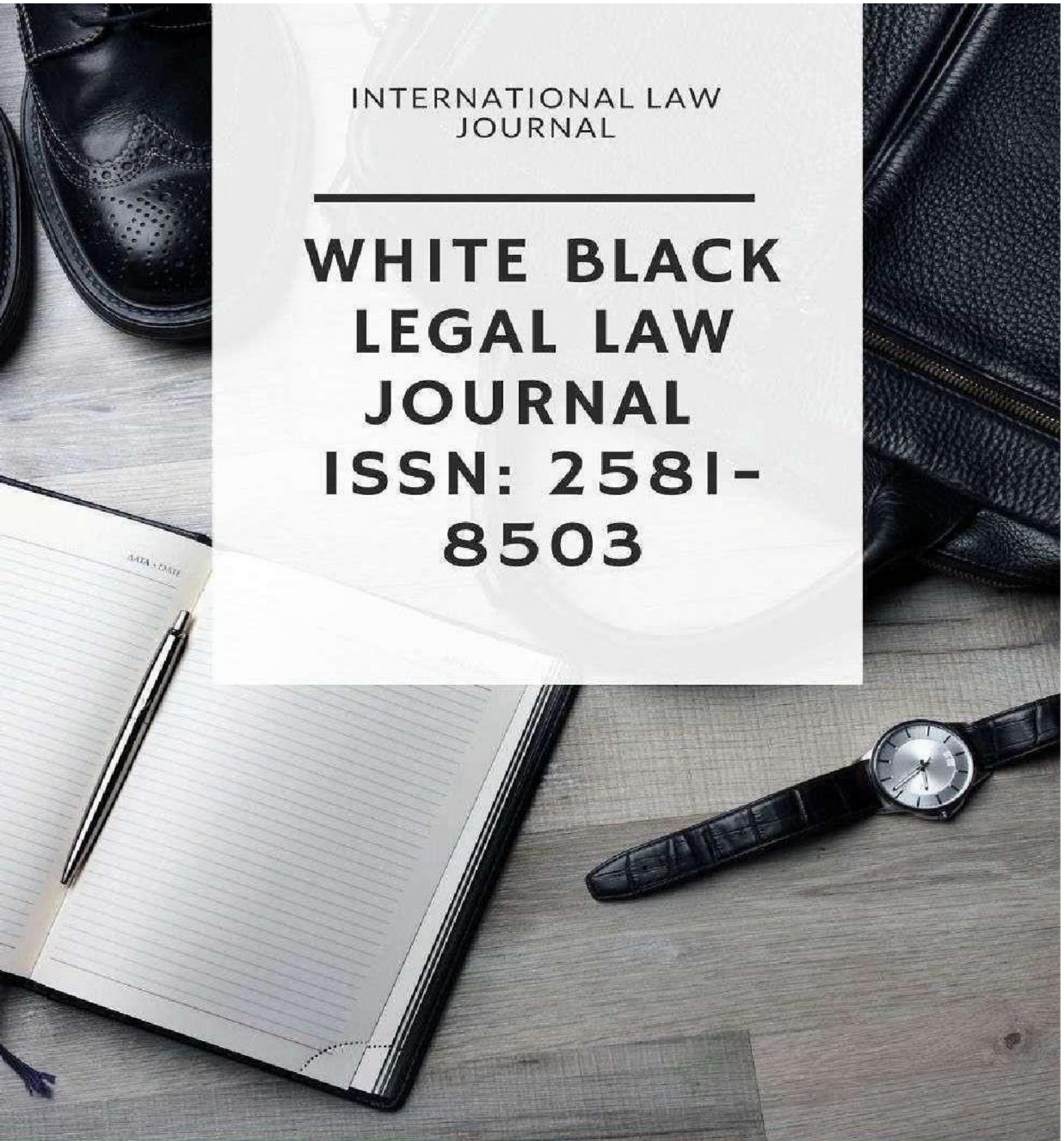




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JUVENILE JUSTICE IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

