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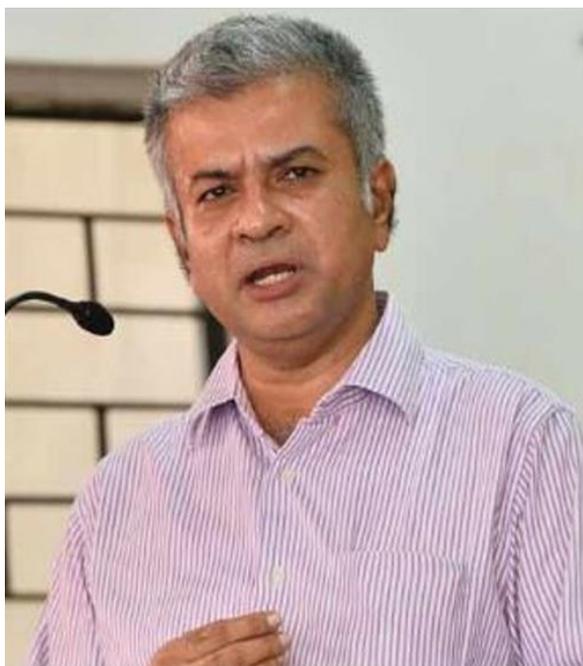
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **LAW, JUSTICE & SOCIETY WITH REFERENCE** **TO JUVENILE JUSTICE ACT**

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## ***Abstract***

*Crime rate is day by day increasing in India and the most shocking trend that can be noticed is that it is upheaving among Juveniles too. For several centuries, youth offenders were treated in a highly punitive manner, as they were managed concurrently with adult offenders, with little consideration given to their cognitive, emotional, or developmental immaturity. The first juvenile justice system was created in 1899, and it was a very separate entity from the adult system. The initial juvenile justice system ultimately led to a more rehabilitative approach to dealing with youth offenders as this system took into consideration a youth's moral, intellectual, social, and emotional development and worked to treat and rehabilitate more than punish young offenders. The evolution of Juvenile Justice Legislation, from British India to the present democratic India by focusing at the guidelines of Juvenile Justice Act, 1986, 2000, 2014 and 2015. In spite of the existence of that safety regulation for such children, there is a rise in the number of Juvenile criminals across the country, is a vital issue for the country. After Independence, the constitutional provisions have inspired the developments in the field of juvenile justice. Part III and Part IV which deal with Fundamental Rights and directive Principles of State Policy respectively contain some special provisions with respect to children. Whether the present Juvenile Justice System in India is actually solving the purpose of speedy justice and amicable solution for Juvenile Crimes. The objective of juvenile justice system will not be achieved if there is no proper implementation of juvenile justice system in India. In view of the gravity of the problem it is suggested that efforts should be made at all levels and steps should be taken in all forms to curb the tendency of crimes and bring in a new era of crime free society. The objective of juvenile justice system will not be achieved if there is no proper implementation of juvenile justice system in India.*

**Key Words-** *Child, heinous, Law and society, Judiciary, Juvenile Justice System, Juvenile Justice Act, Society.*

## **1. Introduction:**

Children are recognized worldwide as supremely assets of the Nation. The future of the nation lies in the hands of the Children, who have been recognized as the supremely assets of the nation but because of the indifferences of our society in all spheres, these future stake holders are not brought up properly which leads to child delinquency. Child or juvenile delinquency is an alarmingly increasing problem causing a source of concern in all over the world. Children ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, it has not been so. Despite the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, the majority of children in India continue to live without a cared, protected and meaningful childhood.

India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect, right to information, right to expression and right to nutrition etc. have been defined as basic rights of children by the Convention of the rights of the child.

Almost all the countries have developed juvenile justice system to deal with their young offenders. In India scene for the children has changed a lot and their problems and related issues have been given attention and are being discussed at various forums. The question of providing proper protection and care to the children of such a big number is a big challenge. A good number of our children on account of socio- economic reasons have adding themselves in the list of delinquent children.<sup>1</sup>

The juvenile justice systems have been designed to respond to the needs of young offenders. One principle role has been to provide specialized preventive and treatment services for children and young persons as a means of secondary preventions, rehabilitations and improved socialization.<sup>2</sup>

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

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<sup>1</sup> Lawctopus, <https://www.lawctopus.com/academike/juvenile/>, (last visited on 23/09/2024)

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.<sup>2</sup>

Law, Justice and Society are identified with one another. Nothing can clarify with no of them. Society turns into the wilderness without the law. Law likewise should be changed by the progressions the general public countenances, in light of the justice. Justice & law keep pace with society. Without the control of the law, the general public turned into the wilderness. Hence all these three elements i.e., Law, Justice and Society are interrelated to each other.

