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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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IN THE FACE OF HARDSHIP: EXPLORING THE COMPLEX FACTORS BEHIND YOUTH CRIME AND JUVENILE DELINQUENCY

AUTHORED BY - UTKARSH PANDEY¹
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OBJECTIVE OF RESEARCH

After completion of present study, the reader would be able to understand the background factors playing role in the delinquent behavior of a child. Several factors as impact of media and technological interface which is so deep rooted into the being of an individual in present society. Changing family patterns are also one of the major factors for it. This research would help reader understand the plight of child both in and after the observation home. This study would also help in suggesting the means for better conditions of the children at observation home and also to ensure their healthy rehabilitation.

HYPOTHESIS

The current Indian legal regime does not adequately provide for protection of juveniles of the country.

RESEARCH QUESTIONS

- What are the causes of delinquency?
- Explore how the juvenile justice system responds to delinquency.
- What are the historical, legal, social, and philosophical foundations of the juvenile court movement?
- What is the juvenile court process, from arrest to placement?

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RESEARCH METHODOLOGY

The research” would be “doctrinal in nature. The project work would confine itself to the research questions. Topics and issues which are ancillary to the research questions would be discussed.

LITERATURE REVIEW

- B. R. Sharma, in article “Juvenile delinquency in India – a cause for concern” stated that the term juvenile delinquency applies to violation of criminal code and certain patterns of behaviour that are not approved for children and young adolescents. It may be grouped as individual delinquency (in which only one individual is involved and the cause of delinquent act is traced to individual delinquent), group supported delinquency (committed in companionship and the cause is attributed not to the personality of the individual but to the culture of the individual’s home and neighbourhood), organized delinquency and situational delinquency.
- Kavita Sahmey, in article “A Study on Factors Underlying Juvenile Delinquency and Positive Youth Development Programs” stated that The word juvenile has been derived from the Latin term *juvenis*, which means young and etymologically, and the word delinquency has been derived from the Latin word *delinquer* which means to omit. In the year 1484, William Coxtton used the word delinquent to describe a person who was found guilty. Juvenile delinquency refers to the involvement by the teenagers in an unlawful behavior who is usually under the age of 18 and commits an act which would be considered as a crime.
- Ms. Maharukh Adenwalla, in article “Child Protection and Juvenile Justice System for Juvenile in Conflict with Law” explained A child is the part of the society in which he lives. Due to his maturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. Juvenile Legislation attempts to cure his illness by treating the juvenile without doing anything to treat the causes of the illness.

INTRODUCTION

Children are indeed lord’s gift to a family and in turn an asset to a nation. They should be allowed to be given an opportunity to develop themselves physically and emotionally, such development would make them a good citizen of a country. Although generally many children are respectful towards elder

and follow societal regulations, there are few who do not follow them and are termed as “bad” for the very first instance by the family, society etc. this bad turn into a more serious habits which later are tagged by a term known as delinquency, as said in legal jargon.

The word juvenile and minor are used very differently in legal context. Juvenile is a child who is supposedly in conflict with law, a minor whereas is someone who is below a certain lawful age, set by the *lex loci*.

In India, there was no consensus as to age of juvenile until the children act,1960 was passed by the parliament. Till then various state acts were there which had their own ways of defining what a juvenile was for them according to their own set rules of procedure and enactments.

According to some customs in ancient India, a child was not punished if he was guilty of doing something for example drinking alcohol, his brother or father whoever is the immediate custodian was supposed to be punished. While boys in pre pubertal age was only held somewhat responsible for their delinquent acts.

In India, under section 82 of the Indian penal code section 82 encompasses principle of doli incapax which means that a child under age of 7 can not be made liable for whatever act he doesn't because he lacks the mental ability to do so.

