

A CRITICAL STUDY OF JUVENILE JUSTICE SYSTEM IN INDIA

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Abstract: The provocation for selecting this topic for a detailed analysis is to present issues relating to the study of children under Juvenile Justice System in India. This paper gives the perspective in the light of which the detailed children right has to be made. The concept of the juvenile justice system was derived from the concept of juvenile delinquency. The young children fail to understand the abnormal situations of life. They are not easily amenable to the legal framework and the processes of criminal law. The Juvenile Justice System, therefore, is designed to fit the needs of care and protection of the children and the child in conflict with the law only. One principal role of the Juvenile Justice System has been to provide specialised and preventive treatment services for children.

The nation's children are a supremely important asset. Their need and care are our responsibility. Therefore, it is imperative for us to uplift children. Children are forever innocent and they are unaware of good and bad. In addition, they are not physically and mentally fit than adults. Children became good citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development of all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

Keywords: Constitutional Law, Juvenile Justice System, Preventive Treatment Service.

INTRODUCTION

The Supreme Court of India emphasised that “obviously that in a civilised society cannot be denied the importance of child welfare because the welfare of the whole societies is depend on the development and welfare as well as health and well-being of its children. Therefore, it is essential for the development of a nation, how its children grow and develop.”¹

The great poet *Milton* put it admirably when he said: “child shows the man and morning show the day”. The poet believes that children learn seeing adults. If a family member is a criminal nature, then his children will have the same effect on adults. He observed that the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.²

¹ Lakshmi Kant Pandey v. Union of India, 1992 AIR 118, 1991 Scr (3) 568.

² Walsh Vincent (2011), Supreme Court on Children, HRLN, New Delhi, pp 458.

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In India, this consciousness is reflected in the provisions enacted in the Constitution. Clause (3) of Article 15 enables the State to make special provisions, inter alia, for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia, that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner, in conditions of freedom and dignity that children are protected against exploitation, abusing and material abandonment. These constitutional provisions reflect the great anxiety of the Constitution makers to care and protection the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented program for development of children.³

In India, children are supposed to symbolise of powers, which is a symbol of victory that is a main goal of life. Every parent wishes that child will illuminate the name of parents as well as nationally. When the child turns toward the wrong way, the parents die alive whereby sometimes the parents commit suicide. Therefore, it is a duty of parents that appraise them about good and bad. It is a big challenge that children are under huge social impact because of new changing social supervision.⁴

The children in India require double sided protection. The one hand, they need to be provided with the basic necessities for their overall development, making them physically strong, mentally alert, academically brilliant by affording them, irrespective of their sex, family atmosphere for proper growing and grooming of the child. Another side requires prevention and treatment of a child who is termed to be a delinquent.⁵

The Chief Justice of Supreme Court of India, Y.K. Sambalbar, spoke in National Legal Service Authority that “All the statute coming under Social Justice should incorporate provision for free legal aid through the legal service authority, for example; under mental health, Scheduled Caste and Scheduled Tribes Act, Domestic Violence Act, Juvenile Justice Act, POCSO Act, it is necessary to provide free legal aid.”⁶

³ Ibid, pp 459

⁴ Lansdown, G. (2011). Every Child's Right to be Heard. London : Save the Children U.K on behalf of Save the Children and UNICEF.

⁵ Dr. G. Sheela, A. C. (2015).A Study of Attitude towards Education of Juvenile Delinquents. International Journal of Interdisciplinary Research, pp 67.

⁶ Y.K. Sambalbar, Special Lecture on NLSA, New Delhi

India is determined to achieve the goal of the Social Justice, including empowerment of women and promotion of the rights of children. Our responsibility is to protect the rights of the weaker and deprive a section of the society and also the sanctity of the three organs of governments. Today, burning issue of the society is social discrimination, exploitation, human trafficking, the welfare of women and children, the welfare of Scheduled Caste and Scheduled Tribes, improvement of water resources, reform of jail, the health of the common people, and the problem of HIV-AIDS.

It is necessary to give emphasise to this vital issue, the responsibility of the National Legal Service Authority has increased many folds to contribute to the cause of providing Social Justice. Demarcation of the population into BPL and APL is not the solution, but economic justice is the demand of time.

JUVENILE JUSTICE SYSTEM IN INDIA

To achieve this goal the Constitution of India under Article 15 (3) provided provision for make in special laws to provide Social Justice for women and children. On the basis of this provision, Government of India enacted the several laws to secure the care and protection of children. The Children Act, 1960 was a first central law relating to Juvenile Justice System. In 1986, Juvenile Justice (Care and Protection of Children) Act, the age of delinquent children was below 16 years for boys and below 18 years of girls. In the Act of 2000, the age of delinquent children was 18 years for both the sexes. In the Juvenile Justice Act, 2015, the age of the juvenile was fixed as 18 years for both sexes, however, for heinous crimes; the ages are fixed as 16 years for juveniles.

