

# A STUDY OF JUVENILE DELINQUENCY IN CONTEXT OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015: - CHALLENGES & WAY FORWARD

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**Abstract-** Juvenile delinquency is a doorsill to the serious crime and this issue is rippling day by day and causing a grave concern over the whole universe. In the recent times children and their issues are noticed and observed by the authorities and of society both. Every child is born perfect and spotless and if child is given proper teaching and guidance, he will turn into a good human being with ethical integrity and exemplary behaviour. On the other hand, if child gets neglected then he will turn into a culprit & villain by indulging himself with the wrong kind of people and in case nobody provides attention towards him he will become poison for the society in the future on growing up he will turn into acute hardcore criminal.

Due to the physical and mental shortcomings, juveniles require proper care and attention to develop his overall personality in the right direction. The children who do not get attention and proper care, they feel unprotected and discomfort in their life and because of this they adopt the way of rebellion against the norms of the society. Juvenile delinquency is the reflection of the desires and needs of the person that normally remains unsatisfied.

**Key words:** - Juvenile delinquency; Rippling; exemplary behaviour; unprotected; Discomfort.

## 1. INTRODUCTION:

“Children are precious gems of the futurity and they are the most valued and worthwhile capital of a nation and society. Every State is under obligation to look after, take care of and protect them with a view to assure the complete progress of their personalities. After all society expect them to grow as amenable as well as trustworthy citizens of the Nation after all, they require special care, protection, affection and facilities by the dint of their tender age, physique, habitus and underdevelopment mental faculties. There is no fantasy if it is remarked that future welfare, success and happiness of a particular nation depends upon the growth and development of juveniles and youths of the concerned Nation”<sup>1</sup>

The word ‘Delinquency’ is derived from the Latin word ‘delinquer’ which means ‘to omit’. The term ‘Juvenile’ means ‘child’ and the word ‘Delinquent’ means ‘Criminal’. Thus, the expression ‘Juvenile Delinquency’ means “Crime committed by a child”. So, it means deviant child behaviour including wrong doing, disorderly conduct, malicious mischief etc. Juvenile Delinquency is a gateway to adult crime which includes smoking and drinking by children also. Juvenile delinquency, also known as juvenile offending, is the act of participating in unlawful behaviour as a minor or individual younger than the statutory age of majority. The term delinquent usually refers to juvenile delinquency, and is also generalised to refer to a young person who behaves in an unacceptable way.

The speedy and hasty computerization, economic growth, drastic change and upgrading of the country have undoubtedly uplifts and improves the economy of our country but it also invited some inevitable negative impacts on them.<sup>2</sup>

## 2. DEFINITIONS OF JUVENILE DELINQUENCY:

There is no precise definition of the term ‘Juvenile Delinquency as crime is a dynamic concept varying from place to place and time to time. But this term has been defined by various statutes in different terms. Some of these are as follows: -

**As per legal definition** Juvenile Delinquency is ‘any act prohibited by law for children up to a prescribed age limit’

<sup>1</sup> Lakshmi Kant Panday v. Union of India 1984(2) SCC 244

<sup>2</sup> N.V Paranjape (14), Criminology and Penology (Allahabad: Central law publications,2010)528

**The U.P. Children Act defined “Child”** – “as a person under the age of 16 years”

Juvenile Justice Act, 1986 defines “a juvenile or child, who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age”.

**According to Section 2(c) of Juvenile Justice Act, 1986** ‘Juvenile Delinquency’ means a Juvenile who have been found to have committed an offence.

**As per section 2(h) of this Act,** ‘Juvenile means a boy who has not attained the age of 16 and a girl who has not attained the age of 18 years.

Government of India while executing its international obligations revoked the **JJA Act, 1986 by 2000 Act** and the distinction regarding the age between male and female juveniles was done away. As per new Act, age of juvenile for both male and female involved in unlawful acts has been fixed at 18 years.

A juvenile in conflict with law under the **JJ (C & P) Act, 2000** is “a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of said offence”.

And under the **Juvenile Justice (Care and Protection) Act 2015** juvenile defined under **section.2 (35)**, “juvenile means a child below the age of eighteen years”.

**Definitions of Juvenile Delinquency According to Section 2(k) of Juvenile Justice (Care and protection of Children) Act, 2000,** Juvenile or child means, a person who has not completed the age of 18 years.

**According to New Mexico definition,** a delinquent child is one ‘who, by habitually refusing to obey the reasonable and lawful commands of his parents or other persons of lawful authority, is deemed to be habitually uncontrolled, habitually disobedient or habitually wayward or who habitually is a truant from his house or school or who habitually so departs himself as to injure or endanger the morals, health or welfare of himself or others.

According to **W.H. Sheldon**, it is “behaviour disappointing beyond reasonable expectation”.

**Cyril Bur**<sup>3</sup> says that “delinquency occurs in a child when his antisocial tendencies appear so grave that he becomes or ought to become the subject of official action”.

And in the words of **Robison Holt**<sup>4</sup>, “we use the term delinquent as we sometimes use the term „love“ as though it were a simple concept whereas it actually embraces complex patterns of behaviour.”

**According to Robison** the legal term “delinquency” is “an umbrella for a wide variety of socially disapproved behaviour that varies with the time, place and the attitudes of those assigned to administer the law”.

**In USA, the law on Juvenile Delinquency** declared variety of acts which are described as below.

- ✓ Immoral or offensive conduct
- ✓ Knowingly associating with immoral persons
- ✓ Visiting houses of bad reputation
- ✓ Visiting liquor shops
- ✓ Roaming in street in night
- ✓ Engaging in illegal and unlawful business
- ✓ Violation of any law of state 11 Ruth Shonle Cavan Theodore N. Ferdinand, Juvenile Delinquency (III Edition): 27 15 Ibid 22
- ✓ Immoral conduct in school
- ✓ Habitually wandering on roads
- ✓ Driving without license.
- ✓ Habitually bunking from schools.
- ✓ Incurable
- ✓ Habitually using immoral language in Public Place.
- ✓ Running away from home without permission
- ✓ Smoking at public places
- ✓ Begging or receiving alms

On criticising this definition two more things, were added in the standard Act. The two items are: -

✓ “Child who deserts his home or who is habitually disobedient or is out of control of his parents or other custodian and

✓ who being required by law to attend school, wilfully violates rules there of or absents himself there from.

**Write & Briggs**<sup>5</sup> define delinquent as, “The delinquent, then would be a person where misbehaviour is resulting in serious legal offence, which is inappropriate to his level of development, is not committed as a result of extremely low intellect, in trancannial organic Pathology or server mentally function, and is alien to the culture in which he has been regarded whether or not the individual is apprehended or legally adjudicated is not crucial.”.

<sup>3</sup> The Young Delinquent 15 (1925)

<sup>4</sup> Juvenile Delinquency 10 (1960)

<sup>5</sup> 4 Robert D. Writ and Peter F. Briggs quoted in Ruth Shonle Cavan, Juvenile Delinquency (3rd Edition)..

**Gibbons**<sup>6</sup> defines “Juvenile Delinquency consists of acts or infractions which are prohibited in statutes of individual states”.

**Prof. Walter C. Reckless**<sup>7</sup> has suggested stand to resolve the problem of defining delinquency. These three problems are-

- a. Delinquency as a social problem
- b. Delinquency as a behavioural problem.
- c. Delinquency as a legal problem.

