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JUVENILE IN CONFLICT WITH LAW- AN OVERVIEW*

Abstract

This research paper deals with a burning issues relating to the children who is in conflict with in conflict with law as far as India is concerned. Author wish to provide elaborate provisions of Law relating to called the Juvenile Justice (Care and Protection of Children) Act, 2015. Other Provisions relating to Juvenile Delinquency will be discussed widely. The author has come up with the arguments in respect of Pradhyumn case in which Juvenile to be treated like adult, Nirbhaya's Case in which all the judiciary has on the war front and there was a big debate and the same will be discussed elaborately along with the provisions whether there is really it is high time to amend the provisions of Juvenile Justice Act.

The law wants the Juvenile Justice Boards to take a call in such cases of heinous crimes by those aged between 16 and 18 years. The boards will determine whether the crime was committed with a child-like mind, or an adult-like mind. It couldn't be more arbitrary than this. In this research paper the working of Juvenile Justice Board will also be discussed along with the conclusion and suggestions in this respect.

Key Words: Children, juvenile, crime.

Introduction Meaning and Concept:-

A child is born with purity and innocence and not with any criminal mind. Nurturing child is plays a vital role in every child's life and the child grows in constructively if he gets proper care and

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attention in a right manner. Surrounding environment plays a crucial role in the development of the child when he convert himself into teenagers such they may perform good and satisfactorily if he gets the support of positive surrounding.

Children are considered to be gifts from God and are greatest personal as well as national assets. We as individuals, parents, guardians and society as a whole have a duty that children should be allowed and provided opportunity to grow up in a healthy socio-cultural environment so that they could become responsible citizens, physically fit, mentally alert and morally healthy. It is the duty of the State to provide equal opportunities for development to all children during the period of their growth which would reduce inequality and ensure social justice. Children are expected to be obedient, respectful and have virtues and good quality in them. However, due to various reasons certain percentage of children do not follow settled social and legal dictum. Such children are most often than not get involved in criminal behaviour which is known as juvenile delinquency or juvenile crime.

Meaning and Concept:

When the child understand their capabilities it means the effects of child's physical, psychological, moral and spiritual development working on their minds positively. On the other hand if the environment is not positive or proved to be detrimental to the growth of human minds, absence of basic needs absence to supervision from parents or ineffective supervision, such factors may affects the growth of children adversely as result of this child may turn in to delinquent that is Juvenile Delinquent. One of the major social problem India is facing that Juvenile Delinquency such problem is not affects the child but also affecting concerned families, society, community where in such child exists and hence such behaviour of the child's the family in to panic situation and made to suffer a lot in turn.

The meaning of the syntax 'juvenile delinquency' is doing of some act against society by young persons. The terms 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society

The minimum age standard of criminal responsibility is the age at which children may be prosecuted in the criminal justice system. The average minimum age of criminal responsibility worldwide is 12 years.

Juvenile justice act (2000)

- Section 2 (1) of the Juvenile Justice Act, 2000 has defined juvenile in conflict with law as a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

Juvenile justice act (2015)

- Section 2(12) child means a person who has not completed
- Section 2(13)“child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.
- Section 2(21) child care institution means Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency and a fit facility recognized under this Act for providing care and protection to children, who are in need of such services.
- Section 2(35) juvenile means a child below the age of eighteen years.

Difference between Juvenile and Minor & Juvenile Crimes in India.

Juvenile and Minor may be similar but in legal term minor associated with legal capacity and the term Juvenile are used in context with criminal offender. In India Crimes Committed by the children is not new to any one. Generally minor crimes and particularly atrocious crimes in particular are being committed at regular and frequent interval in India by children. Crimes such as theft, burglary, snatching which are not so serious in nature or crimes such as robbery, dacoity, murder and rape etc which are comparatively serious are on the rise in whole of the country. Unfortunately all these crimes are being committed by the children below the age of eighteen years.

As far as juvenile is concerned also there is a tendency that juveniles between the age of 16 to 18 years are found to be more involved in atrocious or heinous criminal acts. According to the National Crime Records following is the statistics

Again, in another barbaric gang rape case which is known as Shakti Mill Rape case in Mumbai City wherein , a minor was involved. These and several more recent events have triggered a public debate that the present Juvenile Justice (Care and Protection) Act, 2000 which treats persons below the age of 18 years as minor or juvenile, should be amended.

