CHAPTER-1

INTRODUCTION

1.1 Introduction

“There can be no keener revelation of a society’s soul than the way in which it treats its children.” - Nelson Mandela.

We have to recognize the rights of the child in the societal framework, and there is need in an exemplar change from a ‘need-based approach’ to a ‘right-based approach.

The word ‘juvenile’ originates from ‘juvenis’, (in Latin) i.e young. The main object of juvenile justice is to protect all children including those who are in conflict with law and bring them within its domain. However, the word ‘conflict with law’ and delinquency is often interchangeable or can be used together which describes the children who are involved with the judicial system as a result of committing or being suspected of a crime. There has always been a clash between the protective approaches of juvenile justice and the traditional approach of criminal justice system which has a created a major problem in front of our juvenile justice system. Despite our Constitution has guaranteed various civil rights and child centric services, still an innumerable Indian children, face discrimination and deprivation on many grounds.

According to National Crime Record Bureau “a total of 60,539 juveniles were apprehended and produced before various juveniles boards during 2014”.

And “the ratio of girls to boys apprehended for committing under special and local law (SLL) crimes during 2014 was about 5:95, whereas ratio during 2013 was nearly 9:91 which shows decline in number of female juveniles apprehended. In special and local law (SLL) crimes, maximum juveniles apprehended belong to age group 12 yrs. - below 16 years (11,220) whereas maximum girls apprehended were in age group 16 yrs. to below 18 years (451) under special and local law (SLL) crimes. Over 48,230 juveniles across whole
India are mostly nearby the age group of 16 to 18, who have been prosecuted for serious crimes like sexual abuse and homicide in 2014".\(^1\)

The data also shows increasing cases of sexual abuse by juveniles. As many as 1,419 such cases were recorded in 2011 as compared to 399 cases in 2001, it said. It is relevant to mention here that the Delhi police arrested a juvenile and five others for brutally raping and assaulting a 23-year-old girl in the capital on December 16, 2012. The victim later succumbed to her injuries. The cases of murder by juveniles have also shown a surge in last ten years. According to the data, 6,770 juveniles were arrested in Maharashtra, 5,794 in Madhya Pradesh, 2,692 in Chhattisgarh, 2,542 in Rajasthan and 2,510 in Gujarat among others in 2011. In the same year, a total of 2,474 adolescents were arrested in Andhra Pradesh, 2,083 in Tamil Nadu, 1,204 in Uttar Pradesh and 1,126 in Bihar, the data said.

If we take into consideration the family background\(^2\) of the juveniles then the data showed that out of 27,577 juveniles suspected of committing a crime, 1,924 were homeless, 4,386 were living with care-takers and rest of them living with their parents.

Nowadays approach towards the delinquents have changed, instead of treating them as bad individual either they are considered as a mentally diseased person or have been victimized by certain circumstances around them. In the earliest period small children were seriously punished for committing even petty crime. But in modern time psychologists proceeded to draw the awareness in the civilized world the causes of juvenile delinquency, the custom of punishing children over by the time and to be replaced through rehabilitating them. Currently these days in every nation make efforts are made to redress the juvenile delinquent rather than punish him.

Abraham Lincoln said: “A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone,

\(^1\)www.ncrb.gov.in
\(^2\)ibid
attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”

Problem of Juvenile delinquency is not new and it is prevailing in every society and nation. When social relations are affected leading to serious arguments between a groups of individuals give rise to the problem of juvenile delinquency. The issue of juvenile delinquency and neglect is comparably low in developing countries like India but it is increasing with the passage of time as per the National crime record bureau report 2014. The percentage of juveniles involved in crimes to the total crimes reported in the country has also increased in last four years is also a worrying factor for the nation.

