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***Title: “Juvenile Justice System”, Authored By: Ms. Mansi Pragya (LL.M
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HYPOTHESIS:

The concept of juvenile justice was derived from a belief of problems that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional process of criminal law

RESEARCH METHODOLOGY:

The goal of this research is to examine various statutes, books, cases, articles, reports, and so on in order to uncover various studies and developments in this field. As a result, the research methodology used here will be purely doctrinal.

SOURCES OF DATA COLLECTION:

The researcher will collect data for this project using both primary and secondary sources of data collection.

METHOD OF DATA COLLECTION:

The researcher has done online as well as offline research as well.

I. INTRODUCTION:

It is truly said that the children are the future of our nation, they are our greatest assets. Society owes a duty that our precious assets, our future builders, our children should be given a healthy, socio-cultural environment to grow as a responsible citizen so that they can do their best for their own Country. It was correctly said by *Margaret Mead*¹, "*Children must be taught how to think, not what to think.*" State also owes a duty towards its children to provide equal opportunities for the development and wellbeing. If society and state provide them their best, then children are also supposed to be obedient, following all social and legal norms and maintaining all social and legal decorum. But due to certain reasons and circumstances, many children do not obey the legal and social decorum, and gets involved in criminal behaviour termed as *Juvenile Delinquency* or *Juvenile Crime*. This term i.e., Juvenile Delinquency depicts the participation of juvenile in an act where he has violated the laws. It has become

¹ Margaret Helen Read, CBE was a British social anthropologist and academic, who specialised in colonial education.

essential to establish a system which protects the right and interest of a juvenile, either he is the one who has committed a crime or the one who is in the need of care or protection.

II. WHO IS A “JUVENILE”?

‘Juvenile’, this word has a Latin origin from the word *‘Juvenis’* that means *‘Young’*. A Juvenile means one who has not attained the age of majority i.e., age of 18 years. Legally saying, a Juvenile can be defined as a *“child who has not attained a certain age at which he can be held liable for his criminal acts like an adult person under the law of the country. Juvenile is a child who is alleged to have committed certain acts or omissions which are in violation of any law and are to be declared as an offence.”* In terminology of law, a person who has not attained the age of 18 years can be denoted as a Juvenile. Even minor is said to be a person who has not attained the age of majority i.e., 18 year, then what is the difference between the two? Though in our day-to-day life we may use both the terms for the same purpose and may get confused, but in legal terms both of them has different meaning, minor relates to the legal capacity of a person, but juvenile denotes the young offenders or a person being young commits a crime.

III. INDIAN SCENARIO OF JUVENILE JUSTICE SYSTEM:

***“Great changes in the destiny of mankind can be affected only in the minds
of little children.”***

The early penology laid no discrimination between an adult and a juvenile offender and considered same punishment for both of them. Before 18th century, young offenders were dealt with the exactly same way like those of the adults. They were treated by Criminal Laws, in the same manner as adults were treated. No matter how small was their fault, they were not treated as a child and there were no separate laws for them. But gradually time changed and people started understanding the importance of separate laws for their child. Experts of laws stated that children are just like moulding clay, they would form shape as we would mould them. If a child is kept in the same place with a professional criminal, then it would take no time for him to think in the same way as those criminals think. As the time passes by, there came many Acts

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and rules that considered Juvenile and Adults on the different basis. The Apprentices Act, 1850, was the first step towards this issue. According to this Act, magistrates were authorised to act like the guardian of a destitute child or any child convicted for any petty offences and could bind him as an apprentice to learn any craft, trade or any other skill. But this Act also failed to bring any big change in the society and was not sufficient to meet every need of the society. Then in 1872 there was the enactment of *The School Reformatory Act, 1872*, which introduced the new rehabilitation techniques in the penal philosophy for the juvenile offenders. According to this Act, if any young offenders would be found guilty of the offences punishable for imprisonment or transportation, then they would be sent to Reformatory Schools for their correctional majors. There came many more Acts and Rules for the welfare and benefits of Juvenile, but they were not so up-to-the-mark to meet the current needs of the society regarding juvenile crimes.

