

## **“A Socio Legal Study on Juvenile Justice”**

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### **I. INTRODUCTION**

In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated. Contemporary World has seen increase in the rate of crime committed by juveniles which is a very serious problem especially in India as these juveniles are the future of their respective countries. More and more children are moving towards the pathway of crime to lead their life. Various factors are responsible for this approach of juveniles.

Change is the natural phenomenon and this phenomenon applies in every sphere of life so the law cannot be an exception to this. In the same way, the laws relating to child, having its seeds right from enactment of the Constitution of India in the form of fundamental rights under Article 15(3) read with Directive Principles of State Policy under Article 39(e) & (f) along with fundamental duties under Article 51A, was the need of the society. The laws relating to the child was also expedient to be enacted due to accession by the Government of India to the Convention on the rights of the child, 1992, the standards set in UN rules for the administration of justice, 1985, UN rules for protection of juveniles deprived of their liberty, 1990 and Hague Convention on Adoption, 1993.

And therefore, the law was enacted in the year 1986 in form of Juvenile Justice Act and the same was, as per the above said natural phenomenon of changes, changed time to time accordingly Le. Juvenile Justice (Care and Protection) Act, 2000 and Juvenile Justice Act, 2015.

The frightful incident of “*Nirbhaya Delhi Gang Rape Case*”<sup>1</sup>, on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “*Juvenile Justice (Care and Protection), 2015*”. In other words, the present Act is the result of post Nirbhaya's incident development. In this backdrop, the present Act has to be analysed and discussed

A nation's children are its supremely important asset and nation's future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.<sup>2</sup> Children are precious treasures of the future and they are the most valuable assets of a nation and society. It is the duty of State to look after them with a view to ensure the complete development of their personalities. Since society expect them to grow as responsible citizens of the future, they need special care, protection, affection and facilities because of their tender age, physique and underdevelopment mental faculties. There is no exaggeration if it is said that future well being of a particular nation depends upon how the children grow and develop.<sup>3</sup>

The term Juvenile Justice is a pervasive term. Only in one sense it has a uniform meaning and that is rehabilitation and social reintegration through any of the legalised measures. The term juvenile is a stigmatic term which essentially refers to a child under certain prescribed age who has been alleged or found to have committed an offence. The international documents dealing with the human rights of the children has not been successful in replacing this stigmatic term. The United Nations Convention on the Rights of the Child 1989 also

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<sup>1</sup>1998 SCC, Del 879 : (1999) 77 DLT 181

<sup>2</sup>“*Juvenile Deviations And Protection in the Context of the Juvenile Justice Act, 1986*”, Indian Journal of Criminology and Criminalistics, 25(1-3), 2004 at 6-14.

<sup>3</sup>Lakshmi Kant Panday v Union of India, 1984(2) SCC 244.

uses the term 'children accused of'. In India, for the first time efforts were made to equate the term juvenile with the term child or vice-versa with the idea of removing the stigma attached with the term juvenile through the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000. The term juvenile refers to juvenile delinquent what now is called juvenile in conflict with law and the term child refers to neglected juveniles what now is called children in need of care and protection. The earlier legislations also tried its best to give another meaning to the term juvenile but failed. Juvenile justice legislation in India from 1920 to till the passing of the Act 2000 maintained the clear distinction between neglected juvenile and juvenile delinquent. The restructuring of the labour market, the extension of the maturity gap (the period of dependence of young adults on the family) and, arguably, the more limited opportunities to become an independent adult are all changes influencing relationships with family and friends, educational opportunities and choices, labour market participation, leisure activities and lifestyles. It is not only developed countries that are facing this situation; in developing countries as well there are new pressures on young people undergoing the transition from childhood to independence. Rapid population growth, the unavailability of housing and support services, poverty, unemployment and underemployment among youth, the decline in the authority of local communities, overcrowding in poor urban areas, the disintegration of the family, and ineffective educational systems can be some of the reasons young people deal with.