### **3. CAUSES OF JUVENILE DELINQUENCY:**

Juvenile delinquency is a sign of sick society. Juvenile delinquency is the reflection of the desires and needs of the person that normally remains unsatisfied. There are many causes for Juvenile Delinquency. Immigration of population from cities, dissolution of joint families, divergence from traditional values, culture and norms, poverty; illiteracy; bad company; hereditary; family disputes; Upgrading and Sophisticated Technology, early physical maturity, inducement; child labour etc are some of the after bad effects and thus causes of Juvenile Delinquency. The important point to be noted is that the major tendency to commit crime is among children who are from poor families. Some of the causes are detailed as follows: -

**A. Family Background:** - Above 90% of the juveniles were arrested those who resided with their parents or guardian. While, those who were homeless or living without parents were only 7.5%. Children are expected to have a moral character of highest quality and it is the responsibility of parents and state to get this work done and to provide healthy environment so that children could become physically fit and mentally healthy. However, some children do not succeed in imbibing these qualities and they inclined towards the immoral activities and strayed from their right path and got involved in criminal activity which is known as juvenile delinquency or juvenile crime.

**B. Poverty:** - Generally, crime and poverty are interrelated concepts but sometimes cases against the children of high-class families are not reported and thus it is not shown in the records. The important point to be noted is that the major tendency to commit crime is among children who are from poor families. India has large amount of population who are poor and lives in poverty as compared to other countries in the world. Majority of the poor children are engaged in crime in one way or the other and most of the poor children starts with the petty crimes and then converted in to the hard-core criminals.

**C. Migration from Rural to Urban:** - Large scale migration from urban to rural has also resulted into slums in the cities and unhealthy living environment and lack of sanitization forces the children to steal and commit crime so that they can live a better life with their families.<sup>8</sup>

**D. Upgrading and Sophisticated Technology:** - The speedy and hasty computerization, economic growth, drastic change and upgrading of the country have undoubtedly uplifts and improves the economy of our country but it also invited some inevitable negative impacts on them.<sup>9</sup>

**E. Education:** - Education is also one of the most important reasons for the increase in Juvenile Delinquency. In 2001 more than 70% of the juveniles arrested were illiterate. Uneducated & illiterate children usually adopt illegal activities to earn money and fall into bad company. The children who are not taught about legal and moral ethics from the beginning are prone to commit crimes. So, the lack of education is also a reason for the increasing crime by children.

**F. Sex Ratio:** - As we find that Number of girls were less apprehended as compared to boys. Adolescent boys commit the majority of vicious crimes with a prevalence ratio in comparison to girls of from **3:1 to 12:1** depending upon the exact type of aggressive offense reported. The high male-to-female ratio decreases from tweenagers to young adulthood. Boys also have higher drug use than girls. The ratio of the girls to the boys arrested for committing offences under IPC in 2001 was 1:12.

### **4. DEVELOPMENT OF THE CONCEPT OF JUVENILE DELINQUENCY:**

Issue concerning juvenile delinquency is not new & latest phenomenon. It has been existed from time immemorial. It is only after the centuries of the human civilizations that we are now began to look the juvenile delinquency as outside the adult criminal justice system. It was not the same in the past, in some of the societies in the past juveniles were also treated like an adult criminal.

<sup>6</sup> Don C, Gibbons, Delinquent Behavioural (3rd Edition).

<sup>7</sup> Walter C. Reckless, The Crime Problem (Indian Reprint, 1971).

<sup>8</sup> N.V Paranjape (14), Criminology and Penology (Allahabad: Central law publications,2010)529

UN convention on rights of child 1989, retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. visited on 22 April 2020 at 11 am

<sup>9</sup> N.V Paranjape (14), Criminology and Penology (Allahabad: Central law publications,2010)528

In past the doctrine was very much in prevalent that is “patria parents patriae” it establishes the role of children within society and within his family. According to this doctrine, the children are under the complete control of their fathers. Children had to obey the order of their father<sup>10</sup>. He has no right to oppose to their father. He only has to act under the good will of their father. So sometimes his father himself indulges in the wrong activities and he forces his child to do the same wrong activities and immoral acts. In earlier period of classical era these kinds of instances were occasional or unpredictable by virtue of the moral values present in the society. By reason of presence of moral values in the society it was very strong & impenetrable for the anti-social or anti moral activities. at that time.

A society plays a significant role in shaping the character of individual in the society. But now a days the problem of juvenile delinquency is very uncontrolled and widespread in today’s modern society. Recently, juveniles were found to be involved in committing extremely heinous and barbarous crimes which are likely to disrupt the solidarity of the society

**UN Convention on the right of child 1989** also emphasized on the need on giving the special attention to the children who commits crime in the society as they have the tendency of reformation as they are the future of the country<sup>11</sup>.

Thereafter 19th century the states started facing the complex problems concerning juvenile delinquency and then steps were taken by the states by passing stringent legislation for dealing with this complex issue of juvenile delinquents. Mushrooming growth in juvenile delinquency is a result of urbanization and industrialization. This problem is not only found in India but also it threatens and jeopardies the whole World. It is worth noting that juvenile’s delinquency is only connected with age and mindset, but also to be equated with the grown-up offenders as the grown-up offenders are treated differently from the juveniles.

**Pre- independence** British rule enacted several Legislations for the trial or lawsuits of young people who were under the age of 15yrs committing any crime. **The Apprenticeship Act 1850** was passed in India that dealt separately with the juveniles. After that in 1876, Britishers had passed **The Reformatory School Act, 1876** which provided that the juvenile who committed any crime has to move to the reformatory school. Also **The code of criminal procedure, 1898** provided for the provision of reformatory school for the offenders below the age of 18yrs.

**After independence Indian Constitution** also provides provisions concerning juveniles under **Article 15(3), 39(e), 39(f), 45 and 47** of the constitution and imposes primary duty on the state to take proper care of the children and also ensures that state can make laws for the betterment of the children and also ensures the protection and safeguard of the children from exploitation and abandonment.<sup>12</sup>

Juvenile delinquency is a doorstep or beginning to the severe offence and this issue is growing and rippling day by day and causing a grave concern all over the universe. Even the developed Nations are also not untouched with this issue as the cases of juvenile delinquency are increasing every year. Recently, the children and their problems are holding the eyes of the authorities and of society both<sup>13</sup>.

In 21st century, Due to use of internet and sophisticated technology, the young children deviate from the moral values of living and they are inclined towards the immoral activities. As the numbers of the juvenile delinquents are increasing, there felt a greater need for the systematic and well-organized machinery for the administration of the juvenile justice in our country.

The history of the juvenile justice is new and whenever the cases relating the juvenile delinquency came before the court, the judges either refuse to punish the offender for the want of penalties in the specific law or release after admonition or provide the soft and lenient punishment in place of the harder punishment. It is the duty of every parents/guardian of the Nation to give such moral attitudes and ethics in their children so that they would not be involved in any offence so that not only the future of children but also future of the Nation will progress and develop in all manners so that they could become a better person in the society as they are the future and prestige of our Nation. Problem of juvenile delinquency is undoubtedly a negative factor for any country that is by every member of the society has to do a little effort to see that no child should be deprive of the essential necessities so that children should not move towards the illegal means to satisfy their needs and their proper care must be kept so that they should develop fully mentally as well as physically. On the other hand, if child gets neglected then he will turn into a criminal by associating himself with the bad company.

## 5. PERIODICAL DEVELOPMENT OF JUVENILE JUSTICE SYSTEM IN INDIA AND RELATED LEGISLATIONS: -

<sup>10</sup> Krishna Pal Malik, Administration of Juvenile Justice in India (Faridabad: Allahabad law Agency, 2012) 4.

<sup>11</sup> UN convention on rights of child 1989, retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. visited on 22 April 2020 at 11 am.

