cases are still pending in the courts for years.

(d) The Act of 2000 is silent on inter-country adoption. Linkage between Juvenile Justice Act, 2000 and other legal provisions relating to child labor, primary education, sexual abuse, adoption, disabilities, health etc. is missing.

(e) The juvenile justice adjudicatory cadre is drawn from the cadre of Magistrates of the state judiciary. The other implementing agencies and institutions like police are also not separate. Lack of institutional infrastructure and trained manpower has contributed a lot to blur the objective of the legislation.

(f) No obligation has been cast on the part of the state in the Act on account of which a right based perspective is missing in the Act. So whatever in the name of protection is given to the child is not seen as a right but a charity or welfare. There is no specific provision ensuring services for children relating to education, health, legal and social. Even identification of the 'juvenile in need of care and protection' is not done for want of proper mechanism.

(g) Keeping in mind the high level of sensitivity of the issue and alarming rate of increasing number of juveniles a regular coordination is required amongst various government agencies and NGOs working in this area. But this coordination is missing and the Juvenile Justice Act, 2015 does not have any provision to ensure the continuous supervision, monitoring and evaluation of the functioning of juvenile justice system as a whole.

(h) The coverage of the Act is quite limited and a large number is still away from its purview. The children affected by drug abuse, HIV/AIDS, militancy, disaster etc. do not have any remediation under the Act and the issues like child marriage, female foeticide, child labor,

street children is also not covered under it. The problem gets engraved due to lack of support services to venerable families which are factories for turning their children into delinquency. There is no yardstick to standardize the facilities and services in the institutions in different states. There is no way to know the quality of performance of various institutions working in the area of juvenile justice.

(i) The police which have a direct and immediate contact with the juvenile delinquents more than often violate the procedure for handling the juvenile and police indifference in implementing the law is most disappointing. There are instances to record a wrong age in the police record to avoid their fatigue in taking the juvenile delinquent before the Juvenile Justice Board. The arrangement for reintegrating the child into family and society for its proper rehabilitation and after care service is almost non-existent.

(j) The Supreme Court is of the view that it should be ensured beforehand that the states are ready with the infrastructure to implement any law which is being enacted by the government otherwise besides blunting the objective of law this puts the whole machinery into unnecessary pressure and frustration. Our zeal to bring the law is more pronounced than evolving the ways and means to enact the same. The need to make a proper study and feasibility is imperative. At times the goals of such laws are too ambitious and they do not relate well to the ground level situation.

(k) The problem of special care and needs of the disabled children have been ignored by the Act. The standards of quality care have also not been laid.

(l) The expansion of definition of 'child in need of care and protection' could lead to undue influence in the lives of poor children and the families by the system.[37]

6.6 SUGGESTIVE MEASURES-

Based on the Critical Study the following suggestions are given:

1. Juvenile Justice Board

[37]Law too protective of juvenile delinquents (Apr.27, 2019, 08:01 AM) https://www.thehindu.com/news/cities/Delhi/Law_too_protective_of_juvenile_delinquents/article.

i. As referred in section 4 of the Act, a special training programme must be prepared and the officers of the Board including the Principal Magistrate should be given training of child psychology and child welfare.

ii. Ambience of the place where the Board holds enquiry should be child friendly. Wearing of black coats, using raised platforms etc. should be avoided. Practice of making the juvenile stand in front of the Board should be stopped. The child must be made comfortable and feel free from fear of any person. Sittings can be held by the Board in the observation homes.

iii. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should also be provided to the Board for smooth discharge of duties.

iv. There should be a proper maintenance of files and case records.

v. Video linking of the homes should be provided for children to facilitate inspection and supervision by the Board to keep a check on anything done against the best interest of the child.

vi. At least one of the two social workers in a Board should be a person with a minimum qualification of law degree.

vii. The Board should be provided with a list of experts in the field of psychology, counseling, clinical psychiatrist, NGOs, panelists of advocates and fit institutions and fit persons, observation homes, special homes and voluntary organizations who are dedicated to the field of child welfare. The services of such persons may be utilized. The officers manning the Juvenile Courts/Boards need to be sensitized to the development need of the juvenile in which case, flexible enough to respond to new discoveries in social sciences research and willing to invest in the experiment with promising new interventions for offenders.

viii. For giving good services to the juvenile and the parents of the child, they should be treated psychologically in consultation with a psychiatric. For the same, a psychologist and one social worker, who has awareness of the relevant law, must be appointed in the Juvenile Justice Board.

ix. Juvenile Justice Board may seek co-operation of NGOs and other social organizations in addition to probation officer and special juvenile police unit. Probation officer should be given the sufficient training that how they have to prepare the social investigation report

which will help the Juvenile Justice Board. Lady probation officer is appointed instead of government probation officer for the preparation of social investigation report.

x. One government welfare official should be appointed by the government to work as a liaison officer between the NGO and Juvenile Justice Board child welfare committee. In this regard, the State Government Welfare Department may organize seminars, sensitization and orientation programme inviting all the probable officials, police personal who are responsible for better delivery of justice to the children.