**CRIMINAL BEHAVIOUR:** The relationship of personality measures with delinquent behavior continues to arouse considerable controversy. Criminality is obviously a continuous trait of the same kind as intelligence, or height, or weight. It is suggested that socialized behaviour rests essentially on a basis of conditioning which is applied during a person's childhood by his parents, teachers, and peers, and that his conduct in later years is determined very much by the quality of the conditioning received at that time, and also by the degree of condition ability which he himself shows; that is to say, the degree to which he is capable of being conditioned by stimuli which are presented to him.<sup>4</sup>

**WHO IS JUVENILE:** The age ceiling for purposes of being treated as juvenile varies from country-to-country, state-to-state and act-to-act. The age of majority is the threshold of adulthood as it is conceptualized in law. It is the chronological moment when children legally assume majority control over their persons and their actions and decisions, thereby terminating the legal control and legal responsibilities of their parents over and for them.

**“Juvenile” or “child” means a person who has not completed eighteenth year of age”.**

Under section 82 of the Indian Penal Code<sup>5</sup>, nothing is an offence which is done by a child under seven years of age and under section 83<sup>6</sup> nothing is an offence which is done by a child under seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. Maturity of understanding is to be presumed between the ages of seven and twelve unless the contrary be proved.

According to the Constitution of India (Article 23)<sup>7</sup>, no child below the age of 14 must be employed in a factory or mine or engaged in any other hazardous employment. Article 45 says that the State will provide free and compulsory education to all children up to the age of 14. The legal conception of a child varies, however. The age of majority is 18 years for girls and 21 years for boys under the Indian Majority Act. On the other hand, under the Indian Penal Code, the age of sexual consent for girls is 18 years. These different age-specifics under different laws confound the very definition of a child.

The Committee on the Rights of the Child says in its Concluding Observations of January 2000: "In light of Article 1, the Committee is concerned that the various age limits set by the law are not in accordance with the general principles and other provisions of the Convention. Of particular concern to the Committee is the very low age of criminal responsibility under the Penal Code, which is set at seven years; and the possibility of trying boys between 16 and 18 years as adults. The Committee is concerned that there is no minimum age for sexual consent for boys. The Committee is further concerned that minimum-age standards are poorly enforced (e.g. the 1929 Child Marriages Restraint Act)."

“The legal definition of “child” is interchangeable with minor and varies according to each country's own individual interpretation, the Convention on the Rights of the Child defines a child as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.<sup>8</sup>

Convention on the Rights of the Child was adopted and opened for signature, by General Assembly on 20<sup>th</sup> November 1989. The motive of this Convention was to protect children from child abuse, child neglect and child exploitation. In 1992, India also ratified on the Child Rights. The Convention is guided by the

<sup>4</sup> Michael Wadsworth, ‘Roots of Delinquency’ (Henry Holt and Co., New York)

<sup>5</sup> Prabhas C. Sarkar, ‘Criminal Major Acts’, Sixth Revised Edition, Orient Law House, New Delhi.

<sup>6</sup> Ibid.

<sup>7</sup> Dr. J.N. Pandey, ‘Constitutional Law of India’, Central Law Agency, Allahbad.

<sup>8</sup> Convention on the Rights of Child, 1990, taken from <http://nicp.nisd.gov.in/internationalconv.php>

principle of a “first call for children” – a principle that essential needs of children should be given highest priority in the allocation of resources all times. It obligates the State to respect and ensure that children get a fair and equitable status in society and advocates their rights by all individuals and agencies – governmental, local, regional, national and international- to create an environment in which all children are able to reach their full potential.

Countries all over the world are facing difficult conditions to help their children grow to their full potential, children are living in worst conditions of all time and they need special care and consideration in the law according to their tradition and cultural values for the protection and harmonious development of the child. The Convention draws attention to these four sets of civil, political, economic and cultural rights of every child. Some of these include: -

### ***The Rights to Survival<sup>9</sup>***

It includes the right to life; the highest attainable standard of health, nutrition and adequate standards of living. It include right to a name and a nationality.

