Chapter – I

Introduction

Children are innocent, vulnerable and dependent. In the landmark judgment in Gaurav Jain vs. Union of India case¹, the Hon’ble Supreme Court of India has commented that abandoning the children, excluding good foundation of life for them is a crime against humanity. Meting out justice to juveniles in confrontation with law requires different mindset, considerations and approaches. Juvenile justice has gradually emerged as a separate focal point in the study of law and justice. The prominence of juvenile justice world over has assumed greater significance with intense activism and persuasion by several international organisations and growing awakening of conscience about the need of it. In tune with the developments in the international arena, India has also taken definitive steps to promote and strengthen juvenile justice system in the country. In a bid to do a detailed study and a research work with a focus on the judicial aspects of the juvenile justice system in the country, I have written this thesis on ‘Juvenile Justice in India – an analysis with special reference to West Bengal’.

1.1. Definition of Child:

As per the biological definition, child or childhood is referred to the stage of a human being between the age of infancy and adulthood. The childhood has broadly been construed as a ‘golden age’ in the life span of a person and it is typically characterized by its innate innocence and immaturity. The world community is familiar with the definition of child as a person who is under the age of majority, which is fixed by the legal provision of the respective country. By this definition, every country is free to determine the age of childhood as per the prevailing law of that particular country. However, according to the UNCRC a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

1.2. Definition of Juvenile:

The word juvenile is derived from the French and Latin words juvenile andjuvenilis respectively. The word juvenile is used in two senses - one relating to the characteristics of children or young people and the other one suggesting lack of maturity due to early age. Generally a juvenile is a youthful person, whose youth displays or suggests a lack of maturity or adolescent insecurity. The concept of juvenility hinges on the assumption that a juvenile is physiologically immature or undeveloped and predominantly exudes characteristics typical of a child.

¹ 1997 (8) SCC 114
1.3. **Definition of Child under Indian Laws:**

In the Indian context, finding a single definition of a ‘child’ under the Indian laws is indeed an uphill task. The word ‘child’ has different meanings in different contexts. Whenever the word is used without reference to parentage, it is generally synonymous to the word ‘infant’, which means a person who has not attained the age of majority. However, in the interpretation of deeds and will, the presumption is that the expression ‘child’ means a legitimate child or if the deposition comes into operation after the date of legitimating, a legitimated child. It prima facie includes an adopted child, where the adoption was made before the date of the disposition. In other cases it means and includes an illegitimate child or step child or grandchild. The Indian Majority Act, 1875 provides a blanket definition of a minor as a person who has not attained the age of majority until he or she is of eighteen years of age. The same definition of minority has been assigned in the Guardians and Wards Act of 1890, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956. The Christian and Zoroastrian personal laws also uphold eighteen as the age of majority. However, under section 2(a) of the Child Marriage Restraint Act, 1929 a ‘child’ means a person who, if a male, is under the age of eighteen years and if a female, is under the age of sixteen years. The Act has been repealed and replaced by the Prohibition of Child Marriage Act, 2006. The section 2(a) of the Act of 2006 states that a ‘child’ means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. Under the provisions of the Majority Act, 1875 it has been asserted that a ‘minor’ means a person who, is to be deemed to have not attained his majority. The Child Labour (Prohibition and Regulation) Act, 1986 defines a child as a person who has not completed the age of fourteen years. The Factories Act, 1948 and Plantation Labour Act 1951 states that a child is one who has not completed fifteen years of age and an adolescent is one who has completed fifteen years of age but has not completed eighteen years of age. The Motor Transport Workers Act 1961, and The Beedi and Cigar Workers (Conditions of Employment) Act 1966, both define a ‘child’ as a person who has not completed the fourteen years of age. The definition of child has not been provided in the Merchant Shipping Act 1958 and Apprentices Act 1961 but the Acts do not permit a child below fourteen to work in occupations within the ambit of the Act. The Mines Act, 1952 is the only labour related Act which defines an adult as a person who has completed eighteen years of age. Though the Indian Penal Code 1860 does not provide any definition of ‘child’ but it prescribes different age of criminal
responsibility. Under the Code, no person below the age of seven may be held criminally liable for an action (Sec 82 IPC). In case of mental disability or inability to understand the consequences of one’s actions, the criminal responsibility age is raised to twelve years (Sec 83 IPC). A girl must be of at least sixteen years in order to give sexual consent, unless she is married, in which case the prescribed age is no less that fifteen. With regard to protection against kidnapping, abduction and related offenses the given age is sixteen for boys and eighteen for girls.

