

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 5 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ANALYSIS



Dr. Namita Jain

Head & Associate Professor



School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



INTERNATIONAL JOURNAL

Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

A large, semi-transparent watermark of the IJLRA logo is centered on the page. The logo features a stylized emblem at the top, followed by the acronym 'IJLRA' in a bold, sans-serif font, and the full journal title 'INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS' in a smaller, all-caps font below it.

IJLRA
INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

JUVENILE JUSTICE SYSTEM: A COMPONENT OF CRIMINAL JUSTICE SYSTEM IN INDIA

Authored By- Pancham Preet Kaur (Research Scholar)
Department Of Law, Punjabi University

“Youth shows the man as morning shows the day.”

John Milton¹

Introduction

Today's children are the youngsters of tomorrow. They are the most important determinants of growth and development for any country. We can easily predict that the future of a country is certainly at peril if the children there are getting involved in horrendous crimes. A juvenile is referred to a person who has not completed 18 years of age. Presently juvenile crimes are increasing day by day. Juveniles are considered of light age and tender in nature and they can be rehabilitated if given a chance, hence certain sections of The Indian Penal Code² and The Criminal Procedure Code³ do not apply on them. If we go back in the history, the juvenile justice system in India originated during the British rule. Before the British regime in India, juveniles were treated by the family and society in general. As such, the juvenile justice system and correctional measure was the direct consequence of western philosophy and development of social reforms. The traces are available to show that delinquents have been committing crimes since the days of Vedas but problem of juvenile was not considered as a separate system and such cases fell within the purview of ordinary law. It is the duty of the State to provide equal opportunities for the development of the children for ensuring social justice.⁴

A child is considered to be an important part of the society where he takes birth, grows, lives and dies. Juvenile delinquency is a behavioral aspect. The behavioral pattern develops in early

¹John Milton was an English poet, polemicist, and civil servant for the Commonwealth of England.

²The Indian Penal Code, 1860 (Act 45 of 1860).

³The Criminal Procedure Code, 1973 (Act of 1973).

⁴ Juvenile Delinquency in India, available at: <http://www.legalservicesindia.com/law/article/1294/17/Juvenile-Delinquency-In-India> (last visited on July 19, 2021).

childhood. The biological, psychological and sociological factors are important for making behavioral pattern of the child.⁵ Therefore, it depends upon the constitution of the temperament and attitude of the juvenile to what extent he or she becomes delinquent.

Meaning And Concept

When it comes to the concept of juvenile justice system, it is referred to as a system which deals with children in conflict with law which includes child related proceedings and programs or services for prevention, diversion, rehabilitation, reintegration and aftercare so that normal growth of the delinquent is not adversely affected. The system for the juveniles is required to be different from the ordinary judicial system relating to crime.⁶

A child being innocent is completely unaware of the actions it performs. And the most disappointing part is that the children in the present scenario are being used as a tool for commission of the crime as they can be easily manipulated at this stage.⁷ And this is the reason why the child is exempted from both civil as well as criminal liability.⁸

When we talk about juvenile justice system in India, it occurs to us that it must be relating to the children who are not adults, who are adolescents or minors and they are not aware of the good and bad. They commit a crime without thinking about the consequences it may lead to. It may just mean to them as playing a trick or playing nuisance with someone as if they would go scot-free after committing that particular act. However, in reality juvenile justice system is a system of legislations, policies and procedures which are made with an intention to regulate the processing and treatment of non-adult offenders for violation of law and to provide legal remedies. A juvenile can do anything of his own choice or at the instance of anybody else including murder, robbery, theft, physical assault, abuse, etc. and still try to take the escape route by pleading that he is a juvenile.⁹

So, here there is a contradictory position where one law talks about that he is an offender who should be punished according to the ordinary law; but on the other hand the other law called as the juvenile justice system which says that he is a protected criminal and should be let off by following measures such as rehabilitation and reformation.

