

A STUDY OF CHILDREN'S RIGHTS AND JUVENILE JUSTICE SYSTEM IN INDIA

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ABSTRACT

This paper is based on a research project in which the Juvenile Justice System is analyzed by researchers. A researcher has been collecting the data from different sources, i.e. National Crime Report Bureau, Government of India, Annual Reports, Law Journals, the Supreme Court Judgements, etc. It has been rightly pointed out that the problem is the implementation of the Juvenile Justice Act is always concentrated on one part of the law that addresses only "children in conflict with the law" and ignores another category of "children in need of care and protection". 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. 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 per cent 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 the 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**¹ despite the possibility that he was under age 18 at the time of the crime.

Keywords: Juvenile Justice System, Juvenile Delinquency, the Best Interest of the Child.

I. Introduction

"A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands"².

¹ (1994) 6 SCC 200

² Myneni, S.R. (2014) Legal Research Methodology, Analysis and Interpretation of Legal Research Data, Allahabad Law Agency, Faridabad, p. 256

“The children having been recognized supremely assets of the Nation. The Government of India through its National Policy for Children acknowledged that their nurture and solicitude is our responsibility. Equal opportunities for development of all children during the period of growth should be our endeavor, for this would serve our larger purpose of reducing inequality and ensuring social justice. 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.”³

In one of its judgment, the Supreme Court⁴ rightly observed that the children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens in the future of the country depends on. Children are, no doubt, supreme assets of the country. “Child is the father of man”. Child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him.

Neglecting the child means a loss to the society as a whole. Juvenile crime, formally known as juvenile delinquency, is a term that defines the participation of a minor in an illegal act. The problem of juvenile delinquency is not new. It occurs in all societies simple as well as complex. The children are the future and a blessing to the world. The obligation of the state towards this burgeoning generation is to ensure that the children are the blessing to the world.

The future of the world hangs on the practical concern shown for the worth and growth of the child. The finest investment in the future of any country is in the nourishment (physical and mental) of children.

II. Objectives of Juvenile Justice Act

The Government of India has acceded on the 11th December 1992 to the “Convention on the Rights of the Child”, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child. The Juvenile Justice (Care and Protection of Children) Act, 2000 has made comprehensive provisions for children alleged and found to be in conflict with the law and children in need of care and protection. The Juvenile Justice (Care and Protection of Children) Act, 2015 has been enforced in the whole of India from 15th January 2016. These Acts as conceived by legislation aims at providing care, protection, treatment, development, and rehabilitation of delinquent and neglected children and children in conflict with the law.

³ Amity Law School, National Seminar on RETHINKING OF JUVENILE JUSTICE SYSTEM IN INDIA: FROM WELFARE TO RIGHTS, Published 1st September, 2016

⁴ M.C.Mehta v. State of Tamil Nadu & Ors, [1996] INSC 1576 (10 December 1996).

It has been rightly pointed out that the problem is the implementation of the Juvenile Justice Act is always concentrated on one part of the law that addresses only “children in conflict with the law” and ignores another category of “children in need of care and protection”. The existing law gives equal importance to both the categories, but our system is always preoccupied with the first category. Under the Indian Constitution, the Government is mandated to protect the right of the child and provide care and protection to them. It is important to underline that neglecting children in need of care and protection lead children to “children in conflict with law”.

III. Population of Children in India

India is a young nation, with about 40 per cent or more of its 1 billion people being children. In Census 2011, population of 0-5 years’ age group (29 per cent), 6-10 years age group (28 per cent), 11-15 years age group (27 per cent) and 16-18 years age group (16 per cent) has been reported in India.

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 laws. 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.

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 labor, 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.

IV. Juvenile Justice System in India

The first proper intervention by the government of India in justice for children was via the National Children’s Act, 1960. This act was replaced later with the Juvenile Justice Act, 1986. In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC). To adapt to the standards of the convention, the 1986 act was repealed and the JJ Act, 2000 was passed. The JJ Act 2000 dealt with two categories of children viz. ‘Child in conflict with law’ and ‘child in need of care and protection’. As per the JJ Act, 2000, a juvenile is a person who is under 18 years of age. This act has a provision that a child in conflict with the law cannot be treated as an adult. If a child is convicted of any offence, he may spend a maximum of three years in institutional care.

This act empowered the Child Welfare Committees (CWCs) to deal with children in need of care and protection. Juvenile Justice Boards (JJB) were empowered to deal with children in conflict with law.

The National Crime Records Bureau (NCRB) data reveal that there has been an increase of offences committed by juveniles, especially in the age group of 16-18. One of the perpetrators of the Delhi gang rape of 2012 was a few months short of 18 years' age and he was tried as juvenile. He was sent to a reformation home for three years and was released in December 2015. This had raised the public demand for lowering the age of juveniles under the act. The 2000 act was also facing implementation issues, particularly in cases of adoption.

V. Children in conflict with law

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. A child of 16-18 years age, who commits a lesser offence (a serious offence), may be tried as an adult if he is apprehended after the age of 21 years. A heinous offence attracts a minimum seven years of imprisonment.

