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Delinquent Juveniles: Determination of Liability and Administration of Justice

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ABSTRACT

Delinquency is an inherent quality of every human being and no one can claim immunity from it. From childhood to old age every human being is found, sometimes, to have acted under delinquent impulses of their own which may be favourable for achieving success in life or maybe unfavourable for becoming an active member of the dark world. In addition to this every member of the society, either regularly or irregularly, becomes a victim of vices being generated or regenerated by the changing social, economic, political and cultural events of the country. A child is not an exception to these phenomena, rather he or she is an easy victim of social maladjustment, delinquency and neglect. The Juvenile Justice Act, 1986 (JA) has been enacted to protect and preserve child resources from vices of such social maladjustment, delinquency and neglect. It provides "for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of, delinquent juveniles"

Keywords: Juvenile, Child in conflict with Law, Delinquency.

I. INTRODUCTION

Children are perceived worldwide as remarkable resources of the state. the more extended term of the state exists in the hands of the children, WHO are perceived on the grounds that the especially resources of the state anyway because of the lacks of concern of our general public everything considered circles, these future partners aren't referred to appropriately that outcomes in child delinquency². Children or delinquency is an Associate in nursing alarmingly expanding downside incurring a supply of concern everything considered over the globe. Children should be the subject of prime focal point of improvement planning, research, and welfare in Asian nation anyway unfortunately, it's not been accordingly. Regardless of the Constitutional vision of a solid and cheerful child secured against maltreatment and exploitation, and a National Policy for youths, the greater part of children in Asian nation still live while not a minded, ensured and substantive youths.

India could be a spirit to world association declaration on The Rights of the Child, 1959 that

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² A young person who habitually commits crime or offences.

sketched out and perceived fluctuated Rights of the Children in particular: the correct to wellbeing and care, the best possible to assurance from maltreatment, the best possible to security from exploitation, ideal to insurance from neglect, appropriate to information, ideal to articulation and ideal to sustenance and so forth are laid out as essential privileges of children by the Convention of the privileges of the child. Subsequently, Asian nation has received a national policy on children in 1974 for accomplishing the over previously mentioned rights for its children. The Union Parliament, in this way giving an even law on juvenile justice for the total nation, passed the essential focal enactment on Juvenile Justice in 1986. Under the watchful eye of these laws there were many different laws in regards to a similar issue was in presence in each nation everywhere throughout the world. Nevertheless, those were not same or uniform. The essential uniform law on juvenile justice yet neglected to prompt any emotional improvement inside the treatment of juveniles. The law kept on electrifying a lot of worry, in human rights circles, pertaining not ready to the strategy juveniles³ were treated in detention focuses chose as special homes and juvenile homes.

II. HISTORY OF JUVENILE JUSTICE ACT

In 1986 a statue came into power with the end goal of the security of juveniles after that many different laws additionally came into power. Under the steady gaze of this law, each state had its very own enactment on juvenile justice with their being variations inside the strategy juveniles were treated by unique state legal systems. The essential uniform law on juvenile justice however neglected to prompt any emotional improvement inside the treatment of juveniles. The law kept on electrifying plenty of worry, in human rights circles, pertaining strikingly to the technique juveniles were treated in detention focuses chose as special homes and juvenile homes. Following closer international regard for the issue of juvenile justice inside the late 1990's, the issue passionate to the middle stage even in local circles with assortment of consultations proceeded with juvenile justice each nationwide and regionally.

III. BRIEF EVOLUTION OF JUVENILE JUSTICE LEGISLATIONS IN INDIA

A few creators have assessed the birthplace and advancement of Juvenile Justice in India (Mousami Dey, 2014). Preceding happening to British in India, the actions of children were administered under existing Hindu and Muslim laws, where the separate groups of the individual concerned were considered in charge of monitoring the actions of their children. In India, the requirement for new legislations for children was felt under the British standard. Some

³ Someone who is below the age of eighteen is named as Juvenile.

particular laws were passed somewhere in the range of 1850 and 1919, similar to the Apprentice Act (1850), the Code of Criminal Procedure (1861) and the Reformatory School Act (1876 and 1897).