⁵Dr. RatnapravaBarik, Dr. Jayanta Kumar Dash, "Juvenile Justice in India: A Historical Outline" 10(9) *International Journal of Current Research* 73445 (2018).

⁶ Juvenile Justice, available at: <https://www.britannica.com/topic/juvenile-justice> (last visited on August 25, 2021).

⁷Juvenile Justice System in India, available at: <https://blog.ipleaders.in/juvenile-justice-system-india/> (last visited on August 20, 2021).

⁸Prof. N.V. Paranjape, *Criminology, Penology with Victimology* 523 (Central Law Publications, 17th edn., 2017).

⁹*Supra* note 6.

Definition Of Juvenile

The Juvenile Justice Act, 1986 defined “child” as a person who in case of a boy has not completed 16 years and in case of a girl who has not completed 18 years. But, later on India repealed this Act and it was replaced by The Juvenile Justice (Care and Protection of Children) Act, 2000 where the distinction between the age of a boy and girl was done away with and the age for a juvenile was fixed to be not more than 18 years at the date of the commission of the offence. However, it was again amended in the Act of 2015 that if the concerned child is between 16 to 18 years and his age is in conflict with the law of the land, he will be considered as an adult for committing heinous offences and also be punished accordingly.

According to The Juvenile (Care and Protection) Act, 2015 a “child”¹⁰ means a person who has not completed 18 years yet. The Act has classified the term “child” into two categories which are “child in conflict with law”¹¹ and “child in need of care and protection.”¹²

Historical Background

Juvenile delinquency is not a recent phenomenon in India or elsewhere because crime by the adolescents has been a regular feature in all the ages such as modern, medieval and ancient. Children have been committing serious offences even during the periods of Mahabharata and Ramayana. However, there have been different ways for the treatment of juvenile offences and there was no single common criteria for punishing the offenders.

There is a Latin maxim which suits best for the Juvenile Justice System is “nil novi spectrum” which means that nothing is new on this earth. A presumption has existed since the ancient time that the juveniles should be dealt with leniency because young children generally respond in a frustrated and aggressive way.¹³

International Perspective

Juvenile Justice System in UK

In England, the juvenile courts were set up for the first time in 1908 under The Children Act, 1908. The main purpose was to provide care and protection to the young offenders and to provide reformation by way of education and training to the offenders. Thereafter, The Children and Young

¹⁰ The Juvenile (Care and Protection) Act, 2015, (Act of 2015) s. 2(12).

¹¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act of 2015) s. 13.

¹² *Id.*, s. 14.

¹³ *Supra* note 7.

Offenders Act, 1933 was passed in England which provided civil powers to the juvenile courts in special cases. The Act also provided that any young person¹⁴ or child¹⁵ who has committed the crime should be tried only in the juvenile courts. There was a provision of remand homes for such offenders. Another Act passed in UK was The Criminal Justice Act, 1948 to deal with the rights of the offenders providing certain types of security to the young offenders by sending them to remand homes.¹⁶

Juvenile Justice System in USA

America followed the same system for juveniles as that in UK but in USA the procedure was not much complex. The courts of America used to follow informal manner in handling such cases. At the first stage, the police officer concerned was supposed to use his complete discretion to keep the juvenile under the custody or to release him immediately or warn him. In the second stage, the concerned police officer referred the offender to juvenile courts. Then these offenders were sent to certified schools or children homes as per the orders of the court. As per the procedure followed in USA, a juvenile is treated as an adult if the age of the juvenile was near to 18 years.¹⁷

International Conventions and Instruments

The International conventions and instruments have contributed significantly in relation to the provisions of child rights and prevention of child abuse.¹⁸ The International organizations such as United Nations and UNICEF have always stressed more upon the development of child.

The International conventions and instruments which are signed by the member states of UN in order to protect the rights of Children are as following:

- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)
- Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)
- The Hague Convention on Protection of Children and Co-operation in respect of inter-country Adoption, 1993

¹⁴A person between the age group of fourteen and seventeen year.