A serious offence attracts three to seven years of imprisonment and a petty offence is treated with a three-year imprisonment. No child can be awarded the death penalty or life imprisonment. It mandates setting up of Juvenile Justice Boards (JJBs) in each district with a metropolitan magistrate and two social workers, including a woman. The JJBs will conduct a preliminary inquiry of a crime committed by a child within a specified time period and decides whether he should be sent to a rehabilitation center or sent to a children's court to be tried as an adult. The board can take the help of psychologists and psycho-social workers and other experts to take the decision. A Children's court is a special court set up under the Commissions for Protection of Child Rights Act, 2005, or a special court under the Protection of Children from Sexual Offences Act, 2012. In the absence of such courts, a juvenile can be tried in a sessions court that has jurisdiction to try offences under the Act. Children in need for care and protection Child Welfare Committees (CWCs) should be set up in each district with a chairperson and four other members who have experience in dealing with children. One of the four members must be a woman. The committee decides whether an abandoned child should be sent to care home or put up for adoption or foster care. Other Salient Provisions the Central Adoption Resource Agency will frame rules and regulations for the adoption of orphaned children. Inter-country adoption is allowed when no Indian adoptive parents are available within 30 days of the child being declared free for adoption. Adoptive parents should be financially and physically sound. A single or divorced person may adopt a child. A single male may not adopt a girl child. Disabled children will be given priority for adoption. Children in need of care and protection can allow to be placed in foster care based on the orders of the CWC. The selection of the foster family is based on the family's ability, intent, capacity and prior experience of taking care of children. Buying and selling of a child attract imprisonment up to five years. Giving an intoxicating or narcotic substance to a child attracts imprisonment up to seven years.

Summary of Provisions The JJ Act 2000 empowers the Juvenile Justice Board, which has psychologists and sociologists on board, to decide if a juvenile criminal in the age group of 16–18 should try as an adult or not. It has also tried to make the adoption process of orphaned, abandoned and surrendered children more streamlined, while adopting some of the concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption. Further, the act has introduced foster care in India under section 44. As per this, the families would sign up and the abandoned, orphaned children or those in conflict with the law would be sent to them. Such families will be monitored and shall receive financial aid from the state. The law has also made provision that while adopting a child, priority is given to disabled children and physically and financially incapable children. The parents who are giving up their children for adoption get 3 months to reconsider their decision {It was earlier 1 month}. The law mandates that any person giving alcohol or drugs to the child would be punished with 7 years imprisonment or Rs. 1 Lac (0.1 million) fine or both. A person selling a child would be imprisoned for five years or Rs. 1 Lac (0.1 million) fine or both.⁵

VI. Analysis of Juvenile Crime in India (During 2015) under Indian Penal Code and Special Local Laws

The Census of India, 2011, the total population of India was 1.21 billion among that population 444 million were children (i.e., under the age of 18). Among 1 Lac population, 240 numbers of cases were registered under total cognizable IPC crimes in India in 2015. The seven cases were registered against Juveniles in conflict with the law under IPC during 2015 per 1 Lac people. 2 cases per 1 Lac were registered under POCSO Act, 2012 in India during 2015. Juveniles in conflict with the law were apprehended the 5.2 percent of the total number of cases of a crime under POCSO Act, 2012.⁶

NCRB issued the report of a crime in India, 2015 in the month of 08th August 2016. According to this report, the total number of juveniles apprehended under IPC and Special Local Laws in the year of 2015 was 56501. Among that, 13.01 percent sent to the home after advice or admonition. Like this parent/guardians released on probation was 15.64 percent. Only 3.4 percent were placed under the care of the fit institution. 17.10 percent sent to special homes. Whereas 4.56 percent were dealt with fine. Acquitted or disposed of cases were 8.10 percent. It shows that 38.16 percent cases were pending for disposal in the whole of Juvenile Justice Board of India which is too much.⁷

If we observe the reformatory justice system, 36.61 percent juveniles in conflict with the law are benefited as advice, admonition, probation, care of fit institution and fine. The above table shows that almost 62 percent of Juvenile in conflict with the law were found guilty in India.

⁵ <http://www.gktoday.in/blog/juvenile-justice-care-and-protection-of-children-act-2015/> accessed on 07th October, 2016

⁶ NCRB Report 2015, Ministry of Home Affairs, Government of India

⁷ Ibid

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.⁸

VII. Total number of cognizable offences under Indian Penal Code during 1961, 1985, 2000 and 2015

The under-aged or Juveniles are characterized by a low level of maturity, both in physical and in mental capabilities which distinguish them from adults. They are, therefore, highly vulnerable groups to fall prey to temptations, inducement and mechanizations by vested groups to embark on the path of criminality. Crimes committed by Juveniles may range from petty ones to heinous ones. The nature of Juvenile sensitivity is such that it necessitates a treatment or dealing apart, by way of counseling, special care and rehabilitation through special legal provisions. The Act provides for adjudication and rehabilitation of Juvenile delinquents. 1960, 1986, 2000 and 2015 had been enacted the Juvenile Justice Act by the Parliament of India so researcher has comparative studied of Juvenile crimes under Indian Penal Code, 1860 and Special Local Laws Which Juveniles have committed the crimes in these years.

