

**JUVENILE JUSTICE SYSTEM IN INDIA : A STUDY  
WITH REFERENCE TO JUVENILE JUSTICE (CARE  
AND PROTECTION) ACT, 2015**

**Thesis**

**SUBMITTED TO THE  
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY  
LUCKNOW**



**FOR AWARD OF THE DEGREE OF**

**Doctor Of Philosophy  
IN  
LAW**

**SUPERVISOR**

***Dr. Pradeep Kumar***

**(Assistant Professor)  
Department of Law  
School for Legal Studies  
BBAU, Lucknow**

**SUBMITTED BY**

***Narendra Kumar Mishra***

**Enrollment No. : 891/14**

**DEPARTMENT OF LAW  
SCHOOL FOR LEGAL STUDIES  
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY  
(A CENTRAL UNIVERSITY)  
VIDYA VIHAR, RAEBARELI ROAD  
LUCKNOW  
2018**

# ABSTRACT

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## JUVENILE JUSTICE SYSTEM IN INDIA: A STUDY WITH REFERENCE TO JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

### Introduction

The study of delinquency and juvenile justice often relies on definitions of delinquency that do not conform precisely to the legal definitions of delinquent or status offenses. The definition of delinquency often takes on a specific meaning depending on the interests of the group or individual examining juvenile misconduct. In every definition of delinquency there is an implicit assumption of what constitutes a juvenile. Interestingly, the legal definition of a juvenile varies from jurisdiction to jurisdiction. This means that persons subject to the juvenile statutes in one location may not be in another place. The majority of states recognize juveniles as individuals below the age of 18. Roughly one-fifth of the states define juveniles as those less than 17 years old with some states listing the age of majority below age 17. Under these ages the individual is considered a juvenile and is handled in the juvenile justice system.

In brief a juvenile is a person who is under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law. Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. The juvenile is a child who is alleged to have committed or violated some law which declares the act or omission on the part of the child as an offence.

Delinquency is a kind of abnormality. When an individual deviates from the course of normal social life his behaviour is called 'Delinquent'. When a juvenile, below an age specified under a statute exhibits behaviour which may prove to be dangerous to society and / or for him, he may be called a Juvenile delinquent. Juvenile delinquents are those offenders including boys and girls who are under 18 years of age. A Juvenile delinquent is a young person incorrigible or habitually disobedient. The first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was

transplanted by the Reformatory Schools Act, 1897 and later came The Children Act of 1960.

The Juvenile Justice Act, 1986 was the primary legal framework for juvenile justice in India. The Act provided for a special approach towards the prevention and treatment of juvenile delinquency and also provided a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. The law replaced the Children Act, 1960. This Act, the first central legislation on Juvenile Justice was passed in 1986, by the Union Parliament, thereby providing a uniform law on juvenile justice for the entire country.

Juvenile Justice Act, 1986 was applied uniformly throughout India except state of Jammu and Kashmir. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems.

The Juvenile Justice Act, 1986 was more humanistic and treatment-oriented. This Act was considered a unique piece of social legislation intended to provide care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles as well as the adjudication of matters relating to the disposition of delinquent juveniles.

In a landmark step, the Government of India, repealing the juvenile justice Act 1986, introduced juvenile justice (Care and Protection of Children) Act in 2000 and further, amended , it in 2006, so as to make it responsive to the emerging needs in the tiled of juvenile justice, and making it, compatible with UNCRC standards. The Juvenile Justice Act, 2000 aims at consolidating and amending laws relating to juveniles in conflict with law, and children in need of care and protection by providing proper care, protection and treatment by catering to their developmental needs, by adopting child friendly approach in adjudication and disposition of matters in the best interest of children, and for their rehabilitation through various institutional mechanisms established.

With the passage of time there is a shift of strategic focus of the country from welfare to development to a right based approach. In the 9th Plan child development was viewed, not merely as a desirable societal investment for the nation's future but

also as the right of every child to achieve his or her full development potentials. The 11th Plan in its vision has included commitment to survival, protection and all round development of children of all ages, communities and economic groups.

National Commission for Protection of Child Right has also been constituted by the Government of India in March 2007 in order to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms 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 Children, under The Commission for Protection of Child Rights Act, 2005, passed by Parliament in December 2005.