¹⁵A person under fourteen years of age.

¹⁶ The Criminal Justice Act, 1948, (Act of 1948), s. 77.

¹⁷*Supra* note 7.

¹⁸Child rights and Prevention of Child Abuse, available at:http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf (last visited on July 20, 2021).

These conventions and instruments are also relevant in respect of care and protection of children who are juveniles and become offenders after the commission of crime which attracts some kind of punishment.¹⁹

National Perspective

In India, Juvenile Justice System started around the 18th century and before that juvenile offenders were treated like ordinary criminal offenders. Due to this reason, the UNO had adopted Convention on Rights of the Child on 20th November, 1989.²⁰ This Convention provided that in order to protect the social reintegration of the juvenile, there shall be no judicial proceedings and trials in the court. It also permitted India to repeal the Juvenile Justice Act, 1986 and to make a new legislation. As such, the new Act known as “The Juvenile Justice (Care and Protection of Children) Act, 2000 was passed. It may be mentioned here that Children Act, 1960 was replaced by The Juvenile Justice Act, 1986. Thereafter, Juvenile Justice Act, 2000 was passed which was amended first in 2006 and then in 2011.²¹

The aim of Juvenile Justice (Care and Protection of Children) Act, 2014 was to substitute the Indian juvenile delinquency law and it was passed on 7th May 2015 by the Lok Sabha. It provided for a juvenile justice board consisting of psychologists and sociologists to determine the age of juvenile criminal.²²

Further, it was replaced by the Juvenile Justice (Care and Protection) Act, 2015. It has following features:

- (i) There should be no trial of young offenders in the courts but they should be corrected in best possible manner.
- (ii) Young offenders should not be given punishments by the courts but they should be given a chance to reform themselves.
- (iii) Trial for child in conflict with law²³ should be based on non-penal treatment through social control agencies e.g. Observation Homes²⁴ and Special Homes.²⁵

Various provincial governments had also passed State relevant Acts such as Madras Children Act, 1920; Bengal Children Act, 1922; Bombay Children Act, 1924; Similarly, notwithstanding the

¹⁹B.K. Das, “Juvenile Justice System in India” 5(5) *Indian Journal of Research* 200 (May 2016).

²⁰*Supra* note 8 at 662.

²¹*Supra* note 7.

²²*Supra* note 19.

²³ The Juvenile Justice (Care and Protection) Act, 2015 (Act of 2015) s. 2(13).

²⁴*Id.*, s. 47.

²⁵*Id.*, s. 48.

Juvenile Justice (Care and Protection) Act, 2000 also guaranteed that regardless of religion, the young children needing consideration were given the benefits of a different legal process, be it Juvenile Justice (Care and Protection) Act, 2000, Hindu and Muslim individual laws likewise represent youngsters in India.²⁶

India was the main nation to adopt the United Nations Standard Minimum Rules, 1985 for the organization of the juvenile justice legal framework in the light of standards prescribed in the rules.²⁷

Causes Of Juvenile Delinquency

Juvenile delinquency is one of the serious problems involving almost all the societies of the world including India. Children are vulnerable groups in the population requiring utmost care and protection and there are great chances that they might not be treated well and their energy may be diverted to various undesirable channels by the unscrupulous persons. It is natural for them to indulge in deviant behavior. It may vary from country to country and place to place. In India, vandalism, theft, street hocking, black marketing and others are treated as juvenile crimes. India has world's largest number of children who are vulnerable to committing crimes. There is a trend of increase in juvenile crimes in India which is a matter of serious concern and this problem needs to be sorted immediately.²⁸ The present Indian society is undergoing tremendous change in terms of beliefs, thoughts and ideologies. What people used to consider as immoral yesterday may not consider the same today because of the changes taking place in the belief system of the society. The facilities and comforts of life have advanced the aspirations of people to get more and more. We have totally ignored the virtue of self-introspection and self-realization. Children are most adversely affected part of the society in the modern world who are exposed to the bitter realities of life at a very young age. All these reasons have contributed to the increase in the rate of juvenile delinquency in India.²⁹

Juvenile delinquency occurs at different places due to different reasons, behaviors and situations which emerge at that juncture of time. Unfortunately, large number of children are seen these days committing various types of dangerous and ghastly offences including rape, murder, robbery, theft, etc. which are ample proof of increase in juvenile delinquency which may be due to interplay of

²⁶ Asha Bajpai, *Child Rights in India: Law, Policy and Practice* (Oxford University Press, 2017).