In the year 1961, 53776 Juveniles were apprehended this year as against 49276 in 1960, showing an increase of 9.1 percent. These include mainly; (i) Children apprehended for begging (ii) Children found intoxicated by liquor or dangerous drugs (iii) Children indulging in betting or borrowing (iv) Children apprehended from brothels (v) Children having no homes, settled place or visible means of subsistence or having no parents or guardians who could exercise regular and proper guardianship.

In the year 1986, a total of 170149 juveniles and youthful offenders were arrested during 1986 out of which 45.7 percent were arrested for committing crimes under IPC. The highest number of arrests under IPC crime heads, Riots (15468) accounting for 19.9 percent of the total arrests under the IPC. The arrests for crimes committed under the Local and Special Laws accounted for 54.3 percent of the total arrests. Two Acts, viz, the prohibition Act (20174) and the Gambling Act (15987) together accounted for 39.1 percent of the total arrests under the Local and Special Laws. Under the Indian Penal Code, both boys and girls were arrested mainly for Riots, Theft and Burglary while under Local and Special Laws boys were arrested mainly under the Prohibition Act and Gambling Act. Girls were arrested mainly under the Prohibition Act and Immoral Traffic (Preventions) Act.

The statistics of juveniles and youthful offenders apprehended over the past 10 years revealed that more than 80 percent of the juveniles apprehended belonged to 16-21 year age groups except in 1976 and 1977 when this percentage was 67.3 percent and 75.5 percent i.e., less than 80 percent. The arrests of juvenile offenders under this age group was 89.9 percent in the year 1986 which was the maximum. The percentage of juveniles in the same age group was 67.3 percent in 1976 and went gradually up to 89.9 percent in 1986 except a decline in 1983 which was

⁸ Ibid

85.3 percent.

Among the larger States, there was very little juvenile delinquency in Uttar Pradesh, Punjab, Odisha and Kerala States in which juveniles indulged more in rioting than in any other type of offence were Bihar, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Manipur, Tripura, Rajasthan and West Bengal. Criminality under the Indian Penal Code among girls was highest in Maharashtra followed by Gujarat. The number of girls booked under Local and Special Laws was highest in Gujarat followed by Tamil Nadu and Maharashtra. Juvenile delinquency under the Indian Penal Code in all the States and Union Territories was higher in the higher age groups. A similar trend was observed in the case of juvenile delinquency under the Local and Special Laws.

A total of 154399 juveniles sent to the Courts during 1986. Cases in respect of 57.4 percent of the total number of juveniles sent to courts remained pending for disposal at the end of the year 1986. During the year 1986, 14.7 percent of the juveniles whose cases were sent to the courts for disposal, were either acquitted or otherwise disposed of. Of the 154399 juveniles sent to the court during 1986, 7.2 percent were restored to guardians, 1.1 percent were placed on probation, 0.5 percent sent to Reformatories and Borstals, 0.5 percent sent to Schools and Institutions, 2.6 percent sent to Adult Institutions, 16 percent were imprisoned, 14.7 percent were acquitted or otherwise disposed of and cases in respect of 57.4 percent of them were pending.

Socioeconomic background information about juveniles during 1986, in order to study the phenomenon of juveniles crime, socioeconomic background information about the juveniles apprehended was collected under certain broadheads viz; family background, economic set-up, recidivism, religion, community, and education. 70.6 percent of juveniles arrested were living with their parents, 21 percent with their guardians and 8.4 percent were homeless. The all-India pattern is not reflected in different States and Union Territories. In all the States and U.Ts more juvenile delinquents were living with their parents.

Information regarding economic conditions of the parents or guardians of the juveniles collected under four heads, viz; lower income (below Rs 150 per month), lower middle income (above Rs. 150 but below Rs 500, upper middle income (above Rs. 500 but below Rs. 1000 per month). Break up of data for all the States and U.Ts, except in Delhi was available on this aspect of 165451 juveniles. Out of those juveniles, 50.6 percent belonged to those parents or guardians whose income was less than Rs. 150 per month and there were only 4852 juveniles belonging to those parents or guardians whose income was Rs 1000 per month and above. The highest number of juveniles apprehended in the upper middle-income group was noted in Maharashtra (9032) followed by Gujarat (3213) and Madhya Pradesh (1249) while in the upper-income group. It was the highest in Tamil Nadu (719) and Rajasthan (713).

Information under this head also was available for 165451 juveniles out of whom 88.8 percent were new offenders. In almost all the States this pattern was consistent. The classification of juveniles apprehended by religion was available in respect of 165451 juveniles out of which 67.8 percent belonged to Hindu religion, while the percentage in respect of Muslims, Sikhs,

Christians and others was 19.1, 1.3, 5.0 and 6.8 percent respectively. Out of the 632 juvenile delinquents arrested in Punjab, on was a Sikh were as 2088 Sikh juvenile delinquents were arrested in other States. The data classified by the community was available in respect of 165451 juveniles, out of which 26.3 percent and 17.1 percent belonged to Scheduled Caste and Scheduled Tribes respectively. The classification of juveniles apprehended was collected under four heads, viz; (i) illiterate (ii) below primary (iii) above primary, but below matriculation or higher secondary and (iv) matriculation or higher secondary and above. The data were available in respect of 165451 juveniles, out of whom 41.4 percent were illiterate and only 5.4 percent were matriculation and above.