Under International documents for Children's Rights, The Beijing Rules, 1985 is a vital document for the children in the whole world. The interest of children has been foremost regarded. This Rule is framed the standard minimum rule for every child. Under this standard minimum rules, the State shall take care of children. UN CRC, 1989 strong commitment towards the care and protection of children in the whole world. In 1989, Secretary-General, United Nations emphasised that the State shall regard every child rights without discrimination of sex, birth, race, colour, caste, religion, ethnic, language etc.⁷

India is the second largest country in the world from the viewpoint of the population. 19 per cent of the world's children live in India. Almost 44 per cent of the total population of India is children's population. In Census 2011, the population of 0-5 age group (29 per cent) followed by 6-10 (28 per cent), 11-15 (27 per cent) and 16-18 years age group (16 per cent) has been reported in India. Almost 50 per cent of these children need the care and protection.⁸

⁷ Guidance Note of Secretary-General of United Nations, UNCRC, 1989.

⁸ Alok Kumar, A. P. (2012). The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011. J Indian Acad Forensic Med, pp 170.

A higher-than-average crime rate clearly means that children in the cities are not only victims of such violence, but are in danger of becoming a part of the organised crime racket, especially when faced with circumstances such as disruption of schooling, dysfunctional family, lack of parental care and exposure to substance abuse,” the report said, highlighting the role of cities in increasing urban crime. According to the report, major crimes against children include trafficking, kidnapping, rape, and infanticide, while the girl child is affected the most due to the proliferation of sex work in cities. In 2012, Bengaluru (India) tops the list of 88 cities across the country with 551 cases of crime against children, Mumbai stands second with 570 and Delhi comes third with 363 cases, the report said citing NCRB data.⁹

NCRB issued the report of a crime in India, 2015 in the month of 08th August 2016. According to this report, amongst 24 numbers of cases per million were registered under total cognizable Indian Penal Code crimes in India in which 0.7 numbers of cases per million people were registered against Juveniles in conflict with the law under Indian Penal Code during 2015. 0.2 cases per million were registered under POCSO Act, 2012 on this year. Juveniles in conflict with the law were apprehended the 5.2 per cent of a total number of cases of a crime under POCSO Act, 2012.¹⁰

The percentage shares of Juveniles apprehended under the age groups 7-12 years, 12-16 years, 16-18 years are 1.46 per cent, 26.70 per cent, and 71.84 per cent respectively. An increase has been observed in a number of juveniles apprehended in all the age groups in 2015 over 2014, and the highest percentage increase was in 7-12 age group (30.6 per cent) whereas the rise in crimes in 12-16 years and 16-18 years were 8.9 per cent and 12.5 per cent respectively.¹¹

About 57 per cent of juveniles belonged to the poor families whose annual income is up to Rs. INR 25,000. The share of juveniles from families with income between INR 25,000 and 50,000 is 27 per cent. The share of juveniles hailing from the middle-income group (INR 50,000 - 2, 00,000) is 11 per cent.¹²

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice Bill was presented in the Lok Sabha (House of Representative) on August 12th, 2014, by the Minister of Women and Child Development, Ms. Maneka Gandhi. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Dr. Satyanarayan Jatiya) on September

⁹ NCRB Report, Crimes in India 2012, Ministry of Home Affairs, Government of India.

¹⁰ NCRB Report, Crime in India, 2015, Ministry of Home Affairs, Government of India.

¹¹ Ibid

¹² Ibid

22nd, 2014. The Committee presented its report on February 25th, 2015. It was passed on 7th May 2015 by the Lok Sabha (House of Representative) in the midst of extreme dissent by a few Members of Parliament. It had been passed on 22nd December 2015 by the Rajya Sabha (House of State). Juvenile Justice (Care and Protection of Children) Act, 2015 is notified in the Gazette of India on 1st January 2016 and came into force in the whole of India from 15th January 2016 but this Act, the State of Jammu and Kashmir will not be adopted because of Article 370 of the Constitution of India.

