JUVENILE JUSTICE IN INDIA: A STUDY OF LEGISLATIVE POLICIES, JUDICIAL TRENDS AND SOCIAL PERCEPTION

ABSTRACT OF THE THESIS SUBMITTED TO MAHARSHI DAYANAND UNIVERSITY, ROHTAK FOR THE AWARD OF DEGREE OF DOCTOR OF PHILOSOPHY IN LAW

Under the Supervision of: DR. VIMAL JOSHI Reader Department of Law M.D. University, Rohtak, Submitted by: D.N. BHARDWAJ No.09/Ph.D/Law-6

DEPARTMENT OF LAW MAHARSHI DAYANAND UNIVERSITY ROHTAK-124001 HARYANA (INDIA) 2011
ABSTRACT

Children are recognized worldwide as supremely assets of the Nation. The future of the nation lies in the hands of the Children, who have been recognized as the supremely assets of the nation but because of the indifferences of our society in all spheres, these future stake holders are not brought up properly which leads to child delinquency. Child or juvenile delinquency is an alarmingly increasing problem causing a source of concern in all over the world. Children ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, it has not been so. Despite the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, the majority of children in India continue to live without a cared, protected and meaningful childhood.

India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect, right to information, right to expression and right to nutrition etc have been defined as basic rights of children by the Convention of the rights of the child. Accordingly, India has adopted a national policy on children in 1974 for achieving the above said rights for its children. The National Policy for Children has reaffirmed the Constitutional provisions for adequate service to children both before and after birth and through the period of growth to ensure their full physical, mental and social development. Through its National Policy for Children the government of India took the responsibility of children's nurture and solicitude saying that equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

India being a party and signatory to the world Declaration on survival, protection and development of children, 1990 and for the purpose of fulfilling its commitment made at the world summit a national plan of action for children has been formulated by the under the Ministry of Human Resource Development,
keeping in mind the needs, rights and aspirations of approximately 300 million children in the country.

Almost all the countries have developed juvenile justice system to deal with their young offenders. In India scene for the children has changed a lot and their problems and related issues have been given attention and are being discussed at various forums. The question of providing proper protection and care to the children of such a big number is a big challenge. A good number of our children on account of socio-economic reasons have adding themselves in the list of delinquent child.

There is need to give specific importance to children in society. Importance of a child is well recognized since ages. Nowadays children are under tremendous social pressure due to new changing social perceptions. A report of UNICEF in 2005 on the state of world's children under the title “Child under Threat”, speaking regarding India, mentioned that millions of Indian children are equally deprived their right of survival, health, nutrition, education and safe drinking water. This is what is happening to the most of the young children who if properly taken care of, would shine the future of the country. The cache statements “Children are supremely important national asset”\(^1\) and the greatest gift of humanity,\(^2\) in the present scenario and on ground level realities appear hollow. The children in India require double sided protection. The action is required on two fronts. Firstly, by preventing and arresting the increase in number of the juvenile delinquency, and secondly by giving the delinquent child or a juvenile in conflict with law proper opportunity to reform himself and join the mainstream of the society. Juvenile delinquency is difficult to be defined as to its behavioural connotations.

There is difference of opinion given by the various authorities in the field and also in the type of offences and behaviour which is included in the juvenile delinquency. The concept of juvenile justice was derived from a belief that the problem of juvenile delinquency and related problem of youth in abnormal

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\(^1\) Laxmikant Pandey vs. Union of India, 1984(2) SC 244, 249

\(^2\) Bandhua Mukti Morcha vs. Union of India (1997) 10 SC 551-553
situations are not only amenable to the resolution within the framework of the traditional process of criminal law. The juvenile justice systems have been designed to respond to the needs of young offenders. One principle role has been to provide specialized preventive and treatment services for children and young persons as a means of secondary preventions, rehabilitations and improved socialization.