The Indian judiciary has given numerous decisions on the juvenile justice. Among these few are leading cases on juvenile justice. The Indian Supreme Court in *Pratap Singh vs. State of Jharkhand and Anr.*(2005) 3 SCC 551 where person has not completed age of 18 he will be governed by new act of 2000. In *Vikram Singh V. State of Haryana*, appellant accused claimed to be juvenile on date of incident, appellant was convicted by trial court and latter confirmed by high court the Supreme Court held, according to school certificate of appellant on date of incident his age was sixteen years during trial juvenile justice act of 1986 was applicable after coming into force of act of 2000 'juvenile in conflict with law' means child who had not completed age of eighteen years - considering facts and circumstances of case benefits of act of 2000 be given to appellant period of sentence be adjusted for sentence already gone appellant be released from custody.

When the JJA was enforced, the Supreme Court emphasized that, about 30 crores of young boys and girls come within the purview of the Act. There can be no two opinions that these children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene-physical and mental. The problem is, therefore, gigantic, at the same time, there is demand for immediate attention-unless the importance of the matter is properly perceived and the response is adequate both in regard to sufficiency of actions and immediacy of attention, the purpose of the Act cannot be fulfilled. It is one of the paramount obligations of those who are in charge of governance of the country today to attend to the children to make them appropriate citizens of tomorrow.

**STATEMENT OF PROBLEM**

- A considerable number of children are victims of terrorism and natural disasters. 30,000 children were orphaned by terrorism in Punjab. In Jammu and Kashmir, terrorism led to a high dropout rate of 48 per cent among boys and 60 per cent among girls. Poverty, neglect, ill treatment, and family discord are forcing an increasing number of children to run away from home and take shelter on the streets. The Government of India has mentioned the number of children living on the streets as fifty lakh in 1998.
- The nomenclature and the categories of children under the JJ (C&P) Act changed to children in need of care and protection and included many more categories within its purview. This definition excludes child beggars from its purview and includes three new categories: namely, children living with guardians posing a threat to their safety, ill and disabled children, and child victims of armed conflicts, civil commotion, and natural disaster.
- According to the statistics made available to the UN secretary general's report, "We the Children", India has a long way to go in meeting the needs of its children. The figures state that 63 per cent of children born in India today would not be registered at all, 25 per cent will not be immunized against any disease, 26 per cent will not have access to clean water, 47 per cent will suffer from malnutrition in the first three years of their life, 6 per cent will be born with weight less than 2500 grams, 15 per cent will never go to school, and only 52 percent of children who begin at the first class will reach the fifth.
- The profile of children in India reveals that a majority of them are living in conditions of want, deprived of basic survival, subsistence, and developmental opportunities. High rates of child mortality, school dropouts, child labour, handicapped children, and the problem of juvenile delinquency are indicators of the need for intervention by the state.
- The basic data relating to the number of juveniles in need of care and protection and their location continues to be non-existent. Therefore, it is difficult to ascertain the criteria by reference to which the number of juvenile courts or juvenile welfare boards, homes, and other services at various places may be determined.

- Barring a few instances, there has been no organized pressure on the state either from the beneficiaries of the system or any other group to improve the JJS policy or operations. The beneficiaries of the JJS are children. Most of these children come from low economic, social, and educational backgrounds. Neither does their physical and mental growth or their status in the society give them the ability to organize themselves and lobby for the protection of their interests in any articulated fashion.
- In India, various voluntary workers and organizations have been involved in the welfare of children but they have not evolved any mechanism of co-operation among themselves, or dialogue with one another, or joint action for a place of priority for the children by the state. Individual persons or organizations have taken up the issue with the state on individual instances of injustice to children involved, but there has been no consistent pressure from the social workers on the state to brace it seriously to ameliorate the conditions of children.
- The JJ (C&P) Act has been enacted with the apparent objective of bringing the law in accordance with the rights approach of the CRC but its provisions fail to reflect that policy change
- The Act requires change in the policy is from piecemeal implementation to implementation of the JJ (C&P) Act as a whole. Cooperation of various agencies involved in the system and coordination of their activities is necessary for ensuring care, protection, and developmental opportunities to all children as envisaged in the Act.
- There is no dearth of evidence in the field of juvenile justice of the large-scale unawareness of the law itself among the very personnel of the states who are supposed to operate and function under it. The need for orientation, in-service training, and periodical refresher courses for them in these circumstances can never be overemphasized

## **HYPOTHESIS**

- A special provision for juveniles in Juvenile Justice Act is in consonance with Art 15(3) of the Indian constitution.

- The present Juvenile justice Act, 2015 is inadequate for the safeguard of juveniles in present scenario.

## **RESEARCH METHODOLOGY**

The proposed study would be based mainly on the method of doctrinal explanatory, observational in addition to descriptive, historical, analytical research methods shall also be applied in accordance with the need of prospective study. Where the things are of introductory and observatory in nature, the method to be applied will be analytical.