REASONS FOR JUVENILE CRIMES

A child is born with purity and innocence and not with any criminal mind. Nurturing child is plays a vital role in every child's life and the child grows in constructively if he gets proper care and attention in a right manner. Surrounding environment plays a crucial role in the development of the child when he convert himself into teenagers such they may perform good and satisfactorily if he gets the support of positive surrounding. ¹A Juvenile delinquent is a child first and an offender later. In this context, penal laws, criminal codes and Children Acts of various countries extend immunity from criminal liability to children under a particular age, however, to the next higher age, the extended immunity is qualified

It has been proved that circumstances makes the child to act criminally. Socio-cultural environment, both inside and outside of home, significant enhancement in Technology and mobile applications plays significant role in shaping one's life and overall personality.

Some of the most common causes which are associated with juvenile crimes are: Poverty; Drug Abuse; Anti-social Peer Group; Easy availability of firearms; Abusive parents; Single-parent child; Nuclear Family; Family Violence; Child sexual abuse and Role of Media.

However, as far as India is concerned, it is Poverty and the effect of media, especially the social-media which make juveniles more inclined towards criminal activities.

²The study B. R. Sharma, Sangeet Dhillon et al.³ noted that childhood incidents and experiences are significant in the development of criminality; on the other hand, it does not mean criminals

¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/67730/11/11_chapter%204.pdf

² Research paper by Susheelkumar V Ronad,¹ Ashok S Kori,² ShrinivasKosagi,³ Obanaik P,² Prashant Patil² ¹ Department of Psychiatric Nursing, Dharwad Institute of Mental Health and Neurosciences, India ² Department of

expose their criminality early in life Causes of Juvenile delinquency required to understand from sociological theories of juvenile delinquency, these theories put prominence on the environment, social structures and the learning process. Yet, many factors that take part in vital part in a youngsters delinquent behavior.

³The study by B. R Sharma, Sangeeth Dhillon et al.³ they mentioned individual factors cause for Juvenile delinquency. Individual factors are personality traits like submissiveness, defiance, hostility, impulsiveness, feeling of insecurity, fear, lack of self control and emotional conflicts whereas situational factors are family, companions, movies, school environment, work environment etc. Commonly, children need support, love, affection, keen parenting support and involvement of family members is required to every child become healthy. When these basic needs are missing which may affect child's personality. The study of Haveripeth PD4 describes that causes of juvenile delinquency are broken homes, lack of love, lack of parental affection, gang subculture, poverty, negative influence of movie and media, urbanization, adolescent instability, lack of recreation, negative environment, low-socio economic, poor parental violence, availability of weapons, association with deviant peers, parental substance use, Poverty is one of the biggest causes which force a child to get involved in criminal acts. Also, role played by social media today which is having a more negative than positive imprints on young minds. Others factors responsible for the child become juvenile are as follows.

Juvenile delinquency is the act of committing a crime at a very young age. A juvenile delinquent is a young person, particularly a teenager under the age of eighteen, who breaks a state or federal law by committing a crime.

Teens are still immatures and do not think like adults, therefore they are prone to making mistakes or committing crimes that are not fully in their control. Teens can break laws for various reasons, and there are a number of factors that can lead them to juvenile delinquency.

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In this research paper , researcher have listed down some of the reasons why teens become juvenile delinquents and what causes them to commit crimes. Let's have a look at them:

Broken Family

In any family every a teen adopts moral and ethical values from his family members. It goes without saying that family plays a vital role in shaping a teen's behavior and grooming his/her personality. However, teens become violent or show signs of juvenile delinquency only when they're facing disturbance at home. Broken or disturbed families with bad relations can cause teens to go astray and become violent. Single parents are often busy in working, obviously there is ignorance resulting they are not able to spend appropriate time with their children. This causes teens to seek attention from others..