2. Treatment of Juvenile-

i. Juvenile should be brought before Juvenile Justice Board within 24 hours.

ii. The age of the juvenile should be determined with reference to the date of commission of crime. A detailed scientific investigation for determination of the age is not required.

iii. The Board should ensure that privacy rights of the juvenile should not be violated.

iv. The juvenile has the same Constitutional safeguards like other adult offenders and should be allowed if wants to adduce any evidence.

v. In any circumstances the juvenile shall not be sentenced to death or put into behind the bar in default of payment of fine or furnishing security.

vi. Whenever a juvenile is produced before magistrate, the magistrate not empowered to exercise the powers of the board under the J. J. Act and such magistrate should without any delay record such opinion as regards the juvenile and send the juvenile to the Juvenile Board and the board shall hold the enquiry as if the juvenile had originally been brought before it.

vii. Judges in the juvenile courts should be trained to recognize the educational, social and treatment needs of the children in crisis.

viii. Mere implementing the laws without there being proper infrastructure or its proper implementation remains incomplete. This part should also be simultaneously dealt with by all concerned government or non governmental agencies.

ix. For proper implementation and giving relief to the juveniles determination of age is a relevant factor. In India because of many reasons many children do not have birth certificates

so even in absence of age proof the beneficial provision of the Act should be made applicable to the child.

3. Procedure for Inquiry

i. Principal Magistrate should not be entrusted with any other court work except the JUVENILE JUSTICE BOARD, as the Board need to complete the enquiry within four months.

ii. Due to the variations in state rules from state to state, there is an ambiguity regarding proper implementation of provisions of the Act. Therefore, common rules should be followed throughout India in all Juvenile Justice Boards.

iii. Stay in special home or observation home to be ordered only in exceptional cases and for strong reasons which are to be recorded.

iv. The board should conduct independent and private inquiries with the juvenile to ascertain whether he/she was abused, sexually or otherwise by anyone or is suffering from any disease and if it so the juvenile be sent to government hospital for checking and treatment.

v. The Board should also ensure that the police officer who apprehends a juvenile should inform the parent or guardian of the juvenile regarding such apprehension.

vi. The Board shall not adjudicate the proceedings without calling the report of probationary officer

vii. Summary procedure should be adopted during enquiry instead of summons procedure trial.

viii. No joint proceeding of a juvenile and an adult accused should be held.

ix. Monthly group meeting should be organized of all departments which are engaged in the welfare of the child i.e. District Judge, members of JJ.Board, welfare officer and superintendent of the observation home etc for discussing the programme for welfare and betterment of children.

x. Juvenile Justice Board should conduct awareness programmes about offences against children in every school situated in their jurisdiction through legal aid campaign.

xi. The Board may also be complainant and lodge the case in any regular court when it is found that provisions of section 21,23,25,26 of Juvenile Justice Act have been violated and offence is committed against the juvenile by any person who has been given actual control or control of the juvenile.

4. Rehabilitation/ Shelter Home/ Observation Home.

i. Separate homes should be constructed for juveniles and these homes should not be like jails. The homes for children should be video linked to facilitate inspection and supervision by the Board so as to keep a check on anything done against the best interest of the child. Also, surprise visits should be made at the special homes, juvenile homes and observation homes. Senior citizens should be involved as community resource person to look after the well being of the children in various homes with their expertise in different fields.

ii. Schooling of the children in the homes up to the age of 14 should be made compulsory. They should he given the best of the facilities and opportunities like any Boarding school (hostel) making a course of moral science and civics compulsory for those who are in homes. For the welfare of juvenile, he must be allowed to go on leave and released on license during examination so that he can continue with his studies. Sponsorships should be provided for education of juveniles in good institutions. Personality enhancement courses should be organized. There is no provision of providing legal aid under Juvenile Justice Act. There is no assistance 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.

iii. For better welfare of juvenile games, sports and other functional programmes may be organized in observation home and institution and encourage the juvenile to participate in these programme so they connect themselves with society.

iv. Adoption used in section 41 should be defined to avoid conflict.

v. The property right of the juvenile on adoption be incorporated in the Act in clear terms.

5. Police

i. The state governments should be directed to establish a special juvenile police unit in every district and the unit must be specially instructed and trained in child psychology and child

welfare. The public prosecutors handling the cases should be sensitised and given training with the juvenile police.

ii. If a juvenile apprehended by any police officer then he/she should be placed under the charge of designated police officer or under the special juvenile police unit. Police should be given sufficient direction that summons or warrant of the juvenile is served/ executed in time so that the Juvenile Justice Board can complete the enquiry within four months as per the mandate of the Juvenile Justice Act

iii. A time limit should be fixed for investigation and the Police officer who investigate the juvenile case, must submit the report within 60 to 90 days from the date of complaint.

iv. A social worker can also be Assistants with the investigating police officer and at least one lady police officer should be appointed in the child cell.

v. The police department also plays a very important role in ensuring child protection. But, practically police officials are not aware about provisions of the Juvenile Justice Act.