Children are the future of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. But the last decade has seen a huge leap in the rate of Juvenile crime in a developing country like India. Today, Juvenile crime is like a disease in our society. A child is born with innocence and if nurtured with tender care and attention, then they grow in positive way. Physical, mental, moral and spiritual development of the children makes them capable of realizing their fullest potential. On the opposite side, harmful surroundings, negligence of basic needs, wrong company and other abuses may turn a child to a delinquent i.e. a juvenile delinquent. 'A child is an uncut diamond' it depends on the society how to shape an uncut diamond. Juvenile delinquency means transmission of an innocent child in to a juvenile offender. Delinquency is because of broken families, adolescent, instability, labelling, gang culture, hunger, poverty, malnutrition and unemployment, lack of recreation, uncongenial homes etc. Observation homes, Shelter homes have been started by the government for the sake of such offenders then also the rate is continuously increasing day by day. For delinquent juvenile it is said that Prevention is better than cure juveniles should be protected from going to the wrong path. Juvenile justice in India is regulated by the juvenile justice care and protection act 2015, constitutional law of India 1949, etc, This paper endeavours to high light the concept of juvenile justice, definition of juvenile justice, differences of juvenile and child, history of juvenile justice, juvenile justice system in India, law relating to juvenile justice in India, criminal justice and juvenile, causes of juvenile delinquency, on the basis of existing literature, reports, studies, differet cases and other relavent materials, etc.

Key Words:- Juvenile justice care and protection of children act 2015., Juvenile justice system, juvenile delinquency, constitutional law of India, 1949, Code of criminal proceedure 1973. India penal code 1860, Delinquency, asolescent, instability, labelling, gang culture.

INTRODUCTION

In my introductory part, the word “Juvenile” originates in a Latin word “Juvenis” that means young. A “Juvenile” or child means a person who has not completed eighteen years of age. Children are greatest national resource. They represent the nation and the coming future of the country. But what is worrying more is that the share of crimes committed by juveniles to total crimes reported in India has increased in the last some years. Juvenile crime, formally known as juvenile delinquency, is a term that defines the participation of a minor in an illegal act. And Juvenile Justice is the legal system that aspires to protect all children, bringing within its ambit “the children in need of protection”, besides those “in conflict with law”. Most of the factors causing delinquency are in plenty in a developing country like India. . Being a signatory to the UNO, India has adopted measures as per the international standard. The constitution makers of India provided separate treatment for the children and women. The assumption that reported in social milieu is under taken to make a strong JJS in India. In this article an attempt is made to analyze the special treatment adopted by India for Juveniles in the light of its constitutional philosophy and the international conventions. In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason of increasing crime rate is may be due to the upbringing environment of the child, economic conditions, lack of education and the parental care. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7 years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated. The frightful incident of “Nirbhaya Delhi Gang Rape Case”[1], on December 16, 2012 shocked the whole nation and many debates were started among legal fraternity and socialists. The main reason and issue of the debate was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislation to introduce a new law and thus, Indian Parliament came up with a new law which is known as “Juvenile Justice (Care and Protection), 2015. The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult.

CONCEPT OF JUVENILE JUSTICE IN INDIA

The word “Juvenile” originates in a Latin word “Juvenis” that means young. A “Juvenile” or child means a person who has not completed eighteen years of age. Children are greatest

national resource. They represent the nation and the coming future of the country. But what is worrying more is that the share of crimes committed by juveniles to total crimes reported in India has increased in the last some years. Juvenile crime, formally known as juvenile delinquency, is a term that defines the participation of a minor in an illegal act. And Juvenile Justice is the legal system that aspires to protect all children, bringing within its ambit “the children in need of protection”, besides those “in conflict with law”. Most of the factors causing delinquency are in plenty in a developing country like India.

DEFINITION OF JUVENILE JUSTICE IN INDIA

Definition of Child and Juvenile under the Juvenile Justice Act, 2015 and other various laws, Generally, a “child” mean a person who has not attain the age of 18 years and is not mature to understand that what is right and wrong. In modern era, the penal laws of most countries have adopted the principle of ‘doli incapex’, which means of knowing that act there are committing is a crime. The penal laws also states that Only child between the age of seven to twelve age can be convicted, provided that, the act they have committed is a heinous crime and they have knowledge and has attained the sufficient knowledge to understand the consequences of their act. According to sub- section 12 of Section 2 of The Juvenile (Care and Protection) Act, 2015 a “child” means a person who has not completed eighteen years of age. The Act classifies the term “child” into two categories: – “child in conflict with law”, and “child in need of care and protection”.

The child who has committed an offence and he or she is under the age of 18 years on the date of commission of the offence is basically called as “child in conflict with law”. The second sub – category is “child in need of care and protection” means a child ad defined under Section 14 of the Act. Children Act, 1960:- Section 2(e) of the Act states “child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

United Nations Convention: – The UN Convention on the Rights of Child, 1989 defines that “child” means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier.