Various theories and studies have shown and come to a conclusion that most of the factors which are responsible for delinquency and neglect are common and interrelated. Broken families, financial instability, physical or sexual abuse, family isolation, broken homes, deficient educational system, unhealthy environmental conditions, racial discrimination and various such other reasons are responsible for the problem of juvenile delinquency. The negligence of children shown by their parents, family and society have negative effects not only on their mental and social growth but it also effects their overall development. Even “UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985 and UN Convention on the Rights of Child, 1989, are based on global consensus and has articulated that special attention should be drawn towards the children who are in conflict with law”. In the above context, this research highlighted and focused on the growth and development of Juvenile Justice System in India, via various legislative and constitutional provisions.
India has signed UN Declaration\(^3\) according to which various Rights of the children has been acknowledged and granted as their basic rights such as: The right to health and care, right to protection from neglect, right to expression and right to nutrition, the right to protection from various abuses, the right to protection from exploitation etc. To achieve the above said basic rights of children, India has adopted a national policy on children in 1974. Three fold Constitutional protections have been provided by the national policy to children before their birth and throughout the period of their growth and full development. The Government of India (GOI) has developed adequate monitoring procedures to take action to review the National and State legislations and to get them in the line according to the provisions for implementing the Convention on the Rights of the children. India being a member of the world Declaration on safety, survival and development of children-1990 and to fulfill its allegiance at world level, our Ministry of Human Resource Development prepared a national plan of action for children, keeping in mind the basic needs, rights and aspirations of about 440 million children of the country. Approximately 50 percent children do not attend school sincerely. In our country the worst victim are girls because they are neglected and discriminated on the basis of gender discrimination.\(^4\)

Now a day’s things in India are changing, their problems and difficulties are being given heed and discussed at different levels. But the proper protection and care of the children is a tough challenge in India. Socio-economic condition is main reason of reasons delinquent child. Presently youngsters are under social pressure because of changing social perceptions. As per report of UNICEF in 2005 titled “Child under Threat”, “In India, millions of children are deprived of their basic rights of health, education, sanitation, nutrition and

\(^3\) Convention on Rights of the Child, 1959
\(^4\)http://www.friendsofsbt.org
safe drinking water”. “Children are supremely important national asset\(^5\) and the greatest gift of humanity\(^6\)”.

Children are valued assets of every nation so there is a need to give proper attention and care to each child in a society. Importance of a child can be imagined and valued from what Winston Churchill said about children. He said “that there is no finer investment for any community than putting milk into babies.” “That appeal of concern to the people everywhere is the fundamental faith in juvenile justice system. Reorganization of merit of child born and unborn, is the beginning of juvenile justice”, as per Justice Krishna Iyar.\(^7\) “Child is the father of man” and “for fathering of a pulsating man, the child need to be nurtured well. A child must have education, knowledge of world and groomed in an atmosphere where on future age, he would become a man with mission”.\(^8\) In BandhuaMuktiMorcha's\(^9\) case “the importance of a child has been highlighted observing that including the children being lights to the society as a whole. The nation will sooner get deprived of the potential human resources for social development, economic empowerment, law and order and social stability if the children of that nation are deprived of their childhood socially, mentally and financially’’.

Nowadays there is an increased tendency among young individuals to commit crime and indulge in anti-social activities so in order to control juvenile delinquency special measures have to be undertaken to control and check future criminals. As per The National Policy for Children “they are supreme assets of the nation and their childhood is a worldwide human practice and has fundamental stakes. The upcoming growth and stability of a society depends upon the quality of its children. Welfare of the children is the ultimate importance to mankind. Now Child are considered as important social entity

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\(^5\)Laxmikant Pandey vs. Union of India, 1984(2) SC 244, 249

\(^6\)BandhuaMuktiMorcha vs. Union of India (1997) 10 SC 551-553


\(^8\)M.C.Mehta vs. State of Tamilnadu, AIR 1997 SC 701.

and is entitled to make healthy living, sufficient recreation, schooling adopted to his natural living methods, intelligent home care and the right to develop his abilities to their fullest extent.10 “We have to promote the positive well being of children which on a wider scale should include the development of child, mental, physical, emotional and social faculties”.11

The Central Children Act, 1960 recognized importance and the protection of children saying that “Children are the most venerable group in any population and they require greatest social care. Children are being exploited, ill-treated and directed into undesirable activities by anti-social element in the community because of their dependence and venerability on adults. The state has to difference of affording proper care and protection to children at all times”.12