Thus, the police officer should conduct awareness programmes from time to time and in these program the Principal Magistrate and JUVENILE JUSTICE BOARD members and NGOs should also be involved in these awareness programme.[38]

6.7 Miscellaneous

i. The High Court of every state should take concrete steps to establish more Juvenile Justice Boards or court in order to dispose of Juvenile cases within specified period as intended in JJAct.

ii. The Juvenile Justice Board should be made functional on all working days and the proceedings be held on all working days.

iii. The Act should be amended to enable the JUVENILE JUSTICE BOARD to directly entertain complaints of child instead of being through police so that the child can give his complaint without any fear.

[38] Gohike, Karl H: Police and Juvenile Justice, 1995.

iv. The Juvenile Justice Act does not make any difference between a male and a female child. But The Juvenile Justice Act fails to take a note of the fact that the female juvenile being more comfortably and conveniently exploited and even abused adversely. Such a female juvenile needs special protection even at an observation home or at a place of safety, notwithstanding the fact that voluntary social organizations may come forward to provide a place of safety. An inbuilt safety mechanism is required to be provided to such a female juvenile in the Act itself.

v. Provision should be made to divert at least 25% of the fine amount collected by the criminal courts at each place towards creation of a juvenile welfare and rehabilitation fund, at the disposal of the J J Board of the particular place/area to be utilized by it in day to day rehabilitation need of the juvenile or child concerned.

vi. The Act is silent as to whether a juvenile involved in a TADA/POTA/NDPS Act case can be bailed out under section l2. The Act should provide immediate relief to the juvenile and must add the bail provision in the act in cases of above said categories.

vii. The Juvenile Justice Act is silent about doing justice to the victims who have been victimized in the hands of juveniles. Necessary provisions/amendments should be made in this regard.

viii. Protective custody' should be defined in Juvenile Justice Act to avoid any confusion.

ix. The Act should make it clear as to when enquiry commences.

x. Voluntary social organisation with necessary government supervision and assistance should be allowed to run after care programmes to build a meaningful and constructive after care programme in order to rehabilitate the inmates by helping them to secure jobs in various government and private undertakings.

xi. Special police units must be constituted to investigate the cases of juveniles.

xii. 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.

xiii. It is not enough to make good legislation unless it is honestly, strictly and scrupulously enforced without fear and favor. The Juvenile Justice Act has been enacted for the purpose of

providing care and protection to the child. So the functionaries of the Juvenile Justice System should enforce the Act honestly, strictly and without any fear and favor.

xiv. The primary object of Juvenile Justice System is to provide protection to the child and adopt measures for keeping the child integrated with his family and back them to the mainstream of the society. The Advisory Board should be established at the central, state, district and city level for integration of the children with the family. The Advisory Boards should also provide facility to the juvenile so that desired output can rendered by them.

xv. The community participation should be maximised.

xvi. NGOs working on the street and with children should be increasingly involved.

xvii. The childrens' village pattern, which was recommended by the Indian Jail Committee 1920 should be followed. Community services for education, vocational training and recreation along with other children in the society may be used by these homes to ensure that the institutionalized juveniles are not marginalised and that the standard of programmes for the institutionalized children is at par with those for other children.

xviii. The community based programmes should be under close supervision to ensure fulfillment of obligation by the child and the person in whose care juvenile is placed under the placement order. For this purpose the number of probation officers/social workers and case workers is also increased to the standardized ratio between such workers and children.

xix. In March 2007 "National Commission for Protection of Child Rights (NCPCR)" was set up under the Commission for Protection of Child Rights Act, 2005, an act passed by Parliament in December 2005. The Commission's ensure that all provisions, laws, programmes and policies are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Commission should focus and evolve programmes for all categories of children coordinating various programmes, undertaking follow-up of its recommendation with various other bodies and departments to create a database for policy formulation and review.

xx. The state should start experimental projects with alternative ways for dealing with children and after successful evaluation they should be made part of the enforceable law. Because merely renaming the existing structures or Juvenile Justice Act serves no purpose.

xxi. Probation and other community based programmes, apart from being cost effective should be preferred for their potential for ensuring better care and rehabilitation of juveniles.

xxii. There should be a clear relationship and mutual coordination between Juvenile Justice Act and other legislations that affect the life of the children covered under its scope.[39]

[39] Let's talk about teenage violence (Apr.27, 2019, 11:03 PM), (https://www.hindustantimes.com/India_news/let_s_talk_about_teenage_voilence_unchecked_petty_crimes_turn_fatal/story.html.

CHAPTER -7

EMPIRICAL DATA ANALYSIS RELATING TO JUSTICE FOR JUVENILE

This chapter deals with empirical analysis relating to juvenile in present juvenile justice system. It aims to analyse the present juvenile justice system and its feasibility as to how far is it successful in reforming children in conflict with law.