In the year 2000, the share of offences committed by the Juveniles to the total IPC crimes reported in the country has shown a declining trend since 1990, notwithstanding the fact that there is an appreciable increase in the population of the country. From 0.9 percent during 1990, the share of Juvenile crimes has steadily gone down. It recorded the lowest at 0.5 percent during 1994 but increased marginally to 0.6 percent during 1995 and 1996. It again went down to 0.5 percent during 1997 to 2000. The crime rate too has shown a declining trend with the lowest at 0.8 in 1997 it slightly increased to 1.0 in 1998 and again went down marginally to 0.9 during the years 1999 and 2000

A total of 9,267 IPC cases was registered against Juveniles during 2000, showing an increase of 4.3 per cent such cases over 1999. The crimes showing significant decline were Counterfeiting (57.1%), Arson (27.5%), Burglary (7.7%) and Other IPC crimes (1.1%). A steep increase of 250 percent was reported for cases under Preparation & Assembly for Dacoity. Other crimes to register increase were Criminal Breach of Trust (84.6%), Sexual Harassment (51.9%), Dowry Deaths (50.0%), Dacoity (32%), Molestation (30.2%), Causing Hurt not amounting to Murder (28.6%), Rape (24.5%) and Cruelty by Husband & Relatives (22.3%).

A total of 5,154 cases of Juvenile Delinquency under SLL were reported during 2000 against 5,569 cases in 1999, thereby registering a decline of 7.5 percent in 2000 over 1999. However, steep increase was reported for some crimes by Juveniles such as 2400 percent for Indecent Representation of Women (P) Act (25 cases from 1 cases during 1999), 400 percent increase was reported (5 cases from 1 cases during 1999) for Protection of Civil Rights Act and Child Marriage Restraint Act, 100 percent increase (4 cases from 2 cases during 1999) for Essential Commodities Act and Copy Rights Act, 77.8 percent increase in Narcotic Drugs & Psychotropic Substances Act, 50.7 percent increase for Excise Act and 38.9 percent increase for SC/ST (Prevention) of Atrocities Act etc. Similarly, a significant decline was noticed for cases under Indian Passport Act (75.0%), Explosives & Explosive Substances Act (57.1%), Prohibition Act (29.2%), Registration of Foreigners Act (28.6%) etc.

Madhya Pradesh (2,681) and Maharashtra (1,641) reported a high incidence of Juvenile crimes under IPC. They shared 28.9 per cent and 17.7 per cent of Juvenile IPC crime at national level almost doubles their shares in Total IPC crimes of 12.2 per cent and 9.8 per cent respectively. Among the mega cities, the share of Delhi city (19.6%) in Juvenile crimes was almost equal to its

share in Total IPC crimes (20.1%). Theft (2,388), Hurt (1,497) and Burglary (1,241) altogether constituted 55.3 percent of total Juvenile IPC crime. The share of these Juvenile crimes, i.e. 25.7%, 16.2% and 13.4% was significantly higher than their respective share in Total IPC crimes, i.e. 14.6%, 13.6%, and 6.0%, signifying Juveniles are confined mainly to these crimes only. 19.9 per cent and 16.0 per cent of Juvenile Theft cases were reported from Maharashtra and Madhya Pradesh States alone while these States shared 23.9 per cent and 35.6 per cent of Hurt cases respectively and 18.1 per cent and 25.1 per cent of Burglary cases respectively etc.

Tamil Nadu continued to enforce effectively the Special and Local Laws against Juvenile offenders and reported the highest number of cases (3,891) in the country. Of the total reported Juvenile SLL cases in the country, 75.5 per cent were registered in Tamil Nadu. The Other States, in which there was effective enforcement of these Acts, were Gujarat (544), Madhya Pradesh (190) and Maharashtra (188). During 2000, offences reported against Juveniles in connection with SLL cases were more under Prohibition Act (519), Gambling Act (131), Excise Act(113) etc.

Only 3 States, namely Gujarat, Maharashtra and Tamil Nadu registered cases against Juveniles under Prohibition Act. These cases were 366, 92 and 60 respectively. While Madhya Pradesh State reported 55.7 per cent Gambling Act cases and 46.0 per cent of Excise Act cases. U.T of Delhi accounted the same as before for almost all the SLL crimes (11 out of 14) registered in all the Union Territories of the Country. The majority of these crimes was booked under Excise Act and Arms Act.

The number of total Juveniles apprehended has been gradually declining over the years. The number of girls apprehended in 2000 declined by 23.2 percent when compared with the figures of 1999. Juveniles in the age group of 12-16 years were most susceptible to crimes both under IPC and SLL cases and more Juveniles were arrested in this age group (63.3%). The Juveniles in the age group of 16 - 18 years shared 18.4 percent of the total arrests. Juveniles in the age group of 7 -12 years comprised 18.3 percent of the total shares of the Juveniles arrested in the country. The Juveniles arrested in the age groups of 7 - 12 years and 16 - 18 years declined by 18.5 per cent and 19.7 per cent in 2000 as compared to the corresponding figures in 1999. However, in the case of Juveniles in the age groups of 12 - 16 years, there was an increase of 10.5 percent in the number of arrests during this year.