State's responsibility of Welfare of the children, with the passage of time has shifted to the social organizations and certain philanthropic bodies. To make the people aware of the right of child, United Nations Organization declared 1979 as "International Year of the Child" issuing a general appeal to all the nations to review their programmes for the well being of the children and to mobilize support for programmes according to the countries conditions, needs and priorities.

If we can control juvenile delinquency we shall be controlling and checking the future criminals in making an open admitted fact is that tendency among young people to commit crime and indulge in anti social activities is increasing. The future, development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. Children are the most venerable group in any population and in need of the greatest social care. On account of their venerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social element in the community. The state has to difference of affording proper care and protection to children at all times.3

Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. Delinquency is a kind of abnormality. When an individual deviates from the course of normal social life his behaviour is called 'Delinquent'. When a juvenile, below an age specified under a statute exhibits behaviour which may prove to be dangerous to society and / or for him, he may be called a Juvenile delinquent. Juvenile delinquents are those offenders including boys and girls who

3 See, the Object and Reasons Appended to the Children Act, 1960.
are under 18 years of age. A Juvenile delinquent is a young person incorrigible or habitually disobedient.

Act of delinquency may include: Running away from home without the permission of parents, Habitual behavior beyond the control of parents, Spending time idly beyond limits, Use of vulgar languages, Wandering about rail roads, streets market places, Visiting gambling centre, Committing sexual offences, Shop-lifting, Stealing etc.

A grave problem such as juvenile delinquency can't be solved by means of legislation and government efforts alone. As far as India is concerned in many of the states Children Acts have not been effectively enforced. Some of these Acts themselves have defects. Official machinery is not effectively used for controlling this problem. Government as well as private agencies must work hand in hand with all sincerity and seriousness to find on effective remedy for the problem of juvenile delinquency.

The first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was transplanted by the Reformatory Schools Act, 1897 and later came The Children Act of 1960. The Juvenile Justice Act, 1986 was the primary legal framework for juvenile justice in India. The Act provided for a special approach towards the prevention and treatment of juvenile delinquency and also provided a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. The law replaced the Children Act, 1960.

Juvenile Justice Act, 1986 was applied uniformly throughout India except state of Jammu and Kashmir. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. In a landmark step, the Government of India, repealing the juvenile justice Act 1986, introduced juvenile justice (Care and Protection of Children) Act in 2000 and further, amended, it in 2006, so as to make it responsive to the emerging needs in the field of juvenile justice, and making it, compatible with UNCRC standards. The Juvenile Justice Act, 2000
aims at consolidating and amending laws relating to juveniles in conflict with law, and children in need of care and protection by providing proper care, protection and treatment by catering to their developmental needs, by adopting child friendly approach in adjudication and disposition of matters in the best interest of children, and for their rehabilitation through various institutional mechanisms established.

The concept of juvenile justice was derived from a belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional processes of criminal law. The term ‘juvenile justice’ has been given different meanings in different contexts. The juvenile justice system thus performs the welfare cum criminal justice functions, in this duality of its roles; the system strives to achieve explicit social goals such as the provision of minimum standards of child care. The system also functions to safeguard the right of children as per the United Nations Declaration of the Rights of the child.

The central functions of the juvenile justice system are: to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of matters relating to, and disposition of delinquent juveniles in the light of the avowed policy of providing opportunities to such Children to become useful citizens for any country.

Crime and the Treatment of Offenders identified three models of juvenile justice system on the basis of contemporary approaches to dealing with juvenile offenders namely; The due procedural model, The social welfare model, and The participatory process model.

The juvenile justice movement appears to have owed more to the slowly changing conceptions of childhood which came to maturity during the seventeenth and eighteenth century. The concern for the children had grown during the nineteenth century on account of the recognition of special needs of children. By the end of nineteenth century these ideas were firmly backed by legislation, and thus courts for children were required to be set up to give expression to humanitarian beliefs.

The present Juvenile Justice legislation in India has tried to move out of
the derogatory nomenclature and introduced the concept of ‘children in conflict with law’ and ‘children in need of care and protection’.