The Constitution of India does not provide any definition of child but it provides some welfare measures for the children. According to the Article 21A, all children between the ages of six to fourteen should be provided with free and compulsory education. Article 45 states that the state should provide early childhood care and education to all children below the age of six. Article 51(k) states the parents/guardians of the children between the ages of six and fourteen should provide them with opportunities for education. Under Article 39(f) the state shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Juvenile Justice Act, 1986 defined a boy child as below sixteen years of age and a girl child as below the age of eighteen years. The Juvenile Justice (Care and Protection of Children) Act, 2000 has removed the anomaly by replacing the definition of child. The JJ Act, 2000 provides that a ‘child’ or Juvenile is a person who has not completed eighteenth years of age [Section – 2(k)].

1.4. Meaning of delinquent Juvenile or juvenile-in-conflict with laws:

The term juvenile delinquent generally refers to a blameworthy minor or child or a culpable youth or a derelict adolescent. By and large a juvenile delinquent is a young offender who is guilty of minor misdeeds or has failed to accomplish his duty as required by law. The following four aspects are to be taken into account while terming a person as delinquent juvenile:

1) The person concerned must be a youth under the age of majority as per the law in force
2) The child / juvenile has a persistently bad character
3) The child / juvenile is guilty of a minor misdeed which is subjected to legal action
4) The minor or under-aged person has exhibited dereliction of his duty as required by law

Thus a juvenile delinquent is a child, who has committed a delinquent act and is in need of supervision. A delinquent act is an act committed by a child which is considered as a violation, misdemeanor or felony offense under the law for the time being in force. Under the context of the Indian law it refers to the antisocial or criminal activity by a child below the age of 18 years. Had it been committed by an adult the same activity would have been considered as a crime. In case of a juvenile, it is to be tried in the Juvenile Justice Board where the process, procedures and sentences are different than what is done in the courts for the adults.

1.5. Child in need of care and protection:

The child protection is an important component of the overall activities pertaining to the care and protection of children. It is not synonymous with the protection of children’s rights. When a child is said to be in need of care or protection, it broadly means any of the following:

1) A child, who is being or is likely to be harmed (physically or emotionally or sexually), ill-treated, abused or seriously deprived;

2) The child's development or physical / mental / emotional wellbeing is being or is likely to be impaired or neglected and that impairment or neglect is or is likely to be serious and avoidable;

3) Serious differences exist between the child and the parents or guardians or other persons responsible for the care of the child to such an extent that the physical or mental or emotional wellbeing of the child is being seriously impaired;

4) The child has behaved or is behaving in a manner that:
   a. Is or is likely to be harmful to the physical or mental or emotional wellbeing of the child or to others;
   b. The child’s parents or guardians or the persons responsible for the care of the child are unable or unwilling to care and control;
   c. The parents or guardians or other persons responsible for the care of the child have abandoned the child;
   d. Serious differences exist between the parents, guardians or other persons responsible for the care of the child to such an extent that the physical or mental or emotional wellbeing of the child is being seriously impaired;
5) The child has no parent or guardian;
6) The child is exposed to moral danger or bad company;
7) The physical or mental health of the child is in danger;
8) The child is destitute or is living in extreme poverty;
9) The child is living, wandering or begging on the streets;

1.6. Juvenile Justice – meaning and scope:

In the society as a whole the juvenile misbehavior is not perceived as a grave danger but is considered as a potential risk for the development of the child and it needs to be tackled in positive and empowering ways. It obviates that meting out justice to children in confrontation with law requires different mindset, considerations and approaches. As a result juvenile justice has gradually emerged as a separate focal point in the study of law and justice. The prominence of juvenile justice world over has assumed greater significance with the intense activism and persuasion by several international organisations and growing awakening of conscience about the need of it. In tune with the developments in the international arena, India has also taken definitive steps to promote and strengthen the juvenile justice system in the country.