Definition of Child

Section 2 (12) defined the word 'child' that meaning, a child who is under 18 years. Section 2 (35) 'juvenile' means a child who is under 18 years of age. The word 'juvenile' is defined the first time in the Act, 2015. Section 2 (42) 'orphan' means a child who has no any biological parents or a guardian or an adoptive parent or a judicial guardian. Section 2 (60) 'surrendered child' means a child who is relinquished by a biological parent or a guardian or adoptive parents due to physical, mental or other disabilities or social factor which cannot be controlled by them and Child Welfare Committee is declared as 'surrendered child'. Section 2 (13) 'child in conflict with the law' means a child who has committed the petty, serious and heinous offences which are known as 'child in conflict with the law'. Section 2 (14) 'child in need of care and protection' means "a child who are destitute, downtrodden, deprived or oppressed in one way or the other." In case *Robert Heitkamp v. Bal Anand World Children Welfare Trust, Mumbai, India*,¹³ the Supreme Court of India held that "judicial pronouncement can add to the definition any other type of children such as mentally ill or stunted children."

Definition of Best Interest of Child

Section 2 (9) defined the 'best interest of child' which is a key principle of Juvenile Justice System in the International and National perspective. It is an objective of Juvenile Justice System through which concerned authorities provide to ensure fulfilment of their basic rights, i.e. elementary education, food, shelter, clothing, medical care, rehabilitations and a good practice with them, etc., Section 2 (15) 'child friendly' means any conduct, behavior, good nature, good practices, attitude, environment that is made humane. This is an obligation of Principal Magistrate, its Social Worker of Juvenile Justice Board, Chairman and members of Child Welfare Committee, Special Juvenile Police, concerned persons of Institutions, etc. These concerned persons are directed to underlie the friendly relationship with children in need of care and protection and child in conflict with the law.

¹³ AIR 2008 (NOC) 1024 (Bom.)

Definition of Offence

The Definition of 'offence' is not defined in the Act. Section 40 of the Indian Penal Code, 1860 defines 'offence which denotes a thing made punishable by this code.' The word 'thing' has been considered a rather unhappy substitute. However, petty offence, serious offence and heinous offence are defined in the Act. The offence is classified on the basis of punishment. Section 2 (45) 'petty offence' includes an offence is committed by the child in conflict with the law under IPC or SLL for which punishment is up to 3 years. Section 2 (54) 'serious offence' includes an offence for which punishment is between 3 to 7 years. Section 2 (33) 'heinous offence' includes an offence for which punishment is 7 years and more. The definition of 'heinous offence' is inserted in the Act. Section 15 (1) provides for it. A child who is among the age group of 16 and 18 years and committed the heinous offence, then the Children's Court will be treated as an adult.

Definition of Child Care Institution

Section 2 (21) 'Child care institution' includes observation home, special home, open shelter, place of safety for child in conflict with the law and children home, fit institution, SAA wherever, "child in need of care and protection housed for providing care and protection of children who are in need of services." Section 2 (40) 'observation home', Section 2 (56) 'special home', Section 2 (41) 'open shelter', Section 2 (29) 'foster care' and Section 2 (5) 'after care' are defined in the Act for child in conflict with the law. Juvenile delinquents who are kept in observation home under trial, wherever a convicted child who is kept in the special home. A child who has committed a heinous offence in the age of 16-18 years, they kept in open shelter. The Neglected child, an Orphan and Abandoned child who are housed in children home. "Aftercare means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society".

General Principles of Care and Protection of Children

The first time, 'General Principles of Care and Protection of Children have been inserted in Section 3 of chapter-II of the Act, 2015. There are 16 General Principles which are based on UN CRC, 1989 which was known as fundamental principles of care and protection of children. These principles were provided in the Juvenile Justice (Care and Protection of Children) Rules, 2007. While implementing the Act, 2015, Central Government, State Government and their Agencies will be guided by these General Principles. The Principle of Best Interest of the child is key elements of the general principles. All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. This principle is one of the important objectives of

Juvenile Justice System. The Government guarantees the best interest of the child in the sphere of the child rights. The principle provides to ensure the physical, emotional, moral, intellectual, social development of a child or juvenile or child in need of care and protection, a child in conflict with the law.

Draft Model Rules, 2016 under the Juvenile Justice (Care and Protection of Children) Act, 2015:

The Government of India, MWCD has released the Draft Model Rules, 2016 of Juvenile Justice Act, 2015 on 25th May 2016 for effective implementation of Juvenile Justice Act. The old Rules, 2007 are repealed. Section 110 of the Act, 2015 empower to make the rules for Juveniles. The Rules are based on the basic principles, i.e. the best interest of the child, well-being of the child, rehabilitation, social reintegration and reformation rather than punishment.

The Rules provide the constitution, composition, functions, procedure to be followed in the determination of the age of the Juvenile Justice Board. Besides, the rules also provide in relation to adoption, rehabilitation, social reintegration.