Under the Apprentice Act (1850), it was held that penniless or frivolous guilty parties in the age gathering of 10 and 18 years ought to be managed separately-the sentenced children were required to function as students for agents. Area 82 of the Indian Penal Code of 1860 likewise perceived the special status of children. It set age confines on criminal duty and avoided children more youthful than 7 from culpability. The children somewhere in the range of 7 and 12 years old were considered to have sufficient maturity to understand the nature of their actions in specific situations.

IV. JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

The unpleasant incident of raised several debates. What's more, hence the prime issue among these was the inclusion of the juvenile guilty party, WHO was solely a half-year short from turning into adult. This attracts the law of Juvenile Justice (care and assurance) Act, 2000 and subsequently the guilty party was condemned by the court only for three-year confinement. Against this call of Apex Court, many protests were made, that demanded modification inside the current Juvenile Justice.

Notwithstanding, this case is not solely purpose behind the govt. to present this bill. The Ministry of young women and child Development even the presentation of bill with many elective reasons. The prime 2 reasons of all were, first, the Juvenile Justice Act, 2000 was confronting usage and procedural delays. Also, the National Crime Records Bureau (NCRB) Reports show increment inside the Juvenile Crime between the people of 16-18 years (i.e.1% in 2003 to 2% in 2013). Close to the huge advocates, there have been some child activists, WHO condemned this Act on several grounds: introductory, expressing it to be retributive not helpful. The presentation of The New Juvenile Justice (care and Protection of children), 2015, has presented some of the uncommon changes inside the current Juvenile Law. One in everything about significant changes is, juvenile archaic group of sixteen to eighteen are to be attempted like Associate in nursing grown-up. Likewise, the person who has earned the age of twenty-one though in sentence are send to the correctional facility for rest of the time range. In any case, of these decisions are taken by the Juvenile Justice Board. This paper has featured on shifted polemical issues respect to } new Juvenile Justice Act with special reference to the perspectives on different activists. Close to this, the paper has focused on the foreseen situation which can emerge once the New Juvenile Justice Act, 2015 are peruse with Protection of children from

Sexual Offenses Act, 2012 and Prohibition of child wedding Act, 2006.

The basic objective of the Act is to ensure justice as well as to ensure well-being of all juveniles by adopting all responsive and favourable measures. It is a piece of social defence legislations aiming to "suppress the mischief" and "advance the remedy. The Act imposes a duty on the state to so look after the children as to ensure full development of their personality⁴.

The JA has basically dealt with juveniles of two kinds, viz, (i) neglected juveniles⁵, and (ii) delinquent juveniles⁶. The present study is primarily confined to various measures of judicare in nature in respect of delinquent juveniles who have been found to have committed "Offence"s under the Act The measures based on reformatory and rehabilitative ideals, are regarded as new inventions of the penology of the twentieth Century having primary objective to reform offenders rather than to punish them.

V. REASONS FOR JUVENILE SYSTEM

Crimes Interdisciplinary studies on juvenile delinquency reveal that across the world, many behavioural changes occur in the juveniles/ adolescents, which are related to the sudden changes in their body due hormonal surge, associated with puberty. The changes are most apparent in physical parameters, such as change in height and weight of the adolescents, and are soon followed by other sexual and physical changes of maturity. These physical changes are accompanied by mental changes also.

(A) Social Factors:

In some cases, the juveniles create reprobate sub-culture because of social hardship and status disappointment that they experience (Albert Cohen, 1955). They frequently embrace the reprobate propensities because of companion weight. As indicated by Walter B. Mill operator (1958), some youth (as a rule having a place with lower class) turn the standard culture up-side down, therefore whatever is valued and is viewed as positive for the most part by the is society surrendered by these youth, and is supplanted by the polar opposite value system. In this way, if certain ethics are maintained by society, juvenile delinquents surrender these values, attempt to exceed expectations in the areas of strength, over-hurting the others, and enjoy things that give them excitement(characterized as central worries by Miller). Reprobate sub-culture hypothesis has been connected in most recent investigations in the United States, where new area of frame of mind of the juvenile towards the Police in China has been engaged.