## **2. Concept of Juvenile Delinquency:**

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. 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.<sup>3</sup>

In India the term 'Juvenile Delinquency' has not been defined in any Act. 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 JJCPA 2000 defines juvenile who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of such offence. "Offence" under the act means an offence punishable under any law for time being in force. The Indian position is in consonance with the latin principle, *nullum crimen sine lege*, which means an act cannot be crime unless it is so defined under the existing law. Thus, there is no difference between contents of delinquency and an offence. The only difference is that an offence is committed by an adult person is trial able in ordinary courts whereas the juvenile who commits a delinquent act is tried in the Juvenile Court through a special procedure.

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<sup>2</sup> Serials journals, [https://serialsjournals.com/abstract/40148\\_ch\\_5\\_f\\_-\\_venudhar\\_routiya.pdf](https://serialsjournals.com/abstract/40148_ch_5_f_-_venudhar_routiya.pdf), (last visited on 23/09/2024.)

<sup>3</sup> Supra 1.

In eighteen centuries, there were no special courts for children, and they were treated as adult criminals. Minors were arrested, held in custody, and tried and sentenced by a court that had discretion to order the child imprisoned in the same jail as adult criminals. Although children received the same punishment as adults, they were not provided with many of the due process protections accorded to adult criminals. For instance, minors did not have a right to “bail, indictment by grand jury and right to a public trial”<sup>4</sup>

### **3. Juveniles Means:**

Generally, a “child” means a person who has not attain the age of 18 years and is not mature to understand that what is right and wrong. In modern era, the penal laws of most countries have adopted the principle of “doli incapex”,<sup>5</sup> which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act.

A “Juvenile” or “Child” means a person who has not completed eighteen years of age.

According to International Law –

A ‘Child’ means every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC).

Under the Juvenile Justice (Care and Protection of Children) Act, 2015 –

Section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines “juvenile” or “Child” as a person who has not completed eighteenth year of age.<sup>6</sup>

### **4. Causes of Juvenile Delinquency:**

#### **A) Economic Problems in Family:**

The choice of Delinquency may be shaped by economic needs. Often the cause of juvenile delinquency is economic problems in family. Youth belonging from poor economic status easily get involved in criminal activities. They want to improve their

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<sup>4</sup> Singh, Sanyukta, “Juvenile justice system in India: A Critique”, Vol 10 Criminal Law Journal,

<sup>5</sup> Section 82 of, IPC, 1860 states that a child below the age of seven years is doli in capex.

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, section 2(12)

status and for this purpose they use negative path, in this regard often people do not support teenagers who belong from poor status and they go for criminal activities.

#### **B) Psychological Problems in Family:**

Psychological problems in parents or siblings can also be a risk factor of juvenile delinquency. Mental illnesses or other psychological problems like depression, frustration, aggression or hyper behaviour showed by the parents can make the child feel deprived and inferior among friends. Sometimes children adopt depression and anger from parents or elder siblings.<sup>7</sup>

#### **C) Social Problems in Family:**

In many family's parents or elder siblings are involved in various social problems. There can be various problems like gender discrimination, age discrimination, racial discrimination, child labour or violent of animal rights. Children and youth learn what they see in their family, in many rich family's parents do not feel shame in child labour and children could not understand that child labour is against society and against morality. Social problems cause stress and due to stress teens get involved in violent.

#### **D) Psychological Cause:**

The Human mind has long been considered a source of abnormal behaviour and therefore, crime is committed. Early varieties of psychological theories of delinquency and crime focused on lack of intelligence and personality disturbances as major causal factors. several of early pioneers of the psychological school were convinced that biological factors played a major role in determining intelligence, therefore they could be considered the proponent of both schools of thought. Goddard said that eliminating a large proportion of mental defectives would reduce the number of criminals and other deviant in society. Similarly going focused on defective intelligence and psychological characteristics as basic cause of crime in his attempt to refute Lombroso and other positivists. As we indicated previously research concerning the relationship between defective intelligence, IQ or learning disabilities and delinquency continues. Problem concerning the reliability and reliability and validity of IQ tests and personality

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<sup>7</sup> [https://www.academia.edu/7912439/Causes\\_and\\_Solutions\\_of\\_Juvenile\\_Delinquency](https://www.academia.edu/7912439/Causes_and_Solutions_of_Juvenile_Delinquency), last visited on 24/09/2024.

inventories, as well as other methodological shortcomings continue to plague such research.