Main Features of the Rules, 2016

1. No child in conflict with the law who are between the age of 16-18 years, shall be handcuffed or sent to police lock-up and any type of jail.
2. The child in conflict with the law will be provided the basic needs, i.e. food, clothing and shelter, proper medical care, treatment, and securities. When the Special Juvenile Police Officers apprehend to the child in conflict with the law, they will be duly informed to their parents, guardians, and relatives.
3. The Rules directed to the State Government to establish at least one 'place of safety' in the State for providing their rehabilitation.
4. The determination of the age of the child in conflict with the law is time bound within 30 the date of submission of application in the JJB.
5. The Rules directed to the State Government to constitute a permanent medical board in every government hospital for the determination of the age of the child.
6. If every medical board determines the range of the age of a child, the child will be benefited the lower age.
7. The Rules present that a 'Child Welfare Officer' will be appointed in every rehabilitation institution for ensuring the child development.
8. Identifying the skill and aptitude of the child, the government will provide the sufficient finance to develop the self-employment of the child.
9. The Rules provide that every child welfare officer will have to maintain the 'rehabilitation card' which is a report on the monitoring of the child. The details of a child will be registered in this card.

10. The Rules provide regarding the aftercare scheme. The State Government will ensure to facilitate the educational, vocational programs, accommodation and employment when they turn 18 years and left child care institution.
11. The Rules declared a new offence
 - (i) Buying-selling of children for any purpose.
 - (ii) Corporal punishment in the Observation home/Special homes/Children's home or other care institutions
 - (iii) Use of child with the drug gang, adult gang, and militant.
 - (iv) Giving children for buying and selling the drug, narcotic drug, liquor, tobacco products etc.
12. The Rule is given the detail information in relation to the composition of the JJB, the tenure of the Board, qualifications for members of the board, sitting and conveyance allowances, sitting on the board. The Juvenile Justice Board is constituted together one Principal Magistrate and two Social Worker in every district. The Principal Magistrate should be as the first class Judicial Magistrate. A Social Worker must be female.

Child Care Institutions

The examination of the status of utilization of critical obtainments under various Children Acts, the Juvenile Justice Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 and 2015 are proposed to be shown as below:

1. The observation made by Dr. M.S. Sabnis in the year 1954 exhibits that the effective activities for decreasing of culpability were not present in the homes. He thought about the "homes" with hopelessly thick-walled pastilles.¹⁴
2. Sinha Committee Report, 1968¹⁵ recommended for setting up one Remand home in every district with a base purpose of repression of 25 children, two Children's homes in every district, two certified schools for a group of five districts in every state.
3. A number of juvenile courts were 95 in the whole of India in 1976 after passing the Children Act, 1960.¹⁶
4. In the year 1990, there was neither juvenile court nor children court in 230 districts in India. In the 147 same course, there was neither juvenile justice board nor any juvenile welfare board in 419 districts in India.¹⁷

¹⁴ [Report of the Committee for the Preparation of a Programme for Children, Ganga Sharan Sinha, Chairman, Department of Social Welfare, Government of India, 1968 cited in The Juvenile Justice System in India: From Welfare to Rights by Ved Kumari, p.237, Oxford University Press, 2nd edn., 2010].

¹⁵ Ibid

¹⁶ Juvenile/Children's Courts and Children Welfare Boards 1976, Statistical Survey', 64 Social Defence, 56 (April 1981).

¹⁷ Statistical Survey Juvenile Courts for the year 1985-6', Table 1, 101, Social Defence, 60 (July 1990)

5. Children in homes were misused, mishandled, ill-treated and abused. In this way, a reprobate a significant part of the time leaves the Observation homes/ Certified school as a joined 148 criminal rather of a reformed person.¹⁸
6. The official figures for 1985-86 determined 232 observation homes, 87 juvenile homes and 114 special homes. The number was short of 1025 homes as for each the Sinha Committee recommendation.¹⁹
7. There is an absence of Juvenile Justice Board and Children Court to cover each one of the districts. The institutional facilities were with no overall described criteria and models as far as possible, staff, programs, et. cetera.
8. A total number of Observation Homes, Juvenile Homes, Special Homes and After Care Institutions were 1399 in 1987. In the same ways, a total of 613 homes in the India in 2000 in which, included “280 Observation Homes, 251 Juvenile Homes, 36 Special Homes, 46 Aftercare Institutions” et. cetera. In 2001, a total number of revenue districts in the whole of India were 596, whereas included 308 Observation Homes, 258 Special Homes, 101 Aftercare Institutions were established. Every district should be established a minimum one home under Juvenile Justice Act, 2000.
9. Annexure-I²⁰ to the confirmation recorded in the month of April 2011 by the National Commission for Protection of Child Rights under the careful eye of the Supreme Court of India in Sampurna Behrua’s case, showing the State-wise status of utilization and implementation of genuine obtainments of Juvenile Justice (Care and Protection of Children) Act, 2000 gives the going with pictures as to the status of execution of all-India proposition.