The information shall be gathered using secondary source of data. The research would be descriptive and narrative information using secondary sources of data. It will include governmental and semi –governmental publications, earlier research, personal records, mass media reports and law journals, public and personal documents, internet magazines and other similar good sources of data. Some primary source of data could also be used in accordance with the requirements of study. The proposed study will definitely enrich the existing knowledge about the legal aspects of ‘Juvenile Justice’.

### **Chapter 1: Introduction**

This chapter introduces the topic of the thesis work. In this process, this chapter covered research problem, research methodology, significance of study, hypothesis. Thereafter, this chapter gives the framework and contents of the rest of thesis in very brief. This also mentions the objective of thesis. The introduction has covered the role political parties, civil society in the juvenile justice.

### **Chapter 2: International perspective of Juvenile Justice: An Overview**

Juvenile delinquency is a worldwide problem that has ebbed and flowed in focus and attention just as it has in the United States. The effects of globalization have impacted the juvenile justice arena just as they have numerous other areas of criminal justice operations. Globalization refers to the increased connectivity and interdependence that has evolved among countries. This chapter has discussed the various United Nation’s convention regional conventions and efforts made for

juvenile justice in other countries like USA, UK. This chapter contains provisions of Declaration of the Rights of the Child 1959, United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985, The United Nations Convention on the Rights of the Child, 1989<sup>1</sup>, Optional Protocols to the CRC on Sex Trafficking, Armed Conflict, Universal Declaration of Human Rights 1948<sup>2</sup>, International Covenant on Economic, Social and Cultural Rights 1966<sup>3</sup>, International Covenant on Civil and Political Rights 1966<sup>4</sup>, Convention on the Elimination of all Forms of Discrimination against Women 1979<sup>5</sup>, The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990<sup>6</sup>, African Charter on the Rights and Welfare of the Child 1990, European Convention on the Exercise of Children's Rights 1996, American Convention on Human Rights (Pact of San José, Costa Rica)<sup>7</sup>, Havana Rules 1990. The impact of U.N. instruments developments in India has been also discussed.

### **Chapter 3: Constitutional provisions relating to juvenile justice**

This chapter has discussed the legislative history of juvenile justice in India. The Evolution of the Juvenile Law in India (1773- 2000)<sup>8</sup>, The Apprentices Act, 1850<sup>9</sup>, The Indian Penal Code, 1860, Constitutional Protection for Children, The

<sup>1</sup>The United Nations Convention on the Rights of the Child, <https://www.unicef.org/au/Discover/What-we-do/Convention-on-the-Rights-of-the-Child/childfriendlyrcr.aspx>, Visited on: 31-03-2016

<sup>2</sup>The Universal Declaration of Human Rights, with a Preamble and 30 articles, was adopted by the U.N. General Assembly on December 10, 1948. G.A. Res. 217 A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948). <http://www.un.org/Overview/rights.html> (last visited on dated 24th March, 2017)

<sup>3</sup>The International Covenant on Economic, Social and Cultural Rights, with a Preamble and 31 articles, was adopted by the U.N. General Assembly on December 16, 1966, and entered into force on January 3, 1976. G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess., Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3 <http://www.ohchr.org/english/law/cescr.htm> (last visited 23rd March, 2017)

<sup>4</sup>The International Covenant on Civil and Political Rights, with a Preamble and 53 articles, was adopted by the U.N. General Assembly on December 16, 1966, and entered into force on March 23, 1976. G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess. Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171. <http://www.ohchr.org/english/law/ccpr.htm> (last visited 23rd March, 2017).

<sup>5</sup>Convention on the Elimination of all Forms of Discrimination Against Women <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (last visited 27th March, 2017).

<sup>6</sup>The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990, <https://www.crin.org/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf>, Visited on: 31-03-2016

<sup>7</sup>The American Convention on Human Rights, with a Preamble and 82 articles, was adopted on November 22, 1969, in San José, Costa Rica, and entered into force on July 18, 1978. OAS, Treaty Series, No. 36; U.N. Registration 08/27/79 No. 17955. <http://www.oas.org/juridico/english/treaties/b-32.html> (last visited 26th March, 2017)

<sup>8</sup>Constitution of India, Paras Diwan, Edn. 2014, 36

<sup>9</sup> Drug addict juvenile and the Law, P. Panda, The Law Publication, 2016 edition.