DIFFERENCE BETWEEN JUVENILE AND CHILD

A person under the age of full legal obligation and responsibility is a minor or a person who is below the legal age of eighteen years is minor. A child being accused of a crime is not tried as an adult and is sent to Child Care Centre whereas juvenile is a person between the age group of sixteen and eighteen years. A young person who is been accused of crime is a juvenile offender and is tried as adult in court proceedings. In general sense both the term has same meaning but however difference lies in context of implications in the eyes of law. Minor implies young and teen persons whereas juvenile either indicates immature person or young offenders.

International Concerns for Juvenile

The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20th November, 1989 which prescribe a set of standard to be adhered to by all the States parties in securing the best interest of the child.[7] The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse.[8]The International bodies like United Nations and UNICEF have always paid more emphasis on the development of Child. Following are the International Instruments and Conventions that are signed by all the States of UN in order to protect the rights of Children:- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Conventions) Guidelines for the Action on Children in Criminal Juvenile System (Vienna Guidelines)

Juvenile Justice System in U.K.

For the first time in 1908 Juvenile Courts were established in England under the Children Act, 1908. The primary duty of these courts was to provide proper care and protection to child and young offenders and take all the necessary steps to remove all undesirable surroundings around the offenders and to ensure reformation of the offenders by providing education and training. The Children and Young Offenders Act, 1933 confers the civil powers on the Juvenile Courts in certain important cases to look into matter. The Act also provides that any child[9] and young person[10] who have committed the crime should be tried in Juvenile Courts only. The Act also provides the establishment of Remand Homes. UK Legislation also came with the new Act that also deals with Rights of Juvenile Offenders. The Act came to know as The Criminal

Justice Act, 1948, the act provides certain class of security to young offenders by sending them to remand homes.

Juvenile Justice System in U.S.A

The working of Juvenile Courts in U.S.A. is relatively less complex and easier as compared to the other nations. The courts of U.S.A. follows the informal way in the process of trial of offender. At the first stage, the police officer in the charge of the case has the full discretion power either to keep the juvenile offender in the child custody or to immediately release him or to admonish the offender or to do the both. In the second stage police officer have to contact the Juvenile Courts to make them aware about the case and to take the matters into their hands. Juvenile Offenders after the trial in court is being sent to Certified Schools or to the Children Homes if the order is passed by the court. According to the Juvenile Justice System in U.S.A. a juvenile is tried as an adult only in those cases where the age of the juvenile is close to adulthood as per the statutory provisions or any juvenile offenders who is found to be involved in repeated offences and is proved danger to the society.

HISTORY OF JUVENILE JUSTICE IN INDIA

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., U.S.A. This movement has been started around the 18th century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as “The Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice, 1986 which repealed the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of Jammu and Kashmir. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:- The act basically laid

down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

Juvenile Justice Act 2000

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011. The amendment was made to address the gap and loopholes in the implementation. Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “Delhi Gang Rape Case” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by The Juvenile Justice (Care and Protection) Act, 2015.

JUVENILE JUSTICE SYSTEM IN INDIA

Like the other countries, India had also made legal provisions like the other countries that especially and specifically deals with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency. The Juvenile Justice System in India is made on the basis of three main assumptions:- young offenders should not be tried in courts , rather they should be corrected in all the best possible ways, they should not be punished by the courts , but they should get a chance to reform trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

Juvenile Justice Act, 2015

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care& protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions.

The most important subjects of the Act are as follows:-

Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. The Board had to consider Rule 12 of the Juvenile Justice Rules, 2007 in order to determine the claim of juvenility. In case of *KulaiIbrahim v. State of Coimbatore* it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015. In case of *Deoki Nandan Dayma v. State of Uttar Pradesh* the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child. Again in the case of *Satbir Singh & others v. State of Haryana*, Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of Krishna Bhagwan v. State of Bihar the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for the considering the age of juvenile should be on which the offence has been committed. But later in case of *Arnit Das v. State of Bihar* the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.

Juvenile Justice Board

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law. The Board shall consists of Principal Magistrate and two social workers, among whom one should be a women. The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.

Special Procedure of Juvenile Justice Board:- The Act has provided the procedure against the juvenile offender. Following are the main special procedure –

The proceedings cannot be initiated on a complaint registered by the police or citizen

The hearing must be informal and should be strictly confidential.

The offenders should be kept under Observation Home after detention.

The trial of juvenile in conflict with law shall be conducted by lady Magistrate.

A child in conflict with law may be produced before an individual member of the Board, when Board is not sitting.

