

Legislative Analysis of Juvenile Justice in India

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Abstract: In India, the law relating to juvenile justice has gradually evolved since the mid-19th century and the first legislation in this regard was the Apprentice Act, 1850 which required the children between ages of 10-18 years convicted by the Courts to be provided vocational training as part of their rehabilitation process. This Act was substituted by the Reformatory Schools Act, 1897. The most significant Central legislation in this area was the Children Act, 1960. The Act aimed at providing care, protection, training, maintenance, welfare, education and rehabilitation of neglected or delinquent children. But the Act was not applicable to the whole of India and thus, it failed to serve that cause of juvenile justice.

Introduction

The Juvenile Justice Act, 1986 was the first Central legislation in the field of juvenile justice that was made applicable throughout India. The Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 in response to the recommendations of the UN Committee on the Rights of Child that India should incorporate the aims of the Convention on the Rights of the Child into its domestic legislation. The Act comprehensively deals with the law relating to juvenile in conflict with law and child in need of care and protection. The introduction of these new terms gives an idea of the intention of the Legislature, which categorically wanted to avoid terms such as ‘Criminal’ in reference to juveniles. The following may be the striking provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000:

- Section 2(k) defines the term “juvenile” or “child” as a person who has not completed eighteenth year of age. Further, it defines the term “juvenile in conflict with law” as a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Thus, the age of juvenility is made uniform under the said Act i.e., 18 years for both the genders.

- Section 4 of the said Act has authorized the State Government to constitute for a district or a group of districts or more Juvenile Justice Boards for exercising the powers and discharging the duties, conferred or imposed on such Boards in relation to Juveniles in conflict with the law under this Act. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman.

- Section 10 of the Act makes the provision that as soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup. or lodged in a jail.

- Section 12 of the Act provides that when any person accused of a bail able or non-bail able offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

- Section 13 of the said Act further lays down that when any juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought, as soon as may be after the arrest, has to inform the parent or guardian of the juvenile about his arrest and direct him to be present at the Board before which the juvenile will appear and he has also to inform the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile.

- However, section 16 of the Act makes the special provision regarding the punishment of the juvenile delinquent. It provides that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death [or imprisonment for

any term which may extend to imprisonment for life] or committed to prison in default of payment of fine or in default of furnishing security.

- Under section 19, the Act removes all disqualifications attracting to the conviction of an offence when he has been dealt with under the provisions of the Act.
- Section 21 of the Act prohibits the publication of names, addresses etc. of juveniles in any newspaper, magazine etc.
- Section 23 of the same Act provides for the punishment for cruelty to juvenile or child and provides that if any person having that actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering, he shall be punishable with imprisonment up to six months, or fine, or with both.
- A new chapter on rehabilitation and social reintegration has been added in the said Act to transform the objective of the Act in to practice. Section 40 specifies four main ways of achieving this objective viz. adoption, foster care, sponsorship and sending the child to an after care organization.

The present Act is in line with the new International Legal Documents viz. Convention on the Rights of the Child, 1989 and the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990. The Act was, however, not free from lacunae and had been criticized on many fronts. For the prevention of juvenile delinquency, the Governments should enact and enforce specific laws and procedures in more efficient manner to promote and protect the rights and well-being of all young persons. And also, the legislations preventing the victimization, abuse, exploitation and the use for criminal activities of children and young person's should be enacted and enforced.

REGISTERED CRIME: JUVENILES IN CONFLICT WITH LAW- 2016

S. No.	State/UT	Cheating (Section 419 to 420 IPC)	Arson (Section 436 IPC)	Forgery (Section 468 & 471 IPC)	Counterfeiting (Section 231 - 254 And 489-A To 489-E IPC)	Other IPC Crimes	Total Cognizable IPC Crimes
		24	25	26	27	28	29
STATES:							
1	Andhra Pradesh	3	0	0	0	115	802
2	Arunachal Pradesh	0	0	0	0	10	56
3	Assam	0	0	1	0	13	403
4	Bihar	70	0	3	1	619	2169
5	Chhattisgarh	1	5	0	0	793	1834
6	Goa	0	0	0	0	1	21
7	Gujarat	4	3	0	0	448	1561
8	Haryana	12	10	0	0	269	1051
9	Himachal Pradesh	0	1	0	0	54	194
10	Jammu & Kashmir	1	2	0	0	27	188
11	Jharkhand	1	0	0	0	20	126
12	Karnataka	0	5	0	0	57	436
13	Kerala	0	3	2	2	108	553
14	Madhya Pradesh	10	13	2	0	3955	7219
15	Maharashtra	16	25	2	0	1318	6239
16	Manipur	0	0	0	0	1	6
17	Meghalaya	0	0	0	0	2	70
18	Mizoram	0	0	0	0	5	49
19	Nagaland	0	0	0	0	1	16
20	Odisha	1	1	0	0	241	977
21	Punjab	2	0	0	0	21	103
22	Rajasthan	10	6	1	0	704	2181
23	Sikkim	0	0	0	0	1	25
24	Tamil Nadu	1	0	0	0	420	1687
25	Telangana	12	0	2	0	160	991
26	Tripura	0	0	0	0	1	24
27	Uttar Pradesh	5	0	2	0	107	1340
28	Uttarakhand	4	0	1	0	10	123
29	West Bengal	0	3	2	6	117	619
TOTAL STATE(S)		153	77	18	9	9598	31063
UNION TERRITORIES:							
30	A & N Islands	0	0	0	0	0	12
31	Chandigarh	0	0	0	0	18	96
32	D&N Haveli	0	0	0	0	0	0
33	Daman & Diu	0	0	0	0	1	7
34	Delhi UT	9	1	0	0	391	2452
35	Lakshadweep	0	0	0	0	0	0
36	Puducherry	0	0	0	3	19	67
TOTAL UT(S)		9	1	0	3	429	2634
TOTAL (ALL INDIA)		162	78	18	12	10027	33697