DEFINITION OF DELINQUENCY-A HAZED AREA

The issue was discussed during the Second United Nations Congress on the prevention of Crime and the Treatment of Offenders in August 1960, in London. It recommended:

“*The Congress* considered that the scope of the problem of juvenile delinquency should not be unnecessarily inflated. Without attempting to formulate a standard definition of what should be considered to be juvenile delinquency in each country, it recommends (a) that the meaning of the term juvenile delinquency should be restricted as far as possible to violations of the criminal law, and (b) that even for protection, specific offences which would penalize small irregularities or maladjusted

behavior of minors but for which adults would not be prosecuted, should not be created ”³

In Indian scenario, child means a boy less than 16 years and a female child less than 18 years, as defined by the children act,1960. After recommendations and to fulfill its objective under UN declaration, India increased the age of juvenile to 18 years for boy and girl both., under the juvenile justice (care and protection) act,2000.

JUVENILE AND JUVENILE JUSTICE BOARD

Juvenile justice in India came into front in 1850 for children between age of 10-18 who are supposed to be provided vocational training as a part of the rehabilitation process which they are supposed to undergo. The juvenile justice act,2000 W.E.F 1 April,2001 aimed at “providing care and justice for the juveniles who are in conflict with law and children in need of care and protection by implementing a child friendly approach in the best interest of children and also for their rehabilitation by keeping in view the developmental need of the children which means it will provide a protective cover to the children who are at risk.”

The preamble of the above act aims at:

“providing for proper care, protection, and treatment by catering to their developmental needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation”

The term juvenile was replaced and the new word coined was “child in need of care and protection”. Concept of observation homes, i.e. the homes which are used for temporary care of some child in conflict with law. Such homes aim at providing the best suited proper mental and physical care as per their respective age group.⁴

On the other hand, special home is a place where convicted child up to 3 years of conviction was sent to such place where some voluntary organization establishes such home for their good. The Act enables a multi-disciplinary inquiry by a Juvenile Justice Board (JJB), consisting of a Principal

³ Bridges, J. W, “Psychoanalysis, a Contribution to the New Psychology Public Health Jour.”, 1923., pp. 42-49

⁴ Haines, T. H, “Crime Prevention. The Study of Causes”. *Bureau of Juv. Research Bull. No. 5*; Ohio Board of Adm. Pub. No. 11, 1-19.

Magistrate and two Social Workers as members sitting as a bench, to conduct inquiries into juvenile crime in a child-friendly manner in order to pursue 'the ends of justice'. The JJB therefore has to also take into consideration the concerns of the victims if any, and public interest. These inquiries are to focus not only on establishing guilt but on understanding the juvenile and his/her circumstances, as well as the motives and root causes that may have played a role in the commission of the crime. In cases where a juvenile is allegedly co-accused with an adult/s, the law forbids joint trials. In a conscious departure from the Code of Criminal Procedure (Cr. P.C.), the JJ Act and Rules restrict apprehension of juveniles, stipulate bail as a right (under certain conditions) irrespective of whether the offence is bailable or non-bailable, and prescribe inquiries to be conducted as per the procedure meant for trial in summons cases.

THE MODUS OPERANDI IN THE JUVENILE JUSTICE HOMES

To make it very lucid, author shall list all the steps out:

1. Juveniles not granted bail are sent to observation homes till the inquiry is completed. Factors such as degree of seriousness and age of offenders are considered for classifying them.
2. Then they are sent special homes, the state has authority to frame rules for the same. The juvenile justice board has a say to pass final protective custody who is above 16 years and could pose harm to other juveniles in special home. Only 3 years of special home time period is allowed to serious offenders.
3. The law demands that intensive individualized attention be provided to such juveniles. Probation Officers, the key duty bearers in this regard, are required to undertake a number of responsibilities that are vital to achieve the goals relating to juveniles who commit serious offences including developing various kinds of care plans, facilitating after care, and mentoring, monitoring, supervision, and reporting the progress of each juvenile. Individual Care Plans (ICPs) must be prepared for all juveniles within one month of their admission into an institution in order to ensure they get individualized attention in their journey towards reformation, rehabilitation, social mainstreaming and restoration back into the community. The JJBs are required to pass final orders based on these ICPs prepared by a probation officer or voluntary organization on the basis of interaction with the juvenile and his family where possible. Moreover, a Mental Health Care Plan, with recommendations from experts has to be maintained in every case file and integrated into the ICP of every juvenile. The Management