#### **Article 6 of the Convention provides as follows:**

- States Parties recognize that every child has the inherent right to life.
- States Parties shall ensure to the maximum extent possible the survival and development of the child.

### ***The Right to Protection<sup>10</sup>***

It includes freedom from all forms of exploitation, abuse, and inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflicts.

There are children who are particularly disadvantaged because of their social, economic, physical or mental condition. These children are placed under the category of children under special or difficult circumstances. The following groups of children have been included in this category by the Government of India:

- Children in labour
- Street children
- Children who are neglected or treated as juvenile offenders
- Children who are physically or mentally challenged
- Destitute children in need of adoption
- Drug addicts
- Children in prostitution
- Children of prostitutes
- Children of prisoners
- Refugee children
- Slum and migrant children.

### ***The Right to Development<sup>11</sup>***

It includes the right to education, support for early childhood development and care, social security and right to leisure, recreation and cultural activities.

### ***The Right to Participation<sup>12</sup>***

It includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

### ***Non- Discrimination<sup>13</sup>***

Article 2 mandates, State Parties shall respect and ensure the rights set forth in the present Convention. Without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. This principle would strengthen the protection given under the constitution of India as it includes other categories of prohibited discrimination such as discrimination on the basis of disability, property, birth, language, political or other opinion, colour and the open ended category of other status.

<sup>9</sup> Article 6, 7, 8 of the Convention on the Rights of the Child (1989),  
<http://nicp.nisd.gov.in/internationalconv.php>

<sup>10</sup> Article 11,16, 19, 20,22,32, 33, 34, 35, 36, 37, 38 of the Convention on the Rights of the Child (1989)

<sup>11</sup> Article 26, 28, 29, 31, 39 of the Convention on the Rights of the Child (1989)

<sup>12</sup> Article 13, 14, 17 of the Convention on the Rights of the Child (1989)

<sup>13</sup> Article 2 of the Convention on the Rights of the Child (1989)

### **THE JUVENILE JUSTICE ACT, 1986<sup>14</sup>**

This Act was to bring the operations of juvenile system in the country with the UN Standard Minimum Rules for the Administration of juvenile justice, Parliament seems to have tried to put its power under the Article 253 of the Constitution of India read with Entry 14 of the Union List<sup>15</sup> to make law for India be able to fulfill international obligations also. On August 22, 1986, the Juvenile Justice Bill, 1986 was introduced and passed by both the Houses of Parliament on December 1, 1986.

#### **Objectives of this Act are to:<sup>16</sup>**

- To lay down a uniform legal framework for juvenile justice in the country, to ensure that no child under any circumstances is put behind the bars;
- To provide a specialized approach towards the prevention and treatment of juvenile delinquents in its full range in keeping with the developmental needs of the child in any situation he/she found in;
- To establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation;
- To constitute special offences in relation to juveniles and provide for punishments therefore;
- To bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

### **THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000<sup>17</sup>**

This Act provides care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles. Several provisions of the Constitution including clause (3) of article (15), clauses (e) and (f) of article 39, articles 45 and 47 also impose on the State as a primary responsibility of ensuring that all the needs of children should be met and that their basic human rights are protected completely. On 20th November 1989 General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered to by all State parties was prescribed to secure best suited things for the child. The Convention emphasizes on the social re-integration of child who were victims, to the extent possible, without restoring to judicial proceedings. This is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing proper care, protection and treatment keeping in mind their developmental needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best possible approach for children and for their ultimate rehabilitation through various institutions established under this enactment.

#### ***Who is juvenile***

Sec.2 (k)<sup>18</sup> of the Act,2000 defines the term “juvenile” as follows:

"Juvenile" or "child" means a person who has not completed eighteenth year of age”

Proviso to Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000 mandated that a claim for juvenility could be raised before any court, at any stage, even after final disposal of the case.<sup>19</sup> Pleas as to the benefit of the Act cannot be raised for the first time before Supreme Court. Age of the accused is question of fact, which requires taking of the evidence.