The juvenile justice system may be regarded as a separate track in the criminal justice system in the society with special features of treatment for minors. The juvenile justice is a system which is guided by the philosophy of concern, care, attention, reformation, rehabilitation and reintegration of youth and adolescent offenders into the main stream of the society. The young offenders are deemed to be immature and should not be treated as adult offenders. The system of juvenile justice is a special procedure, which deals with underage persons with the charge of crimes or who are neglected or out of the control of their parents or guardians. The procedure essentially covers involvement of the parents or social workers and probation officers in the process to achieve positive results and guides the minor not to be involved in further crimes. However, serious crimes and repeated offenses can lead to detention of the juvenile delinquents in juvenile homes. Whenever parental neglect or loss of control is the root cause of a problem, the juvenile justice system may seek out foster homes for the juvenile treating the child as a ward of the state.

1.7. Juvenile Justice under Indian context:

A robust juvenile justice system is one of the pillars of a sustainable and credible human development plight in a country. In India, the legal rights of children have
conferred special status to the children with regard to their emotional, mental, psychological and physical being and have mandated that they should be treated as a special category. The juvenile delinquency is considered as a larger social problem, which is to be prudently dealt by the society. The Indian youth violating the rules and thus breaking the social order attracts the attention of the social control agencies. Informal and formal control stakeholders like parents and family on the one side and the legal institutions like police, JJ Board or reformation homes or institutions on the other have larger roles to play in promoting and inculcating the law-abiding behaviors among the next generation. In tune with the developments in the international arena, India has also taken definitive steps to promote and strengthen the juvenile justice system in the country. Under the laws of India, the Juvenile misbehavior is, on the whole, not perceived as an imminent danger to society, but as a potential risk for the development of the individual and society alike which has to be reacted to in a positive, empowering way. It is obvious that there are two essential components of a good juvenile justice system – one is ‘justice’ and the other one is ‘welfare’ of children. The juvenile justice system in India has passed through several experimentations, reforms and corrections. The present day juvenile justice system in India (since enactment of JJ Act, 2000) encompasses both the components.

1.8. Development of Juvenile Justice:

1.8.1. At International level:

The United Nations played a pioneering role in promoting children’s rights and making attempts to eradicate violence against children across the world. The efforts of the United Nations created a spark and then gradually caused fire, nay inferno in cajoling individual nations to chalk out strategies and policies including specific enactments to promote children’s rights and juvenile justice in line with the norms prescribed in the international law in their countries. In one word, the United Nations has impacted greatly the propagation of the concept of child right and juvenile justice in all countries. Thereafter a series of international declarations and instruments relating to child rights and juvenile justice came into foray.