As the society changed with respect of time, intensity of the crime also changed, because it is truly said that as time changes, people also changes and the same is happening in this context, with the enhancement of society and standard of living of the people their level of criminal activity is also progressing, not only adults, but youths and children are also committing Heinous² Crimes which are out of our thinking, youths of today that we consider to be our nation builder, our future is getting indulge in crimes like, rape, murder, acid attacks, etc. What we expect from them are something totally different from what we are getting from them, our youths are being diverted from their paths of innocence, study, play, etc. and are being involved in criminal acts, the things which they should not do. Children are the greatest gift of God, and we should preserve them as our greatest assets. Crime committed by the juveniles are the harsh reality of our society, but we cannot ignore them and just sit like nothing is going on, everything is all right. It is our duty to teach our children, what is right and what is wrong? According to a report of NCRB³ youth of age group of 16-18 years are the most active one among the juvenile crime.

² Heinous crimes typically involve some form of extraordinary personal injury or death. Prominent heinous crimes include **murder, forcible rape and sexual molestation, aggravated or felonious assault, robbery, and first-degree arson with serious injury or death resulting.**

³ NCRB- NATIONAL CRIME RECORD BEAURU

IV. REASONS FOR JUVENILE CRIMES:

**“I have seen best minds of my generation destroyed by madness, and starving
hysterical naked....”**

No one is a born criminal from their mother’s womb, the circumstances prevailing in the society makes them so. Socio-cultural circumstances and environment in which an individual resides, plays a very important role in moulding one’s life and developing their personality⁴. If for an example, a child lives in a family of thieves and 24*7 he watches his parents stealing money, then it is quite obvious that he would also steal one day. But there can a be a second option for stealing i.e., they might steal for food or to make their children study, but here we are talking about a general thief who steal for his own profit and not for his family and children⁵. There are many reasons that forces a child to steal or to commit a crime, etc., we cannot blame a single circumstances for the same, **as there are various grievances that are associated with the juvenile crime, that are:**

- i. Bad company,*
- ii. Adolescents’ instability and impulses,*
- iii. Extreme social suggestibility,*
- iv. Motion pictures,*
- v. Vocational dissatisfaction,*
- vi. Street life,*
- vii. Social media,*

are some of the common causes of the same. However, if we talk about Indian society, poverty and the effect of media especially social media inclines juvenile towards criminal activities.

Poverty is one of the major and the biggest cause that forces an individual to commit a crime, not only adults, but children is also being indulge in criminal acts due to poverty to meet their

⁴ Ishika Goyel, Juvenile Justice System in India, Volume 5 Issue 5, Available at-
https://ijariie.com/AdminUploadPdf/JUVENILE_JUSTICE_SYSTEM_IN_INDIA_ijariie15353.pdf.

⁵ Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offences – Reflections on the Way Forward, Available at-
https://www.oijj.org/sites/default/files/documentos/the_juvenile_justice_system_in_india_and_children_who_commit_serious_offences.pdf.

basic needs. Also, social media plays an important part in everyday life of an individual, today’s youth get attracted more towards its negative side than to its positive one⁷.

V. CURRENT SCENARIO:

As discussed earlier in this article, that laws which used to exist previously were not sufficient to deal with the current scenario as because youths of today are being indulge in Heinous Offences like rape, murder, acid attacks, etc., at the age of just 16-18 years⁸. This age of a child is highly volatile and unstable, and they think that whatever they are doing is absolutely right, but this is not so, ruining someone’s life just for fun and adventure is not so funny, neither it is right. Various schemes and programmes were introduced for the benefit of juveniles, but their implementation was defective⁹. Today’s youth are being so much attracted towards the glamorous lifestyle and are being money minded, that they don’t give a second thought before doing something wrong to earn money or to do something for fun. But they are forgetting that shortcuts cannot lead one towards success, after sometime even the doors of shortcut are closed, and the one who chooses shortcuts over hard work are stuck in the between i.e., neither they can come back nor can go forward.

Not only youths are at faults, sometimes their parents are also at fault, as in this fast and busy life parents do not have enough time for their children, which leaves a deep impact on them. Parents are our first teacher, whatever we learn at our initial stage, we learn from our parents, but what if they don’t have time for us? In today’s time the same is happening, parents are busy with their jobs and children at their home are free to do whatever they want. At the age, where they should sleep at their mother’s lap, they are sleeping with their tabs, I-phone, laptops, etc. Parents leave their children with their servants to look upon them, but the care, affection parents can provide, no one can take that place. With the curiosity a mother wants to know what are doing with your laptop, a servant won’t even bother to look that, this is the starting of a child’s

⁷ <http://www.legalservicesindia.com/article/1031/Juvenile-Justice-System-&-its-Delinquency-in-India.html>

⁸ <https://blog.ipleaders.in/juvenile-justice-system-india/>

⁹ Prof. N.V. Paranjape , Criminology , Penology with Victimology, page no 662 ,Central Law Publications, 17th edition,2017.

