

“Juvenile Justice and Juvenile Court”

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The Supreme Court of India in *Rosy Jacob v. Jacob A. Chakramakkal* observed that: Children are not mere chattels nor are they mere playthings.¹ Children are the future of our country, they hold a family together and are the biggest gift to humanity. They are the potential and useful human resources for the progress of the country. The better the foundation of a child, the better he will give results and the better the progress of the country will be. But unfortunately things are not so good as it seem to be. Gabriela Mistral, the Nobel Laureate said, “We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things can wait . The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. It is true that unconducive childhood may result in alienation of a person from the mainstream of the society and instead of adding to the strenth of society such person turns out to be the weak link and becomes more of a liabilty than an asset”.

As the Lenardo Da Vinci said “The greatest deception men suffers is from their own opinions . Most of the people in their lifetime go through this dilemma , it is a constant struggle between right or wrong, morality and immortality”. Every individual has their own beliefs and principles and person acts according to their own level of understanding so what may be right for me might be wrong for the another plus there are certain behavioural patters, rules are imposed by the society from the beginning that has become ideal and justified and if anyone is acting in contrary to that, it is considered preposterous. Now with respect to juveline, Juveniles are generally defined as persons who are below the age of 18 years and above the age of 10. A juvenile who is alleged to have committed an offence may be tried in Juvenile court. If the person does not abide by certain norms set out by the society then that person is regarded as deviant. Deviance can occur due to many reason like Poverty, Hunger, Family's atmosphere , your surroundings , Outer influences like bad company , Misuse of Internet , Peer pressure, Brainwashing by the cult, Physiological factors, etc. And this deviance can take a deadly form turning a Juvenile into a very rebellious, Disoriented kid. The deviant thought and behaviour exhibited by an adolescent influence their entire peer group and this further deteriorates their morality. The growing demands on decision-making have implications for the engagement in perilous behaviours. Structural strain theory was developed by American sociologist Robert K. Merton and suggests that deviant behavior is the result of strain an individual may experience when the community or society in which they live does not provide the necessary means to achieve culturally valued goals. Merton reasoned that when society fails people in this way, they

engage in deviant or criminal acts in order to achieve those goals (like economic success).² Labelling theory further suggests that people engage in deviant acts because they have been labeled as deviant by society, because of their race, or class, or the intersection of the two. Deviance is also connected to juvenile delinquency, its like a gateway to an adult crime. The cause of juvenile are usually found at each level of the social structure including social groups, social institutions, organizations and interpersonal relations there are other factors too which fosters juvenile delinquency. Most of juvenile are isolated and bullied due to this neglected behaviour they engage themselves in wrongful acts. The juvenile justice act reflects that the minors are little vulnerable at this stage and sometimes it becomes suffocating and due to this they get indulge in some of the illegal activities like consuming or selling drugs, fighting, trespassing and vandalism so we can say sometimes they don't understand the deadly repercussions of their actions. It also reflects that we choose to try to rehabilitate minors, rather than send them into an adult prison system. The rates of those who go into prison again after being sent once are high, and there is an interest in not putting children into that cycle.

In recent years the crime committed by children has drastically increased, the reason can be their upbringing environment, changes in society, lack of parental control, lack of care and education, economic problems and the crime includes crime by the child himself or by using them as tool by adults to commit such act. We can recall the Nirbhaya case which was the worst and this frightful event brought a lot of debates between socialists and people from legal fraternity and even human rights activists. The question that was in many minds was whether the minor knew the nature of the crime and its consequences or not? Because he was just a few months smaller than attaining the age of 18, can this be appropriate justification for his act. And this is not the only case but there are several cases like this where children who are below the age of 18 commit such crimes and the question remains that same. So how can this be determined?

In today's society juvenile justice is leading to a major concern, before the year 2000 the main question in conflict was whether juvenile being tried as an adult is fair and the right face of justice, like can a 14 year old accused of murder be tried as an adult and eventually sent to prison? and there might be a great possibility that in the growing age he may have bad experiences and as a result turn into repeat offender. Thus confirming to the international norms and convention as well as to give effect to the constitutional mandate, the act of 2000, called as the Juvenile Justice (Care and Protection of Children) Act, 2000 was brought into force and also amended suitably by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. the provision of the Act mainly aimed at rehabilitation and providing social integration in the society of the child in conflict with law. The human rights convention on the rights of the child focuses on the rights of the child and early age care and taking special notes on children in conflict with law because the main purpose is not to punish them but acknowledging the fact that there may be a chance that he can be changed and have a

² Mark, Complex Trauma,(March 13, 2017), <https://www.scribd.com/document/341731384/thesis-docx>

better life to lead.

Crime committed by children below the age of 18 is called delinquency. In many countries, criminal tendencies and acts of a person is looked as a result of bad relations of their parents or some traumatizing childhood, in short we can say that if a child turns into a delinquent the blame is on the parents for any actions, omission and commission during his childhood. How can we identify that a child will turn into a delinquent, we can't. Infact in criminal psychology it is well established that there are no particular signs or traits that can be classified into criminal behaviour.