1.8.2. At National level

It is apparent that the Apprentices Act, 1850 was a landmark legislation, which can be said to be the cornerstone of emergence of the modern juvenile justice system in the country. It was followed by the Indian Penal Code (1860), Reformatory Schools Act (1897), Code of Criminal Procedure (1898) and most importantly recommendations
made by the Indian Jail Committee (1919-1920). The recommendations of the Indian Jail Committee specifically stated that the child offenders should not be clubbed with the adult offenders and should be treated differently. It also mentioned that imprisonment of child offenders must be prohibited at any cost. It further recommended creating reformatory schools and introducing children’s courts with flexible and informal procedures. The committee went on to highlight the need for taking proactive approaches by making specific provisions and also special enactment for children, who though did not commit crime so far but had the propensity to do so in the near future due to their living in pathetic and hostile surroundings or without proper care and proximity of guardians or homes. The founding fathers of the nation also laid due emphasis on survival, development and protection needs of children by inserting relevant provisions in the ‘Fundamental Rights’ and the ‘Directive Principles of State Policy’ in the constitution of India. The very fact that there was an exponential increase in the number of orphans, destitute and delinquent children at the altar of murky partition at the time of independence of our country and exclusive status accorded to children in the constitution, it led to some special programmes aimed at meeting the needs of this group of children during the first five-year plan. It is indeed ironical that though with introduction of five-year plan, the country saw the vive of resurgence in its financial might and its overall conditions but the consequent industrialization and urbanization process brought forth new sets of problems for the children of the country. A spurt in juvenile crimes was witnessed. At that time as legislation for dealing with delinquent children existed only in few states, the Government of India had to step in and enacted the Children Act 1960. However, the Act was only restricted to the Union Territories and it was left to the states to enact their own Children Acts taking cue from the Children Act, 1960 as model. Interestingly, different enactment by states created several discrepancies, inconsistencies, misinterpretations in the juvenile justice system as a whole in the country. To tide over the inadequacies of the pre-existing law and to bring uniformity across the nation, the Juvenile Justices Act 1986 was enacted for the whole country. With the objectives of providing special care, attention and treatment to the juveniles, the aim of the Act was to create a uniform legal framework for juvenile justice in the country as a whole and also to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This also led to establishment of juvenile welfare boards and juvenile courts. The guiding approach was to prevent recurrence of juvenile delinquency and facilitate them in their development and social adjustment process. It also resulted in establishment of observation homes, juvenile houses, juvenile homes or
neglected juvenile and special homes for delinquent or neglected juveniles. The Act drew heavily from the major provisions and clauses of the Indian Constitution, the 1974 National Policy Resolution for Children, the universally agreed principles and standards for the protection of juveniles such as the 1959 United Nations Declaration of the Rights of the Child and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) among others. In spite of sincere intentions and efforts, the JJ Act 1986 had several lacunae and posed difficulties in implementation. Interestingly, the administration of juvenile justice has historically been with the sole purview of the government. This somehow did not spur the civil society to enter into this domain in the initial phase. However, later on taking cue from its own experience, to be in sync with the legal framework in the country and also in line with development in juvenile justice paradigms world-over, the government brought in a new Act, the 2000 Juvenile Justice (Care & Protection of Children) Act. This Act endorsed both ‘justice’ as well as the ‘rights’ approaches towards children. Most importantly the new act ushered in involvement and collaboration with the civil society organizations for better juvenile justice in the country. The JJ Act 2000 was further amended in 2006 and made it clear that retrospective consideration of juvenility would be done from the date of commission of offence. The amendment also professed that under no circumstances, a juvenile in conflict with law is to be kept in a police lock-up or lodged in a jail. In addition, it also stressed on expediting the pendency of cases. Every child who is found to be neglected or delinquent juvenile should be dealt with under the JJ Act and should be brought within the protective umbrella of the juvenile home. It establishes the fact that there has been a revolution in the juvenile system in India post 2000. The impact of this has manifested itself as reduction in the count of juvenile crimes progressively over the years.

1.8.3. At the regional level in the state of West Bengal:

Structural reforms in the children related legislation in the state of West Bengal started gaining ground in 1908 when England enacted its own Children Act. The study shows that the state of West Bengal has a progressive track record of legislative development and positive governmental actions in tandem with the national network relating to child right and child protection. Time to time the state has implemented the recommendations of the Central Government and has developed and strengthened the system for consolidation. The state has shown its progressiveness in juvenile justice in the pre independence era and even after the independence till the JJ Act, 1986 was
promulgated. Thereafter, the Govt. of West Bengal lagged behind the union legislature. The state, which was once considered a trend setter in juvenile justice, framed its rules under JJ Act, 2000 long after its enactment in the year 2003 and thereafter modified it in 2009. In this context it may be mentioned that that the JJ rules of Bengal are nothing but reproduction of the central rule. In this context it can also be mentioned that the state government framed its rule for free and compulsory education long after the enactment of the Right to Free and Compulsory Education Act, 2009. In the same way, the child care leave of women which came in vogue in the rest of the country long ago was notified by the state government just a few months back.