7.1 HYPOTHESIS:

Is Juvenile Justice System in India effective enough in achieving its reformatory object or there is abuse of law in the veil of immunity?

7.2 OBJECTIVES:

(i) To examine factors which influence/affect psychology of juvenile.

(ii) Conduct of officials towards juvenile at observation/juvenile home.

(iii) Inquire about rehabilitative practices at observation home.

(iv) To give recommendations for improving the system so that there is balance between juvenile justice and victim justice.

7.3 SIGNIFICANCE OF FINDINGS:

The findings of this study aims to help for welfare of children as well as maintenance of law and order in the society. The result is the outcome of the primary data collected from direct interview of:

1. Juvenile inmates at observation home
2. Officials at observation home and Judges of Juvenile Justice Board
3. General public

7.4 RESEARCH METHODOLOGY-

7.4.1 RESEARCH METHOD:

The study was empirical in nature wherein quantitative analysis was made from the data collected through field study. Lucknow being the capital city of Uttar Pradesh is one of the populous cities of the nation transitioning to a metropolitan city and the observation home covered three jurisdictions i.e. Raebareily, Lucknow and Unnao thus, it was selected as the area of study.

By the virtue of this study, certain best possible recommendations are tried to be drawn out for the better implementation of juvenile laws thereby reforming juveniles in a substantial manner. To understand the ground realities of juvenile justice system those respondents were targeted who confront with the issues/problems on everyday basis.

The first focus group was the juvenile inmates in observation home so as to explore their attitude. It helped in knowing the treatment they were getting from officials and system once they entered the process of juvenile justice system and what reformation processes they are going through.

Second focus study was to interview the officials of observation home and judges of juvenile justice board, as they are the custodians /caretakers of juveniles at juvenile home. They disclosed various unknown aspects faced by them on day to day basis regarding behavioural pattern of children brought in juvenile home.

Third focus group was the general public indicating their opinion on juvenile legislation in India and suggestions on the subject to make it more efficient.

Different interview questionnaires were prepared for all the sample groups which were prepared under the supervision of Dr. Kaushlendra Singh Sir.

7.4.2 METHOD OF DATA COLLECTION:

Based on above stated methodology, data was collected through questionnaires. The task of data collection was carried in three phases. At first stage, permission was taken from concerned authority to meet and interview the juvenile inmates at the observation home for boys “Rajkiya Bal Samprekshan Greh” at Mohan Road, Lucknow.

While visiting the observation home, the detailed opinion of officials were also sought in two ways; firstly, by the help of questionnaires, secondly, by seeking their suggestions for the betterment of Juvenile Justice System.

All the interviews were conducted through questionnaire prepared under the supervision of Dr. Kaushlendra Singh Sir.

STAGE 1: APPROACH FOR STARTING RESEARCH-

First visit was made to 'Rajkiya Bal Samprekshan Greh' at Mohan road Lucknow (observation home for boys which covered the jurisdiction of Unnao, Raebareily and Lucknow) and Collectorate to meet the officials in order to know the proper channel to seek permission to interview juvenile inmates.

STAGE 2: PERMISSION FROM THE CONCERNED AUTHORITY-

After taking a Letter of Request from the Faculty of Law, University of Lucknow on my second visit to Collectorate I was able to get permission from the District Probation Officer, Lucknow who asked me about the objectives of the study and thereby gave permission to interview juvenile inmates in the aforesaid observation home.

STAGE 3: EMPIRICAL STUDY-

Three respondent groups (i.e.): Juvenile Inmates, Officials at observation home and judges of Juvenile Justice Board, General public were selected to be interviewed through questionnaires.

STAGE 4: DATA INTERPRETATION-

All the collected data has been analysed in the form of tables and by stating the collective responses in particular groups.

STAGE 5: DRAWING INFERENCE AND FINDING OF STUDY-

Inferences drawn out of all the responses have been summarized as following:-

S NO.	SAMPLE GROUP	SAMPLE SIZE	AREA OF STUDY	REMARKS

1.	OFFICIALS AT OBSERVATION HOME AND JUDGES AT JUVENILE JUSTICE BOARD	06	1. OBSERVATION HOME AT MOHAN ROAD, LKO. 2. JUVENILE JUSTICE BOARD, LKO.	Officials were reluctant in filling the questionnaire though after the superintendent filled the questionnaire few other staff members also filled and discussed the day to day observances of juvenile home. However, the judges of JUVENILE JUSTICE BOARD were kind enough to suggest alternative measures which should be implemented and discussed the problem of juvenile recidivists.
2.	JUVENILE INMATES	25	OBSERVATION HOME FOR BOYS AT MOHAN ROAD, LKO.	Children between 10-18 years of age were interviewed

				though most of them seemed to be tutored.
3.	GENERAL PUBLIC	25	ACQUAINTANCE	The general public opinion always plays an important role in successful implementation of laws therefore suggestions were taken from them regarding the immunity to juvenile in present scenario.