Probation of Offenders Act in 1958, The Central Children Act, 1960, The Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice Act, 2000, The Child Labour (Prohibition and Regulation) Act, 1986, The Prohibition of Child Marriage Act, 2006. This chapter has also analyzed the statics data.<sup>10</sup>

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

The Juvenile Justice (Care and Protection) Act, 2015 received the assent of the President on the 31<sup>st</sup> December, 2015 and Act published in the Gazette of India. This Act contains 112 sections dividing into 10 chapters. This chapter has analyzed Juvenile Justice (Care and Protection) Act, 2015 comprehensively. The New Juvenile Justice (care and Protection of children), 2015, has introduced some of the remarkable changes in the existing Juvenile Law. One of such major changes is, juvenile of age group of 16 to 18 are to be tried like an adult. Also, the person who has attained the age of twenty one while in sentence will be send to the jail for rest of the time span. However, all these decisions will be taken by the Juvenile Justice Board. The key purpose to legislate the Juvenile Justice Act, 2015 was the increased number of crimes (mainly rapes), by juveniles of 16 to 18 age groups. However, numerous questions were raised on the new Juvenile Justice Act, 2015, as being more retributive than reformative. Retributive because it contains provisions for teenager who commits heinous crime (give punishment seven years or more) shall be tried like an adult but in the children's court. The Children's Court shall make sure that the child who is found guilty of heinous crime shall be sent to a place of safety till the age of twenty-one years and afterward, the person shall be shift to jail. It means once a juvenile is found guilty; he shall not get the benefit of being child and may be sent to jail if he commits a heinous crime.

The new Juvenile Justice Act, 2015 was also criticized by many protestors as being unconstitutional. It violates Article 14, 15(3) and 20 of Indian Constitution<sup>159</sup>. Constitution of India enumerated every person is equal before law<sup>160</sup> but if we read this article with 15(3) then it is very much clear to us that Government can make special provision for the benefit of children. It is also enumerated in the United Nations Standard Minimum Rules for the Administration of Juvenile, 1985 that the

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<sup>10</sup> Data Source: Census of India 2010-11, Assessed from [www.childlineindia.org.in/child-in-india.htm](http://www.childlineindia.org.in/child-in-india.htm), dated 22.06.2017, time 12:30 P.M.

prime important should be given to the juvenile Justice and while considering a juvenile in conflict with law.

If a sixteen years old juvenile commits a heinous crime and his or her offence is punishable with seven year sentence, then he/she need to be produce before the Juvenile Justice Board comprising a magistrate and two social workers<sup>165</sup> who will decide on the physical and mental capacity of the child; whether that juvenile has committed such offence has the ability to understand the consequence of the offence and in what circumstances the offence has been committed.

The amendment of Juvenile Justice Act, 2015 has created controversy in regard to the Age of Consent, when it read with the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and the Prohibition of Child Marriage Act (PCM Act) . First of all the POCSO Act states the age of Consent is 18 years and if any crime committed by a Juvenile under the POCSO Act then as per the section 23 of the POCSO Act it will be dealt as per the provision of Juvenile Justice Act, 2000 (Now as per the new amended Act). Again, the PCM Act states that the child marriages are voidable but not void. In such a situation, many Juvenile who are in involved in a love relation can marry each other and can enter in ‘consensual’ sexual act. In such situation the consented sexual act may attract the provision of POCSO Act and Juvenile Justice Act, 2015 and they may be tried as adult offender. In a hypothetical situation, when both the guy and girl are involved in a consensual sexual relation, then the male child shall be treated Children in Conflict with Law and the female will be treated as Children in need of care and protection.

Thus, considering all these things in mind, author thinks that it is necessary for the Government to rethink and peruse child-friendly amendments in the new Juvenile Justice Act, 2015 so that injustice in Juvenile Justice Act can be curved.

### **Chapter-5 Juvenile Justice and Indian Judiciary**

This chapter has explored the judicial approach towards juvenile justice. In this context this chapter has discussed the leading cases on juvenile justice and latest case laws.

In *Emperor v. Dharam Prakash*<sup>11</sup> the protective philosophy underlying the special legal provisions relating to children has been reiterated by the judiciary on various occasions under the Reformatory Schools Act. The courts have held that very young children should not be sent to prisons.<sup>12</sup> As far as possible, such young children should be released under the supervision and care of their parent or guardian.<sup>13</sup> The court must have clear evidence of the age of a person before sending her/him to a reformatory school. It was clarified that a child could not be sent to a reformatory school unless an order of institutionalization, that is, of imprisonment, was made<sup>14</sup> and that the duration of stay could not be less than that prescribed by the rules.<sup>15</sup>

In *Bhoop Ram v. State of UP*,<sup>16</sup> the Supreme Court disagreed with the sessions judge who refused to rely on the school-leaving certificate stating that it was not unusual that in school age was understated by one or two years for future benefit, and declared the person to be above the specified age on the basis of medical opinion. Giving precedence to the authentic documentary evidence over the medical opinion, the Supreme Court said that medical evidence was an estimate based on radiological examination and physical features and the possibility of an error of estimate creeping into the opinion cannot be ruled out. It further reiterated that school certificates should be accepted as reliable and genuine if there was no material on record to throw doubt about the authenticity of the entry.