⁴ Sheela Barse vs Union of India AIR 1986, SC 1011 AT P 1015

⁵ Section 2b of JJ Act

⁶ Section 2e of Act.

(B) Psychological Factors:

There are mental clarifications to delinquency additionally, which can be surely known through Freudian ideas of id, inner self and super-personality. At the point when the id (the intuitive component of person's character) turns out to be excessively solid, and the super-sense of self ends up powerless (the socially shown component of character) the personality forms into against social individual (K. S. Williams 2012). Here and there when the discretion and social control through essential gatherings ends up frail, the juveniles create reprobate propensities. The breakdown of the social institutions has likewise been associated with aberrance and delinquency (Chris Knoester and Dana L. Haynie, 2005)⁷. There can a solid connection between mental state of the youth and reprobate propensities. Investigation of female detainees in Bangladesh demonstrated exceptionally high incidence of mental issue among the guilty parties of Female Juvenile Centre. These wrongdoers likewise indicated high incidence of substance abuse.

(C) Biological Factors:

The biological explanations propose that people are affected by their biological or hereditary make-up. They are not exactly the prisoners of biological structuring; however, it renders these people slanted towards reprobate propensities. The hormonal changes in the body of the juveniles are in charge of their impulsive and rebellious behaviour. Ecological or natural and financial parameters additionally play significant trigger focuses in lives of the juveniles. However, for the most part it is the combination of these factors that together makes circumstance of juvenile delinquency.

VI. JUVENILE'S LIABILITY: CRIMINALITY OR NON- CRIMINAL

A boy under the age of sixteen years or a girl under the age of eighteen years⁸ is said to be liable for any act which is considered to be an offence under the JA if he or she is found to have committed that act, and that boy or girl is otherwise known as 'delinquent juvenile.'⁹ Though the Act does not prescribe any criterion to determine 'delinquency of a juvenile, it is, although, expressly clear that he or she is not immuned from any criminal liability if his or her act of delinquency is verified with above statement. The Act does neither define 'delinquency nor expressly define any act as 'crime. A child is only liable for commission of an offence which is "punishable under any law for the time being in force. The juvenile Act is characterised by the

⁷ "Community context, social integration into family, and youth violence."

⁸ Section 2h

⁹ Section 2n

feature that it regards many acts as crimes when committed by adults but non-criminals if committed by persons below certain age. Under the Indian Penal Code a child of twelve years of age is regarded to A boy under the age of sixteen years or a girl under the age of eighteen years is said to be liable for any act which is considered to be an offence under the JA if he or she is found to have committed that act, and that boy or girl is otherwise known as 'delinquent juvenile. Though the Act does not prescribe any criterion to determine 'delinquency of a juvenile, it is, although, expressly clear that he or she is not immuned from any criminal liability if his or her act of delinquency is verified with above statement. The Act does neither define 'delinquency nor expressly define any act as 'crime. A child is only liable for commission of an offence which is "punishable under any law for the time being in force. The juvenile Act is characterised by the feature that it regards many acts as crimes when committed by adults but non-criminals if committed by persons below certain age. Under the Indian Penal Code a child of twelve years of age is regarded to be responsible for his acts (deeds) and is liable under criminal law to the same extent as an adult criminal. In both the Acts the child is considered to be doli capex, because the essence of the crime, i.e. mens rea, is quite visible when his or her acts are judged individually by two different statutes. Under the Indian Penal Code a child over twelve years does not enjoy any privilege of immunity from penal liability whereas the same child, under the JIA, is exempted from penal liability except under certain situations, even though the mens rea is quite visible in the doing of an act by that child. Even in English law a child between ten to fourteen years does not enjoy absolute immunity! although he or she is treated as doli incapex. Hence, at fourteen a person comes under full criminal responsibility¹¹. The deciding factor for determining juvenile's penal liability has been the consideration of 'delinquency' only and not the consideration of 'criminality', although the former is very much present within the latter concept. The Court also, in fixing liability of the juvenile, is guided by the principle that 'crime' and 'delinquency' are of two different concepts. Because, it is the Legislators who have given separate meanings to the concepts of 'crime' and 'delinquency' although both are used inter-changeably in Criminal Law. Under the penal law particular act of a child has been strictly prohibited and made it punishable accordingly, while the same act though prohibited by the present law (JA) and by other laws of the same nature, deserves separate treatment. It is simply Government's policy to exempt from criminal liability children upto certain age as it considers the two concepts, 'crime' and 'delinquency' from different angles. In view of this it is imperative to know how these two concepts are understood in legal senses. Although 'crime' and 'delinquency' appear to be close to each other in meaning when considered in ordinary senses, there are marked differences between the two if considered in terms of legal