CRIMES COMMITTED BY JUVENILES 2014- 2016

S. No.	State/UT	2014	2015	2016	Percentage State Share To All-India (2016)	Rank Based on Incidence/ % share (2016)	Mid-Year Projected Children Population (in Lakhs)##+ (2014)	Rate of Total Cognizable Crimes (2016)++	Rank Based on Crime Rate (2016)
1	2	3	4	5	6	7	8	9	10
STATES:									
1	Andhra Pradesh	883	1015	809	2.3	13	156.7	5.2	22
2	Arunachal Pradesh	81	66	57	0.2	26	4.7	12.1	10
3	Assam	487	624	436	1.2	17	118.9	3.7	25
4	Bihar *	4371	1658	2335	6.5	4	447.8	5.2	21
5	Chhattisgarh	1691	1914	1953	5.4	7	100.5	19.4	4
6	Goa	64	28	21	0.1	30	5.2	4.0	24
7	Gujarat *	4380	1577	1681	4.7	8	206.8	8.1	16
8	Haryana	1041	1098	1186	3.3	10	92.8	12.8	9
9	Himachal Pradesh	272	195	204	0.6	18	21.6	9.4	12
10	Jammu & Kashmir	102	181	198	0.6	19	45.0	4.4	23
11	Jharkhand	150	124	140	0.4	20	131.5	1.1	33
12	Karnataka	412	446	453	1.3	16	195.9	2.3	29
13	Kerala	1203	1398	628	1.8	15	93.4	6.7	20
14	Madhya Pradesh	6512	6583	7369	20.6	1	300.8	24.5	2
15	Maharashtra	5407	5693	6606	18.4	2	378.5	17.5	5
16	Manipur	23	17	10	0.0	33	9.6	1.0	34
17	Meghalaya	125	111	84	0.2	24	10.0	8.4	15
18	Mizoram	44	41	53	0.1	27	3.7	14.3	7
19	Nagaland	10	17	18	0.1	31	6.7	2.7	27
20	Odisha	838	934	994	2.8	12	140.4	7.1	19
21	Punjab	277	111	117	0.3	22	87.7	1.3	32
22	Rajasthan	2309	2203	2273	6.3	5	285.4	8.0	17
23	Sikkim	19	41	27	0.1	28	2.0	13.5	8
24	Tamil Nadu	1549	1814	2217	6.2	6	202.0	11.0	11
25	Telangana	931	1252	998	2.8	11	111.7	8.9	13
26	Tripura	64	37	25	0.1	29	12.4	2.0	30
27	Uttar Pradesh	1397	1006	1438	4.0	9	885.8	1.6	31
28	Uttarakhand	123	127	124	0.3	21	38.5	3.2	26
29	West Bengal *	1566	562	709	2.0	14	293.7	2.4	28
TOTAL STATE(S)		36331	30873	33163	92.5		4389.6	7.6	
UNION TERRITORIES:									
30	A & N Islands	14	13	12	0.0	32	1.4	8.6	14
31	Chandigarh	116	100	96	0.3	23	4.0	24.0	3
32	D&N Haveli	6	17	0	0.0	-	1.3	0.0	-
33	Daman & Diu	2	3	7	0.0	34	0.9	7.8	18
34	Delhi UT	1969	2366	2499	7.0	3	56.0	44.6	1
35	Lakshadweep	1	0	0	0.0	-	0.2	0.0	-
36	Puducherry	16	61	72	0.2	25	4.7	15.3	6
TOTAL UT(S)		2124	2560	2686	7.5		68.4	39.3	
TOTAL ALL INDIA		38455	33433	35849	100.0		4458.0	8.0	

Status of juveniles in other countries:

The detail penalty has been one of the most debated issues of our contemporary system of justice. Although the death penalty is generally tolerated under international law the same cannot be said of execution of Juvenile offender.

The international convention civil and political rights required that the death penalty should be imposed only for the most serious crime and never upon those who were under 18 years age at the time of committing crime.