Justice Verma Committee Recommendations on January 23, 2013,²¹ demonstrates that Juvenile homes and Observation homes are not working in the point and soul of Juvenile Justice Act. The Report likewise shows that the readied powers like the Child Welfare Committee and Juvenile Welfare Board have not been constituted in every area yet. The infrastructural working environments in homes, the nature of sustenance, the nature of overseeing, and psychotherapy are not at the spot even as on date however the Act was passed in the year 2000. The Committee besides recommended that it is the key responsibility of the state to finish the Act, 2000. The Committee besides passed on its stun over the young people being obliged into strengthening worker and beggary.

¹⁸ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 2nd edn., 2010, Oxford University Press, New Delhi, p.237

¹⁹ Ibid

²⁰ W.P. (Normal) No. 473 of 2005

²¹ Justice Verma Committee Report on Amendments to Criminal Law, 23 January 2013, para 3, p.419.

The Committee highlights the criticalness of the honest to goodness embraced that it is the ideal open entryway for the legitimate to meander into release the holy demand of affirming key rights and the execution of the standard of law identifying with young people. It further prescribed that the Chief Justice of the High Court in each state could devise the fitting gear for affiliation and supervision of these homes in meeting with experts in the field. For the thriving and physical security of young people, female, people with idiocies, detainees of mental homes and women, checking by the legitimate is needful. The brief and convincing guardianship of such people must be in court, set up on the guideline of *parens patriae*.²²

Under the ICPS, there is a provision for providing Counselors in each Child Care Institution including Observation and Children Homes. There is also the provision of special educator/therapist for children with special needs. Rehabilitation measures through adoption, foster care, sponsorship, and aftercare are also supported through Special Adoption Agencies, sponsorship, foster care fund and aftercare fund. In the year 2014, 9747 children housed in 307 Observation Homes and 55511 children were kept in 965 Children's Homes in the whole of India. These Child Care Institutions and children had been provided the funds by Government of India for rehabilitation. The Observation Homes were the highest in Maharashtra (81) followed by Rajasthan (34), U.P. (24), M.P. (19), Karnataka (16) and Kerala (15) and while, 3241 children, 715 children, 879 children, 409 children, 322 children and 65 children respectively were housed. If we talk about the average of observation homes and children, then 31 children per observation home have been living since 2014.

An un-starred question was raised in Lok Sabha by Adv. Sharad Kumar Murti Bansode, Member of Lok Sabha on dated 15th December 2015²³, whether any steps have been taken to deal with the cases regarding juveniles waiting for justice and still confined in different jails of the States and if so, the details thereof." Minister of Home Affairs, Government of India answered in the House of Lok Sabha that "Prison" is a State subject as per entry 4 of List II of the Seventh Schedule to the Constitution of India. Therefore, the administration and management of prisons are primarily the responsibility of the State Governments. Juvenile offenders are not housed in prisons but are kept in Juvenile Justice Institutions in a child-friendly environment.

Minister of Women and Child Development, Government of India answered that "during the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 several issues had arisen such as increasing incidents of abuse of children in institutions, families, and communities; inadequate facilities, quality of care and rehabilitation measures in Homes; delays in various processes under the

²² Ibid

²³ LOK SABHA UNSTARRED QUESTION NO.2642, on dated 15 December, 2015, Lok Sabha Debate, 15 December, 2015

Act, such as decisions by Child Welfare Committees (CWC) and Juvenile Justice Boards (JJB) leading to high pendency of cases; disruption of adoption and delays in adoption due to faulty and incomplete processing; lack of clarity regarding roles, responsibilities and accountability of CWC and JJB; to address the heinous offences committed by children in the age group of 16 to 18 years; and inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, ranging etc. To address gaps in the implementation of the Act, the Ministry conducted consultations to amend the Act to make it more effective. An amended Bill was thereafter drafted and was sent to the Legislative Department, Ministry of Law & Justice for vetting. The Legislative Department suggested that since the number of amendments proposed in the existing Act was large in number, the existing Act should be repealed instead of being amended.²⁴

Yet in India, neither punishment of death penalty nor life imprisonments are imposed under the age of sixteen years. A juvenile cannot be sentenced to death or life imprisonment.