Of the total Juveniles arrested under IPC crimes in 2000, 22.8 per cent offenders were apprehended in various cases clubbed as 'other IPC crimes'; 24.1 per cent in cases of 'Theft', 16.2 per cent in case of 'Hurt', 14.7 percent in 'Burglary' and 6.9 per cent in 'Riots'. In cases under SLL, more Juveniles were arrested under 'Prohibition Act' (10.8%), 'Gambling Act (3.5%)', 'Immoral Traffic'(Prevention) Act'(1.4%) and 'Indian Railways Act' (1.3%). However, as in the case of IPC, the majority of Juveniles (77.9%) were arrested in cases clubbed as other Special & Local Laws. More Juvenile girls than boys were involved in cases related to dowry death', cruelty by Husband and his relatives', 'Prohibition Act', immoral Traffic (Prevention) Act', dowry Prohibition Act, Child Marriage Restraint Act', Protection of Civil Rights Act, Indecent Representation of Women (P) Act', Registration of Foreigners Act and Indian Passport Act.

Madhya Pradesh apprehended the highest number of Juveniles (3,541) under IPC in the country during 2000 followed by Maharashtra (2,161) and Gujarat (1,109). Madhya Pradesh witnessed the highest number of arrests of Juveniles under Murder (105), Attempt to Commit Murder (78), Causing Hurt not amounting to Murder (16), Rape (98), Robbery (37), Burglary (471), Hurt (678), Molestation (104) etc., and Other IPC crimes (1,230) than any other State. As far as SLL cases are concerned, Tamil Nadu accounted for 66.0 per cent of the total Juvenile offenders arrested in the country during 2000. The other States which contributed significantly under SLL were Gujarat (11.4%), Maharashtra (11.1%) and Madhya Pradesh (5.0%). The States which apprehended the largest number of Juveniles in specific SLL cases were : Madhya Pradesh in 'gambling Act', 'Excise Act', 'Arms Act', 'Narcotics Drug and Psychotropic Substances Act'; Gujarat in 'Prohibition Act' etc.

The ratio of girls to the boys arrested for committing IPC crimes during the year was nearly 1:3. Madhya Pradesh (569), Maharashtra (283) and Gujarat (101) contributed substantially towards Juveniles apprehended in the age group of 7 -12 years in the country under IPC crimes during 2000. The Juveniles apprehended in the age group of 12 - 16 years from Madhya Pradesh (2,619), Maharashtra (1,661), Gujarat (665) and Andhra Pradesh (634) shared 65.7 per cent of the total Juvenile apprehended in the age group of 12 - 16 years in the country. The Juvenile girls apprehended during 2000 in the age group of 16 - 18 years for IPC cases were the highest (383) in Rajasthan followed by Madhya Pradesh (353) and Gujarat (343).

The percentage of Juvenile girls apprehended in IPC crimes was 23.6 percent, whereas in SLL cases it was 21.6 percent. Tamil Nadu (3,919) and Gujarat (678) reported higher Juvenile offenders in SLL cases. Tamil Nadu also had the highest Juvenile offenders in the age-group of 7-12 years (1,767) and 12-16 years (1,976) under SLL crime. The highest Juvenile girls (480) in the age-group of 16-18 years were arrested in Maharashtra followed by Gujarat (365). 91.6 per cent of the total girls apprehended in this age-group (16-18 years).

The information on disposal of Juveniles arrested is available in the data. The percentage of juveniles awaiting trial at the end of 2000 was 37.0 percent. Mizoram, Nagaland, Sikkim and Tripura reported cent percent disposal of apprehended Juveniles. Jammu & Kashmir and Manipur had not reported any incident of Juvenile Delinquency which appears to be highly unlikely. The States and UTs which reported cent per cent pendency level in the disposal of apprehended Juveniles were Punjab and A&N Islands. Of the total Juveniles apprehended, 14.6% were disposed off after advice or admonition, 17.2 per cent were placed under care of Parents/guardians 11.2 per cent sent to fit institutions, 10.4 percent sent to Special Home, 3.4 per cent were dealt with fine and 6.3 per cent were either acquitted or otherwise disposed off.