Committees that are to be set up in every institution are also required to meet every month to consider and review the ‘individual problems of juveniles..., provision of legal aid services and institutional adjustment’, prepare Pre-release restoration plans, as well as post-release and follow up plans as part of the ICP for juveniles who completing their term of placement in a Fit Institution or SH and to also review these plans on a quarterly basis.⁵

4. Issues of chemical dependency, alcohol disorder are also to be considered, also psychiatric hospital certificate can be used as proof for the same.

DECIDED JUDICIAL PRECEDENTS

1. Sanjay Suri & Anr . Vs. Delhi Administration, Delhi & Anr⁶

Case which dealt with creation of certain special structure for protection of juveniles under Tihar Jail, it was done because a report of district judge revealed that the juveniles were sexually assaulted in the jail by the adult prisoners.

The Supreme Court lamented, “We are anxious to ensure that no child within the meaning of the Children’s Act is sent to jail because otherwise the whole object of the Children’s Act of protecting the child from bad influence of jail life would be defeated.” This judgment instructed “every Magistrate or trial Judge authorized to issue warrants for detention of prisoners to ensure that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age – not necessarily by a trial and every warrant must specify the age of the person to be detained.” Further the jail authorities were also instructed, “We call upon the authorities in jails throughout India not to accept any warrant of detention as a valid one unless the age of the detenu is shown therein. By this order of ours, we make it clear that it shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated.”

2. Sanat Kumar Sinha Vs. State of Bihar & Ors⁷

This public interest petition was filed with regards to juvenile cases pending for long period of time.

⁵ Holsinger, Kristi, “Youth in the Juvenile Justice System.” In Juvenile Justice, 24–43.

⁶ *Sanjay Suri & Anr . V. Delhi Administration, Delhi & Anr* 1988 Supp SCC 160; 1988 SCC (Cri) 248; AIR 1988 SC 414; 1988 CriLJ 705 (SC)

⁷ *Sanat Kumar Sinha V State of Bihar & Ors* 1991 (2) Crimes 241

“From the facts called out from the reports received from various courts by the efficient efforts of the counsels appearing in this case it appears that not only in some cases investigations are pending but trials are going on for a period extending up to five years and in large number of cases juveniles are still in prisons. This state of affairs indicates a pathetic indifference to all concerned. We, therefore, direct that all criminal trials pending since three years or more be quashed to the extent as far as the trials of juveniles in custody are concerned and they are directed to be acquitted. They are released forthwith from custody or detention, as the case may be. Further, in relation to trials that are pending since less than 3 years the court should act in accordance with the provisions of the Juvenile Justice Act and dispose them of, in relation to where punishment is up to seven years, in accordance with the direction of the Supreme Court in *Sheela Barse’s* case. In other cases, the court concerned should after giving the prosecuting agency final opportunity to procure evidence as also to the defence to lead evidence, should close the case and proceed to dispose them of in accordance with law.”

3. State of Karnataka Vs. Harshad⁸

The question before the High Court was whether the Sessions Court or the Fast Track Court has jurisdiction to entertain a juvenile case. The court categorically held that in view of section 6(1) of JJA 2000, the Juvenile Justice Board “has the exclusive power of dealing with the trial of Juveniles in conflict with law and to that extent, the jurisdiction of any Court including that of the Sessions Court or Fast Track Court be barred.”