## **5. Constitutional Provisions for Children in India:**

The Indian Constitution is regarded as our country's basic rule. Citizens' rights and obligations are defined in our Constitution. It also makes arrangements for the running of the government machinery. Part III of the Constitution establishes citizens Fundamental Rights, whereas Part IV establishes Directive Principles of State Policies (DPSP), which serve as general principles for the formulation of government policies. The Constitution establishes several basic rights and protections, particularly for children's wellbeing. Like:

**Article 15(3):** "It enables the government to make special arrangements for women and children".<sup>8</sup>

**Article 21-A:** "All children aged six to fourteen must receive free and compulsory education from the state".<sup>9</sup>

**Article 23:** "Human trafficking and forced labour are prohibited."<sup>10</sup>

## **6. Juvenile Justice (Care and Protection of Children) Act, 2015:**

The Act focuses on the children who are in conflict with the law, and are in need of care as well as protection from any vulnerability. This can be achieved by catering to their basic needs by taking proper care, giving them protection, aiming at their overall development, treatment of any ailments, and social re-integration, through adoption of a child-friendly method that is in best interest with the children. The Act also states rehabilitation of these children by the responsible institutions and bodies.

Principles Related to Administration of the JJ Act:

The Union and state governments along with the institutions and boards shall abide to the fundamental principles required in administration of the Act, some of which has been listed below:

- a) Principle of presumption of innocence: Any child, who has been charged of criminal offense, had to be declared innocent till he/she has reached the age of 18 years.
- b) Principle of dignity and worth: All humans should be treated with equal dignity and

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<sup>8</sup> INDIA CONST. art 15 cl 3

<sup>9</sup> INDIA CONST. art 21A

<sup>10</sup> INDIA CONST. art 23

rights.

- c) Principle of participation: Every child needs to be heard and allowed to participate in the decision-making process.
- d) Principle of best interest: The decisions taken for the child should be in their best of interest aiming at their overall development.
- e) Principle of family responsibility: The Child's responsibility should be taken by his/her parents (biological or foster).
- f) Principle of safety: All kinds of safety precautions need to be taken to ensure protection of the child.
- g) Positive measures: In order to prevent vulnerable environment for the child, resources of the community as well as the family needs to be mobilized to promote development, well-being, and an inclusive opportunity for the child to develop.
- h) Principle of non-stigmatizing semantics: Accusatory words should be avoided in case of a child.
- i) Principle of non-waiver of rights: No waiver of any fundamental rights of a child is permissible, whether sought by the parents or the child itself.

## **7. Various Social Legislations for The Protection and Development of Children:**

Children have the right to be protected from all vulnerable and exploitative situations. But this is possible only if we make our self of the real problem and the risks that the children face and of the remedies that are available in law and the policy to change the situation in the best interest of the children. A child may need legal help and protection. Resisting legal action when a child needs it the most is a common mistake all of us tend to make.<sup>11</sup> Various Schemes and Programmers:

- a) Integrated child development Scheme (ICDS),
- b) Rajiv Gandhi National Creche Scheme,
- c) Nutrition Component of Prime Minister Gramodaya Yojana,
- d) Nutrition Programme for Adolescent Girls,
- e) Reproductive and Child Health Programme,
- f) Pulse Polio Immunization Programme,
- g) Sarva Shiksha Abhiyan,

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<sup>11</sup> [https://en.m.wikipedia.org/wiki/Main\\_Page](https://en.m.wikipedia.org/wiki/Main_Page), last visited on 26/09/2024.

## **8. Effects of Juvenile Delinquency on the Society**

Juvenile delinquency affects the juvenile, and it has a huge and long-lasting impact on the parents of the juvenile, other family members, and society at large. Once a child falls into the pit of juvenile behaviour, it becomes very difficult to turn things around for him. To reprimand and reform the juvenile, he/she is often incarcerated in remand homes where they mix with other juveniles and, more often than not, become incorrigible. Some of them grow up to be hardened criminals, which creates a nuisance for society and the lawmakers, the government and the judicial system. The delinquency of the minor influences his/her career choices in the future, which impacts the juvenile's family. The trauma of having a juvenile delinquent in the family can be trying emotionally as well as financially. The cases and court trial which took place after committing a crime by a juvenile is costly and expensive, and it is also mentally taxing for the juvenile's family. The family also has an ethical problem with the victim of the delinquent. Apart from this, the family loses respect in the society and neighbourhood, which impacts the psychology of the family members.

Juvenile delinquency is closely associated with sexual behaviour, gang involvement and drug use, which creates unsafety and instability in society, which puts immense pressure on the law enforcement authorities and the government has to spend tons of money to ensure school safety and law enforcement. [81]. It results into a rise in the number of cases, also affecting the victim and his family and the country's justice system. Delinquency often has its roots in childhood, and aggressive tendencies, if uncontrolled, can lead to major issues as the child grows up.