²⁷ Pragya Shukla, "Juvenile Delinquency and Justice laws in India" 3(7) *International Journal of Advance Research and Development* 104 (2018).

²⁸ Riyaka Surong, Anniesha Lyngdoh, "A Study on the causes of juvenile delinquency and its prevention by the community" 8(4) *The International Journal of Indian Psychology* 1271 (Oct-Dec, 2020).

²⁹ Shivangi Tiwari, "Analytical Study of Juvenile Delinquency in India" 5(6) *Journal on Contemporary Issues of Law* 108.

individual, biological, genetic and environmental factors as under.

Environmental and Societal Causes

Children are also human beings who live in the society and communicate with others and they influence others by their behavior or interaction. In this process they may indulge in anti-social or indecent behavior with anybody. They may come into physical, emotional, spiritual or cultural conflict and show anger, become hostile and aggressive which may lead to dangerous fights and attacks on each other resulting in death . Children also copy others in their behavior and habits but they become adaptive only of harmful habits.

Biological Causes

The personality of a man is formed on the basis of hereditary and environment. The environment aspect has been discussed above but heredity factor is very important in the composition of the physique and nature of a child because it will be on the pattern of his ancestors. If father was a musician, painter or specialist in any field, his son will follow his footprints. It is the genetic system of the body. In adolescence, there are various changes in the body of the child according to hormonal patterns of the father. He will also develop certain habits like that of eating, talking, walking etc. So, this feature of delinquency also transfers from one generation to the other.³⁰

Peer Groups

Many a times a juvenile becomes delinquent as a result of demonstration effects of his friends, colleagues, classmates or close relatives. Being in a bad company or good company of friends or colleagues leads to the same type of impact on the behavior and attitude of a child. If the friend is a thief, naughty person or a drunkard then his friend will also become like him.

Emotional Causes

There can be bad effects of emotional imbalance, jealousy, inferiority or insecurity shown by one person to the other. Face is the index of mind. If you appear before anybody in an angry or a sad mood, the other person will also try to be so with you sooner or later. Therefore showing extraordinary composure or exposure leads to juvenile delinquency on the part of the child.

³⁰*Ibid.*

Financial Causes

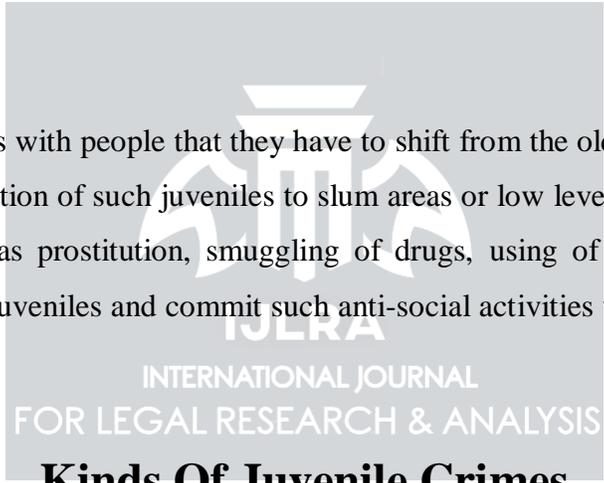
Many children become habitual of pick pocketing, stealing money, indulge in theft of utensils, books or other valuable things from the houses of others for the want of shortage of money. They are not able to make their both ends meet as they have no sufficient income. They see their parents quarreling with each other and they also do not want to beg money from others. So for this reason they indulge into delinquency.