In *Gaurav Jain v. Union of India*,<sup>17</sup> and *Vishaljeet v. Union of India*,<sup>18</sup> the issue was rehabilitation of child prostitutes and children of prostitutes. While no reference was made to the Children Act or the JJA in *Gaurav Jain*, *Vishaljeet* did point out that the JJA, which provided for care, protection, rehabilitation of neglected children, made specific provisions for taking charge of and making appropriate orders relating to child prostitutes. The court did not agree with the proposal for separate hostels and schools for children of the prostitutes as that would have hindered their integration in the mainstream of society. It appointed a committee to study the

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<sup>11</sup>AIR 1926 (Lah.) 611

<sup>12</sup>*Parbati v Emperor*, AIR 1921 (Cdh) 190

<sup>13</sup>*Mst. Parbati v Emperor*, AIR 1921 (Cdh) 190

<sup>14</sup>*Nawab Dheru Gul v. Emperor*, AIR 1934 (Pesh.) 29

<sup>15</sup> *State v. Jahlu*, AIR 1953 (HP) 40

<sup>16</sup> 1989 (1) SCALE 799

<sup>17</sup>AIR 1990 (SC) 292

<sup>18</sup> (1990) 3 SCC 318

question in depth and submit a report. No directions for rehabilitation were made in Vishal Jeet in view of the order in Gaurav Jain.

In *State (Government of NCT of Delhi) v. Ram Singh & Ors*, S.C. No. 114/2013 the Delhi High Court convicted 4 accused of death sentence for very infamous case Delhi Gang rape. But one juvenile was convicted for three years because he was juvenile at the time of committing crime. This has raised the eyebrows of all sections of society and it was demand to amend the law.

### **Chapter 6 Comparative analysis of juvenile in USA, UK and India**

The intensity and severity of juvenile offences are generally determined by the social, economic and cultural conditions prevailing in a country. There is evidence of a universal increase in juvenile crime taking place concurrently with economic decline, especially in the poor districts of large cities. The problem of juvenile justice is a universal problem irrespective of the nation. This chapter has discussed the position of United States of America, UK and India. The researcher has discussed the Children and Young Persons Act, 1969 of UK, and laws of USA with case laws.

In USA age to determine juvenility varies from state to state, in most of the states it is 18 years but in few it is 17 years and 16 years respectively. Many states permit execution of juvenile of 16 years for murder as an adult and could be tried by criminal courts for prosecution and punishment as adults as per the gravity of the alleged offence. Till now many juvenile offenders have been executed under capital punishment but in 2005 Supreme Court of U.S.A in the case of *Roper v. Simmons*<sup>19</sup>, held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18.

In UK child between 10 to 18 years becomes criminally responsible for his action and be tried by the Youth Court and could be tried in an adult court as per the gravity of the offence committed. In France no criminal charge can be brought against a child up to the age of ten years; and for child between ten to thirteen years of age, only educational penalties such as placing in a specialized Centre or home are to be given, while between thirteen to sixteen years of age, minors will get only half of the

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<sup>19</sup>543 U.S. 551 (2005)

adult sentence. Lastly, between sixteen to eighteen years of age, person would be remanded to Criminal Court and plea of juvenility can be set aside.

In the case of *L v. DPP*<sup>20</sup> the youth court was correct to find that there was sufficient evidence of the presumption that the appellant was *doliincapax* to be rebutted. In *IPH v. Chief Constable of South Wales*<sup>21</sup> a 11 year old boy was said to have enough knowledge that his act was causing a damage to the motor vehicle and also in the case of *J.M. v. Runeckles*<sup>22</sup> where a 13 year old who attacked under kid with a milk bottle, must have known that it was seriously wrong to engage in such a behaviour. In the case of *Director of Public Prosecutions v. K & B*<sup>23</sup> children below 14 years of age or of 14 years of age were convicted for rape and indecent assault as the children were found with guilty mind leading to *mensrea*. In *Powell's* where a 16 year old with a previous conviction for indecent assault received six years Section 53(2) detention of rape of a 15 year old girl, illustrates the courts attempt to balance the various considerations posed by the very serious youthful offenders.