<sup>12</sup> Narender Kumar (8), Constitutional law of India (Faridabad: Allahabad law agency, 2012) 45.

<sup>13</sup> Krishna Pal Malik, Administration of juvenile justice in India (Faridabad: Allahabad law Agency, 2012) 2

In India the History of juvenile justice has been divided into the five periods by reference to the laws passed by the parliament and other developments. The year 1773 played an important role in the Indian legal system as the **Regulating Act of 1773** granted to the East India Company the powers of making laws and enforcing them on a very restricted scale. **The Charter Act of 1833** which converted the commercial East India Company into a governing body. The period between 1773 and 1850 saw numerous committees viewing the condition of jails in India and made the stage for special attention on children detained in jails. The reports of the **All-Indian Jails Committee 1919-20** led to the beginning of complete separation of children from the criminal justice administration. The detailed development of Juvenile Justice system in each of these periods are discussed as follows: -

**(a) Prior to 1773:** - Hindu and Muslim laws both have the provisions to maintain their children<sup>14</sup>. The first and the foremost duty to maintain the child is of the parents. Both the religions believe in generosity and charity. In both the religions helping the poor and helpless persons is considered to be the best deed. They both provide for the care and protection of the children who are destitute and had nobody to take care of them. It is important to note that neither the Hindu law nor Muslim law has any reference to the juvenile delinquency. It means that juvenile offenders were not present in the society at that very time because of the high moral values prevalent at that time. Under the Hindu law, the king in inflicting punishment was to ascertain the intention, the time, place of offence, consider the ability of the criminal to suffer and the nature of crime, and cause the punishment to inflict on those who deserve the punishment<sup>15</sup>. Hindu law puts the responsibility on the king equivalent to the equity court in England, to take proper care of the helpless children till they grew up to the age where they can take care of themselves. All these prerogatives show that the children are regarded the different entity from the adults and needs a special attention and protection in order to be a good human being in the society

**(b) Period between 1773 and 1850:**

The period between the 1773 to 1850 started with the emergence of the east India Company in India as a governing body rather than the trading body. It introduced the first Statute dealing with the children. In report of the committee appointed by Lord William Bentinck, pursuant to T.B. Macaulay on the subject of jail discipline, which was submitted in 1839<sup>16</sup>, exposed the evil and immorality of the jail management existing at that time.

This was the period when west was adopting the laws relating to the children on a large scale. In USA the crime rate by the young offenders were increasing day by day. In 1825 the society for the containment of juvenile delinquency supported separating juvenile and adult's offenders. India as a British colony was also affected by such kinds of events happening in the west countries. The exploitation of the British people aimed at the rural economy and forced the large number of people to move from the rural areas and move to the suburban areas and this ultimately led to the slums in the suburban areas and this also seriously affected the indigenous work done by the rural people. It also increased the poverty among them and children were indulged in criminal activities.

Out of concern for the children, Krishna Chandra in, 1787 alliance with Lord Cornwallis, the then Governor General in India, make effort for establishing a home" for destitute children in the area of Calcutta. During the colonial regime, in 1843, the first centre for those children called the "Ragged School" opened by the lord Cornwallis, Bombay now known as the David Sassoon Industrial School<sup>17</sup>. The salient features of the school were:

- The rehabilitation of the juvenile offenders detained by the police authorities.
- Uplift of the apprenticeship among the working class.

**(c) Period between 1850 and 1919:**

The period between 1850 and 1919 was marked by the social, political and industrial change. **The Apprentices Act, 1850** was timely the first law which urges that children between the ages of 10-18 convicted in Courts, are to be given vocational training as part of their rehabilitation process.

There were so many statutes and Legislations that were passed in these years concerning children like: -

- **female infanticide act 1870. Vaccination act of 1880**, provides for the good health of the children and provide for the free vaccination service in the government hospitals.

<sup>14</sup> N. Chandrasekhara Ayer (11), Moyne's Treaties on Hindu Law & Usage (Madras: Higginbotham's, 1953)285. 10

<sup>15</sup> S. D. Sharma, Administration of Justice in Ancient India, (New Delhi: Harman Publishing House 1988) 61 11

<sup>16</sup> Chatterjee Gautam, The Reformation of Neglected and Delinquent Children in British Raj: An Historical overview, (Pondicherry: Akshaya Publications, 1995)106 12

<sup>17</sup> Krishna Pal Malik, Administration of Juvenile Justice in India (Faridabad: Allahabad law Agency,202)6. 5

- **Guardianship and wards act of 1890**, provides for the proper care and protection of the children who do not have families by their other guardians and this act also provide the protection to the property of the young children from disposing by their guardians without the permission of the court.
- **The factories act of 1881**, provides for the protection against the child labour and this act provides the greater punishment for those who violate the provisions of this act.
- **The Apprentices Act, 1850** was coming into force for better enabling children, and especially destitute and helpless children brought up by public generosity, to learn art and crafts and occupations by which when they come to full age, that may earn a livelihood. It authorized the magistrates to bind the juveniles between 10 and 15 years as apprentices to learn art and craft, or occupation instead of sending them to jail for minor offense. This Act mooted the concept of helpless children for the first time for legislative purposes and provides an alternative to imprisonment of offending children for minor offences.<sup>18</sup>**The Apprentices Act. 1850** was the threshold for many other legations laying down special provisions in relation to children.
- **The Indian Penal Code 1860 (IPC)** provided that the children below 7 years of age are (Doli incapax) which means that they are incapable of committing an offense, while the presumption of mens rea are rebuttable in case of children in the 7- 12 age group. Prison reports in the meanwhile continued to point towards the need for change in policy and administration.
- **The whipping act of 1864** provides the punishment to the juvenile delinquents by the way of whipping for the wrongs committed by the juveniles and therefore it will have the deterrent effect on the minds of the juveniles. Indian jail Committee was constituted in 1864 by the Governor General immediately after the enforcement of the whipping Act. The formation of committee was intended to propagate that the Act was not intended to supersede the requirement for the larger measures of prison reform. Most members of the Indian Jail Committee viewed that if education was offered through reformatory institutions, then there was a peril of poor parents wanting their children to commit crimes to obtain Government education. It is significant that juvenile delinquents should not be exposed to impurity by association, within prison with more hardened and regular culprits. There are many reasons for isolating the juveniles form adults because it is the only manner of preserving the young from getting bad habits during their residence in jail<sup>19</sup>. The committee also recommended that every juvenile in the jail should be provided with separate sleeping rooms if practicable so that they should not come in contact with the other criminals.

**In the period 1872-75**, Poona Juvenile prison was coming out to be running successfully with good health and conduct of juvenile's offenders. The need for forming the reformatory school for juvenile delinquents was felt at this point of time keeping in view the bad condition of the regular prisons. **The Reformatory School Act enacted in 1876** and later amended in 1897, was another landmark law in the treatment of juvenile delinquents. It empowered local government to establish rehabilitation schools. Under the Act, the sentencing court could have kept the offending boys in such schools for a period of two to seven years but they would not to be kept in the rehabilitation schools after they have attained the age of eighteen years. There was also a provision to provide the boys suitable employment for boys who were above eighteen years of age. In Bombay Presidency, the Act was extended to juveniles who were under sixteen years of age, while at other places it applied to juveniles under fifteen years of age.

**the Code of Criminal Procedure 1898** contained the provision to authorize the magistrates to send juvenile offender to reformatory school instead of prisons under special circumstances along with provisions relating to release the offenders on probation and trial of children by the juvenile court<sup>20</sup>.