LAW RELATING TO JUVENILE JUSTICE IN INDIA

Juvenile Justice and Constitution of India

The Constitution of India is considered as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same manner in its Part IV it has provided Directive Principles of State Policies (DPSP) which acts as general guidelines in framing government policies. Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A). Right to be protected from any hazardous employment under the age of fourteen age. (Article 24). Right to be protected from being abused in any form by an adult. (Article 39(e)). Right to be protected from human trafficking and forced bonded labour system. (Article 39) Right to be provided with good nutrition and proper standard of living. (Article 47). Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has considered all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways. This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

Juvenile Justice (Care and Protection of Children) Act, 2015

The juvenile justice care and protection of children Act 2015 has been passed by Parliament of India amidst intense controversy, debate and protest on many of its provisions by Child Rights fraternity. It replaced the Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, and allows for juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, to be tried as adults. The Act also sought to create a universally accessible adoption law for India, overtaking the Hindu Adoptions and

Maintenance Act (1956) (applicable to Hindus, Buddhists, Jains, and Sikhs) and the Guardians and Wards Act (1890) (applicable to Muslims), though not replacing them. The Act came into force from 15 January 2016. It was passed on 7 May 2015 by the Lok Sabha amid intense protest by several Members of Parliament. It was passed on 22 December 2015 by the Rajya Sabha. To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively. A separate chapter on Adoption provides detailed provisions relating to adoption and punishments for non compliance. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption. As of 2019, Ministry of Women & Child Development of Government of India is working towards bringing an amendment, primarily to remove courts from adoption process, to handover it to Executive Magistrates/ District Magistrates and to make Child Welfare Committees administratively and judicially subordinate to District Magistrate, despite nationwide protest against such a move.

Section 27 of CrPC 1973

Section 27 strictly speaks of jurisdiction in the case of Juveniles, wherein if a Juvenile (a person who appears or is brought before the Court is under the age of sixteen years), may be tried by Chief Judicial Magistrate, or by any specially empowered Court. The section further considerate of the age and psyche of Juvenile offender conforms with restorative justice, by providing with the following: Treatment, Training, Rehabilitation of youthful offenders.

Section 437 in The Code Of Criminal Procedure, 1973

437. When bail may be taken in case of non- bailable offence.

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

- (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non- bailable and cognizable offence: Provided that the Court may direct that a

person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm: Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that It is just and proper so to do for any other special reason: Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail] or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub- section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or (c) otherwise in the interests of justice.

(4) An officer or a Court releasing any person on bail under sub- section (1) or sub- section (2), shall record in writing his or its reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. (6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs. (7)

If, at any time after the conclusion of the trial of a person accused of a non- bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear

judgment delivered.

Section 83 in The Indian Penal Code

83. Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 315 in The Indian Penal Code

315. Act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Section 316 in The Indian Penal Code

316. Causing death of quick unborn child by act amounting to culpable homicide.—Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Illustration A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section. CLASSIFICATION OF OFFENCE Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 361 in The Indian Penal Code

361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation.—The words “lawful guardian” in this section include any person

lawfully entrusted with the care or custody of such minor or other person.

CAUSES OF JUVENILE DELINQUENCY

Researches and Studies shows that they are various causes of juvenile delinquency in India. Every person has different behavioral patterns so as in case with children also. The behavior patterns develop in early childhood and at early stage it is very difficult to identify any kind of behavior. But as soon as, child grows up comes out to real world, behavior patterns changes from time to time and many circumstances or situation may arose the delinquent behavior in them. Following are the some of the causes of Juvenile Delinquency:- Adolescence Instability: – The biological, psychological and sociological are one of the important factors in the behavior pattern of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play and etc. And at this age, they want freedom and they wanted to be independent but sometimes they are given any chances and opportunities by their parents, teachers and elders this leads to development of anti – social behavior in them. Thus, this anti – social behavior, biological changes, psychological causes are the some of the reasons which is responsible for juvenile delinquency. Disintegration of Family System: – Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency. Economic condition and Poverty: – Poverty and poor economic condition is also consider has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfill the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by crook and when their desires are met they start themselves indulging in stealing money from homes or any other parents. And this develop habitual tendency of stealing which results into theft at large scale. Migration: – Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities. Sex Indulgence:- The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. In this age they may become more vagrants or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc. Modern Life Style: – The rapidly changing society patterns and

modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.

CONCLUSION

In my conclusion part, I would like to state that, the central government has laid various legislation and rules to stop the incidents of juvenile crimes so the present laws on juveniles that is the juvenile justice care and protection act 2015 is creating a deterrent, retributive, reformatory, preventive, expiatory effect on the juveniles and thus the results are fruitful and legislative intent is accomplishing. Although the increasing rates of juvenile crime in India is very concerning issue and need to be focused upon, so the government of India should think and have to do further study that how to control, eradicate the juvenile offenders, juvenile offence totally from our society.

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