senses and the courts proceed accordingly in determining liability of persons violating legal prescriptions. A crime "means any act which the law of the country visits with punishment and in this sense, it is synonymous with the word "Offence"¹⁰. It is "an intentional act or omission in the violation of criminal law, committed without defence or justification and sanctioned by the law as felony or misdemeanour"¹¹ It shows the pain of punishment being considered as necessary ingredient in the act of crime. But, the delinquency, on the other hand, as defined by Robinson "is simply the first step on the road to adult crime or it is a gateway to adult criminality. It concerns us because it is a 'sign post of danger'. It is otherwise said "an act, a course of conduct or interaction which is socially undesirable. This may or may not have been brought before court and adjudicated. Whether in fact it comes to be treated in the court or through some other preventive agency or indeed remains untreated is immaterial*¹⁵. Therefore, the concept, 'delinquency' is not synonymous with the concept 'crime', rather, it is socially undesirable and intolerable behaviour of certain group of persons which is prohibited by law (*mala prohibita*) and does rarely visit with the pain of punishment. However, both the acts are regarded as acts of violence recognised by the law of the land. 'Criminality' is an act of behaviour of an adult inviting punishment whereas the 'delinquency' is an act of behaviour of a child deserving treatment and nourishment. "In contrast, other forms of behaviour which are sociologically though not legally departures from accepted norms - what we have called 'retreatism' - for example - are less visible and receive little attention¹².

VII. DELINQUENT JUVENILES AND THEIR TREATMENT

Chapter IV of the JJA, which runs into nine sections commencing from Sections 18 to 26 has incorporated basic principles of law dealing with delinquent juveniles in respect of their bail and custody; information as to their arrest to parents or guardians or probation officer as well as necessary order that may be or may not be passed against them. One exception which is regarded as indispensable for the benefit of the juvenile offenders, has been the special provision dealt with by Section 24. In case charges have been framed and proceedings have started against juvenile and non-jvenile offenders, the court taking cognizance of the offence shall direct separate trials of the juvenile and the non-jvenile.

Section 24 overrides Section 223 of the Cr. P.C., 1973 or any other law for the time being in force. The prohibition is not only against the joint trial but also against joint charge. In all

¹⁰ S. Huda- Principles of the Law of Crimes (Tagore Law Lectures, 1902) Reprint edition 1982, p. 1.

¹¹ Paul Tappan- Crime, Justice and Correction, p. 10

¹² Robert K. Merton- Anomic, see Crime and Justice, Vol. 1, edited by Sir. Leonard Zinowicz and Marlin E. Wolfgang, Copyright 1971 and 1977, p. 578.

cases, whether they were pending since before 2nd October, 1987 or have come up after that date, Section 24 will apply if the charges have not been framed¹³. Like is not treated alike being the striking feature of the social legislation.