4. Rajinder Chandra vs. State of Chhatisgarh & Anr⁹

In this case the Supreme Court was faced with the question as to how an accused on the border of 16 years was to be dealt with, and held in favour of holding the accused to be a juvenile. In its judgment whilst referring to *Arnit Das case*, the Supreme Court held that “this court has, on a review of judicial opinion, held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases.”

⁸ *State of Karnataka V Harshad* 2005 CriLJ 2357 (Karnataka)

⁹ *Rajinder Chandra v State of Chhatisgarh & Anr* AIR 2002 SC 748

5. Master Rajeev Shankarlal Parmar & Anr . Vs. Officer -in -Charge , Malad Police Station & Ors¹⁰

The accused was declared a juvenile by the Sessions Court, but was not shifted to the Observation Home nor was his case transferred to the JJB. It was only the High Court's intervention that resulted in Rajeev being shifted to the Observation Home three months after having been declared a juvenile. "Thus, there was a gap of more than three months in carrying out the order passed by the learned Additional Sessions judge. The order dated 7th March 2003 was implemented and affected only on 13th June 2003." The excuse of the jailor for not complying with the court's orders was the non-availability of escort. Rajeev was awarded compensation of Rs. 15,000/- by the High Court. The State challenged this order before the Supreme Court, but to no avail.

6. Master Salim Ikramuddin Ansari & Anr . Vs. Officer -in-Charge , Borivali Police Station , Mumbai & Ors¹¹

In this case the excuse of the jailor for not transferring the accused to the Observation Home was that the order of the Sessions Court declaring Salim a juvenile, though transmitted by the Registrar of Sessions Court and received by the jail, was misplaced. Under the High Court's order, Salim was transferred to the Observation Home on 9th July 2004, i.e., seven months after the Sessions Court order. Salim was awarded compensation of Rs.1,00,000/-. The Bombay High Court examined the granting of bail under section 12 of JJA 2000, and observed, "According to this section, the first petitioner can be released on bail with or without surety. Looking to the peculiar facts and circumstances, we direct the Juvenile Justice Board to release the first petitioner on his executing personal bond only."

7. Sunil Rathi Vs. State of U.P.¹²

The question before the Supreme Court was whether the appellant on the date of occurrence was a juvenile. The High Court had on examination of the documentary evidence held that the same did not

¹⁰ *Master Rajeev Shankarlal Parmar & Anr . V Officer -in -Charge , Malad Police Station & Ors* 2003 CriLJ 4522 (Bom)

¹¹ *Master Salim Ikramuddin Ansari & Anr . V Officer -in-Charge , Borivali Police Station , Mumbai & Ors* 2005 CriLJ 799 (Bom)

¹² *Sunil Rathi v. State of U.P* (2006) 9 SCC 603

conclusively prove that Sunil Rathi was juvenile. The Supreme Court set aside the order of the High Court and directed that the appellant be examined by the Medical Board to ascertain his age. We have perused the order of the High Court. The High Court came to the conclusion, after considering the certificates produced, that they did not conclusively prove that he was a juvenile. However, when this objection was raised, the petitioner was not sent for examination by the Medical Board to ascertain his age. Normally, in a case where the evidence is not clear and convincing, the report of the Medical Board is of some assistance.”

8. Pradeep Kumar Vs. State of U.P.¹³

All the three appellants were declared to have fallen within the definition of “child” under the U.P. Children’s Act 1951 on the date of occurrence. The appellants, viz., Pradeep Kumar, Krishan Kant and Jagdish, had in support of their respective claims, a medical examination report, a horoscope and a School Leaving Certificate. As the appellants had ceased to be children, the Supreme Court observed “there is no question of sending them to an approved school under the U.P. Children’s Act for detention. Accordingly, whilst sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith.”