As expected, low education, poor economic set-up are generally the main attributes of delinquent behavior of the Juveniles. Of the total Juveniles who were involved in various crimes, 77.9 percent were either illiterate (5,265) or had education up to primary level (8,696). Children living with parents (12,562) and guardians (2,679) constituted 84.8 percent of the Juveniles apprehended. The share of homeless children who were involved in crimes was just 15.2 per

cent. Till 1998 the information on an Economic Background of the Juveniles arrested under IPC and SLL crimes was being collected in 5 Income groups as Lower Income (up to Rs. 500 P.M.), Lower Middle (Rs. 501 to 1000 P.M.), Middle (Rs. 1001 to Rs. 2000 P.M.), Upper Middle (Rs. 2001 to 3000 P.M.), Upper (above 3000 P.M.). It was felt that these classifications had lost relevance in the prevailing economic conditions. These income groups were revised in 6 categories as follows: Annual Income (up to Rs. 25,000), Annual Income (Rs. 25,001 to 50,000), Middle Income (from Rs. 50,001 to 1,00,000), Middle Income (from Rs. 1,00,001 to 2,00,000), Upper Middle Income (Rs. 2,00,001 to 3,00,000), Upper Income (above Rs. 3,00,000). Hence income group-wise figures of Juveniles apprehended during 2000 are only comparable with those of the previous year 1999. The large chunk of Juveniles (72.2%) belonged to 1st category i.e. Annual Income up to Rs. 25,000. The share of Juveniles from Upper Middle Income (Rs. 2,00,001 to 3,00,000) and Upper Income (above Rs. 3,00,000) was substantially low at 0.6 percent and 0.2 percent respectively. Annual Income Groups (i.e. 25,001-50,000) and (50,001 to 1,00,000) contributed to 19.0% and 6.3% respectively of the total Juveniles apprehended.

The recidivism shown by the Juvenile delinquents indicated a decrease of 2.0 percent over 1999. The significant recidivist tendency among Juvenile delinquents was noticed in the states of Nagaland (38.2%), Mizoram (22.0%), Gujarat (15.6%), Tamil Nadu (12.5%) and Maharashtra (12.3%). Among UTs, Delhi reported 24.9% Juvenile recidivists.

In the year 2015, NCRB issued the report of a crime in India, 2015 in the month of August 2016. According to this report, the total number of juveniles apprehended under IPC and Special Local Laws in the year 2015 was 56501. Among that, 13.01 percent were sent to the home after advice or admonition. Like this parent/guardians released on probation was 15.64 percent. Only 3.4 percent were placed under the care of the fit institution. 17.10 percent sent to special homes. Whereas 4.56 percent were dealt with fine. Acquitted or disposed of cases were 8.10 percent. It shows that 38.16 percent cases were pending for disposal in the whole of Juvenile Justice Board of India which is too much.

If we observe the reformatory justice system, 36.61 percent juveniles in conflict with the law are benefited as advice, admonition, probation, care of fit institution and fine. The almost 62 percent of Juvenile in conflict with the law were 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.

VIII. Testing of the provisions of Juvenile Justice Act

“Jurisdiction in the case of juveniles.- Section 27⁹ of Cr.P.C states that “Any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the Court is under the age of sixteen years, may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960

⁹ Chaturvedi, M, (2010), Criminal Procedure Code, 1973, Allahabad Law Agency Publication, pp 23

(60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.”

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.”¹⁰

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*,¹¹ 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*)¹². At present, 19 states of U.S. with 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 not is 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.¹³

In March 2005, *Roper v. Simmons*¹⁴, the United States Supreme Court declared the practice of executing defendants whose crimes were committed as juveniles unconstitutional in *Roper v. Simmons*.”

¹⁰ <http://www.deathpenaltyinfo.org/part-ii-history-death-penalty/> accessed on 24th August, 2016

¹¹ 487 U.S. 815

¹² 492 U.S. 361

¹³ <http://www.deathpenaltyinfo.org/part-ii-history-death-penalty/> accessed on 24th August, 2016

¹⁴ 543 U.S. 551 (2005)

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 states¹⁵.

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 per cent 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* ¹⁶) despite the possibility that he was under age 18 at the time of the crime.

Article 6(5) of the ICCPR prohibits the use of the death penalty against people who were under 18 years old at the time of the crime, as does Article 37(a) of the Convention on the Rights of the Child, other international human rights treaty to which India acceded in 1992. Indian law came into conformity with this prohibition in 2000 with the passage of the Juvenile Justice (Care and Protection of Children) Act 2000 and 2015. Before that, it was lawful for a boy of 16 to be sentenced to death¹⁷, but prior to 1986, there was no minimum age prohibition, contrary to India's obligations as a party to the ICCPR.

Ramdeo Chauhan (alias Raj Nath Chauhan) was convicted and sentenced in March 1998 for the 1992 murder of four members of a family for whom he worked as a domestic servant. According to Amnesty International, there was strong evidence that Chauhan was 15 years old at the time of the crime, and as such, his conviction and sentencing were "unsound." The Juvenile Justice Act requires that children under 16 years of age be tried by a Juvenile Court, which Chauhan was not¹⁸. In January 2002, the Governor of Assam commuted Chauhan's sentence to life imprisonment in clemency proceedings. However, the Supreme Court struck down his decision in May 2009. The Court reasoned that the Governor's decision was not reasoned and that it came after the National Human Rights Commission intervened to assist in Chauhan's defense. In November 2010, the Supreme Court reversed its 2009 ruling, thus reinstating the Governor's

¹⁵ New York Times, 29th April 1999 and Amnesty International, "List of Abolitionist and Retentionist Countries," Report ACT 50/01/99, Updated June 2004

¹⁶ (1994) 6 SCC 200

¹⁷ The Juvenile Justice Act, 1986 prohibited the death penalty for juveniles but defined a juvenile boy as one who had not attained the age of sixteen years.