7.4.3 TIME FRAME:

The research was started after permission granted to interview juvenile inmates in observation home on 31.07.2021, whereas the general public were interviewed through mails and personal interview.

7.4.4 CONSTRAINTS:

1. Officials at Observation Home did not co-operated much in the first visit and only 6-7 children were permitted to be interviewed in the whole day (which approximately means 6-7 hours.) In the second and third visit things became gradually easy.

2. Officials were reluctant in giving much information about the problems faced by the children who were not having guardians/parents in the observation home to undergo the procedure of their case. A negative approach in common was noticed among the staff members in sharing any information about the day to day life of children at observation home.

3. Children in observation home were not allowed to talk alone, and there was continuously one staff member present which was creating a pressurized atmosphere for children to express themselves freely.

4. The general public was not much aware of juvenile laws yet after explaining them few concepts they were able to satisfactorily contribute some useful suggestions.

7.5 ANALYSIS:

The three questionnaires data can be analysed as following:-

1. Questionnaire asked to children in observation home-

Out of 25 children, 10 of them differed in the routine followed by them in their day to day life at observation home which clearly indicates the tutored answers by other children. Rest 15 children answered approximately same routine with little deviations.

All the 25 children unanimously denied any sort of counseling therapy or reformative\recreational activities being given to them apart from the two times meal and electricity wiring training and retail classes under PM Kaushal Vikas Yojana.

4out of 25 children could talk about who is their ideal or which famous personality inspires them. This shows the lack of reformation process because children were unable even to name any such personality which inspires them thinking about following them was a distant dream.

All the 25 children belonged to poor families which show that one of the main reasons behind delinquent behaviour is poverty.

Out of 25 children 23 were working to earn their livelihood. The remaining 2 were students studying in schools. This shows the risk of children to delinquent behaviour or being victim of false allegations is more to the child labor.

All the 25 children when asked about their opinion on living free as they use to live before coming to the observation home was affirmative also if given a chance to get education was positive which shows that children were not interested in recidivism.

Out of 25 children 5 children reported violence from the staff members to control the discipline in the observation home which somewhere indicates that children were subjected to violence in the observation home which is against the principles of juvenile justice.

Out of 25 children 15 reported reason behind inability to get bail was shortage of force to take them to the court which shows that there was delay in proceedings due to lack of staff and children were forced to live in observation home.6 reported that their charges were grave and bail was not easy for them, 2 gave poverty and illiteracy of their parents the reason behind not getting bail as their parents were unable to understand the process much rest 2 were new to the observation home and did not answered.

2. Questionnaires asked to officials of observation home and judges at JUVENILE JUSTICE BOARD-

There were 02 Judges of JUVENILE JUSTICE BOARD and 04 staff members of observation home including Superintendent of observation home who discussed the problems in implementing law and the reasons behind it
being not a successful legislation and also suggested alternate measures to curb the problem.

The main reason for juvenile delinquency according to the Judges of Juvenile Justice Board was 'poverty.' Also, the problem to deal with juvenile recidivists was troublesome as there is no provision in law to further treat them with different process or punish them with stricter punishment.
Both the judges believed in 'value education' as a preventive measure and 'community service' as an alternate measure for children in conflict with law so that they get to know the importance of good deeds and inculcate good behavior and moral values.

In the opinion of Superintendent of Observation home, following were the problems faced in administration of observation home:

1. Lack of Staff in observation home
2. Lack of infrastructure facility
3. Less active NGO'S and institutes coming forward for reformation of children in observation home

4. **SPECIAL JUVENILE POLICE UNIT** not in required strength due to lack of police staff

In the opinion of staff members, children mostly belonged to poor background and therefore more prone towards delinquency due to lack of basic amenities and facilities .There were innocent children too who again were not able to released due to false allegation from a powerful person. However, there were some children charged with heinous offences that were mature enough to understand the nature of their act and admitted it to the staff members and other inmates without any fear. The noteworthy point here is the abuse of law by persons below 16 years of age taking advantage of their age due to the immunity, though the age has been lowered by the amendment act of 2015 is not a solution as now cases such as Ryan international school and Brightland school bring the position same as that before amendment faced with children between 16-18 years of age.

3. <u>Questionnaires asked to General Public -</u>

There were 25 people by acquaintance interviewed through questionnaires to take the opinion of general public to know their opinion on contemporary juvenile laws feasibility awareness about the law relating to juvenile and suggestions on improving the system.

In the opinion of General Public, out of 25 people 23 were aware of juvenile laws and special protection granted to them under laws for reformation. 2 were not much aware of such laws.

Out of 25 people 20 were not aware of SPECIAL JUVENILE POLICE UNIT; only 5 of them knew or have seen special police involved in juvenile matters.