Companions and Gangs:

⁴As the child grows older he goes into the neighborhood and becomes a member of the playgroup or peer group. If by chance he joins the group or the gang that fosters delinquent attitudes he is also likely to become a delinquent. In fact, much delinquency springs up from the prevalent attitudes in the groups within which the youth has immediate contacts. Charles Shaw has opined that "delinquency is a product of community forces ". In cities, in slum areas peculiar social groups called 'gangs' are found. Generally the gang starts as a playgroup. In the absence of playground facilities, the children will start playing in streets and finally organize themselves into gangs. The gang has all the qualities of an in group such as loyalty, cooperation, social solidarity and unity.

These gangs are found to be associated with crime in all its aspects like delinquency, rioting, corrupt politics, and so on. Children coming from poor families and broken families easily become the victims of gangs. Due to bad companionship also offences are committed by the adolescents. Studies have shown that delinquent acts are done in company. In his Illinois Crime Survey of 1928 Shaw analysed 6000 boys were involved in the crime. He found that in 90% of the cases two or more boys were involved in the crime. But in Uday Shankar's study in India only 23% of persons

⁴ <http://www.shareyouressays.com/essays/essay-on-the-causes-of-juvenile-delinquency/87252> visited on 6th January 2019

committed delinquent acts due to bad company. It cannot, however, be presumed that mere companionship by itself causes delinquency.

Lack of Communication

Often lack of interaction in the family can lead children to find alternative other than homes. When there is absence of communication with their parents or other family at home, they may lose mutual understanding, trust, and unity, which can eventually lower their self-esteem or self-confidence. Once they feel they're losing their individuality, they tend to do things they shouldn't do to boost their self-confidence. They blindly follow their peers and adopt their unhealthy lifestyles. They shoplift and consume drugs to look cool in the eyes of their peers.

Lack of Income Source.

Young or adult, may lead to a wrong path or they may take themselves in to a wrong direction which is not justifiable by law to improve their financial conditions. Teens become juvenile delinquents due to not having source of income to suffice their requirements. When they experience poor economic conditions, they start engaging in the wrong activities starting with stealing of monies from the parents pockets, misappropriation of family funds, they start selling drugs or steal things to improve their economic conditions and to satisfy their wants or requirements.

Lack of Social and Moral Training

Teens who have not given any social or moral training often lead to juvenile delinquency. It is the parent's duty to teach moral and ethical values to their children. They should teach them the difference between right and wrong behavior. Lack of social and moral values can lead children to poor interaction with others and make them less confident. They may become selfish and arrogant. They would not know how to respect the laws of the state. Parents often neglect their children and pay more focus on working hard to earn money for them. However, while doing so, they forget the importance of spending quality time with their children. In their absence, children tend to spend time with someone who pays attention to them. They may also fall into wrong hands or get involved in a bad company while seeking attention from someone other than their parents.

Juvenile System in India.

Juvenile Justice System is a system coming within the area of criminal law administration of justice. This is a system adopted for the young person not old enough to be held responsible for criminal acts. It is adopted as correctional measures for Juvenile delinquency. The etymological term 'Juvenile' means young person or any young person's retaining the nature and characteristics of a child. The term 'Delinquency' connotes 'failure to observe norms of society or omission of duty, involving with crime or doing any wrong. The term 'Justice' means 'concern for justice, fairness, equitableness' or a concern for peace and genuine respect for people. It is a principle of moral rightness in the pursuits of fair treatment against unfair behavior. The meaning of the syntax 'juvenile delinquency' is doing of some act against society by young persons. The terms 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society. 'Juvenile Justice System' means a process to deal with the problem concerned with children and society. The main purpose of JJS is to insulate children by resorting to appropriate treatment and create an environment to develop a positive human personality. JJS is socio-legal measure to create an atmosphere for the treatment of delinquent juveniles. All most all countries of the civilized world have adopted Juvenile Justice Law to treat the young offender in the most equitable manner, so that they can lead a peaceful moral and democratic life. JJS applicable to the persons; those are under 18 years of age. Juvenile Justice is administered through Juvenile court, a court which is child friendly in nature. The main goal of this System is to adopt rehabilitative measure rather than punitive measures. If a child is commits or any wrong young person turns delinquent, the Juvenile court takes measures for foster care and soft treatment through special institutions. So that Juvenile offender can find a path to lead a decent life.

Recent Case Studies:

Pradumnya Murder Case. Ryon Internation School.