9. Umesh Singh & Anr . Vs. State of Bihar¹⁴

In this case the contention of juvenility was not raised before the Trial Court or the High Court. The Apex Court declared the appellant Arvind Singh a juvenile on the basis of a “report of experts” which indicated that Arvind was “hardly 13 years old” on the date of the incident. This “report of experts” was supported by “the school certificate as well as the matriculation certificate”. The Supreme Court confirmed the conviction, but set-aside the sentence imposed upon him and released Arvind Singh forthwith.

10. Satya Mohan Singh Vs. State of U.P.¹⁵

The Trial Court convicted the appellant to life imprisonment for having committed an offence under sections 302, 307 IPC. The sentence was upheld by the High Court. No claim of juvenility had been raised before the Trial Court, but “when the question of awarding sentence was being considered, on

¹³ *Pradeep Kumar v State of U.P* AIR 1994 SC 104.

¹⁴ *Umesh Singh & Anr . v State of Bihar* (2000) 6 SCC 89; 2000 SCC (Cri) 1026; AIR 2000 SC 2111

¹⁵ *Satya Mohan Singh v State of U.P* (2005) 11 SCC 395

behalf of the appellant, it was pointed out that he was fifteen years of age in December 1980 when the judgment was being delivered by the trial court. The trial court assessed the age of the appellant in December 1980 between sixteen to seventeen years. The occurrence had taken place in December 1979. Therefore, even according to the estimate of the trial court, the age of the appellant on the date of the occurrence was fifteen or sixteen. This observation of the trial court clearly shows that on the date of the occurrence, the appellant was a child within the meaning of section 2(4) of the Act.” Stating thus, the Apex Court declared the appellant a “child”, i.e., below 16 years of age, under the U.P. Children’s Act, upheld the conviction and quashed his sentence.

11. Sahabuddin alias Shaboo Vs. State of U.P.¹⁶

Apprehending that a juvenile’s incarceration is detrimental to his well-being, the boy juvenile was released on bail on his father’s executing a bond for his son’s good conduct.

“It shall be futile to say that constant incarceration of a juvenile is a greater threat to him than his constructive release. There is every likelihood of his coming into contact of known criminals than his being released on bail on the father furnishing bond for his better upkeep and for maintaining good behaviour towards the society.”

12. Vijendra Kumar Mali , etc . Vs. State of U.P.¹⁷

The High Court whilst dealing with the subject of a subordinate court having refused bail to a juvenile on the ground that the offence was a serious one, observed; “This court in a number of judgments has categorically held that bail to the juvenile can only be refused if any one of the grounds existed. So far as the ground of gravity is concerned, it is not covered under the above provisions of the Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released.”

¹⁶ *Sahabuddin alias Shaboo v State of U.P* 2002 CriLJ 4579 (Allahabad)

¹⁷ *Vijendra Kumar Mali , etc . v State of U.P* 2003 CriLJ 4619 (Allahabad)

13. Abhay Kumar Singh Vs. State of Jharkhand¹⁸

The Petitioner, a juvenile, had spent 3 years 8 months in detention. He was ordered to be forthwith released on bail without executing any bond or furnishing surety. It was further directed that Abhay Kumar Singh's inquiry under the Juvenile Justice Act 1986 be completed within 3 months, and if not so completed, the criminal proceedings against him should automatically stand quashed.

14. Ranjit Singh Vs. State of H.P.¹⁹

A juvenile was released on bail by the High Court on the ground that "In reply, filed by the prosecution, or in the police file, there is nothing to show that juvenile, if released on bail, would be exposed to criminal or moral or physical or psychological danger nor it can be said that his release will defeat the ends of justice."