All 25 had seen juvenile begging in their city which shows the children victim of poverty, illiteracy and lack of facility a common phenomenon.

Out of 25 people 15 agreed that age of juvenile should again be lowered as children in the age of 12-15 years of age are becoming mature enough to commit crime with full understanding of the nature of their act. Rest 10 did not found lowering of age a permanent solution to curb delinquency.

Out of 25 people 12 found the most causative factor for delinquency among children to be poverty, 8 found use of internet at an early age as the most causative factor of delinquency these days and 3 found broken homes as the most causative factor while 2 regarded lack of education as the most causative factor for delinquency. The data here clearly indicates that poverty and use of internet should be controlled in order to bring a change towards positive.

Out of 25 people only 7 were of view that children in conflict with law should be punished 15 were not in favor of punishment while 3 were not able to say whether punishment would

deter delin- quency. The data seems to indicate that yet people are not discouraged of the idea that children in conflict with law can be reformed despite the increasing incidents involving heinous offences by juvenile.

7.6 CONCLUSION OF THE EMPIRICAL ANALYSIS:

The conclusion drawn after visit to the observation home and meeting the officials and judges of JUVENILE JUSTICE BOARD can be summarized as;

1. The observance noted after visiting the observation home is that children of only poor strata i.e. lower class and lower middle class families were present which clearly indicates that "POVERTY" is the main causative factor behind delinquency of children.
2. Majority of children in observation home were not mature enough as compared to the charges framed against them and if reformed in an efficient way could turn out to be a better citizen for the nation and society. When asked about their opinion on getting educated all unanimously agreed and showed interest in reforming themselves. Mere asking them about this opportunity showed a great positive response from their side. This shows that even the children in observation home were waiting for their reformation.
3. There was lack of infrastructural facilities i.e. the observation home seemed to be overcrowded than its capacity which needs to be highlighted so that they could be kept in a more humane manner.
4. More than lack of infrastructure, "LACK OF INSTITUTIONAL CULTURE" was found. Many of the staff members had the preconceived notion that they were dealing with the offenders, despite the fact that there was pendency of inquiry of their cases. A proper training and time to time seminars are recommended to staff and officials of Observation home and persons involved in the Juvenile Justice System to keep in mind the sensitivity of their attitude towards children. The "PRINCIPLE OF NON- STIGMATISING SEMANTICS" as followed in act should also be followed by the executives while implementing the law in true letters and spirit.
5. There was no regular active NGO working for reformation of children in the observation home. No recreational activities which should nurture the brain and mind of children were being carried on. A reformation program for children in observation home is recommended so that children living there for such a long period as two - two and a half year can be reformed to a large extent in the observation home itself.

6. When asked about the delay in getting bail a common problem found was the lack of force to take the children to board for their hearing. This should be taken into account, if there is so much shortage of strength in the police department that the process is getting affected, there is no reason not to recruit fresh staff in a country where there is a huge cry for employment among the youth.

7. Lastly, the problem of juvenile recidivists is a worrisome subject which depicts that somewhere the system is failing in reforming the children and due to poverty and lack of facilities in their personal life children repeatedly commit such offences to return to the observation home and get meal and other amenities. This shows the grave abuse of law by the juvenile which needs to be redressed by amendment of law. A separate provision for recidivists is recommended which can differently counsel and treat them by an individual plan away from the first time offenders.

CHAPTER-8

CONCLUSION AND SUGGESTIONS

Juvenile delinquency is a serious and multidimensional problem which is on rise. It is necessary to deal with this problem with a multidimensional approach. For this we need to evaluate the working of the police, juvenile courts, and other segments of the social control machinery that influences juvenile delinquency. It is crucial to frame a comprehensive social welfare programme with better resource utilization and emphasis on effective planning, monitoring and evaluation of the existing programmes. Thus rather than cutting the weeds from the top it should be destroyed by pulling it out completely.

Similarly in order to get rid of juvenile delinquency we should destroy the conditions under which it breeds and for doing so a coordinated effort by the community is the only way out. In India, where children make up 40% of the total population, around 35,000 to 40,000 juvenile crimes are committed annually, of which only 4,000 to 5,000 could be deemed serious offences. Indian teenagers are far more resilient and even obedient compared to their counterparts elsewhere in the world. In the US, an extremely violent society; teenagers commit over 1.2 million crimes each year.

Given our positive cultural moorings and the present dimensions of the problems, we can definitely stem the tide and correct the situation while we look after our teenagers as responsible families and institutions. Those who have transgressed the law can be brought back to the mainstream by a systematic and compassionate enforcement of the law.

The answer to juvenile crime has to be just and reasonable, proper and reflective of an understanding of their psychology. For making any new amendment to the existing legislation, it requires deep understanding or knowledge of the jurisprudence, philosophy and impact of the existing law. It can be easy through concentrated, participatory and consultative processes which construct consensus on key policy questions.