The local government was also empowered to detach such children from the society and place them under the reformatory homes.

#### **(d) Period between 1919 and 1950:**

In India the juvenile delinquency is dealt with lesser punishment because it is believed that juveniles are not fully capable to commit crime. One of the principal evolutions, in the history of the juvenile justice system in India is the report of Indian jail Committee 1919-20. It undertook the most comprehensive exercise to look after the entire prison system after visiting number of jails and reformatory schools in the country. Preparation for Children Act were under construction in Madras since 1917 and it passed the legislation in June 1920, and the recommendations of this committee provided the encouragement for the enactment of similar legislation by other states also.<sup>21</sup>

**The jail committee 1919-20** viewed that prison administration had made great advancement in the material aspect of administration, health, food, labor, and so on, but little observation was given to the introduction of moral and

<sup>18</sup> Mousumi Dey, Juvenile Justice in India, International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol. 1, No.6 p.65

<sup>19</sup> Krishna Pal Malik, Administration of Juvenile Justice in India (Faridabad: Allahabad law Agency,2012)4

<sup>20</sup> Section 29B, 399 and 562, Criminal Procedure Code 1898(Act 2 of 1974).

<sup>21</sup> Krishna Pal Malik, Administration of Juvenile Justice in India (Faridabad: Allahabad law Agency,2012)8

intellectual development of prisoners. The report pointed out that the juvenile delinquent is mainly a byproduct of an unsuitable surroundings and that he deserves a fresh chance under better environment. There is a general agreement that youth is the time when habits are continuously changing and the chances of reformation are more probable. From both points of view, it has come to be agreed that the juvenile delinquent should be treated differently from the adult. The committee found it unwanted to acquaint the youth with the sight of prison life or to give up the fear of prison which is one of the most powerful deterrent effects of crime.

A number of states – level committees continued to consider various prison refinements, leading to the coming of new measures in allegiance with the changing approach in correctional treatment. Apart from prison reform taking place in different parts of the world, continuous arrival of political prisoners during the nationalist movement kept prisons in focus. The children require special attention and care, as the future of country depends a lot on their proper upbringing. **The first Children Act on 20 June 1920** was passed by the Tamil Nadu government. Its sections are related to age limit of childhood, prohibition against incarnation of young offenders, remand homes, reformatory schools, and non-delinquent children who were in the bad environment were also recommended for adoption by other provinces. After Tamil Nadu, Bengal and Bombay had also passed the similar kind of legislation in 1922 and 1924. Keeping in mind the suggestions of the Indian Jail Committee, 1919-20, the Madras Children Act 1920 was adopted in the Andhra Pradesh.<sup>22</sup> **The Vagrancy Act 1943** was another legislation providing for the protection and betterment of the children. This act also provides for the training program for the children that are below the fourteen years of age who were living in the unfit conditions like beggars, living in the violent areas and families that are not able to take care of their children.

**(e) Post 1950 period:** Till now various developments have been done in the field of juvenile justice system in India. To address the augment in destitute and offender's children as a result of separation of the country into Pakistan and India, the Indian parliament passed a **Central Children's Act (CCA) in 1960**. The CCA provided for the care, protection, and treatment of young offenders, and made it applicable in the states under central government rule, but the central government did not make any effort to apply the legislation throughout the country.<sup>23</sup> Following is some of the developments that have taken place during this period:

❖ **Five-year plan:** Planning commission came in existence in the year 1951. With the formation of the planning commission, five-year plan was started and in this plan several provisions have been made for the betterment of children. State as well as central Acts relating to destitute and helpless children were implemented within the states. The seventh Five-year plan had given Rs. 799.97Crore only for central and centrally sponsored mission like the Integrated Child development Service (ICDS) service for children in need of care and protection, prevention and control of juvenile maladjustment, crèches and day –care centres for children of working/ailing mothers, and training of ICDS and non ICDS functionaries. In Eighth plan India recognized Human development efforts, Child survival and development received high priority. Ninth plan is on buttress the early period of learning most importantly that of the girl child, through effective extension of day care services, a connection of child care solution and primary schools to encourage developmental opportunities to the girl child. Tenth five-year plan by the ministry of social justice and empowerment suggest that the direction of the government is to reach out to every child in need of care and protection and to ensure that his or her basic rights should not to be compromise.<sup>24</sup> In order to fulfil its mission of ensuring a childhood to every child the ministry aims to:

- make sure that every scheme evolved by the ministry will comply with the spirit of the Convention on the Right of the Child.

- make sure that all scheme will be planned and enforced with the active participation of children at all platform.

❖ **Policy and programmes:** - **By 1986**, almost all the states passed the legislations connected with the children welfare. All these acts lack uniformity in defining the juvenile delinquency and procedures to be followed in the court. Keeping in mind all these factors, government felt the need to have the uniform act dealing with the issues of children which has the procedure same throughout the country. With that in mind, the central government passed the most complete act up to date which is called the Juvenile Justice Act of 1986. The Juvenile Justice Act was known as distinct part of social legislation intended to provide custody, prevention, cure, remedy, and reformation for destitute and delinquent children as well as the hearing of matters relating to the disposal of delinquent juveniles. To accomplish the goals of this legislation, special provisions were made for separate provision for handling offenders and non-offenders. Juvenile courts were created to deal with young delinquents, and juvenile welfare boards were established to handle helpless juveniles. The final decision regarding the execution of these courts and boards were left to the respective state governments, but with some conditions. The year subsequent to the passing of the **Juvenile Justice Act of 1986** was of

<sup>22</sup> R. N. Choudhary (4), Law Relating to Juvenile Justice in India, (New Delhi: Orient Publishing Company 2015) 21

<sup>23</sup> History of juvenile justice, retrieved from <https://jurisedge.com/history-juvenile-justice-system-india/>. visited on 23 April 2020 at 10 am

<sup>24</sup>

unsatisfied in the field of juvenile justice<sup>25</sup>. The Juvenile Justice Act of 1986 despite being significant in the field of juvenile justice, breakdown at various levels to fulfil the objective of ensuring that young delinquents need a special care and protection and had to be understood in a different manner.<sup>26</sup>

**Minister of Women and Child Development, Maneka Gandhi in 2014** tell that they were making a new legislation which allows even 16-year-olds offender to be tried as an adult. She also adds that 50% of juvenile crimes were perpetuated by teens because they know that they will be protected by law. On **22 April 2015**, the Cabinet cleared the final version of the act by making some changes in the previous one. The Act will permit a Juvenile Justice Board formed under the new act under which it would include psychologists and social worker to decide whether a juvenile delinquent in the age group of 16–18 should try as an adult or not. Finally, on dated 31st December, 2015 the bill gets the assent of the President and got published in the Gazette of India on dated 1st January, 2016 and on dated 15th January, 2015 the Act came into existence.

#### **6. REQUIREMENT OF THE JUVENILE JUSTICE ( CARE AND PROTECTION) ACT: -**

India adopted the United Nations Minimum Rules for Administration of Juvenile Justice, 1985, in 1986 by enacting legislation for the treatment and development of juveniles and naming it the Juvenile Justice Act, 1986. However, with the passage of time, it was realised that new legislation must be enacted, as a result of which the Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted. Rehabilitation of juveniles was the main purpose of this Act.

In 2013, after Nirbhaya case, the legislature felt the need to amend the Act with respect to the age of juveniles, their trial, and their treatment. Finally, the **Juvenile Justice (Care and Protection of Children) Act, 2015**, was enacted and enforced. The current legislation provides for a Juvenile Justice Board to be constituted and established in every district. The board has the responsibility of disposing of the cases related to juveniles and passing the required order. It also provides for the adoption of children who have been surrendered or abandoned by their parents. The Act also emphasises aftercare programs for juveniles and provides for various shelter homes for their treatment, care and development, like observation homes, special homes, children's homes, etc.