1.9. **Aims & Objectives:**

Under the myriads of definitions of ‘child’ in various Acts in India the aims and objectives of my research were:

i. To examine the concept of Juvenile Justice;

ii. To study and analyse the development International Law on Juvenile justice;

iii. To examine the role of United Nation and its various organization to protect child and child rights;

iv. To study and analyse the development of national laws on child right or Juvenile Justice in India;

v. To study the action of the Govt. of India to protect right to children;

vi. To understand the right to child enshrined in the Constitution of India and related laws;

vii. To understand the contribution of UN and International Law to promote Juvenile legislation in India;

viii. To analyse the statistical data of NCRB regarding commission of crime against children and crime committed by juvenile;

ix. To study pioneer judgments of Hon’ble Courts for an overview to the role of Indian Judiciary for the protection and promotion of child right / Juvenile Justice in India;

x. To study the successive development of provincial laws in the state of West Bengal;
xi. To study the state Government’s action under the direction of the central Govt. to implement the right to children in West Bengal;

xii. To examine the lacuna of state machinery specially to the enforcement of the JJ Act, 2000;

xiii. To find out the procedural defects and defects of laws which affects the proceedings before the JJ Board;

xiv. To analyse proceedings against juvenile before the JJ Board based on case samples collected;

xv. To examine the position of the State of West Bengal basis of statistical data available in the protection of child right or juvenile justice;

xvi. To make suggestions regarding modification of procedure and reforms of legal system in the state;

xvii. To study some pioneer judgments’ of Hon’ble Courts;

xviii. To focus on the impact of the judgments’ of the Hon’ble Courts on the protection and development of child right in the country;

xix. To examine the impact of the role of NGO’s in the protection of children and the right to children;

xx. To give conclusion and make suggestions;

1.10. Questions addressed in the research:

The pertinent questions which were addressed in the research were:

i. What is the concept of Juvenile Justice?

ii. What is the chronological path of development of the juvenile justice internationally?

iii. How UN nurtured the concept of Juvenile Justice around the globe?

iv. What is the chronological path of development of the Juvenile Justice in India?

v. What are the special rights prescribes by the Indian laws for the protection and preservation of children and child rights?

vi. How the international commitments forced India to develop Juvenile Justice in conformity with International instruments?
vii. What are the statistical positions of India regarding violation of the right to child and juvenile delinquency?

viii. What are the influences of pronouncements of the Hon’ble Courts to the protection of right to children and to implement of Juvenile Justice in the country?

ix. What is the chronological path of promotion of Juvenile legislation in the state of West Bengal?

x. What is the comparative position of the state of West Bengal with the all India data regarding crime against children and delinquency?

xi. What are the lacunas to be filled up by the authority to implement child right or Juvenile Justice?

xii. What are the processes to be adopted to resolve the practical problems to implement JJ Act, properly in a proceeding before the JJ Board?

xiii. What are the required administrative and legislative reforms in India and the state of West Bengal?

xiv. What are the fields of further research?

1.11. Scope of the Study:

The topic of the research is “Juvenile Justice in India – an analysis with special reference to West Bengal. In a multi-dimensional approach, the research work has attempted to evaluate the role of the United Nations and the development of the International Laws and instruments for the protection of child rights and promotion of juvenile legislation. The study also encompasses the provisions of the right to child within the national laws of India. Due focus has been given on the development of national laws in India under the influence of international regime. An attempt has been made to draw a comparative picture of the statistical position of India relating to the crime against children and juvenile delinquency. Several pioneering judgments of the courts having longstanding impact on the promotion of the child rights in India have been studied and referred. Analytical studies of the status of West Bengal in the field promotion of juvenile legislation, juvenile justice administration and comparative study of statistical position of the state with rest of India have been done. Suggestions have been mooted with regards to practical problems faced by the authority in holding proceedings before the JJ Board. The research has also attempted to suggest
reformation of laws and the procedures to resolve practical problems in the administration of Juvenile Justice.