¹⁸ Amnesty Intl., India: Death penalty/Fear of Execution, Ram Deo Chauhan (Alias Raj Nath Chauhan), ASA 20/032/2001

previous decision to award life imprisonment to Chauhan. The Gauhati High Court ruled in August 2011 that Chauhan was indeed a juvenile at 15 to 16 years of age at the time of the offense¹⁹. Medical tests to determine his age were conducted in 2003, five years after his initial imprisonment²⁰. Because of his age at the time of the crime, the case would thus fall under the Juvenile Justice Act, 1986 and 2000. The maximum sentence for a juvenile under the Act is three years in an observation home, not in prison. After spending almost two decades behind bars, Chauhan is now a 34-year-old free man. According to a 2012 media report, the Supreme Court stated that trying Chauhan as an adult was a “travesty of justice.”²¹

Another recent case also speaks to the possibility that juveniles often are imprisoned as adults despite safeguards in the Juvenile Justice Act. Ankush Maruti Shinde, who was under a death sentence confirmed by the Supreme Court in 2009, was recently determined to be a juvenile at the time of his offense. His sentence was commuted on July 7, 2012, after the Nasik Sessions Court ruled on his age. According to an Advocate of the Bombay High Court, “There are many more death-row prisoners like Ankush who are juveniles under the law and entitled to its protection, but their cases have not been investigated.”

Dr. Subramanian Swamy v. Raju THR. Member, Juvenile Justice Board, On 16th December 2012 a young lady (23 years in age) and her friend were returning home after watching a movie in a multiplex located in one of the glittering malls of Delhi. They boarded a bus to undertake a part of the journey back home. While the bus was moving, 5 persons brutally assaulted the young lady, sexually and physically, and also her friend. Both of them were thrown out of the bus. The young lady succumbed to her injuries on 29.12.2012. Five persons were apprehended in connection with the crime. One of them, identified for the purpose of the present case as Raju, was 18 years of age on the date of commission of the crime. Accordingly, in compliance with the provisions of the Juvenile Justice Act, 2000 (as amended and hereinafter referred to as ‘the Act’) his case was referred for inquiry to the Juvenile Justice Board. The other accused were tried in a regular sessions court and have been found guilty, inter alia, of the offences under Section 376 (2)(g) and Section 302 of the Indian Penal Code, 1860 (for short “the Penal Code”). They have been sentenced to death by the learned trial court. Their appeal against the aforesaid conviction and the sentence imposed has since been dismissed and the death penalty has been confirmed by the High Court of Delhi. The maximum power of ‘punishment’, on proof of guilt, is to send the juvenile to a special home for three years.

Para 79 of this decision of the Supreme Court of India, The Committee is concerned over the administration of juvenile justice in India and its incompatibility with Articles 37, 40 and 39 of the Convention and other relevant international standards. The Committee is also concerned at

¹⁹ Vishwajoy Mukherjee, A Long Wait for Freedom, Tehelka,

http://www.tehelka.com/story_main50.asp?filename=Ws120911LAW.asp, Sept. 12, 2011.

²⁰ Ananya Sengupta, Govt Mulls Time Limit on Juvenile Claim, The Telegraph,

http://www.telegraphindia.com/1120902/jsp/nation/story_15926955.jsp#.ULqSORyJniA, Sept. 2, 2012

²¹ Vishwajoy Mukherjee, A Long Wait for Freedom, Tehelka

the very young age of criminal responsibility – 7 years – and the possibility of trying boys between 16 and 18 years of age as adults. Noting that the death penalty is de facto not applied to persons under 18, the Committee is very concerned that de jure, this possibility exists. The Committee is further concerned at the overcrowded and unsanitary conditions of detention of children, including detention with adults; lack of application and enforcement of existing juvenile justice legislation; lack of training for professionals, including the judiciary, lawyers, and law enforcement officers, in relation to the Convention, other existing international standards and the 1986 Juvenile Justice Act; and the lack of measures and enforcement thereof to prosecute officials who violate these provisions.

Para 81 states that “The Committee recommends that the State party abolishes by law the imposition of the death penalty on persons under 18. The Committee also recommends that the State party, consider raising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults. In accordance with the principle of non-discrimination contained in article 2 of the Convention, the Committee recommends article 29(h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. The Committee recommends that the 1986 Juvenile Justice Act be fully enforced and that the judiciary and lawyers be trained and made aware of it. The Committee further recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to improve prison facilities as quickly as possible.” The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders.

”Supreme Court of India held that “Procedure under the Criminal Procedure Code, 1898 is followed. Section 51 prohibits the award of a death sentence, imprisonment, and transportation to a youthful offender. Sentences of death and life imprisonment cannot be awarded to juveniles. For juveniles aged between 12- 16 years, one-third of the maximum punishment to adults can be awarded. For juveniles aged between 16-18 years, half of the maximum punishment to adults can be awarded.