#### **7. RELATED THEORIES AND CAUSES OF JUVENILE DELINQUENCY: -**

➤ **Biological theory:** - Founder of this theory is Cesare Lombroso. According to him there is an enormous difference in the criminals and normal human being in terms of organic structure that basically determine their criminal behaviour. In criminals there is a biological defect like mental retardation or some other kind of deficiency and that sometimes becomes the result of the delinquent behaviour in them<sup>27</sup>. According to Cesare criminality is of atavistic occurrence that means that criminality passes from generation to generations and it became prominent when other factors joined this factor.

**According to the Cesare Lombroso** criminal gangs are born with an evil motive and against them all the measures to get them on right path fails miserably. Criminality is the thing which is by birth present in human and it can't be change by giving them punishment or with fine. According to Cesare Lombroso, there are many physical characteristics which are found in most of the criminals and these are like small 20 forehead, having large amount of hair on body, chronic red eyes and big jaw line on face etc. he has noticed all these traits in criminals while he was serving in an army and he closely noticed that these traits are not found in good soldiers with whom he lived<sup>28</sup>. Biological theory talks about the criminality being present in the instinct of the person and they have different physical and mental characteristic than the normal human being and they are almost common in all criminals.

➤ **Sociological theory:** - Under the sociological theory the researchers try to apprehend the concept of juvenile delinquency by referring to the environment of the person in which they acquire the delinquent behaviour. Sociological theory comprised of many kinds. Such as

**Differential association theory.** Edwin Sutherland is the propounder of this theory and it is the most effective theory in explaining the causes of delinquency in the juveniles. **According to this theory** the environment of the person has the influence upon the character of the person and their surroundings decide that whether the person inculcate good characteristics or bad.

#### **According to the Edwin Sutherland:**

- Criminality is not by birth in person but criminal behaviour is learned
- Criminal behaviour is adopted by interaction with the other similar kind of persons in the society
- The main work of learning the criminal behaviour is learned in the family

<sup>25</sup> S.P Shrivastava, Juvenile Justice in India, Policy, Programme, and Perspective (Delhi: Ajanta Publications, 1989) 259

<sup>26</sup> S.P Shrivastava, Juvenile justice in India: Policy, Programme, and Perspective (Delhi: Ajanta Publications, 1989) 258.

<sup>27</sup> . Krishna Pal Malik, Administration of Juvenile Justice in India (Faridabad: Allahabad law Agency, 2012)60.

<sup>28</sup> OStephn Schaer Richard D. Knudsen, Juvenile Delinquency: An Introduction (New York: Random house, 1970)55.

- Learning not only include the way of doing the crime but also inculcate the motive and attitude for commission of the criminal act
- One of the main reasons for the delinquency is that the law is not so harsh towards the criminals now a days. This theory varies in its intensity and time period depending upon the favourable conditions nearby.
- **Anomie theory** Emile Durkheim is the propounder of this theory. The meaning of the anomie is deviance from the normal path of the society or we can say that it is lack of rules and regulations in the society. During the conversion of the society from primitive to the modern society the institutions like state and church that are regulating the behaviour of the population lost their significance which is responsible for the normlessness in the society. There is a lot of disparity between the expectation and reality in society.

**According to Merton anomie** means that

- the presence of norms in the society and values that do not suits the person in the society and because of this there is a conflict arise regarding that norm and he disobeys them.
- opportunity to achieve something when is very limited then the lower strata of the society find the way of shortcut in order to achieve success in their life and that shortcut is basically a wrong and illicit.
- The labor class children openly resist the values and culture of the high-class society because they are not able to afford that culture and conflict arises between them. Boys are more prone to the delinquency then the girls in the society and that's too in the lower-class people it existed and this is also because of the media factor or it can be a jealous factor among the labor class against the high-class society.

➤ **Subculture theory According to the albert Cohen** the delinquency is prominently found in the working class and is particularly the male phenomenon. Working class have no means to fulfil their needs and because of this they left far behind the middle class and upper-class institution in the society. Due to the absence of means in the working class they develop the feeling of the hatred towards the high class people and because of this jealousy they sometimes commit crime against the upper class people like robbery, dacoity, trespass etc.

**According to this theory** if we want to get rid of this menace of juvenile delinquency, we have to remove the gap that is very wide between rich and poor in our society so that the feeling of the superior and inferior in our society that is responsible for the crime get subdued.

➤ **Economic theory** According to the **Adam smith**,

- man is a social animal and man has so many desires in his life and wants to fulfil it for himself and for his family. Adam smith is against the concept of individualism and he said that it is the main reason for the criminal behaviour in the society.
- The capitalist is acquiring more and more wealth and accumulate the resources of wealth due to this the other people in the society keep hoping for the resources for meeting the both ends and when their ends do not meet then it causes a lot of dissatisfaction among them and it ultimately leads them on the wrong and illegal path.
- Poverty in any society is a motivation factor for the crime and the usage of drugs in the slum area augmented this problem in the society.

## 8. JUDICIAL VERDICTS OF THE HON'BLE COURTS CONCERNING JUVENILE DELINQUENTS: -

(1) **Sheela Barse v. Union of India (1986):** This case was related to the inhumane treatment of women prisoners and their children in jails. The Supreme Court directed the government to take necessary steps to improve the conditions of women prisoners and their children and also addressed the release of children below 16 years of age from jails and the necessity of information about children in jails, the existence of juvenile courts, homes, and schools. The court directed

- ❖ State Legal Aid & Advice Board to provide legal assistance to children below 16 years in prisons.
- ❖ State Governments to report the number of children's homes and inmates in these institutions.
- ❖ Strict enforcement of the 'Children's Act' and filing of affidavits explaining non-compliance.
- ❖ District and Sessions Judges to oversee child prisoners' welfare.

(2) **Gaurav Jain Vs Union of India**, In the present case the Delhi High Court has observed that there should not be any place for discrimination in Law against Juvenile offenders regarding the nature of crime. Thus, every Juvenile Delinquent should be provided an opportunity for rehabilitation and reintegration regardless of severity of the crime.

(3) **Case of J. J. Vs State of Haryana, in this case the Hon'ble Apex Court of India** has remarked that a Juvenile can't be given death sentence even in most heinous crimes as the main purpose of the juvenile justice system is not to punish the child criminal but to reform him so that every child offender must have opportunity to reform and reintegrate into the society.

(4) **Pratap Singh v. State of Jharkhand (2005):** In this case the accused was arrested for being involved in causing the death of the deceased by poisoning. When he was produced in court, he was 18 years of age, and it was alleged that he was a juvenile when the crime was committed. The case was then transferred to the juvenile court, where his certificates were examined, and it was held that he was a minor on the date the crime was committed and hence

released on bail. The Hon'ble Apex Court held the date of occurrence of crimes as the criteria to determine the age of juvenility rather than the date on which such a person was produced before the Court.

(5) **Hari Ram v. State of Rajasthan (2009)**: In this case accuse Hari Ram was charged with the commission of many criminal offences. The issue was concerning his age and whether the accused should be treated as an adult or juvenile. After the trial commenced, the Additional Sessions Judge determined the age of the accused to be below 16 years on the date the crime was committed according to the 1986 Act, and so his case was referred to the Juvenile Justice Board in Ajmer, Rajasthan. While, The High Court, relied on the testimony of his father and medical reports and held that at the time of the commission of the crime the accused was above the age of 16 and, hence, excluded him from the ambit of a juvenile. However, the 2000 Act increased the age from 16 years to 18 years under which a child would be considered a juvenile under the Act.