Arguments: United Nations “Universal Declaration of Human Rights, 1948 was predicated the “International Human Rights Doctrines” for a death sentence. According to this Doctrine- “In the aftermath of World War II, the United Nations General Assembly adopted the Universal Declaration of Human Rights. This 1948 doctrine proclaimed a “right to life” in an absolute fashion, any limitations being only implicit. Knowing that international abolition of the death penalty was not yet a realistic goal in the years following the Universal Declaration, the United Nations shifted its focus to limiting the scope of the death penalty to protect juveniles, pregnant women, and the elderly.”²⁵

In the late 1980s, the Supreme Court of U.S. decided three cases regarding the constitutionality of executing juvenile offenders. In 1988, in *Thompson v. Oklahoma*²⁶, four Justices held that the execution of offenders aged fifteen and younger at the time of their crimes were unconstitutional. The fifth vote was Justice O’Connor’s concurrence, which restricted Thompson only to states without a specific minimum age limit in their death penalty statute. The combined effect of the opinions by the four Justices and Justice O’Connor in Thompson is that no state, without a minimum age in its death penalty statute can execute someone who was under sixteen at the time of the crime.

The following year, the Supreme Court of U.S. held that the Eighth Amendment does not prohibit the death penalty for crimes committed at age sixteen or seventeen. (*Stanford v. Kentucky and Wilkins v. Missouri*.²⁷) At present, 19 states of U.S. with

²⁴ Lok Sabha Un-Starred Question No. 1251, Answered on dated 18th July, 2014 in Lok Sabha, Juvenile Justice Act.

²⁵ <http://www.deathpenaltyinfo.org/part-ii-history-death-penalty/> accessed on 24th August, 2016

²⁶ 487 U.S. 815

²⁷ 492 U.S. 361

the death penalty bar the execution of anyone under 18 at the time of his or her crime.

In 1992, the United States ratified the International Covenant on Civil and Political Rights. Article 6(5) of this international human rights doctrine requires that the death penalty is not used on those who committed their crimes when they were below the age of 18. However, in doing so, but the U.S. reserved the right to execute juvenile offenders. The United States is the only country with an outstanding reservation to this Article. The International reaction has been highly critical of this reservation, and ten countries have filed formal objections to the U.S. reservation.²⁸

In March 2005, *Roper v. Simmons*²⁹, the United States Supreme Court declared the practice of executing defendants whose crimes were committed as juveniles unconstitutional in *Roper v. Simmons*³⁰.

The ten countries, including the United States, China, Pakistan, Rwanda and Sudan voted against the Resolution Supporting Worldwide Moratorium On Executions, 1999. Each year since 1997, the United Nations Commission on Human Rights has passed a resolution calling on countries that have not abolished the death penalty to establish a moratorium on executions. In April 2004, the resolution was co-sponsored by 76 UN member states.³¹

While India's law prohibits the sentencing to death of juveniles, this law has not always been followed in practice because of the difficulty of determining the precise age of individuals who were not registered at birth and thus lack birth certificates. Only about 50% of India's population has been registered at birth. Additionally, incompetence and inexperience among defense attorneys leads to failures to bring offenders' ages to the attention of courts. In cases where the offender's precise age could not be determined and where there was evidence that the offender was under 18 at the time of the crime, the Supreme Court has upheld death sentences. One individual, Amrutlal Someshwar Joshi, was executed on July 12, 1995 (*Amrutlal Someshwar Joshi v. the State of Maharashtra*³²) despite the possibility that he was under age 18 at the time of the crime.

JUDICIAL TRENDS ON JUVENILE JUSTICE SYSTEM IN INDIA

The Indian Parliament showing its solidarity with the International Community and in compliance with its commitment to International Obligations has enacted

²⁸ <http://www.deathpenaltyinfo.org/part-ii-history-death-penalty/> accessed on 24th August, 2016

²⁹ 543 U.S. 551 (2005)

³⁰ Ibid

³¹ New York Times, 29th April 1999 and Amnesty International, "List of Abolitionist and Retentionist Countries," Report ACT 50/01/99, Updated June 2004.

³² (1994) 6 SCC 200

the Juvenile Justice (Care and Protection of Children) Act, 1986, 2000 and 2015 in conformity with the international standards and rules providing for upliftment of the children in need of care and protection and for the better treatment and early disposition of juveniles in conflict with the law. The role of the Supreme Court of India and various High Courts has been very appreciable in interpreting the provisions of the new enactment in such a way that advances the cause of the juvenile justice. The judicial trends set by the Supreme and High Courts are guiding factors for the lower judiciary. The beneficial provisions have been applied and benefit has been given to a number of juveniles whose cases had even attained finality and they were undergoing sentences. It has also been the efforts of the courts at the time of final disposition of the case that an opportunity for reforming himself is provided to the juvenile in conflict with the law by way of proper training and providing necessary care and protection for absorbing the juvenile in the mainstream of life.