In the case of *Harilal Mallick v. State of Bihar*<sup>24</sup>, it was held that not only a proof of a child being under 12 but also it has to be proved that the child did not have enough understanding at that point of time and was immature. If no sufficient proof is laid down in front of the court to prove the immaturity of the child then it will be presumed that the child- accused intended to do what he really did. Thus in this case where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity or understanding was led on his behalf, thus held liable.

## **Chapter 7: Conclusion and Suggestion**

It is very hard to draft a suitable and precise definition of juvenile delinquency. Several factors are responsible for not allowing a rational and reasonable formulation. One hurdle is similar to that encountered while defining crime in general, i.e. the choice between the social and legal definitions.

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<sup>20</sup>(2002) 166 JP 113

<sup>21</sup> (1987) Crim LR 42

<sup>22</sup> Supra note 27

<sup>23</sup>[1990] 1 WLR 1067

<sup>24</sup>1978 SCR (1) 301

This is a reason why Sociologists insist that legal definitions are of no means in understanding the true nature of delinquency and in knowing who are juvenile offenders, since the arrest or conviction of a child may depend upon various fortuitous circumstances. They also maintain that legal definitions differ from place to place and time to time and hence are not suitable for scientific studies. The reasons as to why legal definitions are to be preferred are the same as in the case of the definition of crime.

The juvenile delinquency has been defined legally but it is ordinary, because from the legal definition, clear-cut picture of juvenile delinquency is not coming out. As per the provision laid down in the Act, an act forbidden by law for children up to the age of eighteen years is juvenile delinquency. Therefore we can say that if a child is found to have committed an act of juvenile delinquency by a court, is juvenile delinquent.

In India, the definition of juvenile delinquency presents no such problems as are faced in the US and some other countries. The concept is confined to the violation of ordinary penal law of the country so far as the jurisdiction of the Juvenile Court is concerned. The present law which governs the juveniles who are in conflict with law and children who needs the care and protection is called the Juvenile Justice (Care and Protection of Children) Act, 2015. This law has replaced the earlier law governing juveniles and which was known as the Juvenile Justice (Care and Protection of Children) Act, 1000, which was in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules, 1985).

The Juvenile Justice (Care and Protection of Children) Act, 2015, which replaces the Juvenile justice (Care and Protection of Children) Act, 2000 is primarily designed to give effect to the provisions of the UN Convention on the Rights of the Child, 1989 (ratified by India in December 1992). The Convention laid stress on social re-integration of child victims, to the extent possible, without resorting to judicial proceedings.

In recent past there have been a demand that the age of juveniles should not be an impediment in awarding sentences to the offenders of heinous crimes. The challenge was made on the twin grounds, that the Act would result in under

classification if all juveniles, irrespective of the level of mental maturity, are to be grouped in one class and on the further ground that the Act replaces the criminal justice system in the country and therefore derogates from a basic feature of the Constitution. It was argued that the juveniles who have the sufficient maturity to understand their acts should be kept out of the Juvenile Justice Act. But the Supreme Court held that the Juvenile Justice Act is wholly consistent with Article 14. The court said that same penal law applies to all juveniles, only difference is that a different scheme for trial and punishment is introduced by the Juvenile Justice Act. The law is in accordance with Articles 14 and 21 of the Constitution of India.

The rights guaranteed to an accused person are nearly the same as in the American Constitution except that the right to trial by jury has not been given in India. Also, there is no provision corresponding to the right of speedy trial as given in the American Constitution though the same is now read into Article 21 of the Indian Constitution. There is the right against self-incrimination, the right to have a lawyer of one's choice and the right not to be deprived of life or liberty except according to procedure laid down by law. The constitutional issues have not been raised in India till now because of the different nature of the Juvenile Courts in India and also due to some difference between the Indian and American Constitutions regarding the procedure to be employed for depriving a person of his life or personal liberty. In India, the Juvenile Courts are criminal courts unlike in the US and England where they are regarded as courts of a civil nature. It was probably due to this reason that safe-guards have been provided to the juvenile offenders on the lines of adult offenders. A neglected child must be produced before the Welfare Board within 24 hours of his being taken charge of by a police officer. The period of detention of a delinquent child in a reformatory school cannot exceed the maximum period of punishment provided for the offence.