The issue before the Hon'ble Apex Court was which Act would be applicable to the accused. The Court held that all the pending cases would be dealt with according to the 2000 Act after its enactment, so the same Act would be applicable in the present case and the accused would be considered a juvenile.

(6) **Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012)**: The Hon'ble Apex Court, on the issue of whether the plea of juvenility should be granted or not, held that the claim of juvenility can also be raised even after the final disposal of a case, which means that it can be taken up at any stage and any delay cannot be a valid ground for its rejection. The burden is on the person making the claim to support the plea of juvenility. It was further observed that the court must not give effect to any technical approach while dealing with such claims. However, the court has the power to reject false and fake claims. The court in this case also observed that the issue of juvenility was not considered at any stage in the trial court or High Court, nor was there any evidence to prove the same.

(7) **Jarnail Singh v. State of Haryana (2013)**: In the present case the accused was charged with taking the prosecutrix away from her parents and committing forceful sexual intercourse with her. During the investigation, she was found in his house, as a result of which he was sentenced to ten years of rigorous punishment along with a fine by the sessions court. In appeal accused alleged that the prosecutrix seduced him to do so and stayed with him with his consent. Moreover, he argued that it was proven that the accuser was a minor. The Hon'ble Apex Court held that the rules determining the age of a juvenile under the Juvenile Justice (Care and Protection of Children) Rules, 2007, can be applied in cases related to the Protection of Children from Sexual Offences Act, 2012, as well.

(8) **Essa @ Anjum Abdul Razak Memon v. State of Maharashtra Through STF, CBI Mumbai (2013)**: The present case is relating to the conviction of multiple accused under the Terrorists and Disruptive Activities (Prevention) Act, 1987 involved in the 1993 Bombay blasts. They were also charged with conspiring to commit such an offence on the basis of evidences including confessions made by co-accused, prosecution witnesses, documents, and the confession of the accused. The major issue before the Hon'ble Apex Court was to analyse which of the TADA and Juvenile Justice Acts would prevail over the other. It was observed that the Juvenile Justice Act, 2000, has an overriding effect on laws that were in force on its enactment date. On the other hand, TADA has been repealed since way back. On this ground, the Court held that there would be no overriding effect of the Juvenile Justice Act of 2000 on TADA.

(9) **Jitendra Singh @ Babboo Singh v. State of U.P. (2013)**: This case was related to a dowry death by three people, including her husband and father-in-law resulted in death and burning of the woman. However, during the pendency of the proceedings in Court of Law, father-in-law died, and one of the accused, during appeal in the Supreme Court, claimed that he was a minor, i.e., 14 years of age, at the time of the commission of the offence. The Hon'ble Apex Court upholding the decision of lower courts to convict the accused observed that the accused falls into the category of juvenile under the Juvenile Justice Act, 2000. In order to determine the sentence, the case was referred to the Juvenile Justice Board under the Act. The Court further opined that the objective of the criminal justice system in this regard is to provide rehabilitative and restorative mechanisms to juveniles. To avoid such a situation in future, The Court gave certain safeguards that must be complied with: -

- ❖ The Magistrate is under an obligation to record reasons for juvenility of the accused as soon as possible.
- ❖ A juvenile cannot be presumed to have knowledge about existing laws, especially with reference to socio-economic factors.

- ❖ The onus is on the magistrate to decide the juvenile, as the juvenile himself cannot be expected to claim it.

- ❖ In cases where juveniles are involved, their parents or guardians must be involved in the whole legal process.

(10) **Salil Bali v. Union of India (2013)**: In the present case a person of seventeen and half year of age was charged with the offence of rape in a moving vehicle. In the wake of Nirbhaya case, it was argued that the Juvenile Act of 2000 need to be reconsidered on the basis of the gravity and seriousness of offences committed by children belonging to the age group of 16-18 years. The petitioner urged that it is necessary to consider Section 2(K), Section 2(L) and Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, in the light of criminal offences that are committed by people belonging to the age group of 16-18 years. **The Hon'ble Apex Court** in this case discussed two issues:

- ✓ Whether a juvenile must be freed after he has attained majority even though his sentence has not been completed yet

- ✓ Whether the age of juveniles under Act should be reduced to 16 years from 18 years

On the first issue, the Court held that there is a misconception under the Act that a juvenile must be freed after he has attained majority, even if his sentence remains. It must be noted that if a juvenile has attained majority during his sentence, he must not be freed because he will have to complete his sentence irrespective of his attaining the age of majority. While discussing the latter issue, the Court observed that the aim of the Act is to provide rehabilitative and restorative mechanisms and help to juveniles. The age of 18 years has been decided on the scientific and psychological grounds that, until this age, juveniles can be reformed and restored back into society.

**(11) Shabnam Hashmi v. Union of India (2014):** The Supreme Court in this case recognised the right to adopt as a fundamental right under Part III of the Constitution. It was held that parents intending to adopt under the Juvenile Justice Act, 2000, can do so irrespective of their religion, caste, or creed. It was also observed that Muslim law neither recognises adoption nor prohibits a couple from taking care of a child emotionally and financially.

**(12) Dr. Subramanian Swamy Vs Raju, Thr. Member Juvenile justice board (2014):** This case was filed in the wake of the same Nirbhaya case, in which a woman was brutally assaulted, both sexually and physically, by five people, as a result of which she died. Out of those five people, one was a minor. His case was referred to the Juvenile Justice Board, but the petitioners argued to treat him as an adult and proceed with his trial. The Hon'ble Apex Court in this case, while interpreting the Juvenile Act, it was observed that the language of the statute is plain and unambiguous and provides a clear legislative intention of rehabilitating and restoring juveniles. Thus, the Apex Court upheld the decision to treat people under 18 years of age as separate under the Act.

**(13) Parag Bhati (Juvenile) through legal guardian v. State of Uttar Pradesh (2016):** In the present case the accused was arrested for the offence of murder and kept in a juvenile home having confusion regarding his juvenility, and the accused was referred to the medical board for examination for determining his age. The medical board opined that he was a major, and so his case was transferred to the court of the Chief Judicial Magistrate. The Hon'ble Apex Court, on the issue of determination of juvenility, held that the principle of juvenile under the Act would be applicable only in cases where the accused is prima facie a minor. The present case deals with a well-planned serious offence that depicts the maturity of the accused, and he is not innocent.

**(14) Sher Singh @ Sheru Vs State of U.P. (2016):** The court observed that Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, along with Rule 12 of the 2007 rules, obliges a court to conduct an inquiry and not any investigation or trial and that the inquiry related to the determination of age must be completed within 30 days from the date when the application was made. With this, the court can easily seek evidence and obtain matriculation or other required certificates. The court provided a list of documents that must be referred to in this regard:

- In absence of matriculation certificate, birth certificate from the school which was attended first must be referred to, or,
- Birth certificate from the corporation, municipal authority, or panchayat.
- A medical report is required only when the above-mentioned documents are not available.

**(15) Sampurna Behura Vs Union of India & Ors. [Writ Petition (Civil) No. 473 of 2005]:** a writ petition was filed by a social activist named Sampurna Behura and highlighted the problems faced by children and juveniles in observation homes, shelter homes, etc. She directed the attention of the Court towards various provisions in the Constitution which impose a duty on the state government to ensure welfare and development of children and their failure to do so, like establishment of juvenile justice board, medical facilities for juveniles, proper living conditions, juvenile police, etc. **The Hon'ble Apex Court** directed the government to take necessary steps for ensuring the well-being of children, including filling vacancies, collaboration with NGOs, establishing special police units, and improve the conditions of observation homes. The Court discussed the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Act, 2015.