Social Media Causes

Media is a vehicle through which young boys and girls follow doing acts of violence like bullying, harassment, gang related crimes against their friends, family members and relatives. Most of the children commit such crimes on the pattern shown by social media through internet. Many of such children indulge in gambling.³¹

Migration Causes

In several cases it happens with people that they have to shift from the old place of living and settle at a new place. The migration of such juveniles to slum areas or low level areas help in indulging in unlawful activities such as prostitution, smuggling of drugs, using of drugs or narcotics. They create their own gang of juveniles and commit such anti-social activities which spoil their lives and careers.



Kinds Of Juvenile Crimes

Whenever a child becomes delinquent nobody can estimate as to what level or extent he would be committing the crime or acts of delinquency. In fact, he becomes a rogue or a person with a bad reputation in the eyes of society and he himself starts feeling downgraded in front of others including his family members.

The following are some of the types of crimes he is likely to commit.

- (i) He can commit any crime which causes violence resulting into physical injury such as attack with a weapon, rape or murder.
- (ii) A juvenile delinquent may make use of force or threat to snatch the property of any other person with which he has no legal right.
- (iii) He can indulge in illegal sale, possession or trade of drugs.

³¹Supra note 28 at 1272.

- (iv) He also can become a drug abuser by consuming unspecified quantity of drugs, alcohol, opium etc.
- (v) He can induce other children into the use of drugs thereby making them prone to drug addiction.
- (vi) While under the influence of drug addiction, he can cause traffic violation while driving a vehicle. He can also cause a major accident leading to loss of life.
- (vii) Juvenile delinquents become abnormal people and they are never in their proper senses.³²

Evolution Of Juvenile Justice System In India

1) Pre- Independence Period

- **The Apprentices Act, 1850-** It was the foremost legislation which dealt with children in conflict with law. It provided for the children between the ages of 10-18 convicted in courts to be given vocational training as part of their rehabilitation process.³³
- **Reformatory School Act, 1876 and 1897-** Another landmark legislation for the treatment of juvenile delinquents was the Reformatory School Act, 1876 and 1897. Under this Act the court was at an option of detaining the delinquents in a reformatory school for a period of two to seven days, but once they attained the age of 18 years, the court cannot detain them in such institutions any further.³⁴
- **The Code of Criminal Procedure, 1898-** It granted special treatment for the juvenile offenders. The Code also provided probation for good conduct to offenders up to the age of 21 years.³⁵

2) Post- Independence Period

There are a number of articles which provide for the needs of children as mentioned below, the Constitution of India has outlined various developments in the field of juvenile justice.

Part III and Part IV which deal with Fundamental Rights and Directive Principles of the State Policy respectively contain some special provisions with respect to children.³⁶

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

Article 23: The article deals with the prohibition of trafficking in human beings and forced labour.

³²*Supra* note 19.

³³*Supra* note 8 at 583.

³⁴*Ibid.*

³⁵*Ibid.*

³⁶ The Constitution of India, 1950.

Article 24:The Constitution under this article forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations

Article 39 (e):The State is directed to safeguard the tender age of children from entering into jobs unsuited to their age.

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

- **The Children Act, 1960**

The Act was operated all over the country, however the States were allowed to enact their personal legal guidelines for the care and safety of juveniles. Hence, the provincial governments in individuality selected to enact separate law for the juveniles in their respective jurisdictions. The Act was taken into consideration as a model piece of regulation. This Act supplied for the care, protection, preservation, welfare, schooling, training and rehabilitation of ignored or delinquent children.³⁷

- **The Juvenile Justice Act, 1986**

Prior to this Act, every State government had their own legislations for children. However, these Acts lacked consistency in terms of defining delinquency, court procedures and institutionalised practices. Therefore, a need for a uniform Act arose which should provide justice for children. As a result, a uniform Act was passed by the Central Government i.e. The Juvenile Justice Act, 1986. The Act aimed to provide care, protection, treatment, development and rehabilitation for neglected and delinquent juveniles.³⁸

The Act of 1986 failed to fulfil the objectives and goals of ensuring special care and safety to the juvenile delinquents at certain levels. Subsequently in consonance with the worldwide developments, the Indian Parliament enacted The Juvenile Justice(Care and Protection of Children) Act, 2000.³⁹

- **Juvenile Justice (Care and Protection) 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 UNCRC

³⁷*Supra* note at 33.