In view of the exception contained in Section 24 it is not an exaggeration to mention here that "bail not jail" has been the prime objective to be achieved by operating JJA in the World of juvenile crimes. The "entire approach behind the legislation is creative and reformatory and not punitive, so that the neglected and delinquent juveniles are reformed to lead a normal life in the society. Offence committed by an adult either individually or jointly is followed by a punishment as prescribed in the process of sentencing. But punishment is given a new meaning under the Act when a juvenile is found guilty in any offence. The right of a child in respect of his life, liberty or property does not hinge in the sentencing process except when a juvenile is found guilty under section 21(e) of the JA, and in such a situation the Juvenile Court may consider the question of imposing fine in case the juvenile is above fourteen years of age and can earn money." The age fourteen under this clause seems to have been taken from Article 24 of the Constitution imposing no restrictions on children above that age taking any employment¹⁴. Another circumstance is here, when the court can punish the offences committed by a juvenile violating TADAA Law. The Act has laid down special provisions for bail having overriding effects¹⁵. Reacting heavily the crusader of the child rights Mrs. Ved Kumari claims that "there is nothing in the TADAA which may be interpreted as excluding application of the JA to the offences by juveniles under the TADAA She has also claimed that "provisions of Section 21(e) laying the various orders in relation to delinquent juveniles should be applied also to juveniles found to have committed an offence under the TADAA"¹⁵. In view of overriding effect coupled with bitter dose of punishments of the TADAA, it is submitted that the sentencing authority under the Act must have sufficient information from experts like psychiatrists or probation officers while considering the desirability of a particular sentence for juvenile offenders. In a good system of administration of justice, pre-sentence investigation may be of great sociological value²⁷ pre-sentencing importance the great humanist, Justice V.R. Krishna Iyer emphasises on "sentencing pluralism, social realism" and judicial wisdom¹⁶ when he suggested :

"Here again, pre-sentencing exercises become important if the twin goals are to be

¹³ Guddu vs State of U.P., 1989 A.L.J. 390. See also, Bejoy Singh vs State, 1986, Cri. L.J. 2016. Robin Bapari and another v state, State 1986, Cri. L.J. 381

¹⁴ Ved Kumari- Treatise on the Juvenile Justice Act, Ed. 1993. P. 173.

¹⁵ The Terrorist and Disruptive Activities (Prevention) Act, 1987, See Section 5 and 6 of the TADAA.

¹⁶ V.R. Krishna Iyer – A Constitutional Miscellany, Ed. 1986, p. 166.

*accomplished. To improve the present system of judicial sentencing, the pre-sentence report must inform the judge or the sentencing board with opinions of Probation Officers, Sociologists, Psychiatrists and other specialists. Medical knowledge, especially the study of the mind and the brain and the psychosomatic train, has outdistanced traditional techniques and tariff methods of sentencing. This new investigation is very important in cases of juvenile offenders and 'mental' sentences. Judicial training for improving sentencing is also an imperative"*¹⁷

VIII. REFORMATION NOT FORMATION

In deciding cases of delinquency committed by a child the Juvenile Court has to act as a substitute mechanism of the court of justice. Keeping in view of both legal imperatives and social necessities the court exercises its discretion. The basic objective of which is to deter juvenile delinquents from becoming a hardened criminal as well as to prescribe measures for their correction and reformation. "The juvenile court is not a punitive institution but an agency for taking care of the best interest of the child so as to help a child who is in difficulty and who is in need"¹⁸. Because, the reformation of "little criminals," not the formation of crimes, is the sole mission of the juvenile courts to be achieved while dispensing justice. Punishment being considered to be the "crime of punishment is never regarded as catalyst to reform juvenile offenders. 'Judicare' and 'Medicare are indispensable therapies to be administered only by the Juvenile Courts, not by the regular courts. Jail is never regarded as centre for reformation or development; care or treatment. In *Shella Barse v. Union of India*¹⁹ the Supreme Court after considering the detention of children below the age of sixteen years has observed

"If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of a child, exposing him to baneful influences, coarsening his conscience and alienating him from the society"

Jail is not considered only as a centre where child prisoners suffer injury in body or mind, even in some circumstances a care-centre is regarded unfit for juvenile's welfare on account of untrained personnels discharging duties in the centre. Recognising the importance of training

¹⁷ Ibid

¹⁸ S.V. Kaldate- Society, Delinquent And Juvenile Court, Ed. 1982 p. 47.