**(16) In Re Contagion of COVID-19 virus in Children's Protection Homes (2020):** In this case a writ petition was filed in relating to the protection of children kept in observation homes and children in conflict with the law kept in juvenile homes and shelter homes in lieu of the pandemic during lockdown. The petition was related to the health and safety of children in juvenile homes and foster and kinship care during the spread of COVID-19. Thus, certain directions were issued by the Hon'ble Apex court to ensure the health and safety of the children in juvenile homes.

## **9. PREVENTIVE MEASURES FOR JUVENILE DELINQUENCY:**

Juvenile Delinquency is a serious social evil. In the interest of the individual in particular and the society in general, it ought to be eliminated by taking the following measures: -

- a. The parents must take care of their wards and should keep them away from the bad buddies and partners. They should teach them ethics and morals to have effective control over their juveniles.
- b. Ideal and model education system should be adopted as it would certainly help in eradicating delinquency among children. Welfare legislations should be passed for the welfare of the children and child labour
- c. in granting parole and probation there should not be any interference of the political parties. Our purpose should be to reform the criminals rather than punishing the offenders.

d. Government must take necessary steps for eradicating illiteracy by providing free and compulsory education to children.

**The Hon'ble Apex Court of India** has also taken initiatives for the growth, progress and wellbeing of the kids. These steps are mainly initiated with the implementation and execution of the **Children Act, 1960**. Declaring the significance of the **Children Act 1960**, In **1959 The Gazette of India** asserts that: Children are the breakable, delicate and weak part of any society and therefore they need special security and shield. On the basis of their helplessness, instability, jeopardy and vulnerability, there is always a scope of their exploitation which ultimately leads their entry in the surrounding of crime. Thus, State is under moral obligation to safeguard the interest of the children.

**The Hon'ble Apex Court of India** also accepted with this perspective and further highlighted that: children want the protective roof of the society for their better nourishment and overall progress. Children are not in the position to themselves demand the attention of the state authorities, so it is the duty of the state and society to comply with the demands of the children who don't have anyone to take care of them or who are deserted and rejected.

## **10. JUVENILE COURTS:**

The State is the parent of the entire nation. It is their duty to protect and provide care to all especially children. The main role of juvenile justice system is to ensure that children are provided the required care and they are not tried as adults. The juvenile justice system is separate from the Criminal Justice system. Juvenile court is a special court or department of a trial court, that deals with under-age defendants who are charged with crimes, are neglected, or are out of the control of their parents.

**Each state has special courts—usually called juvenile courts**—devoted to handling cases where minors are accused of violating a criminal statute. But, instead of being formally charged with a crime, juvenile offenders are accused of committing a delinquent act.

A juvenile case normally gets started when a prosecutor or probation officer files a petition charging the juvenile with violating a criminal statute and asking that the court determine that the juvenile is delinquent. If proven, the court enters a delinquency adjudication (similar to an adult conviction) and may order a disposition (sentence) aimed at rehabilitating the juvenile. Often, the juvenile court retains legal authority over the minor for a set period of time—until the juvenile becomes an adult, or sometimes even longer.

## **11. TYPES OF CASES HEARD IN JUVENILE COURT:**

Not all cases heard in juvenile court are delinquency cases (those involving the commission of a crime). There are two other types of cases: dependency cases and status offenses. Different procedures typically apply to all three types of juvenile court cases.

**Juvenile delinquency cases.** These cases involve minors who have allegedly committed crimes—meaning that if the crime had been committed by an adult, the matter would have been tried in regular criminal court. But the procedures in juvenile court differ significantly from those in adult criminal Juvenile protection or dependency cases.

**Cases involving minors who are abused or neglected by their parents or guardians** are also heard in juvenile court. In a juvenile dependency or protection case, the judge will ultimately decide whether a minor should be removed from a problematic home environment. Cases involving status offenses. A status offense is a violation that applies only to minors.

**Examples** include truancy (skipping school), curfew violations, running away, and, in some cases, underage drinking. About 50% of all juvenile arrests are made for theft, simple assault, drug abuse, disorderly conduct, and curfew violations.

## **12. PROCEDURES IN A JUVENILE COURT CASE:**

When a juvenile is suspected of violating a criminal statute, the procedures are very different from those used in adult criminal court. Most significantly, the police, prosecutors, juvenile court intake officials, and juvenile court judges all have broad discretion to take more informal steps in handling the case. As a result, many young offenders never reach the point of a formal adjudicatory hearing.

**THE CONSTITUTIONAL RIGHTS OF JUVENILES:-** Likewise, the constitutional rights of juveniles are different from those of adults who have been accused of committing a crime. For example, although juveniles have the right to an attorney at an adjudicatory hearing, in most states they do not have the right to have their case heard by a jury.

Some juvenile cases are transferred to adult court in a procedure called a "waiver." Typically, juvenile cases that are subject to waiver involve serious offenses, like rape or murder, or juveniles who have been in trouble before. Juveniles have a right to a hearing to determine if their case should be transferred to adult court. Juveniles tried as adults face adult criminal convictions and penalties, such as prison time.

### **13. SALIENT FEATURES OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:-**

- To provide a consistent legal structure of justice for the children who have not over the age of eighteen years throughout the country.
- Endeavour to give a new jurisprudence for juvenile as the basis for the conveyance of justice to the juvenile and moving away from adults.
- To transfer the focal point of inquiry into the crime committed by the children from the intent to motive.
- To provide the foundation and proper buildings for the proper protection, care treatment, betterment and reformation of the juveniles.
- To segregate the juvenile delinquents from the children who are destitute and helpless.
- To try the child delinquents socially without dragging him in the complex procedure of the court system.
- To establish the special police units to deal with the juvenile delinquents that is to be mild towards the juveniles rather than having the harsh attitude.
- To establish the monitoring units such as audit team and inspection team.
- To root off the juvenile delinquents from their biological families and transfer them into the non-institutional rehabilitation options like adopting that child and sponsorship method so that the education and health care should be taken.
- To brought a greater coordination between the public and non-government institutions, parents, society through joint management ventures.
- To lift all the sanctions against the juvenile delinquents so that they can lead a normal life after they came out the curative homes.
- To bring the special amenities in respect of cases pending before the court.
- This act authorizes the central government to make the rules and this act also authorizes the state government to make the state rules by notifying them in the official gazette.
- Supreme Court has mentioned that the rules made by the centre have no compulsion over the states but the procedure lead by them should be followed

### **14. CHALLENGES FACED BY THE SYSTEM: -**

**LACK OF INFRASTRUCTURE AND RESOURCES:** - There is lack of infrastructure and resources, including trained staff, observation homes, and rehabilitation centres.

**LACK OF EDUCATION AND AWARENESS:** - There is also a lack of awareness and education among parents, teachers, and the general public about the causes and consequences of juvenile delinquency.

**DELAY IN THE DISPOSAL OF CASES:** - The delay in the disposal of cases, which often leads to the prolonged detention of juvenile offenders. This can have a negative impact on their mental and emotional well-being and may increase the risk of recidivism.

**IMPROVEMENT REQUIRED IN REHABILITATION SERVICES** There is also a need to improve the rehabilitation services provided to juvenile offenders, including vocational training, education, counselling, and employment opportunities.