³⁸*Ibid.*

³⁹Vijay Hansari and P.I. Jose, Juvenile Justice System: Working Manual for Stake Holders, available at:<http://www.legalassistanceforum.org/>(last visited on July 30, 2021).

in 1992. The convention outlines the rights of the child to reintegration into society without judicial proceedings where avoidable. Hence, the government felt a need to fulfil the requirements of the convention to re-write the law. So, in 2000 the earlier law was replaced by The Juvenile Justice (Care and Protection of Children) Act.

This new law being more child-pleasant provided for correct care and protection as also for rehabilitation of youngsters in need of care and safety. Under this Act, a clear difference has been made between a juvenile offender and the disregarded child. In addition the Act also allows the adoption of a child by any community. Thus, the Act provides about the government's responsibilities for the care, protection and the development of the overlooked youngsters, but in addition it also tackles the issues relating to crime prevention and the rehabilitation of juvenile delinquents.⁴⁰

- **The Juvenile Justice (Care and Protection of Children) Act, 2015**

The Ministry of Women and Child Development had brought the Juvenile Justice (Care and Protection of Children) Bill 2014 in the Lok Sabha on 12th August 2014. It sought to make more strong, operative and answerable law for the children in want of care and protection as well as the children in conflict with law. The provisions of the Act were in response to the observations which were articulated by the way of a wide pass-section of society for the need to have an efficient machinery of administration for the protection of juveniles.

Further, the Bill was referred to the Parliament Standing Committee.⁴¹ On 25th February, 2015 several recommendations were made by the Committee to strengthen the Bill. Accordingly, an amendment to the bill was proposed by the Women and Child Development Ministry on the basis of the recommendations of the Committee. One of the main purpose for bringing a new legislation was the increasing number of crimes by juveniles of age group of 16-18 years.⁴²

The Juvenile Justice Act, 1986 defines the juvenile as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.⁴³ Whereas, the Act of 2000 defined the term juvenile or child as a person who has not attained the age of eighteen years.⁴⁴ In relation to the present Act on juveniles i.e., the Juvenile Justice (Care and Protection of Children) Act, 2015 a

⁴⁰Juvenile, available at: http://www.wcdorissa.gov.in/cw_juvenile.aspx/ (last visited on August 25, 2021).

⁴¹Department Related Parliamentary Standing Committee on Human Resource Development "264th Report on The Juvenile Justice (Care and Protection of Children) Bill, 2014" (February 2015).

⁴²Juvenile Delinquency in India, available at: <http://www.legalservicesindia.com/law/article/1294/17/Juvenile-Delinquency-In-India> (last visited on August 30, 2021).

⁴³The Juvenile Justice Act, 1986,(Act of 1986), s. 2(h).

⁴⁴The Juvenile Justice (Care and Protection of Children) Act, 2000, s. 2 (k).

“child” means a person who has not completed eighteen years of age.⁴⁵ The Act classifies the term “child” into two categories: –

- (i) child in conflict with law⁴⁶, and
- (ii) child in need of care and protection⁴⁷.

This Act protects not only the rights of children, but also a person's rights when he/she was a child.

Some The Important Features Of The Act Are:

Juvenile Justice Board

There shall be a Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.⁴⁸ The Board shall consist of Principal Magistrate and two social workers, among whom one should be a women.⁴⁹ The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.⁵⁰ It provides that in case a heinous crime has been committed by a person in the age group of 16-18 years, it will be examined by the Juvenile Justice Board to assess if the crime was committed as a ‘child’ or as an ‘adult’.