Amending the Juvenile Justice Act, as a result to the nationwide anger against one juvenile put a dangerous trend and may also have an effect on all juveniles who are presently entitled for the juvenile focused care and protection and rehabilitative reform which conceive in the law that is currently in force. It will also violate the legal obligations arising from the

Constitution, the recommendations of the Justice J. S. Verma Committee, and the universal standards enshrined in the UN Convention on the Rights of the Child. The nation need is to reform and rehabilitate the juveniles and bring them into the society with dignity. A number of countries around the world are moving away from policies of deterrence to that of restorative and reformative justice.

India has a fairly progressive law grounded in universally recognized principles and approaches. The way forward should therefore be to demonstrate that the reformative/rehabilitative/ model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it. Our children, our victims of juvenile crime and our society deserve no less.

Kofi A. Annan, the Secretary, general of UN observed that "there is no trust more sacred than the one the world holds with children, there is no duty more important than ensuring their rights are respected and their welfare is protected." Children are recognized worldwide as supremely assets of the Nation. The Indian government also express through its National Policy for Children that "their nurture and solicitude are our responsibility. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice". Children because of their supremely importance ought to have been the prime issue of planning, research and welfare in India but unluckily, they still are a 'almost forgotten' lot and required attention has not been paid to this important issue so far, In spite of the Constitutional provision of child protection against abuse and exploitation and National Policy for Children, but in India it is still a nightmare because 'the future of the country' continues to live without proper care and protection. The main aim to conceive the juvenile justice system is to providing care, protection, development, rehabilitation and after-care of juvenile delinquent.

Now day's children are under tremendous social pressure due to change in social conditions. UNICEF report of 2005 on the condition of world's children under the title "Child under Threat", talking regarding India, mentioned that "millions of Indian children are equally deprived of their right of survival, health, nutrition, education and safe drinking water. This is what happening to the majority of the youthful children who if properly taken care of, would be good for the future of the country".

The cache statements "Children are supremely important national asset" and the utmost gift of humanity but in the present situation and on ground reality it appears hollow. In India children need two sided protection. Firstly they need to be provided with the basic requirements such as education, love and care, recreation activities, parent attention etc for their overall development and making them mentally and physically, irrespective of their caste, class, sex and family atmosphere. Secondly, they also need proper treatment and rehabilitation and after care to the child who is termed as delinquent child. The actions required on two fronts are:

(1) By prevention of delinquency, and

(2) Equal opportunity should be given to the delinquent child to join the mainstream of the society.

It is difficult to define Juvenile delinquency as to its behavioural connotations. There is a need to study the different approaches of various authors for solving the problem of juvenile delinquency. Some definitions include all issues of juvenile behaviour at the same time as others have paying attention only on their criminal behaviour. There is also another opinion according to which confusion has been created between delinquency and other social behavioural problems of children. Whatsoever definitions given by the different authors on the subject matter, the fact remains that, the growth and well being of the juvenile/children is most significant because today's delinquent will be a tomorrow criminal. There is requirement to provide special care to the children of any society because children are future of a nation.

Winston Churchill recognised their importance saying that, "there is no finer investment for any community than putting milk into babies".[40]

Justice Krishna Iyer says, "This is an appeal to the people everywhere, this fundamental faith in juvenile justice, this reorganization of the worth of the infants born and unborn, is the beginning of juvenile justice". And also say that "child is the father of man and in order to enable fathering of a courageous and vibrant man, the child must be groomed well in the formative years of his life. The child must receive education; acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned". Bandhua Mukti

[40] D Marvin Jones & C Don Gibbons: Delinquent Behavior, 4th ed. New Jersey.

Morcha case recognised and highlighted importance of the child by comparing the children to the lights in society and also mentioned that if children are deprived of their childhood socially, economically, mentally, the nation's get deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. By preventing the juvenile delinquency we shall control and check the future criminals. Now it cannot be a denied and is an admitted fact that tendency among children to commit crime is growing these days. The National Policy for Children observed that "the children are supremely and important asset of a nation". Welfare of its children is most importance to a society and nation. The child is an important social unit and is entitled to get its all basic rights like health, education, nutrition, good standard of living, parent care and love etc and also have the right to extend his abilities to their fullest degree. Total well being of the child includes the mental, emotional and social development of child and not only the care of delinquent children. Juvenile delinquency creates hurdles in the development of child.

In brief, it can be said that juvenile justice system in India has gained momentum. Attitude and perception towards Child Rights needs a change**. On the legislative side a lot of work has been done in India but implementation part still requires improvement**. The laws enacted require to be effectively implemented to achieve the desired goal of welfare of the children. The society must encourage children's participation in matters affecting their rights as services to the children are no longer a charity.