1.12. **Research Methodology and collection of data:**

The research is primarily an analytical and extensive study of literature, international laws and instruments, national laws of India, provincial laws of the State of West Bengal, statistical data published by the NCRB, several pioneering judgments of the courts and sample cases of the JJ Board. However, the study is also an attempt to create osmosis among historical, political and philosophical perspectives in the field of juvenile justice. The study primarily depends on secondary level data collected from reference books, journals, periodicals, reports, newspapers & magazines, NCRB publications, judgments of the Hon’ble Courts. The research has been based upon the case samples collected from the coverage areas, which fall within the jurisdiction of the JJ Board Burdwan.

1.13. **Significance of the Study:**

1.13.1. **At International Level:**

Juvenile Justice is a Human Rights concept and not confined to any national, geographical or political barriers or borders. It has been staunchly propounded and popularized by the United Nations and its allied organisations. They have also persuaded the member countries to follow it in letter and spirit. Considering the coverage of the research, it is having wider implications at the international level.

1.13.2. **At National Level:**

In reference to India the research study may be useful to reconstruct the concept of juvenile justice in sync with international conventions and treaties. The study may be gainful to enflame juvenile justice instruments both at regional and national levels. The study may facilitate the people to be more and more familiar with the right to children. The sensitization of the people may encourage lodging of complaints complain and ask for redress at the time of violation of children rights and seek protection from it.

1.13.3. **Regional Level:**

Presently the Juvenile Justice system in India is common and uniform. As such the study may receive common impact on state level as same as at the national level. The case samples may facilitate the Govt. of West Bengal to remove the difficulties faced by the state machinery at the time of administration of juvenile justice.
1.13.4. **A Contribution in expedition of Knowledge:**

This study may be useful to the stake holders who are engaged in the implementation of the juvenile justice. This study will be useful to educators, teachers, researcher, advocates & judges, law students, child victims, NGOs and offices of the State Government.

1.14. **Scheme of the Research:**

The research study has been divided into the following six chapters:-

1.14.1. **Chapter-I: Introduction** - It gives an overview of the purpose, scope and nature of the research work

1.14.2. **Chapter-II: Juveniles Justice under International Law** – It presents the survey of literature on various issues and aspects related to international law on juvenile justice and the role of globalised regime to develop the same. The chapter also gives an account of various developments in the child rights arena by the international bodies and organizations.

1.14.3. **Chapter-III: Juvenile Justice under Indian Jurisprudence** – This chapter is primarily structured around the legislative development in India in the field of juvenile justice. The chapter also highlights the problems and issues affecting the juvenile justice in India and critically analyzes the crucial factors for the effective implementation of the legislation in the country. An analysis of crime against children vis-à-vis crimes committed by children in India has also been done on the basis of statistical data published by NCRB.

1.14.4. **Chapter–IV: Judicial Efforts towards Juvenile Justice in India** – In this chapter several landmark decisions of the courts having longstanding impact on the juvenile justice system in the country have been presented and discussed.

1.14.5. **Chapter–V: An empirical survey of West Bengal** – This chapter gives an empirical survey in various rights based field level intervention programmes in West Bengal to deal with the problems of poor enforcement of the law relating to the child rights and to address the legal & structural anomalies and deficiencies of the State Government machineries in the implementation of the JJ Act, 2000. The focus has been given to highlight the roots of the problems in practice and to suggest a rational strategic legal framework in view of the need for better collaboration among the various agencies under the intervention of the State Government for the welfare based social order to the juveniles. The study gives
an account of the gradual development in child related legislations in West Bengal. The chapter also makes an analysis of the statistical data pertaining to juvenile justice in West Bengal. Several case studies pertaining to JJ Act and JJ Board in West Bengal have been also been done in this chapter.

1.14.6. **Chapter–VI: Conclusion and Suggestions** - This chapter gives a summary of the research and makes several suggestions based on research findings and experience to ameliorate the juvenile justice system in India.
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