However, there are several challenges facing the system, including the lack of infrastructure and resources, delay in the disposal of cases, and the need for better rehabilitation services. These challenges need to be addressed to ensure that the Indian juvenile justice system provides better protection for vulnerable children and reduces the incidence of juvenile delinquency.

### **15. SUGGESTIONS AND CONCLUSION DRAWN: -**

(1) The young generation of any country is one of its most important resources. This is the reason every government focuses more on the growth and development of children. **The Juvenile Justice Act, 2015**, is one such piece of legislation that works for the welfare of juveniles in order to reform them and reintegrate them back into society.

(2) Judicial precedents in India play a major role in shaping the law and justice system. Every case brings out a loophole that may exist in the law, and the courts provide measures against it. The above-mentioned cases have helped shape the juvenile justice system by bringing out the existing loopholes for the betterment and welfare of such children. Various directions and guidelines have been given by the Hon'ble Apex Court from time to time regarding any problem or guidelines that come before it, whether it is a question to determine the juvenility of such children, their age, or measures during the pandemic. The courts have been able to deal with every situation and uphold the aim and objective of the enactment.

(3) Juvenile is a different class, and need special attention and handling different than adult hardcore offenders.

(4) Children are not born criminals. Criminality is an outcome of socio environment in which the juvenile grow.

(5) That there are various enactments in dealing with the cases of juvenile delinquency and they proved to be useful to some extent.

(6) **The Juvenile Justice (Care and Protection of Children) Act, 2015** has objectives to provide justice, care and protection to the juvenile in conflict with law. It proves to be helpful in decreasing the crime rate among juveniles.

(7) Need for some amendment in the present Juvenile Justice (Care and Protection of Children) Act, 2015.

(8) In India the problem of the juvenile delinquency is quite large though the statistics says something else because large amount of these kinds of cases goes without reporting. As we are witnessing that when some poor child steals purse of someone what punishment we are giving to that child, only some slaps, who bothers to report that case to the police, nobody. He is allowed to roam freely in the streets, then he will get used to it and this thing is ingrained in his mind that now whenever he is going to steal anything, he will not be going to jail, he will be allowed to move freely in the streets. The filthy image of the police in our country is also a hindrance in its way.

(9) Near about 1614 rapes and 1456 other sexual crimes like outrage the modesty of women and 46 cases of attempt to rapes were committed by juveniles in the India in 2017 as revealed by the National Crime Records Bureau (NRCB). And near about 40,000 offenders who were less than 18yrs of age were detained in 2017 for their involvement in various crimes. 72 percent of them are from the age window of 16 to 18 years.<sup>29</sup>

(10) There were 33,606 cases registered and 40,420 juveniles were detained during the year. In 2016 there were 35,849 juveniles were apprehended and in 2015- 33,433 as per the data provided by NCRB. Most of the juveniles were detained under IPC. Madhya Pradesh alone covers about 19.3 percent of all juvenile delinquents all over the country. While Maharashtra covers about 17.9 percent. Delhi stands 3rd in juvenile delinquency list with 8.8 percent share overall. As per the data collected from NRCB it was observed that most of the juvenile criminals came from the families who has earnings less than Rs.50,000 per year.<sup>30</sup>

(11) The parliament had passed **the Juvenile Justice (Care and Protection of Children) Act,2015**, which provides for the trial of the juveniles of age between 16 to 18 years as an adult if involve in the heinous crime.<sup>31</sup> The law was amended after the outcry of people after the Delhi gang rape case, where one of the accused was about to turn 18.

(12) It is important to be noted that juvenile delinquents are to be treated with proper care and rehabilitation and punishment should be restricted or prohibited. The death penalty and life imprisonment should not to be inflicted to the offenders who are below the age of 18 years. Detention of the children and to restrict the freedom of the child should be the last weapon in the hands of the authorities and if detention is to be given then it must be for the shortest period of time. Whenever such child is detained, he should be given opportunity to meet his parents and to have the legal assistance. He should be given proper opportunity to be heard in the judicial proceeding and their views to be taken seriously.

(13) Due to the physical and mental shortcomings, juveniles require proper care and attention to develop his overall personality in the right direction. The children who do not get attention and proper care, they feel unprotected and discomfort in their life and because of this they adopt the way of rebellion against the norms of the society. They go astray and also went berserk and as a result the came in association of the criminals, if juveniles are not reformed and nobody provides attention towards him then they will become poison for the society in the future and when they grew up then they will become the acute hardcore criminals.<sup>32</sup>

(14) The courts are expected to play the important role in the reformation of the juvenile delinquents. The courts are expected to play the role of parent, teachers and friends to the juvenile offenders and also ensure the proper and healthy environment for their proper development of their mind and body. The children are the future gems of the country that is why they should be treated with the proper attention. Children due to their less age and innocence fall easily in the hands of the criminals and then the criminals exploit them for their own benefits. Children are not born criminals thing is to be kept in mind while dealing with the issues of the juvenile delinquent, there are various factors that led to the development of the criminals. Children are the buttress of the country so it is the duty of the state to provide them proper care and protection<sup>33</sup>.The United Nations have also made an attempt to secure the well-being of the children. They laid a greater emphasis on the point that juveniles are to be treated differently from the other adult criminals and they are not to be kept with these criminals in jail, they are to be kept separately in the specials homes where they are going to get proper guidance and education.

<sup>29</sup> "National Crime Records Bureau" The New Indian Express, October 22,2019.

<sup>30</sup> Data on juvenile delinquency, retrieved from <https://www.indiastat.com/crime-and-law-data/6/juvenile-courts/148/juvenile-delinquency-1971-2017/476305/stats.aspx>. visited on 22 April 2020 at 12 pm.

<sup>31</sup> Section 15 of the Juvenile Justice (care and protection of children) Act,2015.

<sup>32</sup> S.V. Kaldate (1), Society, Delinquent and Juvenile court (Delhi: Ajanta publications,1982)3

<sup>33</sup> N.V Paranjape(14) , Criminology and Penology (Allahabad: Central law publications,2010)528

(15) Juvenile delinquency is a sign of sick society. Overcrowding in urban areas, media, smuggling, gambling and drugs are some of the main factors that lead to this overgrowing phenomenon. juvenile delinquents are regarded criminals when they are caught by the police and after that brought before the court but there are many juvenile offenders who are gone un detained by the police. The conflict in the families leads to the social disorganization. Those children who cannot get proper socialization due to their abandonment, these children could be taken care of by social institutions and NGOs.

(16) In present times it has become all clear that juvenile delinquency has become the most important part of the criminology. The war and its consequence increase the problem of the juvenile delinquency. The word “delinquent” should not to be used instead that the term “unadjusted” should be used for its moral implications. Several investigations pointed out that correctional institution provides the partial solution to the problem of the juvenile delinquency and the rest solution lies within the society. Society has to play an important role in the reforming the juvenile offenders.

(17) Juvenile delinquency is the reflection of the desires and needs of the person that normally remains unsatisfied. Non delinquency and delinquency is an outcome of the surroundings and social media in which the children’s lives.

(18) Delinquency is an act that is socially undesirable and this may or may not be brought before the court of justice. It is the result of various empirical researches that the different causes theories came into existence and it is important to be noted that all researchers vary in their results some said that it is the biological phenomenon that child inherent the delinquency from their parents and on the other hand some researchers view that it is the result of the association that the child has with the adult criminals. And some of the researchers also said that it is the result of the poverty and extremely deteriorating economic conditions that leads them into immoral life and illegal activities. But in reality, there is not a specific reason for the juvenile delinquency. The definition of the juvenile delinquency got modified according to the circumstances and needs of the society which gets different from area to area and country to country.