The Supreme Court of India decided the judgement that “The Board is empowered to pass one of the seven dispositional orders under Section 15 of the JJ Act: advice/admonition, group counseling, community service, payment of fine, release on probation of good conduct and placing the juvenile under the care of a parent or guardian or a suitable institution, or sent to a Special home for 3 years or less. Where a juvenile commits a serious offence, the Board must report the matter to the State Govt who may keep the juvenile in a place of Safety for not more than 3 years. A juvenile cannot be sentenced to death or life imprisonment.

IX. Conclusion

The above analysis shows our Constitution provides several measures to protect our children. It obligates both Central, State & Union territories to protect them from the evils, provide free and good education and make them good citizens of this country. Several legislations and

directions of this Court are there to safeguard their intent. But these are to be properly implemented and monitored. We hope and trust that all the authorities concerned through various responsible NGOs implement the same, for better future of these children.

In the Rajya Sabha, discussing the Juvenile Justice (Care and Protection of Children) Bill, 2014, a member said that restorative justice is best ensured for this underclass by addressing the fundamental problems that create juvenile offenders in society in the first place, by ensuring universal access to education and social care for all children.

The Supreme Court of India emphasised in the several landmark judgement of children's rights, he said that the 'demure laws' have not been translated into 'defacto situation' for various reasons such as illiteracy, social practices, prejudices, cultural norms based on patriarchal values, poor representation of women and children in policy-making, poverty, regional disparity in development, lack of access and opportunity to information and resources, etc. The ground situation more or less remains the same.

For any social and reformatory legislation to be successful, it requires not just the good law but dedicated and motivated functionaries of the criminal justice system as well as the administrative wings of the govt in addition to responsive and responsible society. In the absence of this prerequisite, the law is but just a piece of paper and can never hope to make the impact it was intended to make. However, it has to be understood that the Juvenile Justice Act is a social legislation, aimed at changing the way our children get treated in the society and the system, and just putting the administrative structure alone is not enough to reach the goals set up by the Juvenile Justice Legislation, it requires corresponding change in behavior as well as mindset at all levels to make a real impact in the life of a child.

To chart out a plan for the holistic development of the juvenile every disposition order is required to contain an Individual Care Plan prepared by the Probation Officer. Rule 2 (h) of the Model Rules defines Individual Care Plan as: "A comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile's or child's self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following needs of a juvenile or a child: (i) Health needs; (ii) Emotional and psychological needs; (iii) Educational and training needs; (iv) Leisure, creativity and play; (v) Attachments and relationships; (vi) Protection from all kinds of abuse, neglect and maltreatment; (vii) Social mainstreaming; and (viii) Follow-up post release and restoration."

The standard procedure for making Individual Child Care Plan as was evident from interviewing probation officers is that it is made through 4-5 counseling sessions with the juvenile every 15 days. During these sessions, the Probation Officer finds out about the child's interests, family background, personal relationships, schooling, any vocational training that the child may have had and any sort of employment held by the child.

First, to assess the needs of the juvenile, his/her antecedents need to be properly looked into requiring feedbacks from not just the juvenile but also his/her parents, teachers, peers,

community, and employer. For making the Care Plan it is only the juvenile who is consulted and the parents occasionally if they choose to show up for a session that is. For assessing emotional and psychological needs no trained counselors, child psychologists or psychiatrists are consulted. No IQ or aptitude tests are conducted nor are previous school records checked to evaluate and give direction to serve the educational and training needs of the child. The same problem as in the SIR ensues; the Probation officers in most cases, while assessing the needs are very vague. As a member of the JJB Bench said: "they will write 'bad' in front of the economic status of the juvenile or 'yes' in front of vocational/educational training needed." No in-depth analysis is done which debilitates the entire rehabilitation process. If the basic rehabilitative needs of the juvenile are not identified properly, how is one expected to even determine how the juvenile is to be rehabilitated?

The JJB has no tie-ups with a vocational training center, Institute of Technical Institution or Jan Shikshan Sansthan. So when talking about the interests of the child we are talking only about the ones that the child can afford to pursue. 'Affordability' is the key word here since most of these children come from economically weak families.

Most of them thus, end up pursuing the kind of vocational training they can learn for free like auto-repairing or other such low-end vocations. So the whole system just becomes one vicious circle as these vocations can do little to improve the economic status of these juveniles.

Since the JJB can do little to improve the environments from which these children come (sponsoring these children being rare phenomena), the main reason attributed for the commission of offenses, one hopes that the corrective measures can at least be internalized through counseling or some sort of psychological treatment. However, there are no trained counselors from the JJB's side to administer such therapeutic treatment to these children.

However, some efforts at improving the situation are being made with the appointment of a full-time counselor recently from the side of the state at JJB-II. Given that this is a recent development it will be some time before one can assess the benefits and check to see if this has helped in bringing more juveniles under the net of counseling. Moreover, there are no pre-release or post-release arrangements made. Nor is there any machinery in place to follow-up once the JICL are let out of the system. As a result, recidivism is common.

There are two elements to examine here-as per their interest' and 'gainful' vocational training. Most of the vocations being offered were archaic and certainly not 'gainful' like candle making, book binding and arts and crafts. There was also detergent making, embroidery and cutting and tailoring. But a good thing was that along with informal education these children were also given one hour of basic education.

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