The Supreme Court of India in *Gaurav Jain v. Union of India*,³³ while dealing with writ petition under Article 32 of the Constitution pertaining to the plight of the prostitutes or fallen women and their progeny, spoke about the Preamble of the Constitution and stated that it is an integral part of the Constitution of India and that the children have the right to equality of opportunity, dignity, and care, protection and rehabilitation by the society with both hands open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of his or her.

In *Laxmikant Pandey v. State*,³⁴ the Apex Court of India observed that every child has a right to love and affection and of moral and material security and this is possible if the child is brought up in a family and an inter-country adoption should be permitted after exhausting of adoption within the country.

In *Subramanian Swamy v. Raju Thr. Member, Juvenile Justice Board*,³⁵ Some incidence becomes milestone that shook the psyche of the society or nation. One of such incidence Delhi Gang Rape Case which held in December 2012 in running bus where, 6 persons, one of the homes was a few months short of 18 years, gang rape a college student of the age 23 years. Accordingly, the accused juvenile was tried in JJB was sent to a special home for a term of three years. The Irony of the law is that even after committing the heinous crime of rape and murder, including insertion of an iron rod into the private part of the victim, the juvenile was set free to roam freely in the society.

In the particular case Dr. Subramaniam Swami, a Rajya Sabha Member, Ex-Law Minister and a senior lawyer of Supreme Court moved to the Supreme Court of India requesting the court for an order prohibiting the release the set juvenile

³³ AIR 1993 SC 2178

³⁴ (1984) 2 SCC 244

³⁵ Supreme Court of India, Criminal Appeal No. 695 of 2014

from special home. The Supreme Court of India expressed inability to prevent the release of the set juvenile as the existing law does not provide for do so and asked Dr. Swami to approach the Parliament of India for necessary change in the law for enhancement of punishment in such cases. Here, it would not be out of context to mention that set juvenile was kept in a special home along with an accused Delhi Blast Case. Thus, one can easily imagine the influence of the blast case accused on the sad juvenile and vice versa.

It has further been observed that juvenile released from observation home and special home were found to commit a more heinous crime. Thus, a question naturally arises whether this reformatory home is capable serving the objectives for which these homes were established.

CONCLUSION AND SUGGESTIONS

Conclusion

Age of Child: In India, there is no one definition of a child. The Census of India, 2011 defines children as persons under the age of 14 years. Most Government programs are targeted at children below the age of 14 years. According to Constitution of India, Article 23 and Article 45 are defined children, there are below the age of 14 years. While the Indian majority is 18 years for girls and 21 years for boys. The child has been defined differently for different purposes under various other the law. Indian Penal Code, 1860, Section 82 says that “nothing is an offence which is done by a child under the age of 7. Section 83, the age of criminal responsibility is raised to 12 years if the child has not attained the ability to understand the nature and consequences of his or her act. Indian Family Law, Child Marriage Restraint Act, 1929 says that child means a person who if a male, has not completed 21 years of age and if a female has not completed 18 years of age. During 1986, the age limit for the juvenile was lowered to 16. During 2000, amendments were made making the age limit 18 but Section 15 of Juvenile Justice Act, 2015, amendments; it treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime.

Intellectual persons are demanding that for all protective purposes the age of the child should be uniformly up to 18 years. This includes the age for employment which means any person employing the child under 18 shall be subjected penal and civil consequences for the crime and the civil wrong of employing child labour, which shall be totally prohibited. This also means that until a child attaining the age of 18 shall be entitled to have the right to education, compulsory and free.

Increasing Number of Juveniles Crimes in India: The increasing trend in the incidence of Juvenile Crimes (under IPC) is a matter of grave concern, though percentage cases of Juvenile in Conflict with Law for total Cognizable Crimes are

around 1.1 per cent during 2005 to 2015. The juvenile IPC crimes in 2015 have declined by 6.78 per cent over 2014 as 33526 IPC crimes by juveniles were registered during 2014 which declined to 31396 cases in 2015. Major Juvenile crimes were under the Theft (18.03 per cent), Rape (5.03 per cent), Kidnapping and Abduction (4.86 per cent), Assault on women with intent to outrage her modesty (4.29 per cent), Hurt (3.06 per cent) and Riots (3.03 per cent) in 2015.