¹⁹ AIR 1986 S.C. 1773.

of the personnels the Supreme Court observes that "they must have the working knowledge in psychology and have a sense of keen observation; on their good functioning would depend the efficacy of the scheme "²⁰. Either in jail or in house where the juvenile has to undergo reformation, the family tie with delinquent juveniles has been considered as an effective measure for reformation³³. Considering the proper place of custody where the juvenile is to be put, if he or she is not released on bail, the Supreme Court opines further that the juvenile must not be kept in jail or any police station²¹. The law is also quite clear on this point. "The law throws a cloak of protection round juveniles and seeks to isolate them from criminal offenders, because the emphasis placed by the law is not on incarceration but on reformation"²². Sentencing efficacy in cases of last breded criminality, can not be simplistically assumed by award of long incarceration, for often that remedy aggravates the malady²³

Besides protecting child offenders from jail incarceration the Supreme Court has been active in promoting and protecting human rights of the juvenile offenders. As a lone crusader in the dangerous society it directed the prison authority that due care shall be taken to ensure that the juvenile delinquents are not assigned work in the same area where regular prisoners are made to work²⁴. The Court further observed: "Whatever may have been the philosophy of punishment in the past, the prison house is looked upon as a reformatory and the years spent in jail, should be with a view to providing rehabilitation to the prisoners after the sentence is over"³⁸. The highest court of our judicial hierarchy is very sensitive to protect human rights that even a child is entitled to all procedural safeguards²⁵, right to bail²⁶, right to education²⁷ and right to care and affection²⁸, when he is detained for commission of an offence. Right to have child rights' is not only basic right of the children but it is also a basic duty of the State to promote and protect that right.

IX. CONCLUSION

Before concluding on this topic it is intended to draw attention to two issues viz. decriminalisation of delinquent behaviour and judicial therapy towards delinquent juveniles. Decriminalisation of delinquent behaviour is not a happy phrase as used here and it is also not

²⁰ Sheela Barse v Secretary, Children Aid Society, AIR 1987, S.C. 657 at p. 659

²¹ Minna v State of U.P. 1982 Cri. L.J. p. 620

²² Ibid

²³ AIR 1977 S.C. 267

²⁴ Sanjoy Suri vs Delhi Administration, AIR 1988 SC 414.

²⁵ Sttoo vs State of U.P., AIR 1979 S.C. 1519

²⁶ Gopi Nath vs State of West Bengal, AIR 1948 S.C. 237

²⁷ Unni Krishnan vs State of A.P., AIR 1993 S.C. 2178.

²⁸ Lakshmi Kant Pandey vs Union of India (1984).

intended to remove particular behaviour or conduct of the juveniles from the list of offences²⁹. The question is can 'delinquency be regarded as crime or part of the crime, particularly when liability of a juvenile offender is determined on the basis of and to the extent of delinquency? In deciding justice to the juvenile offenders as well as in administration of the present juvenile law particular conduct or behaviour is judged in terms of an offence committed only, although the Act is quite silent in condemning any behaviour as blameworthy. Apart from this the Act usually commits the delinquent juveniles to the special care-home and neglected juveniles to the juvenile homes. All these institutions are not penal but correctional centres among at the reformation of the child. In considering both the aspects it is not an injustice to claim that the JA itself is an step towards decriminalisation of delinquencies. Other issue is related to judicial therapy towards delinquent juveniles. Here also, the court instead of enforcing orthodox rules of criminal justice, is keen to transform criminal justice into human justice. Correction and reformation have been considered to be proper medicines for treatment of children affected by crimes and delinquencies. Correction-cum-reformation being better than prevention are most effective means of decriminalisation of the "little criminals".

²⁹ 'To decriminalize' certain conduct , means to remove that particular conduct from the list of offences"; See Decriminalization: A study by P.M. Baxi (ILJ) Ed. 1994, p. 7.