**1.2 Who is Juvenile**

According to The Juvenile Justice (Care and Protection of Children) Act, 2015 under Section 2 (35), “A child who is below the age of 18 years”. It can be defined as a child who has not attained a certain age at which he should be treated like an adult under the law of the land and cannot be held legally answerable for his criminal acts. The juvenile is a child who is alleged to have contravened some law of land which declares the act or omission of the child as an offence. In legal terms juvenile and minor are used in different context. Juvenile is used in reference made to a young criminal offenders and minor means legal capacity or majority.13

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12The Object and Reasons Appended to the Children Act, 1960.
13The Black Dictionary of Law.
1.3 What is Juvenile Delinquency

Delinquency is deviation in the behaviour of a child or the abnormal behavior of a child. Delinquent usually refers to a person who shows illegal behavior and has deviated from course of normal social life. Whenever a juvenile below an age defined under various standards exhibits such an illegal and antisocial behaviour which may be harmful to the society, may be called as a Juvenile delinquent. Juvenile delinquents are those who commit any offence and are under 18 years of age including both boys and girls. A Juvenile delinquent is a young person who is rebellious and non obedient.

Act of delinquency may include:

1. Absconding from residence without the parents’ permission.
2. Habitual misbehavior beyond control.
3. Use of bad languages
4. Wandering uselessly and Gambling
5. Indulging in Sexual offences
6. Shop-lifting/ Pick pocketing
7. Theft/stealing etc.

Juvenile can do such criminal acts alone or through a gang. There are few other factors which may lead them to be a delinquent. Some of the factors are listed below:

i. School bunking and dissatisfaction - Some juvenile/students not dissatisfied with their school life. Lack of sports facilities in school, discrimination of the teachers towards them, irresponsible behaviour of parents toward them, unmanageable teachers students ratio are such examples. These disappointed students usually not come to school and become regular absentees from the classes and start wandering idly and become pick pockets, smokers and drug addicts, gamblers, eve teasers etc.
ii. **Cinema and pornographic literature** - Cinema, T.V and obscene literature generally provokes sexual and other impulses in teenagers. Hence they commit crimes while satisfying their desire and adventure.

iii. **Inner desire, pressure and temptation.** Juvenile get tempted and try to imitate the same on hearing the incidence of the illicit sex experiences or any other criminal experiences from others.

In accordance with psycho-analytical view, the delinquent “is a person who is governed by the pleasure principle. They wants to get immediate pleasure and satisfaction for his needs in short term. Thereby they become victim to his own impulses. Environmental factor also leads to delinquency”.

We have to accept that juvenile delinquency is a grave problem and it can't be sorted out by efforts and means of legislation and government alone. As much as India is concerned, Children Acts themselves have many shortcomings and neither have they been effectively enforced in many of the state’s due to which the government alone is not competently able to curb the problem of juvenile delinquency. Therefore the government as well as private agencies must work all together with all sincerity and seriousness to find out the reasons and the effective solution for the problem of juvenile delinquency which is increasing year by year in our society. And also the general behaviour of public towards these Juvenile delinquents should also be changed and people must treat them as normal children of any society.

1.4 **Legislative Developments**

In India the first law on juvenile justice came into force 1850 with the “Apprentice Act” which had provision of vocational training as a part of their rehabilitation process for the children who are convicted by the court and between the ages of 10-18 years. This act was replaced by the “Reformatory Schools Act 1897” and then came “The Children Act of 1960”.

The Juvenile Justice Act, 1986 was the primary lawful outline for juvenile justice and it was uniformly applied throughout the India. According to this
Act, a comprehensive approach was framed towards the prevention and treatment of juvenile delinquency and also provided specific guidelines for the protection and rehabilitation of children in the purview of the juvenile justice system. Then the new law replaced the Children Act, 1960. Then the Parliament passed the first central legislation on Juvenile law in 1986, which provided a uniform law on juvenile justice for the whole Nation. The Juvenile Justice Act, 1986 was applied uniformly throughout the Nation except in the state of Jammu & Kashmir. Before passing this act every state had its own Acts on juvenile law so different states used to treat juveniles in a different way. But no definite result came from the first uniform law on juvenile justice and there was no refinement in the way juveniles were treated. The law also framed special reforms for the juveniles treated in special reformatory homes or juvenile homes.