“Child” of today cannot develop to be a responsible and reproductive member of tomorrow’s society unless an environment which is conducive to his social and physical health that is assured to him in every nation, developed or developing, links his/ her future with the status of the child. Neglecting the children means loss to the society as a whole if children are deprived of their childhood socially, economically, physically and mentally. The nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding father of the constitution, therefore have bestowed the importance of the role of the child in its best for development.<sup>20</sup>

<sup>14</sup> Juvenile Justice Act, 1986.

<sup>15</sup> Dr. J.N. Pandey, “Constitutional Law of India”, Central Law Agency, Allahbad

<sup>16</sup> Dr. Navreet, “*Childhood Crises-Child neglected and Juvenile Delinquency*”. ( Discovery Publishing House), New Delhi.

<sup>17</sup>The Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>18</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>19</sup> However, it is to be noted that in MURARI THAKUR AND ANR.VS. STATE OF BIHAR, AIR 2007 SC 1129 it was observed that plea of juvenility could not be taken in appeal before the Supreme Court as it was neither raised before the Trial Court or before the High Court.

<sup>20</sup> BANDHUA MUKTI MORCHA VS. UOI,(1997) 10 SCC 549: AIR 1997 SC 2218

In respect of the determination of age, school certificate of class 10<sup>th</sup> is given preference to other documents. Second preference was given to birth certificate and then the school record of the first attended school can be taken into consideration. However where the school documents and the birth certificate furnished by accused are not reliable then medical opinion is to be taken<sup>21</sup>. However, where a doctor's certificate recorded a finding that accused was less than 18 years of age without even indicating the basis for giving such an opinion vis-à-vis age is wholly improper.<sup>22</sup> As to who is a juvenile under section 2 (k) of Juvenile Justice (Care and Protection of Children) Act, 2000 it is essentially a question to be determined on basis of material brought on records by parties. In this context, Orders vis-à-vis age passed by Court on earlier occasion would also be relevant. This Act of 2000 was indisputably a beneficial legislation. Principles of beneficial legislation, however are to be applied only for the purpose of interpretation of the statute and not for arising at a conclusion as to whether an offender was a juvenile on the date of commission of the offence or not, is essentially a question of fact which is required to be determined on the basis of the materials brought on records by the parties. In absence of any evidence which is relevant for the said purpose as envisaged under Sec. 35 of Evidence Act, the same must be determined keeping in view the factual matrix involved in each case of the said purpose, not only materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant

### ***Differentiation of Delinquent Juveniles***

#### **Juvenile in conflict with law<sup>23</sup>**

**Sec. 2(l) of the Act** defines the juvenile in conflict with law as follows:

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence"

#### **Child in need of care and protection<sup>24</sup>**

**Sec. 2(d) of the Act** defines the child in need of care and protection as follows:

"Child in need of care and protection" means a child -Who is found without any home or settled place or abode and without any ostensible means of subsistence,

Who resides with a person (whether a guardian of the child or not) and such person:-

- has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
- has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- Who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- Who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
- Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- Who is being or is likely to be abused for unconscionable gains,
- Who is victim of any armed conflict, civil commotion or natural calamity.<sup>25</sup>

Supreme Court Observed that the whole object of the Juvenile Justice (Care and Protection of the Children) Act, 2000 is to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles. It is beneficial legislation aimed at to make available the benefit of Act to the neglected or delinquent juveniles.<sup>26</sup>

### **Period from 1947 to present day.**

The founding fathers of Constitution made specific provisions for protecting rights of child. Article 25 of the Indian Constitution lays down that no child below 14 years of age shall be employed to work in any factory or mine or engaged in any other hazardous employment; Article 39 directs the state to ensure that

<sup>21</sup> See in this regard decision reported as PAPPU VS. SONU & ANR., AIR 2009 SC 2372