The Indian courts have considered and laid down certain guidelines with regard to the betterment of children especially the girl child. The Supreme Court while discussing the menace of child prostitution strongly emphasised that the law enforcing authorities should take very severe and speedy legal action against all the erring persons such as pimps, brokers, and brothel-keepers. The court in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offence. The court in *Vishal Jeet v. Union of India*, directed that both

the State and Central Governments have an obligation to safeguard the interests and welfare of the children and girls of this country have to evaluate various measures and implement them in the right direction. Under the Indian Constitution, what is required to deprive a person of his life or liberty is the procedure established by law. Any procedure laid down by law which does not violate any fundamental right is a valid procedure.

Reasonable restrictions can be placed on the fundamental rights and the restrictions on the rights of juvenile offenders laid down in Children Acts are likely to be upheld by the Indian courts. Under the due process clause the American courts have a much wider latitude to declare special procedures as “unconstitutional” as compared to their Indian counterparts. Though by making a very liberal use of Article 21 the Indian courts have brought the position almost on a par with the one obtaining in the US.

Children are more vulnerable than adults to the conditions under which they live. Hence, they are more affected than any other age group by the actions and inaction of governments and society. In most societies, including ours, views persist that children are their parents’ property, or are adults in the making, or are not yet ready to contribute to society. Children are not seen as people who have a mind of their own, a view to express, the capacity to make a choice and an ability to decide. Instead of being guided by adults, their life is decided by adults. Children have no votes or political influence and little economic power. Too often, their voices are not heard. Children are particularly vulnerable to exploitation and abuse.

All people under the age of 18 are entitled to the standards and rights guaranteed by the laws that govern our country and the international legal instruments we have accepted by ratifying them. The Constitution of India guarantees all children certain rights, which have been specially included for them. These include: Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A). Right to be protected from any hazardous employment till the age of 14 years (Article 24). Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)). Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and

youth against exploitation and against moral and material abandonment (Article 39 (f)).

There is a well-founded general perception that a wide gap exists between the theory and practice of juvenile justice in India. The ground realities regarding juvenile justice are much at variance with the idealism projected through the old legislation. A few factors responsible for this state of affairs are:

1. There is a heavy work-load all around, in courts, police and probation services.
2. Lack of proper planning and dearth of resources affected the quality and working of the institutions.
3. There was hardly any public interest and support regarding juvenile delinquency and its control.
4. There was lack of proper and adequate evaluation of the work connected with the juvenile justice and effective follow-up action and remedies were therefore, not possible.

However, the new JJ Act, 2015 may prove to be more effective than earlier legislations for juveniles.

It is not easy to give a precise definition of juvenile delinquency. Several factors are responsible for not allowing a clear-cut formulation. One hurdle is similar to that encountered while defining crime in general, i.e. the choice between the social and legal definitions. Sociologists insist that legal definitions are of no help in understanding the true nature of delinquency and in knowing who are juvenile offenders, since the arrest or conviction of a child may depend upon various fortuitous circumstances. They also maintain that legal definitions differ from place to place and time to time and hence are not suitable for scientific studies. The reasons as to why legal definitions are to be preferred are the same as in the case of the definition of crime. The legal definition of juvenile delinquency is obvious. Any act prohibited by law for children up to a prescribed age limit is juvenile delinquency and it follows, therefore, that a child found to have committed an act of juvenile delinquency by a

court is a juvenile delinquent.

The Juvenile Justice Act, 2015 states that a 16-18 year old committing a serious or heinous offence and apprehended after 21 years of age, will be tried as an adult. It can be pointed out that this would violate Article 20(1) of the Constitution, which states that no person can be given a penalty greater than that which would have been applicable to him, under a law not in force at the time of commission of the offence. This means that at a later date the same person may face a penalty that is higher than what would be applicable to him at the time of commission of the serious offence. It noted that this provision goes against the right to equality and recommended deleting it.

Article 14 of the Constitution obligates the State not to deny to any person equality before law or equal protection of laws within the territory of India. It is pointed out that in India the concept of equality is not the formal equality as was observed in USA but is that of proportional equality which recognized that everyone is not equal and that the State was obligated to enact laws in favor of the weak and disadvantaged section of the society. Proportional equality is based on that of right to equal treatment in similar circumstances and that the persons who were unequally circumstanced could not be treated at par. It is submitted that through Article 14, it is recognized that weaker and vulnerable sections required special/additional protection. Further, Article 15(3) of the Constitution permitted the State to enact special laws for the protection of children.

It can be concluded that the underlying principle of the juvenile justice system has always been to treat all children who have committed offences within the juvenile justice system and differential treatment or sending the child to the adult criminal justice system has always been excluded by the Supreme Court. It can be constrained to observe that observations/judgments of the Apex Court of the country have simply been ignored.