The judiciary has played an appreciable role and contributed a lot in proper and beneficial implementation of the juvenile justice legislation by interpreting the provisions of Juvenile Justice Acts so as to provide maximum benefit and relief to the maximum number of the juveniles covered under the beneficial and favorable legislation. A good intended and properly implemented legislation can significantly reverse the crime trends in the juveniles. From the above discussion we can say that serious crimes like rape and murders still unpunished with the juvenile offender also cause of juvenility. So, there is an urgent need of amendment in the present legislation. But the delinquency cannot be prevented only by executing and amending the Juvenile Justice Act. It is necessary to spread awareness among the society regarding this problem that exists in our society. Generally juveniles caught up in criminal acts are not hard core offenders, most of the time they are sufferers of society. Juvenile delinquency can be prevented at the early stage by provided them special care and protection at home and school. Teachers and Parents play an important role in development of children intellect. Instead of categories them as criminals or delinquents, measures need to

be taken to put away them from wrongful activities and if they commit any wrong then it would be better the errors of their live are brought to their notices. And treat the problem of juvenile delinquency is like any other social evil and it is just as the lack of perfections of our society. The idea is slowly gaining acceptance over a wide range that juvenile delinquent does not need the strict rules and regulations of law but needs the sympathy and a wider understanding of our society.

SUGGESTIONS:

THE problem is complex and growing. So, the solution also needs to be comprehensive and requires participation from all stakeholders.

1. Parents should instill positive values in children. Family is the role model for every child. Parents should also teach children the importance of respecting laws of society and the consequences of breaking laws. They should also make sure that children observe equality of rights, justice and condemn discrimination.

2. Government should support families that have poor economic status. This way they can improve their financial condition. Right to Education is one great initiative on paper but it should be implemented on ground for all children from weaker sections of society.

3. Racial or religious differences are also a very strong reason behind juvenile crime. It can cause several big crimes as adolescents become aggressive and they want to take revenge from the society for their unequal treatment. So, differences need to be curbed by talking and spending quality time with children.

4. Drug use is also a very common cause of juvenile delinquency. Parents and Teachers need to keep an observation on their children. And if they notice something, it should be bought to the attention of Parents and School so that a proper counseling could be done.

Statistics show that mental illness is one of the biggest reasons behind juvenile delinquency. Parents should spend more time with their kids. Also, teachers need to be vigilant about each child’s behaviour. Here, the importance of Parent-Principal Partnership needs to be highlighted.

Parents should also be informed about the friends of their children and other mates. If their friends commit a crime, adolescents often get encouraged by it. They cannot understand the consequences of the crime. Abusive behavior is the first step towards committing crimes. When teens become part of a gang that is abusive and that does not know how to behave and practice control, the teen also gets involved in negative means.

Parents and teachers should talk to the teens about their problems and they should try to solve their problems. They should create a healthy and friendly relationship with their children. In this way, children feel free to share anything and everything with their parents.

5. Society itself sometimes becomes very negative and creates difficulties for the youth. It is therefore believed to be a strong force in developing the personality of the teens. Negative feelings from the society can become a reason behind juvenile delinquency. So, the role of society is very significant. It is supposed to be fair and reasonably flexible in dealing with children. It cannot adopt a harsh approach.

6. Stigmatisation can also ruin the personality of the youth and make the teen a criminal forever. It means that society treats a teen as criminal, once he commits a crime, though it might be for the first time ever that he/she committed a crime. But due to the tag, he will perceive himself as a criminal. As a result of which he might repeat similar crime or other crimes in future. He will no longer feel any embarrassment in committing crimes. So, negative connotation of a child as criminal needs to be avoided for the betterment of the child and the society around him.

7. Lastly, it is strongly recommended to draw some focus of law makers towards the victim of the heinous offences committed by juvenile. Not only juvenile be reformed in the special homes their reformation plan should impose some obligation upon them towards the victim so that they realize the wrong done by them and contribute in recovery of the victim as well. This can also be an effective tool to measure the reformation a juvenile is undergoing and practically applicable to maintain the balance of justice.

To sum up, juvenile crime is one phenomenon which seems to be growing and might grow further. But there is one word solution and that solution is “Sadvidya” or Value Education in all aspects of life and behavior in the complete eco system including school and home. Emphasis should be laid more on preventive measures which means role of society in

nurturing the young seeds of the nation should be highlighted and worked upon. Awareness regarding juvenile delinquency and ways to deal with it among society should be spreaded. Humanity to prevail must first be preserved among the people therefore adults should take an initiative to upbring the future generation with the scent of humanity kindness and right-mindedness.

Also, even if a child comes in conflict with law, it should be the prerogative of the officials of juvenile justice system to treat them in a manner that they become a better person and civilized citizen of the nation. More than infrastructure, institutional culture should be built which would definitely give a boost in achieving the objectives of the system in reforming the children. A proper training is suggested to the officials of JUVENILE JUSTICE SYSTEM to understand the sensitivity of the duty given to them.

As rightly said, "Who holds the souls of Children holds the nation." If Juvenile Justice System of a nation works efficiently, the crime rate of the country can be controlled in an enormous manner, there can be peace and order established and gradually the world can become a better place to live in.

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