The international attention in the matter of juvenile justice came in the late 1990’s, and then “the matter raised on the centre stage with a number of debates held on juvenile justice at both nationally and regionally level”. There have been growing focus on the sensitive issue of juvenile justice along with the pressure faced by the central government, to submit Report to the Committee on the Rights of the Child, have shown an impact on the Ministry for Social Justice and Empowerment to frame/draft a new law on Juvenile Justice, the result of which was “The Juvenile Justice (Care and Protection of Children) Act, 2000”.

The Government of India, took a leading step and revoked the Juvenile Justice Act 1986, and introduced “Juvenile Justice (Care and Protection of Children) Act in 2000” and again amended the 2000 Act in 2006, to make it approachable to the emerging needs in the cemented of juvenile justice and further making it well-matched with UNCRC principles. The aim of The Juvenile Justice Act, 2000 is “to amending the laws related to juveniles in

15 Ibid
conflict with law and children in need of special care, protection, proper care and treatment by making a provision for their developmentally 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”.

By the course of time the strategic focus of the country has shifted to welfare and development based approach. “The National Commission for Protection of Child Right (NCPCR) constituted by the Government of India in March 2007 to ensure the compliance of all policies, programmes and law in consonance with the Child Rights”.

The rights-based perception into various programs and national policies, along with different approach of the states and districts, taking care of specificities and strengths of the entire region visualize by the commission. With the aim to touch every children of the country, it needs a deeper penetration to communities and need the ground level support from all the authorities working at different levels. A crucial role plays by commission for implementation of programs and policies for children by the States and local bodies at the community level and also work for wider societal concern for juveniles and their well-being.

1.5 The Concept of Juvenile Justice System

Concept of juvenile justice system was emerged from a though that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the structure of the traditional processes of criminal law. The Juvenile Justice System is designed to respond to the needs of young persons who have been convicted for a crime and their rehabilitation with reforms. Main objective of the Juvenile Justice System is “to provide and preventive treatment services for children and young persons and then

16http://www.ncpcr.gov.in/
secondarily rehabilitation, and improved socialization”\textsuperscript{17}. During the Seventh United Nation Congress on prevention of Crime and the Treatment of Offenders, three approaches to juvenile justice were identified\textsuperscript{18}, namely, firstly the due process model, secondly the welfare or parents partial model and last and third is the participatory model. The Juvenile Justice System is one of measure taken by the government to achieve the dream of the Constitution of India concerning to the welfare and care of children. The Constitution recognizes the special status to children through Articles 15(3), 21-A, 24, 39(e) and (f), and 45. The treatment of offenders is recognized by three models of juvenile justice system on the basis of existing approaches to deal with juvenile delinquents;

(a) The due procedural model
(b) The social welfare model and
(c) The participatory process model

The approach of first model is based on “the notion of legality, role of the law and due process, the experienced/professional lawyers taking the main decisions”. The approach of second model is based on “concept of economic and social justice through State planning with administrators and professional from the ‘helping services’ taking the main decision”. The first two models are important for the proper development and protection of the juveniles. The approach of third and last model resolves the problem because juvenile justice can be more significantly take place at the international level, with more participation of general public in resolving of inconsistency at the narrow level with a minimum interference of the centralized power structure of the modern nation.

The third and last model exists still in the pre-industrialized nations and is also functional in the developing nations. Now hardly there is any nation in the world where juvenile justice system follows completely to one of these three models. The stability between all the three models has been achieved according to the culture and the phase of progress of a nation. Every nation juvenile justice system is related to the history and culture of that nation.

1.6 Methodology
Whereas the current study work of all the existing literature available in shape of reports, judgments, books, research papers, etc. has been consulted. An effort has been made to analysis the subject matter undertaken for study. The more stress has been given on the judgments/case law that has been decided by High Courts of different states and Supreme Court of India. In brief, Doctrinal approach has been adopted.
So here all aspect of the Juvenile Justice in India and Legislative Judicial Approach has been analysed to the possible extent.