Special Juvenile Police Unit (SJPU)

When a police officer comes in contact with a juvenile, it is his duty to send the child to the Special Juvenile Police Unit (SJPU) who must further report the child to the Board immediately. Generally, juveniles are released on bail in all cases as long as the Board discover the release of this child will not region him in any threat or in the have an effect on of criminals. If the child is not released on bail then the best place for him is the custody of an Observation Home. The SJPU is responsible for informing the arrest of juvenile to his parents, as well as the Probation Officer who will make essential enquires about the child.

Children in Need of Care and Protection (CNCP)

The Act provides for constituting a Child Welfare Committee for exercising the powers and to

⁴⁵*Supra* note 23 at s. 2 (12).

⁴⁶*Id.*, s. 13.

⁴⁷*Id.*, s. 14.

⁴⁸*Supra* note 23 at s. 4.

⁴⁹*Id.*, s. 4(2).

⁵⁰*Id.*, s. 5.

discharge the responsibilities conferred on such Committees in terms of children in need of care and protection under this Act. New welfare institutions set up under Sections 43 and 44 offer to open shelters and Foster Homes respectively by the State Government for care and safety of the child. The Act allows the State Government to set up such Observation Homes in each district because it deems healthy for temporary reception, care and rehabilitation of any child purported to be in conflict with regulation, for the duration of the pendency of any inquiry under this Act.⁵¹

Adoption

The Chapter 8 of the Act streamlines the procedures for orphaned, abandoned and surrendered children. A legal status has been established under the Act for the Child Adoption Resources Authority (CARA).⁵² The legislation further proposed numerous rehabilitation and social integration measures for institutional and non-institutional children.⁵³ An effort was also made to add certain special measures as sponsorship and foster care.⁵⁴ The provision was also provided for mandatory registration of all institutions engaged in supplying child care.⁵⁵

ROLE OF JUDICIARY

The judiciary is the custodian of the constitution and the law. It is the holistic duty and responsibility of the judiciary to provide justice to the victims of juvenile delinquency in extreme cases like rape, murder, physical assault etc. However, in the distant past such cases were never brought in the light because of various reasons. Age assurance is of principal concern to check if the accused falls under the domain of the Juvenile Justice Act and it is also essential for deciding the duration of institutionalization.

In the most important Nirbhaya Case (Delhi Gang Rape Case), a para-medical student named Nirbhaya was brutally gang raped in a moving bus on the cold night of 16 December 2012 in Delhi, she had ultimately died of the injuries suffered by her and was also a minor. At the end, the criminals were awarded death punishment even though one of the criminals was a minor.

It has been found that after Nirbhaya's case, the judiciary has been very much particular in awarding the punishment to the culprit which is to commensurate with the gravity of crime

⁵¹*Id.*, s. 47.

⁵²*Supra* note 23 at s. 68.

⁵³*Ibid*, chapter VII.

⁵⁴*Id.*, s. 44,45.

⁵⁵*Ibid*, s.47.

committed. It is a positive sign for a democratic country.

In Kathua Rape case of 2018, the criminals took the plea that the culprit was a minor and reserved the relief of being a juvenile but the court rejected their plea because one of them was found of full age.

In the case of Sanjay Suri v. Delhi Administration⁵⁶ it was proposed that there should be a different structure to keep adolescents. The issue of age for the commission of an offence has been clarified under Sec.7A of Juvenile Justice Act, and talked about in the significant instances of Bhoop Ram v UP⁵⁷ and Bholu Bhagat v Bihar.⁵⁸

In Dharambir v. State (NCT of Delhi) and another,⁵⁹ the Appellant was not an adolescent according to 1986 Act, when the offences were submitted yet had not finished 18 years on that date. The court was empowered to consider and decide the immaturity of an individual even after conviction by the normal court and furthermore engages the Court while keeping up the conviction to put aside the sentence and forward the case to the J.J. Board for passing sentence as per the 2000 Act.