Juvenile crime involves huge costs for society, and estimating these costs is difficult. The rise in juvenile delinquency costs the entire country an inconceivable amount of money each year, including government costs, individual medical bills, stolen or destroyed goods, societal productivity loss, work time loss and property value loss. "Prevention is more successful and less costly than treatment after the act" as per National Institute of Justice Journal: Violence by young people. To keep youngsters away from drugs and violence, additional educational and prevention initiatives should be developed.

## **9. Judicial Process- Role of H.C. And S.C.**

The Indian Judiciary plays a vital role having passed a lot of significant judgments favouring child rights.

In the Sheela Barse vs. Union of India, The Supreme Court had directed the state government to establish the required observation homes to accommodate the accused children. Hereafter only the pending investigations in their name will be tried. In Sheela Barse vs. Secretary, children aided societies, The Supreme Court directed to form juvenile and special juvenile courts and to take proper care of the children in conflict with the law and provide them the required protection.

In Vishal Jeet vs. Union of India<sup>12</sup>, the Supreme Court has issued proper directions on a PIL to the state government and all the Union Territories to eradicate the evil of child prostitution and to evolve programmes for taking care, protect, treat, develop, and rehab the young victims.

In M.C. Mehta vs. State of Tamil Nadu<sup>13</sup>, Supreme Court pronounced upon the constitutional perspective to abolish child labour, and issue proper framework with respect to mandatory education, health, nutrition, etc, of the child labourers.

Case of Umesh Chandra v. State of Rajasthan<sup>14</sup>, Supreme Court Case states the enactment of JJ Act aims at protecting the children in conflict with law, from the criminal implications when their maturity is different from mens rea of adults. The date of offense is considered as the date of prevalence, and not the date of trial of the case, which is in line with the UN agency's claim.

Case of Arnit Dass v. State of province<sup>15</sup>, 2000 states that whether the accused is a juvenile or not would be decided based on the age that he/she has attained while presentation before the competent authority.

Abhay Kumar Singh v. State of Jharkhand<sup>16</sup> - The accused had spent 3 years 8 months in detention. He had been ordered to be released on bail without any bond or surety. Further the

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<sup>12</sup> Vishal Jeet vs. Union of India, 1990 AIR 1412, 1990 SCR (2) 861

<sup>13</sup> M.C. Mehta vs. State of Tamil Nadu, AIR 1997 SC 701

<sup>14</sup> Umesh Chandra v. State of Rajasthan, 1982 AIR 1057

<sup>15</sup> Arnit Dass v. State of province, AIR 2000 SC 2264

<sup>16</sup> Abhay Kumar Singh v. State of Jharkhand 2004 CriLJ 4533 (Jharkhand)

inquiry of the accused be completed within 3 months under the Juvenile Justice Act 1986 and if not completed the criminal proceedings against the accused will automatically be quashed.

Ranjit singh v. State of H.P.<sup>17</sup> - A juvenile was released on the grounds in reply filed by the prosecution or in the police file there was nothing to show that if the juvenile will be released on bail that he would be exposed to criminal, moral, physical or psychological dangers and nor the release of the juvenile will defeat any ends of justice.

### **10. Suggestions:**

- a) **All set up should endeavour to provide a child friendly environment:** All set up should endeavour 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.
- b) **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.
- c) **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.
- d) **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.
- e) 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.

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<sup>17</sup> Ranjit singh v. State of H.P, 2005 CriLJ 972 H.P

## **11. Conclusion:**

Society's economic, social and cultural conditions determine the intensity and severity of juvenile offences. Unemployment and socio-economic instability can lead to the involvement of juveniles in criminal activities. Besides the disintegration of families, parental negligence, urbanization, illiteracy, poverty and lack of appropriate social security laws also contribute to delinquent behaviour in juveniles. JJA 2000 had failed to accomplish the aforementioned objectives as the efforts were all at the legislative levels and executive efforts had been inefficient. The famous Nirbhaya case in 2012, which included a juvenile, sparked public outrage and prompted the Central Government to implement the Juvenile Justice Act of 2015 which reduced the age of juveniles from eighteen to sixteen years in order to try them as adults for serious offences. This amendment has affected other juveniles who are in need of reformatory and rehabilitative measures. Juvenile crime, though increasing at an alarming rate, but still keeping in view the intention of the legislature as well as various international conventions, a reformatory approach must be adopted which also takes into account various neurological and psychological factors that lead a juvenile into crime.

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