The court dismissed the bail petition of accused student of 11th class in Pradyumna killing case. Prior to this, the debate on the bail granted to the accused in the court was completed on Saturday. The court had reserved the judgment. Prosecutor Sushil Tikariwal, who was pleading from Varun Thakur, the father of Pradyumna, opposed the student's bail.

Case treated Like Adult

The Juvenile Justice Board has ruled out the case of the accused 11th student treated as adult and has decided to run the case. Behind this decision, the social and psychological report of the accused student has played an important role. It was revealed in the social report that the student was quite aggressive.

In the psychological report on the other hand, doctors talked to the student about their mood and how they behave in different situations.

Facts of the case: 7-year-old Pradumman Thakur was killed on September 8 at Ryan International School, Gurgaon. The body was found in the restroom. In this case, the police had arrested the school bus conductor Ashok Kumar. Later investigations were handed over to the CBI. CBI made an accused of 11th student instead of conductor Ashok and arrested him. There was a hearing in the Juvenile Court, in which the student was told to run a case like an adult. Now the case hearing is going on in the Child Trial Court.

Shakti Mill Gang Rape Case

Facts of the Case:

⁵Five men who gang raped a 22-year-old photojournalist from a city magazine in the Shakti Mills Compound at Mahalaxmi in Mumbai on August 22, 2013, have been held guilty under section 376(d) of the IPC for gang rape and other sections including wrongful restraint, criminal intimidation and sections under the IT act, by the Mumbai Sessions court. Five men, which included a juvenile, whose case was separated, were accused of raping her and assaulting her colleague. The minor accused who was the fifth accused in the cases was yet to be tried by a juvenile justice board. The Mumbai police within 24 hours by arresting a 17-year-old minor accused from his residence in Central Mumbai solved the case and the other accused were arrested within a week. Two weeks after the incident, an 18-year-old came forward to register a police complaint alleging that she too was gang-raped by five men, including three of the arrested accused at that very location, just three weeks earlier. Two different chargesheets were filed by the Mumbai police but due to similarities in both the cases, the two cases were clubbed by Mumbai Sessions court in October last. The accused in this case, namely, Vijay Jadhav, Kasim Bengali, Salim Ansari

⁵ <https://www.livelaw.in/accused-shakti-mills-gang-rape-case-held-guilty/>

and Siraj Rehman, are charged with rape, conspiracy, common intention, unnatural sex and offences under the Information Technology Act. The other case dates back to 31 July last year wherein an 18-year-old telephone operator was allegedly gang-raped by five persons including three of the accused in the first case on the same premises. The accused in this case are Mohammed Ashfaq Sheikh, Mohamed Kasim Hafiz Sheikh alias Kasim Bengali, Salim Ansari, Vijay Jadhav and a minor. While the Mumbai Sessions court tried five adult accused, of which three are common in the two gang rape cases, the two juvenile accused are being tried in the Juvenile Justice court, which does treat them as 'accused' but juvenile in conflict with law.

A Public Interest Litigation was filed in Bombay High Court for torture, illegal detention, violation of child rights and inaction by the Juvenile Justice Magistrate Board in the case of Chand Babu Sattar Shaikh, a juvenile convict who was allegedly tried as an adult in the Shakti Mills gang-rape case in 2013.

According to advocate Beena Tendulkar who represents Shaikh, “ It is the duty of the Juvenile Justice Board and Special Juvenile Police Unit to be quasi-parental. Instead Shaikh was threatened by the NM Joshi Marg police, the Bhoiwada Magistrate and Gauri Jadhav, Principal Magistrate of the Juvenile Justice Board. Shaikh is completing his sentence of punishment in July 2014 at the Nashik remand home, and expecting the PIL order before his release for the benefit of all juveniles. The future of children from 16 to 18 years is presently in danger.”

But the question always unanswered that , what about the life of the victim what about their rights? whether victim a if alive he his right to life has been snatched by the rapist and for what we are thinking about their right to survive?.

International Concerns for Juvenile

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which sets a standard to be observed by all the states in respect of securing best interest of Child Rights and Prevention of Child Abuse. The International bodies like United Nations and UNICEF that have always concentrated more emphasis on the development issues of child.