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transformation to offender¹⁰. Mass media in today’s time has become an essential platform of our day-to-day life, no can imagine their day without their TV and phones, but they have also taken a dark side, most of the TV shows lay emphasis on violence, sex, dacoits, etc., which leaves a mark on the young mind and poke them to try this in their life. Even games on their laptops and phones consist violence, adultery etc., every teenage guy wants to play action games, games of shooting, completing missions as a thief etc., this seems to be just a game, but these types of activities leave a great impact on the young minds.

The recent example of which is *blue whale game*, this game was a type of challenge of 50 days, which provides harmful task to do on daily basis and the players were compelled to do the same, the final task of which was to kill themselves i.e., suicide on the 50th day. Many children were found dead due to this challenge, as the operator of this game left no stone unturned for the players to commit suicide on the said 50th day. This increasing intensity of the crime by the young one i.e., juvenile, forced government to change the laws or bring new laws. Therefore, in 1960, the government of the India established Children’s Act, which were applicable even to the Union Territories. This Act was to “*provide for the care, protection, maintenance, welfare, training education, and rehabilitation of neglected or delinquent children in the Union Territories.*” Under the above said Act, a child is a boy who is below 16 years of age and a girl of 18 years if age. This Act i.e., *Children’s Act, 1960* was a precursor of Juvenile Justice Act, 1986. The Juvenile Justice Bill was first introduced in the LOK SABHA on 2nd August, 1974 in the conformity with the Beijing Rules, and the Central Children Act was replaced by the Juvenile Justice Act , 1986. India declared its National Policy for children which consists of rehabilitation and training of delinquent and exploited children.

VI. JUVENILE JUSTICE ACT:

As we have discussed earlier in this article, the aspects of children getting involved in Heinous Offences cannot be ignored. And the consequences of youths being involved in the criminal activity is well known by all of us. The main issue is that, should the minor, better say should

¹⁰ Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.

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the juvenile be treated in a different manner as compared to adults, who are found to have committed crime? History witnesses that for a long time there was no difference in the treatment of adult and juvenile who commits crime. The concept of Juvenile Courts, Acts, etc., are of recent origin. Since the future of our nation depends upon the young generation, therefore the children deserve best care to protect this burgeoning human resources. The criminal tendency or mind set of the youngsters should be curbed out within reasonable time so that they do not turn out to be a habitual criminal in their coming future life. If the juvenile is not treated differently and are kept with the professional criminals in the jail, then they would start thinking in the same way as criminals. Therefore, it is important to treat juvenile in a different manner and send them to Reformatory Schools or Rehabilitation Centre instead of regular jails for criminal, so that they do not come across professional criminals.

VI.I JUVENILE JUSTICE ACT, 1986:

Prior to the enactment of this Act, the State Government of every State has its own legislation for Children, and they differ from each other in every State. Every State gives their own rules and regulations for every aspect. For example, every State has its own definition of the term “Child”. The Committee on Subordinate Legislation on May 12th, 1986 in its 69th report recommended a uniform law for every State to govern their youths. Then there came Juvenile Justice Act, 1986 as a uniform law governing all as one. While stating about this law, it would be relevant to talk about *Ms. Sheela Barse*, an eminent journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee. She filed a PIL for the release of children who were kept in jail. In her case i.e., *Sheela Barse vs. Secretary Children Aid Society*¹¹, the Supreme Court held that, States, instead of having their own Children’s Act which is different in contents and have different proceedings, it would be relevant that Central Government should initiate Parliamentary Legislation on subjects, so that there is uniformity in laws regarding the provisions related to children in the entire country. This Act was enacted for the benefit and welfare of the children of the country. But, as time passed by and society started to change a little, this Act became insufficient to deal with the situation that were

¹¹ Sheela Barse v/s Secretary Children Aid Society 1986 3 SSC (Cri.) 352.

prevailing in the society at that time. And that need of the society lead to the enactment of *Juvenile Justice (Care And Protection Of Children) Act, 2000*.