There are many theories of juvenile delinquency. Some are: Biogenic Theory, Psychogenic Theory, Psychoanalytical and Psychiatric Theory, Medico-Biological Theory, The classical Theory, Multi-causal Theory

There are mainly following causes in juvenile delinquency: Biological, Socio Environmental, Psychological, Physiological or Personal. A few other causes of delinquency may also be mentioned as Bad Company, Adolescent instability and impulses, Early sex experiences, Mental conflicts, Excessive social suggestibility, Love of adventure, Motion pictures, School dissatisfaction, Poor recreation, Street life, Vocational dissatisfaction, Sudden impulses, Physical condition.

There are various programmes and strategies which may be undertaken to control and prevent juvenile delinquency. Broadly the programmes can be categorised under two heads Individual Programme and Environmental programme.

Police has also important role to play to control juvenile delinquency. There are following major areas of police dealing with Juvenile namely; Discovery, Investigation of Delinquency, Case disposition, Protection of juveniles, and Delinquency prevention.

The approach of the Supreme Court towards juvenile has been very liberal. It was way back in 1977, when Supreme Court in a case held that penalty of death should not be imposed on a person below 18 years of age. Borstal Acts and Reformatory Schools Acts had the children guilty of offence punishable with death or life imprisonment in their focus. Though the judicial opinion was not uniform on the issue when these Acts could apply to such children. The Supreme Court with a view to advance the cause of justice has allowed the plea of

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4 Healy and Bronner, ‘A Delinquent & Criminals’ - Their making and unmaking p. 179.
6 AIR 1965 (MP) 122, AIR 1937 (Nag) to 74 (DB) 1968 Cr.L J. 1178,1961, Mad. L J (Crl.) 705)
juvenility being raised for the first time before it\(^7\). In *Pratap Singh vs. State of Jharkhand and another*\(^8\), the Supreme Court had to decide on conflicting views expressed in Arnit Dass and Umesh Chandra's case(supra). The Constitution Bench of Supreme Court to which the matter was referred overruling the decision in Arnit Dass's case upheld and re-affirmed its view taken in Umesh Chandra's case holding that the relevant date for determination of age of juvenile is the date of an offence and not date of his production before the court. The Supreme Court and the High Courts have lent in favour of jurisdiction of the Board in preference to the jurisdiction of any other court.

Regarding apprehension and production of the juvenile also the Supreme Court has been very sensitive. In *Sheeela Barse and Anr. (I) v. Union of India*\(^9\), the Supreme Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit there respective jails and ascertain how many children below 16 years of age were confined and what were the charges against them.

Regarding granting bail to juvenile also the Supreme Court has shown a very liberal face while holding that Juvenile Justice Act, 2000 is a beneficial legislation for the benefit of the juvenile and the Act must be construed as such Section 12 makes it mandatory for a juvenile offender to be released on bail by this court and all the courts dealing with such a situation must give full swing to the provision of said section as expressed in the objects of the Act.

Uniformity on the national level with regard to different treatment and other procedures relating to juvenile is still lacking. Prescribed institutions for custody and adjudication, trial and treatment of juveniles prescribed under the acts have not yet been properly created which is a major set back to successful implementation of Juvenile Justice Act, 2000. Lack of training in handling the force relating to the children on the part of the officials is also a decisive factor in non-implementation of the Act to full swing. Lack of coordination amongst various institutions involved in the process is also considered as failure to

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\(^7\) *Gopinath Ghosh v. State of West Bengal*, 1984 Cri. L.J. 168 (SC)
\(^8\) JT 2005(2) SC 271
\(^9\) (1986) 3 SCC 596
implement the Act apart from financial crunch in the institutions which is a discouraging factor in implementation of the beneficial legislation.

Some conclusion and suggestions have been drawn on the basis of this research study. The researcher has put his conclusion and suggestions in his research that Parliament has enacted so many Acts for the welfare of the juveniles but these Acts have not been implemented whole-heartedly with sincere intentions on account of which juveniles in India are still facing many problems. Apart from it, certain suggestions for better implementation of the Act have also been made out at the end of the study.