LACUNAE(S) IN PRESENT LEGISLATION

The present legislation does not consider special sub groups amongst juveniles in conflict of law. For example- sex offenders, those who are recidivist, female juvenile offenders.²⁰

- a) **Juvenile sex offenders:** Teenage years is the time of very drastic change, both emotionally and physically. There is a lot of sexual interest arising due to lack of knowledge because sex is still a taboo in our society so juveniles find way which is generally deviant. But then they do commit serious sexual crimes shows that juvenile's sexual arousal is dynamic and not "fixed" in the majority of cases; those who sexually offend are responsive to treatment interventions and such juveniles are more similar than different to other delinquent youth. Provisions relating to management, reformation or treatment of juvenile sex offenders are however conspicuous by their absence in the JJ Act and Rules.²¹
- b) **Juvenile Recidivists:** Young teenagers who become entangled in a criminal cycle frequently find themselves back in the juvenile court system. These children typically have complicated unmet requirements, which present difficult situations for the community, court officials, and

¹⁸ *Abhay Kumar Singh v State of Jharkhand* 2004 CriLJ 4533 (Jharkhand)

¹⁹ *Ranjit Singh v State of H.P* 2005 CriLJ 972 (H.P.)

²⁰ Kelly, T. L, "Mental Aspects of Delinquency" *Univ. of Texas Bull. No. 1713, 1917*, pp 1-125.

²¹ S.P. Srivastava, *Juvenile Justice In India; Policy, Programme and Perspective*,(1989), Ajanta Publications (India), Delhi,pp.160-162

personnel. Regrettably, there are no practical legal remedies available to address adolescent recidivists.²²

- c) While females made up just 6% of all juvenile offenders captured in 2011, they confront far more difficult obstacles on their path to recovery and reintegration into society. Despite regulations for sex-based isolation in the Observation Home/Special Home and for reintegration into society through specially designed aftercare programs, the law is mainly quiet on female adolescents. To guarantee the effective rehabilitation and reintegration of girl juveniles, it is imperative to address their unique needs and obstacles. As a result, legal frameworks must to be improved to offer sufficient assistance, defense, and customized interventions for the special situations involving young girls involved in the judicial system.²³
- d) The rights and status of victims of crimes perpetrated by minors are frequently disregarded by the juvenile justice system. Reconciling criminals and victims is the goal of restorative justice programs, which are becoming more and more popular globally. The juvenile justice system, however, is unable to fully guarantee that victims' needs and rights are acknowledged and fulfilled. This adds to the unfavourable impression of the system.

CONCLUSION

Juvenile crimes are a terrible reality, and in order to lower them, the Act needs to be properly put into practice together with more public awareness. Essential actors in the system, including the police, must change the way they see and handle juvenile offenders from punishing them to rehabilitating them. Juvenile delinquency is caused by a number of variables, including psychological, biological, physiological, and individual aspects. Other contributing variables include physical handicap, discontent with education, peer pressure, and a love of adventure.

One of the most important and enduring social structures, the family, is essential to a child's socialization. It is in charge of educating the youngster about the distinctions between right and

²² Bridges, J. W, "Psychoanalysis, a Contribution to the New Psychology Public Health Jour.", 1923., pp. 42-49

²³ Bridges, J. W, "Psychoanalysis, a Contribution to the New Psychology Public Health Jour.", 1923., pp. 42-49

wrong, acceptable and improper, and good and evil. A child's character is shaped or broken at the grassroots level by their family, who function as role models for them. In addition to teaching, parents have a responsibility to lead by example for their kids. Parents may keep an eye on whether or not their children are being cared for well. Responding to juvenile delinquency may also involve implementing sex education in schools. Improving social and economic circumstances, increasing knowledge, and changing people's perceptions about juveniles can all lead to change.

Maneka Gandhi presented a bill to the Parliament in 2014 that would have allowed 16-year-olds to be prosecuted as adults. The measure was proposed in both legislatures and ultimately went into effect on January 15, 2016, following approval by the Cabinet. The 2015 Act states that when a sixteen-year-old child commits a crime, the Juvenile Justice Board first evaluates the child's mental and physical capacity to commit the offense, as well as their comprehension of the potential consequences and the circumstances surrounding the alleged offense. Notwithstanding these clauses, the Act has come under fire for having a confusing age-determination scheme and being poorly written.

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