VI.II JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

General Assembly of UN in 1989 adopted the convention on the right of a child. This convention outlines the right of the child to reintegration into the society without judicial proceedings were avoidable. Hence, Indian government thought that, to full fill the standards and requirements of the convention, there is a need to re-write the law. Hence, in 2000, there was a formation of a new law replacing the old one and was named as *Juvenile Justice (Care and Protection of Children) Act, 2000*. This Act defines a ‘child’ to be someone who has not attained the age of majority i.e., age of 18 years. This Act i.e., *Juvenile Justice (Care and Protection of Children) Act, 2000* **outlines the two target groups:**

- 1) *Children in need of care and protection;*
- 2) *Juvenile in conflict with the law.*

This Act not only protects the right of the children, but also protects the right of a person i.e., when he/she was a child, that means that if a person commits crime when he/she has not reached the age of majority i.e., 18 and during the proceeding juvenile ceased to be of age, the case would continue as if the juvenile has not reached the age of majority i.e., 18. This Act also states that, no matter what crime a juvenile offender has committed, they should not be treated as an adult. This Act also states that the proceedings of juvenile would only be held at Juvenile Justice Board and no any other Court would do so. But, as the time passed by, society saw many changes and the level of crime committed by the youths began increasing more than our thoughts¹³. After 12 years of the Act there was a need of drastic change in the Act due to an incident that took place on 16th December, 2012, that witness the biggest change in the Juvenile Law. The incident was none other than the most horrible **2012 Delhi Gang Rape i.e., Mukesh and Another vs. State (NCT of Delhi) and Others**¹⁴, which created a huge havoc regarding the

¹³ Purti Vyas, Juvenile Justice Act, 2015, An analytical study of Juvenile Justice System in India, <https://blog.ipleaders.in/juvenile-justice-system-india/>

¹⁴ (2017) 6 SCC 1

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Juvenile punishment according to the crimes committed by them. According to the report one of the five accused was a minor (*was of 17 years, at the time of committing the crime*) and he was the most aggressive one of all five. This law was not sufficient to provide justice to the victims, who suffered due to the minor, because giving imprisonment of 3 years i.e., only of 1095 days for the sin like rape and murder is nowhere a justice to victims whose whole life got shattered in just one day due to him. Four of them were trialled under criminal law, but one of them being minor was trialled under juvenile law, and was given only 3 years imprisonment, which was nowhere right from anywhere. Giving such a lenient punishment for a Heinous Crime like rape and murder cannot be termed as justice. Victim’s mother criticised this decision of the Court and stated that, *“God would do justice.”* On July 31st, 2013, Subhramanian Swami, a politician filed an appeal in the Supreme Court pleading that the minor boy in the Delhi Gang Rape should be trialled as an adult in the Criminal Court because of his violent nature and Heinous Crime. The appeal was rejected by the Juvenile Justice Board, and the trial of the juvenile was held separately in the Juvenile Court and he was found guilty of the rape and murder on 31st August under Juvenile Justice Act and was sentenced 3 years if imprisonment. Later he was released on 20th December, 2015. In July 2014, Maneka Gandhi, the Minister of Women and Child Development said that they were working on new laws that would permit the Court to consider the minor between the age 16-18 as an adult if he/she has committed a Heinous Crime. She also stated that these big changes in laws would provide justice to those who suffered due to minor and lacked in justice due to previous prevailing laws.

VI.III JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

After the incident that happened on 16th December, 2012 i.e., the Delhi Gang Rape or , Nirbhaya Rape Case, Government found a need of amendment in the Juvenile Justice(Care and Protection of Children) Act, 2000 and then there was the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2015. The bill for this Act was introduced in Parliament by Maneka Gandhi. This Act was passed by the Parliament of India after the intense debate, controversies and protest on many of its provision by Child Right Fraternity. It aims at the replacement of certain laws under Juvenile Justice (Care and Protection of Children) Act, 2000

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so that juveniles in conflict with the law in the age group of 16-18 years, involved in Heinous Offences, can be tried as adults. This Act allowed Juvenile Justice Board, including a psychologist and a sociologist, to decide whether a juvenile offender in the age group of 16-18 years of age group should be tried as adults or not. This also introduced the concept of “*Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993*”, which was not there in the previous Juvenile Justice Act. The biggest change that this Act brought was the treatment of Juvenile offender in certain cases as adult offenders in criminal justice system and also to punish them as adult offenders. This was the first time in Indian history that such a provision has been made.

VI.III.I CRITICISM OF JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015:

Every successful step has to face certain problems in their paths, even golds have to be beaten up to form beautiful ornaments. In the same way, this Act also faced many criticism (before the bill was passed). In May, 2015 Shashi Tharoor, an Indian National Congress member of Parliament, argued that this law was not justified, and was not in the favour of the convention signed by the India in UN. He added that many of the juvenile offenders belong the poor and illiterate section of the society and they should be made educated instead of punishing them. The Child Right Activists and Women Right Activists, termed this step of the Government as a regressive step and severely criticised the Bill. But in spite of many criticism, this Bill also received a positive response and many people thought it to be a very good step by the Government of India and also told that *Juvenile Justice (Care and Protection of Children) Act, 2000*, after the 2012 Delhi Gang Rape Case and conviction needed an amendment and this is the best version of that Act.