Below are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children:-

UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions)

Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

Some Important Salient Features of the Juvenile Justice Act 2015 The JJ Act 2015 also deals with both categories of children. 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
- 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 Juvenile Justice Boards 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 rehabilitation centre 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 absence of such courts, a juvenile can be tried in a sessions court that has jurisdiction to try offences under the Act.

Methodology

Above study is based literature survey of various research paper online and offline that is web based and secondary data including Government Websites, Shodhganga, and other private

websites. Secondly an articles based on “School Chale” is, recent Judgement of Hon’ble High Court in some of the selected cases are also incorporated in the present study. The researcher studies almost 60 cases including present laws pertaining to Juvenile Delinquency which discussed on various aspects of children with conflict with law.

Criminal Justice (Reformative or Punitive) and Juvenile

Juvenile Justice is legal parameters which states justice for juvenile under the Indian Legal System. The system is giving a specific treatment and protection to juvenile delinquency. At present, everyone knows that there is an glorrying rate of juvenile crimes and this increasing rate is creating a debatable issue determination of age. Consideration or Determination age is regarded as one of the most important factor to determine the maturity level of the accused. The increasing crime rate is raising a question that whether the juvenile can be tried as an adult or not? The act itself answer to the question that no juvenile offender who comes under the definition of “ child with conflict with law” as defined under sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent to Child Care Centre or any Rehabilitation Centre(till the offender attain the age of 21 years and then he or she may shifted to the jail or prison).

Thus, the present Juvenile Law in India, considers Age Determination as a paramount importance to find out whether the offender falls under the purview of Juvenile Justice Act.

According to the Act, the maximum tenure of punishment which can be given to the juvenile offenders are three years and this punishment is valid for heinous crime also. In case of an adult offender, the maximum punishment which can be given is 7 years or life imprisonment or death penalty. But, the Act, in case of juvenile offenders believe on Reformation of juvenile as much as possible. The reformation type of punishment under the Act includes: – Sending juvenile to Rehabilitation Centers , Juvenile Schools or making them involve in various program headed by government or NGO’s.

In the present scenario, there is no need to give such a minor kind of punishment for a heinous and harsh offence just because of Age determination or Age factor . Rape is Rape, one can’t walk away taking a plea of age factor or mental incapacity or mental unfitness.

Thus, the existing law in the name of Age determination or Age Consent , is not creating an deterrent effect on the anti – social behavior of youth. Juvenile offenders are in believe that committing heinous crime is no issue as they will get away very little or no punishment in name of reformation.

Adopting of reformatory theory of punishment by law, is giving an undue advantage to juvenile to perpetuate their ability to commit crime without facing any harsh consequences. Reformation is good but not always. If law is talking about reforming the juvenile offenders so that they can have a better life in future then law should also talks about the rights of the victim .Justice must be given to the victim. The theory of reformation is helping juvenile to reform but it is not helping the victim at all.

The present juvenile system in India is created on believe that juvenile offenders can be reformed and rehabilitated , sending them to bars or prisons will going to reaffirm their status and identity as “criminals”. Now the question arises is that there is no guarantee that juvenile offenders will get reformed and will not show their anti – social behavior again. The act is totaling focusing on the reformation rather than penalization. Penalization will definitely will create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

Conclusion

From the above discussion It can be seen that heinous crimes murder, rape are go unpunished with the offender wearing the clutch of juvenility. Somehow it should be stopped. Just to implement and amendments of Juvenile Justice Act does not suffice the purpose. What will be effective then? Juveniles those who are indulging with the wrong act they are victims of the society and hence the parents and guardians are need to be made aware about the crime they are committing. Secondly Juvenile delinquency can be stopped at the earlier age provided appropriate or certain steps should be taken to overcome this at College, School and Home level instead of putting a label of Juvenile and Criminals. Most of the time children are in the custody of teachers or in the school hence teachers are the mentor who plays a major sore in shaping the mind of a child. Due importance should be given to understand the demand of children and give them a chance of adjustments.

Thirdly the increasing rates of juvenile crime in India is a very concerning issue and needs to be focused upon. Although the government has issued various legislations and rules to stop the instances of juvenile crimes, but the present laws on juveniles are not creating a stringent effect on the juveniles and thus the results are not fruitful and legislative intent is not being accomplished.