Inadequate number of CWCs and JJBs, and many JJBs and CWCs exist only on paper, and are not functioning. Further, the more populous districts are likely to produce larger CWC caseloads and need additional CWCs.

Despite the fact that there are several homes being run by the government and

other civil society organisations, there is still dearth of homes to 40 accommodate both CNCP and CCL.

There is no Institution nominated either at state level or at national level to monitor the progress and provide support to the child protection structures. The JJ Act requires concurrent training and capacity building of CWC, JJB, Police, Child care institution officials and other stakeholders.

Clause 2(35) of the JJ Act, 2015, the word 'juvenile' has been defined to mean a child below the age of eighteen years. The definition of the word 'child' has been included under the definition clause, and the word 'juvenile' is considered not to be appropriate because of the element of negativity involved in its meaning, the definition of the word 'juvenile' may not be included under the definition clause.

### **SUGGESTION**

There is an urgent need to take concrete steps to implement the provisions of the Juvenile Justices Act, 2015 at national as well as at the state levels. However, while discussing the provisions of juvenile legislations dealing with the juvenile delinquents, following issues emerged which is needed to be redressed by applying the following suggestions:-

- i. Lack of the central agency to monitor various legislations including the Juvenile Justice Act, 2015 concerning juvenile. Therefore the government of India may like to set up a National Commission for Children to monitor the implementation of social legislation concerning the children in the country.
- ii. Most of the states are yet to constitute juvenile courts to cover all the districts as required under the Juvenile Justice Act. As a result, the power of such courts is being exercised by other authorities who may not have special knowledge of child psychology and child welfare. Though this provision may be legally tenable, yet it may run contrary to spirit of law. Juvenile court may be constituted by all states to cover each district, as laid down under the Juvenile Justices Act.
- iii. The mandatory requirement of honorary social worker on the panel of juvenile courts may be fulfilled immediately by all the states.

- iv. Effort may be made by the magistrates appointed on juvenile court who must have special knowledge of child psychology and child welfare as laid down under the juvenile justice act.
- v. There may be separate observation homes for neglected and delinquent juvenile keeping in view their age and nature and gravity of offence committed by them, for the temporary reception during the pendency of an inquiry regarding them under the Juvenile Justice Act to avoid contamination with others.
- vi. Police may be allowed to release the juvenile delinquents giving them warning keeping in view the nature and gravity of the offences committed by the juveniles. A suitable amendment may be made in the existing juvenile justice Act.
- vii. Special cadre of police personnel may be set upto at least in the metropolitan cities in the country, to deal with handling the juvenile effectively.
- viii. Adequate number of professionally qualified staff especially those charged with magisterial, treatment and rehabilitation responsibilities may be appointed.
- ix. The staff engaged in the juvenile justice system particularly probation officers, may be given attractive incentives and more promotion avenues keeping in view the nature of duties assigned to them.
- x. In order to have effective functioning of the juvenile justice system, there may be close co-ordination between police, magistracy and social services.
- xi. The government of India may like to take up the matter with the state Government to constitute State Level Commission for children to monitor the implementation of The Juvenile Justice Act and submit periodical reports.
- xii. Status of juvenile court may be up-graded by associating them with the panel of Medical Officer, Educationalists, and Case Worker etc.

- xiii. After care and rehabilitation of juvenile may be an integral part of the statutory responsibility of the Government. A suitable amendment in the legislation may be introduced.
- xiv. Schools, education and families are very much interpedently and play a major role in shaping the future of children. In our society, education is recognized as one of the most important paths to success.
- xv. Poverty being an important factor, steps to raise the income level of poverty-stricken families, providing job opportunities, establishment of schools, improvement of job environment, providing recreational facilities etc. should be taken care of.
- xvi. Family needs greater attention and steps towards reorganization of family structure are important.

After discussing various provisions relating to the functioning of different agencies dealing with the juvenile delinquents under the Juvenile Justice Act 2015, it may be stated that it is indeed a milestone in the progress of juvenile justice in India.

Nothing is an offence which is done by a child, who has not attained sufficient maturity of understanding to judged of the nature and consequence of his conduct in that occasion. It has been said so taking into account the innocence of the child as well as his incapacity to differentiate between right and wrong and his inability to understand the consequence of the act. Children are to be treated as assets to the future of the nation. Treatment meted out to the juvenile delinquents should be forward looking and progressive. It cannot be viewed and addressed from a uni-dimensional, restrictive perspective.