The Supreme Court in SampurnaBehrua v. Association of India⁶⁰ observed the significance of the basic privileges of the children and gave certain directions which included providing guidance to Chief Justices of every high court of India to suo motto move a request to discover the techniques for execution of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Supreme Court additionally coordinated that national police institutes and state police foundations must consider including child rights as a piece of their educational plan on customary premise. Directions were additionally given that adolescents must be treated with outrageous affectability in the courts where they are showing up as witnesses particularly in cases identifying with sexual and terrible offenses.

The Apex Court in Shilpa Mittal v. State of NCT of Delhi⁶¹ answered the question that whether an offence describing a maximum sentence of more than seven years imprisonment but not providing any minimum sentence for providing minimum sentence of less than seven years can be considered to be a heinous offence within the meaning of Section 2(33) of the Act of 2015. It was held that an

⁵⁶AIR 1988 SC 414.

⁵⁷(1989) 3 SCC 1.

⁵⁸ AIR 1998 SC 236

⁵⁹ (2010) 5 SCC 344.

⁶⁰ (2018) 4 SCC 433.

⁶¹ Cr. Appeal 34 of 2020, SC, DOD 09.01.2020

offence which does not provide a minimum sentence of seven years cannot be treated to be a heinous offence.

Suggestions

The problem of juvenile delinquency is increasing day by day and it has almost reached the alarming proportions. No doubt, various Acts have been passed from time to time and constitutional provisions have been added to deal with such cases, yet this phenomenon is still very much visible in the society. No reasonable person would like to sit and watch this phenomenon because it is a dangerous trendsetter for the community at large. It is therefore suggested that some appropriate measures should be taken by the people, society and government.

- (i) The parents should not leave the child at his volition to do anything whatever he desires rather he needs to be kept under regular observance/ monitoring.
- (ii) Children are future determinants of the world and they are the custodians of our civilization. The education of the children should be formulated in such a way that he remains conscious of his liabilities.
- (iii) It has been found that government initiatives have been found insufficient to deal with the malady of juvenile delinquency. It is high time that necessary steps must be taken at the societal level.
- (iv) The counsellors can play an important role in preventing juvenile crime.
- (v) There is also much onus on the families in this behalf because family is the best institution for keeping a check on the deviant behaviour of the child to deter him from indulging in such activities.
- (vi) There is dire need for effective implementation of relevant laws connected with juvenile offenders to deal with the problem religiously.
- (vii) The members of the juvenile justice board should know child psychology and they should be well trained to handle juvenile offenders sensitively.
- (viii) Media should play its role from the point of view to eliminate this evil from the face of our society instead making a mockery of the system.
- (ix) Many discoveries have found that most of the adolescents are experiencing psychological maladjustments, sorrow or uneasiness which needs to be treated by a psychologist.

Conclusion

Any act of juvenile delinquency on the part of the delinquent is a slur on the child as well as his family. It is also a burden on the society at large. The crimes are sometimes so heinous such as murder, theft, rape, robbery or physical assault which attract severe punishment. Keeping in view the gravity and quantum of the crime, the delinquent child does not deserve any concession on account of his tender age. Therefore, age should not be the sole criteria to award a lenient punishment to the offender. For example Section 376 A and Section 376 E of IPC have provision of death penalty on the minors convicted of rape. Moreover, heinous crimes of rare nature are a class of their own and should not be considered akin to petty crimes. Juvenile crimes cannot be put to an end only by proper implementation of Juvenile Justice Act but rather civil society should be made aware of this ailment which is making the society a chronic patient. The juvenile delinquency comes to the notice of parents, family members and teachers at the first place, if all of them help in taking preventive measures, the problem can be solved at the initial stage only. They should stand up in a bold manner to take necessary steps instead of hiding their evil or protecting their delinquent child. The gist of the discussion is that the problem of juvenile delinquency is not unsolvable but it needs sincere efforts.