If we observe the reformatory justice system, 36.61 per cent juveniles in conflict with the law are benefited as advice, admonition, probation, care of fit institution and fine. The table shows that almost 62 per cent of Juvenile in conflict with the law was found guilty in India. Hence, it is concluded that the number of delinquent juveniles in conflict with the law has been increasing day by day in the way of juvenile crime.

16-18 years age group, of Juvenile has highly committed the heinous crimes: Under the age groups 7-12 years (1.46 per cent), 12-16 years (26.70 per cent) and 16-18 years (71.84 per cent) apprehended by the police stations in the whole in India. The highest incidence of the juvenile rape cases in the country was reported from Madhya Pradesh (16.7 per cent) followed by Maharashtra (14.63 per cent), Rajasthan (9.83 per cent) and Chhattisgarh (8.43 per cent) in the country.

The weak role of the Central and State Government to ensure the care and protection under the Juvenile Justice Act.: According to Lok Sabha Starred Question No. 329, dated 22nd December 2015, Lok Sabha Members Shri Kaushalendra Kumar and Dr. Virendra Kumar raised the question “Crime by Juveniles”, MoHA replied in the lower house of the India that under the Juvenile Justice Act, the State and UTs Government are the prime responsibility to implement the juvenile in conflict with the law and child in need to care and protection, however, the Government of India supplements the efforts of the States/UTs through the Integrated Child Protection Scheme (ICPS) launched by the Ministry of Women & Child Development.

Lack of vocational training, counseling, yoga, moral education: There have been a few instances in some States, of children repeating the same offence after they are released from the Observation/Special Home. The Juvenile Justice (Care and Protection of Children) Act (JJ Act), which is the primary legislation for children in conflict with the law, has adequate provisions for the rehabilitation and reintegration of such children and for follow-up of children released on bail or after completion of probation. Observation Homes and Special Homes set up under Section 8 and 9 of JJ Act for children in conflict with the law are required to provide appropriate (bridge/ formal/ non-formal) education, counseling, yoga, moral education and vocational training to the children for enabling their reintegration into the society. This provision is only a dream of a juvenile, but it is not realistic for juveniles.

Suggestions: I suggested that-

All stakeholders must follow the International Principles on Child Rights and a relevant judicial system.

1. (a) The Principle of the best interest of the child should dominate all other aspects.
- (b) Children should be allowed to exercise their rights to be heard and their view should be given weight according to their age and maturity.
- (c) There should not be any discrimination of children on the basis of gender, caste, race, nationality, language, age, and status including disability.
- (d) The Juvenile Justice System must be child sensitive and it should include:
 - i. Clear laws which reflect rights and qualifications
 - ii. The procedural vulnerability of the Juvenile Justice System
 - iii. Needs and facilities required for access to justice.
 - iv. The facilities for access to advice, information, counseling and support (legal and otherwise)
- (e) A juvenile Justice System should be adopted and implemented that:
 - i. Lay emphasis on prevention;
 - ii. Separates children in conflict with the law from adults.
 - iii. Incorporates procedure for dealing with children in conflict with the law and children in need of care and protection without following the strict procedures.
2. **All set up should endeavor to provide a child friendly environment:** All set up should endeavor to provide a child friendly environment and should be staffed by personnel having knowledge of legislation and procedure specific to children. The personnel should further be trained and skilled on effective interaction with the children, such an arrangement would meet the specific needs of children.
3. **All justice actors should have a base knowledge of child law:** It is highly desirable that all the actors of justice should have a basic knowledge of law relating to children. Module of law relating to children should be incorporated in the course of LL.B. and B.A.LL.B. degree professions should be provided with pre-service training having a child specific module as a mandatory course.

All actors of justice including magistrate, prosecutors, police, social welfare officers, probation officers, superintendent of observation homes should be provided joint training so as to ensure co-ordination and co-operation

of local govt. to make the judicial system more sensitive the rights of the child should be incorporated in the training of the justice sector on human rights.

- 4 **Juvenile prosecutors should be trained for handling cases relating to children:** Specialized juvenile prosecutors should be trained for handling cases relating to children and violation of child rights. Juvenile Justice Laws standard operating procedures and guidance, social and psychological aspects of delinquent children, child development techniques should be incorporated in the module of training.
- 5 **A separate court should be established to deal with the cases of juveniles:** In accordance with the international standards, a separate court system should be established to deal with the cases of child in conflict with the law. Although a separate judicial system is necessary, however, it should be ensured that children are dealt and tried separately from adults in a child friendly environment with procedure understood by children and ensure their participation in the proceedings magistrates should be entrusted with the trial of juveniles below the age of 18 years.

Scheme for reformation and rehabilitation of convicted children should be formulated and implemented so that after releasing from detention, they can live a meaningful life in society by earning their livelihood.

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