VII. CURRENT SCENARIO:

In spite of all these rules and regulations for the benefit of Juveniles, Juvenile Delinquency is rising day-by-day and sometimes crosses the limit of the crime that a prudent man can ever imagine, that a child could do so. According to a report of *NCRB 23,25,575 cases of crime*

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was reported in 2011, which reached the huge number of 29,49,400 in 2015, in which 1,695 cases were registered only in Delhi, in which 69 were of murders and 119 were rape cases.

In a recent case of March, 2015, a 16 year old boy raped and murdered his four years old neighbour, and was caught while he was dumping his body. Have you ever thought what greed for money in a man can make him do? There is a proverb in Hindi, “*Lalach sabse buri bala hai*” and it is true, greed can force a man to do crimes and he won’t find it wrong, either it is the greed for food or money or anything it can force an individual to commit a crime. Why only man, even greed in a child can make him do crime.

In 2016, a young boy of 17 kidnapped his 6 years old neighbour for money to buy an I-phone, the juvenile had the knowledge that his neighbour’s father had collected the sum of Rs. 1.5 lakh and there he decided to kidnap his son and would ask money as a ransom. When the investigation was on, the Juvenile murdered that 6 year old child and tried to hide his body and was found guilty of murder by the Juvenile Justice Board and was sent to correctional home for 3 years. In another case, a young boy of 16 years old was found guilty of murdering his junior of the same school just for the reason that he wanted his exams and parents’ teachers meeting to be cancelled, in this case first the bus driver of the victim was accused, but later on it was found he was not the real culprit and CBI found the real culprit and the juvenile was found guilty, and the Juvenile Justice Board held that he would be treated as adults under criminal law.

VIII. CONCLUSION:

In spite of these Heinous Crimes being committed by Juveniles, there are certain people who think that considering juvenile as adults and treating them under criminal law is not justified, neither reduction of the age of considering them as adults is justified, people over the country still thinks that it is inhuman to treat a child as adults and punishing him in the same way is against humanity. Still in the society there are certain people who have a thinking that children in the age group of 16-18 years are not mature, but this is totally wrong, in today’s society we cannot say that our youths are not mature, neither we can say that they have innocent mind, if a mind can think of raping a girl, murdering her, kidnapping a kid for money, cannot be termed as innocent minds. Youths of today’s basically commit crimes on the fact, that they would be

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saved by the Juvenile Law, but the time has changed if today a guy of 16-18 years commits rape, then he cannot take the defence of Juvenile Law and say that he is a minor. As discussed above according to the *Juvenile Justice (Care and Protection of Children) Act, 2015* if a child of 16-18 year commits a Heinous Crime, then he would be treated as an adult. In today’s modern society, the mind-set of each and every individual has changed, and they are very much aware of the consequences of each acts. Even a child of 9-10 year in today’s era also knows, what murder means? Therefore, it is immaterial to say that the youths of 16-18 year of age group are not capable of understanding the consequences of Heinous Offences like rape, murder, acid attacks, etc. This is just a silly excuse to say that guys and girls of adolescence are not mature enough to act like a prudent person.

It is our duty to make them well understand, what is good for them, and what is bad for them. Every time we cannot only blame youths for being diverted from their paths, sometimes parents also have to look what their children are up to, busy life doesn’t mean that they should be totally unaware about their children’s activities, sometime sitting with their children for 15 minutes also can make a big change in their life. Just giving children their desirable toys, gadgets and pets doesn’t make them happy, sitting with them and listening to them about their whole day activities also makes them feel wonderful, and if a child starts hiding secrets from his parents, means he/she is doing something wrong. It is parents only who have to understand the changing behaviour of the child and on the correct time they should talk to them, because every big crime has a small starting. We should understand that every child is God’s most precious creation and it’s our foremost duty to take care of them. But if after taking every due care also, a Juvenile commits a crime and then we cannot say that he is not guilty, and pleading for not treating them as adults would not be accepted. Last but not the least, if a child can commit a crime like an adult, then they should also hold the capability to be punished as an adult also.

***“Every child needs love, especially when they don’t
deserve it..”***