The basic fundamental purpose of the act is that the young offenders should not be tried but it should be looked that they are corrected and rehabilitated, instead of punishing them, they should be reformed and sent back to have a better life, and that they should be excluded from the penal tratment and rather be sent to observational homes and under the observation of juvenile justice board. The Indian law for the children in conflict with law contains a more precise and clear-cut definition of juvenile delinquency. It provides that "any violation of existing penal law of the country committed by a child under eighteen years, shall be an act in conflict with law for the jurisdiction of the Juvenile Justice Board".³ The provisions of the act clearly states that the courts by any means do not have any jurisdiction over children in conflict with law, that means the crime can be same as that commiteed by the adults but the adults will be tried in ordinary courts while the juvenile be tried by the juvenile justice board. The Juvenile Justice (Care and Protection of Children) Act 2015 (hereinafter referred to as the JJ Act, 2015) is a new law that abolished or repealed the Juvenile Justice Act 2000. One of the main reasons for the introduction of the law was to solve the heinous crimes committed by teenagers between 16 and 18 years old. This development was made after the infamous Mukesh & Anr. vs. State of NCT of Delhi and ors.⁴ (Nirbhaya case) , the case raised an important development and question for the Indian Judiciary that the children between the age of 16-18 be tried as adults under the code of civil procedure, 1973 .

Traditional criminal law marked criminals as "delinquent or neglected children" and began to punish them as criminals, but the new law aims to establish a reformed judicial system for criminals. The Juvenile Justice Board is an institutional body constituted under section 4 of the juvenile justice act of 2015 which starts with the saving clause that implies that it has overriding effect over code of criminal procedure, 1973. The same was further discussed in the case of Chandavarkar Sita Ratna Rao v. Ashlata S. Guram⁵. The juvenile justice board consists of the principal magistrate that can be either metropolitan magistrate or judicial magistrate of first class and two social worker of which one being a women and the bench will have the same powers as been conferred on a metropolitan magistrate or a judicial magistrate of first class by the code of civil procedure,1973. When an alleged child that has

³Pragati Ghosh, Juvenile Justice System in India, <https://www.shareyouressays.com/essays/essay-on-juvenile-justice-system-in-india-947-words/121424>

⁴Mukesh and Ors. vs. State for NCT of Delhi and Ors. (05.05.2017 - SC) : MANU/SC/0575/2017
⁵AIR 1987 SC 117

committed and crime is produced before the board, the board has to exercise its power and hold an enquiry according to the provision of this act⁶, and may pass orders accordingly. A child in conflict with law will be sent to an Observation Home temporarily during pendency of inquiry. The child will be segregated according to age, gender, physical and mental status and nature of offence. A child who is found to have committed an offence by the Juvenile Justice Board will be placed in a Special Home

While on the other hand children's court is established for the heinous crimes committed by the person above the age of 16 years. Thus section 2(33) defines "heinous offences" as those for which the minimum punishment under the Indian Penal Code or any other law for the time being in force in Imprisonment for seven years or more.⁷ Many people are confused with the two that is between Juvenile Justice Board and Children's Court and so, the fine line demarcating between the two is defined by the term Heinous Crime as mentioned above but also there are other factors differentiating the two. Thus we can conclude from the provisions and the power of the act that children's court are provided with the power to try a child of age 16 years and above as an adult for heinous crimes.

This Act thus helps to determine the cause and psychology of a child and that the juvenile cannot be tried as an adult for various reasons, the child may not be knowing the nature and consequences of his acts and he is doing such things under pressure or under stressful circumstances where he does not know what will be the result of his act. Peer pressure is also become a trending cause for children indulging in wrongful activities and committing acts that are prohibited by law, for example we can see the current case of "The Bois Locker Room" which was so much in news a few days back where few children formed a group on social media and shared nude pictures of girls in their group and discussed about them and sexually assaulting them which is a crime under the Indian Penal Code, 1860. But it should be brought to notice that there were female gang members as part of the group and one of them even pretended to be a boy and planned a full fledged sexual assault for herself. Can we still say that she did not know the nature of her acts and consequences.

We can now conclude that there are several reasons for the involvement of children in criminal activities like poverty, peer pressure, societal acceptance and broken families, etc but the new act acknowledges the fact that a child requires special care and attention and specially in their growing age instead of treating them in the same manner which might be the cause for their involvement in such crime and this will lead to an endless cycle from which a child can never recover. Thus juvenile justice helps in dealing with such children and bringing them back to the society so that they can lead the country to a better place. But it does not imply that a juvenile indulged in such a horrendous, inhuman, monstrous, act like rape would be unleashed in any circumstances. It should be kept in mind that no one is born criminal and there are certain circumstances that lead them to become one.

⁶Section 17 and 18 of the juvenile justice act, 2015

⁷Section 2(33) of the Juvenile Justice (Care And Protection of Children) Act, 2015.