1.7 Importance of Study
In India juvenile delinquency is a huge problem and also to the world. There is the fact that “if today’s delinquent child not appropriately taken care then tomorrow he can be a hard-core criminal”. Criminal behavior or delinquency among the children can be controlled before they become serious danger to the society and nation. The data provided by various authorities/agencies from time to time show a rising trend in the incidents of crime by the juveniles. A thorough study needed based on various facts and causes leading to delinquencies also provide the answer to the problem of the delinquent child.

In India various acts passed by the parliament periodically for fulfilling the objectives to a substantial extent and still lot of work is required to be done in
order to make juvenile justice system in India become a reality. For this purpose a number of questions arise in this system:-

- Are the authorities able to properly execute the law in favour of the juvenile delinquents?
- Are the existing laws sufficient in a way to tackle the problem of juvenile delinquency in India?
- Whether the society is responsible or not for the production of juvenile delinquent in India?
- Whether the reformatory methods and rehabilitation institutions setup by the Government of India are sufficient to reform the criminal mind of the juvenile delinquent in India?

The different issues which have been raised in our minds over a period of time have been examined thoroughly in the light of judicial decision and statutory provisions.

**The main objectives of this study are:**

a. To study the various laws related to Juvenile delinquency.

b. To study the significance of Juvenile Justice System.

c. To study the various offences done by Juvenile delinquency.

d. To understand the care and protection needed by the Juvenile delinquency.

e. To discuss the remedies for the Juvenile delinquent.

**1.8 Scheme of Study**

The work has been divided into eight chapters.

**Chapter One** is dedicated to introduction of the study. First chapter deals with study of project and methodology under this heading. The notion has been introduced and the problem is highlighted in this chapter. In fact it is an
introductory in nature and includes of research study. The concept of juvenile justice system in India has been explained comprehensively. The evolution of the concept of juvenile justice has been mentioned in this chapter.

**Chapter Two** deals with definitions, meaning and concept of juvenile delinquency. The meaning and concept of the juvenile delinquency and various juvenile delinquency theories have been discussed in this chapter. Various laws and acts passed by the parliament from time to time have been comprehensively discussed in this chapter. Further, in this chapter it is also highlighted the modern concept of juvenile justice system in India. The researcher has also discussed various other factors which are responsible for the juvenile delinquency.

**Chapter Three** deals with the cause and theories of preventions of juvenile delinquency. Different theories study in this chapter, which discuss the cause and prevention of delinquency. And also try to find out the reason and causes behind a juvenile who become delinquent.

**Chapter Four** deals with prevention of juvenile delinquency. In this chapter the preventive programmes also discussed the needs for the protection and development of the juvenile. And also study the role of police, law and administration for the prevention of delinquency and further also discussed the problems faced by the administration in prevention and in the last provide some suggestion regarding the prevention of delinquency.

**Chapter Five** deal with the development and history of juvenile justice system. In this chapter historical development of the justice delivery system to the juvenile delinquents’ with its ancient, medieval and modern orientation has been comprehensively discussed. Here in this chapter it also elaborates
and examines the developing process of the juvenile justice system from time to time which has been studied and examined comprehensively.

**Chapter Six** attracts the law and acts related to juvenile delinquents. In this chapter the different enactments made by the parliament and its application and spirit have been discussed comprehensively. The researcher’s intend in his research is to include and discuss all laws and acts which have been formulated by the Parliament for the care and welfare of the juveniles.

**Chapter Seven** highlighted the judicial trends on juvenile delinquency. The various precedents and case laws lay down by the Supreme Court and High Courts of various states have been studied, analyzed and discussed comprehensively. That chapter also deals with the case laws regarding juvenile delinquency; the social background of the juvenile delinquent, its related surroundings and various remedies provided to the juvenile delinquents in India has been properly analyzed and discussed comprehensively. The researcher in his research work has incorporated many recent case laws and judgments which have been decided by the Supreme Court and High Courts of various states and which are very valuable and guiding beacons for the juvenile delinquents in their cases. Some analysis have been drawn on the basis of research study and included in the

**Chapter Eight** under the heading of “Conclusions and Suggestions.” It is hereby analysed that Legislature has enacted so many provisions for the care and welfare of the juveniles but the need is to implement wholeheartedly with sincere intentions because still juveniles in India are facing lots of problems. Certain suggestion also been given by the researcher in the end of the study.