<sup>22</sup> JYOTI PRAKASH RAI VS. STATE OF BIHAR AIR 2008 SC 1696

<sup>23</sup> Sec. 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, Universal Law publishing Co. New Delhi

<sup>24</sup> Sec. 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>25</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000, Universal Law publishing Co. New Delhi

<sup>26</sup> PRATAP SINGH VS. STATE OF JHARKAND, JT 2005 (2) SC 271

children are not forced by economic to their age and strength; Article 45 directs the state to endeavour to provide free and compulsory education for all children up to the age of 14 years.<sup>27</sup>

The Government has enacted from time to time various legislations to curb child abuse and to provide statutory protection to children. The Factories Act (Amended) 1954; Hindu Adoption and Maintenance Act 1956; The Orphanages and other charitable Homes (Supervision & Control) Act 1960; Probation of Offenders Act 1958; The Child Marriage Restraint Act (Amended) 1979; The Child Labour (Prohibition and Regulation) Act 1986; Juvenile Justice Act 1986; The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production Supply & Distribution) Act 1992; The Pre- Natal Diagnostic Technique (Regulation, Prevention & Misuse) Act 1994; The Person with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1996; Juvenile Justice (Care and Protection of Children) Act 2000 and Juvenile Justice (Care and Protection of Children) Act 2015

### ***Some important aspects of the Resolution***

The Constitution of India enshrines both in Part III and IV the cause and the best interest of children, insofar that:

- The State can make special provisions for children, **(Art 15 (3))**
- The State shall provide free and compulsory education to all children of the age of six to fourteen years, **(Art 21.A)**
- No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, **(Art. 24)**
- The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength **(Art. 39 e)**
- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, **(Art. 45)**
- It is a Fundamental Duty of a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen year, **(Art. 51A)**

The Department of the Social Welfare is the link between Juvenile Justice (Care and Protection of Children) Act, 2015, Convention on Rights of Child and the constitutional provisions such as Article 15 (3), Article 21-A, Article 39 (e) & (f), Articles 46 and 47, which impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. But the need is to effectively implement the provisions and to have a strict approach towards the achievement of all the promises being made to the generation of future by the State.

The Government of India bearing in mind the Convention as also the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, and the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption (1993) and relevant international instruments enacted the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act deals with two basic categories of children (1) child in conflict with law, and (2) destitute, neglected or orphaned classed as children in need of care and protection.

The Act aims at a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this Act. But rehabilitation just on the papers would not serve the very purpose. A separate department should be there to exclusively deal with the problem of juvenile delinquency.

It is important to note that Juvenile Justice (Care and Protection of Children) Act, 2015 has an overriding effect to over all other laws in terms of section 1(4) thereof. Section 4 makes it mandatory for each State to constitute in every district a Juvenile Justice Board and section 16 provides for periodic review of pending cases and speeding up their procedure. Provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 expressly provides for adoption as a method of rehabilitation and re-integration of the child in the society.

## **II. CONCLUSION**

Every child has a right to joyful, elated and jubilant childhood, the right to grow in a harmless and nurturing environment, the right to be free from the intricacies and convolutions of life etc. but there are some unlucky and doomed children who are deprived of these things and they grow out to be children not wanted for or to term it the other way juvenile delinquents. To deal with these juvenile offenders many legislations are made across the world. In India, The Juvenile Justice (Care and Protection of Children) Act, 2015 is far from being a perfect legislation to protect and promote the rights of children. The mistakes in the earlier law have

<sup>27</sup> D.R. Sachdeva, “Social Welfare Administration in India” ; Kitab Mahal Publisher, Allahabad, 1994

been replicated in the present enactment. It is still left to the discretion of the respective State governments to set up the mechanism mentioned under the Act, despite a demand that the full implementation of the Act be made mandatory. The juvenile justice system is presently in limbo. Let us hope that respective State governments fill the lacunae by preparing comprehensive rules in consultation with child rights experts and nongovernmental organizations.

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