Position of Juveniles in America

America has long history of executing to Juvenile. According to history the first Juvenile execution in America hopper in Masseichusts in 1642 before United States formally severing nation in 1776, since that time a total of 281 youthful offenders were executed.

The history of capital punishment for Juvenile offender has its origin in English common law in which the death penalty every common in the fourteenth century. In the fourteen century child below age of seven who committed a felony went free of judgment because he not knows of good and evil. This is prevision is like section 82 of the Indian penal code provide that nothing is an offence if any act committing by a person who are below the age of seven years.

From the period of eighteen century there was a rebuttable presumption for offender under the age of fourteen could not form the criminal intent required for a sentence of death. There was not rebuttable presumption about 14 Years old child. Form the period of eighteen century there was a rebuttable presumption for offender under the age of fourteen should not form the criminal intent required for a sentence of death there was not rebuttable presumption about 14 years old child. The U.S.A. Supreme Court

accepted this view in 1967 in *Re Gault* the first Juvenile in the fore United State period occurred in 1642 when a sixteen years old boy was executed in polymorph colony.

Current view of America with case laws:-

The American academy of Child and adolescent psychiatry the American society for adolescent psychiatry and the American psychiatric association have pointed out certain parts to disfavor death penalty for children under the age of eighteen these include :-

The vital piece of information is that the decision making forces in adulthood is controlled by the amygdale known as the primitive part of the human brain and therefore the center of impulse and emotion. The amygdale performs a primary role in the processing and memory of emotional exaction behavior and emotion include creating fear in the mind of a person. This stage is developed only during adolescence information from the stage of childhood to adolescence must be kept in the mind while deciding the case against children under the age of eighteen.

The prefrontal cortex situated in the frontal lobe of human brain it is partly responsible for the function such as planning anticipate of consequences controlling impulse and as responsible for abstract thinking research found that the prefrontal cortex is formed the last after every other part of the body this part of the brain is under evaluation until a person is about twenty years old.

According to the death penalty information center 72 Juvenile on death row were under 18 when they committed the crime they were accused but at the moment do not have any Juvenile on death row all these criminals were minor under 18 years of age when their crime were committed the most effective judgment about the death penalty for minor was passed by the U.S. supreme court on march 1 2005 in *Roper V. Simpson*. The court held in *roper* case that the death penalty cannot be applied to individuals who were under the age of 18 when crime was committed however, in *Roper V. Simpson* the court declare the Law for twenty state of United State of America which allowed the death penalty for those who were minor when they committed creation crime to be constitutional the reformation with regard to the decision in *roper* case was sordidly accepted by the international community where case the question why U.S. signed the treaty forbidding the execution of juvenile offender is still unanswered. More so over many of the state still have not amended their death in live with the decision in *roper* case.

Juvenile Justice System in England. In England, prior to 1993, a child between age of 10 to 13 years was presumed under *doli incapax*, to be incapable of committing an offence unless they were able to prove that child knew the difference between right and wrong, although a range of mitigating factors particular to childhood are normally taken into account in England and Wales.

Age of a child or juvenile in the youth and young people justice system of England and Wales, there are two different criteria to define juvenile people. As we know that there is no guilt for child under the age of 10 years. But above the age of 10 years, people over there were classified into two classes, named-‘child’ and ‘youth’.

Section 50 of Children of Young Person Act, 1930 in England provides that it shall be conclusively presume that no child under the age of ten years can be guilty of any offence. In other Sec. 117 of the Crime and Disorder Act, 1998 provide that child means a person under the age of 14 and young person means a person who has attained the age of 14 and is under the age of 18 years. A child is anyone who has not reached its eighteenth birthday. Although the phrase juvenile is still widely used to describe young people under 18 in English law. It carries connotation of children and immature behavior which can be seen as labeling and so they are termed young people. A section 37 of the Crime and Disorder Act establishes that the principle aim of the youth justice system is to prevent offending by children and young person.

When a young person is charged with an offence, they will appear before the youth court. If the case cannot be dealt with immediately, the court will make a decision as to whether the young person will be bailed or remanded into custody. If a young person pleads not guilty, a date will be set for the trial when the magistrates will hear all the Evidence and decide whether or not the young person is guilty. If the decision is guilty, they will then decide on the most appropriate sentence. If the case is very serious, the youth court will send the case to the Crown Court for trial and/or sentence.

Child combatants in armed conflict:

Children are affected by conflicts whether armed or not. India is home for several terrorist groups which are officially banned by the Government of India under the Unlawful Activities Prevention Act, 1967 and under many other Enactments. The terror groups indulge in combats against forces of the State. To swell their ranks they often resort to recruitment of children’s which has become an area of concern. The main objective of this study is to analyze situations under which a child may be compelled to join non-state forces. The study also aims to present the factors which facilitated the adoption of the Optional Protocol to the

Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. For analyzing the reason for recruitment of children in armed conflict, the meaning of 'armed conflict' is briefly discussed.

THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF CHILDREN ON THE INVOLVEMENT IN ARMED CONFLICT

With growing incidents of armed conflict over the globe, children and their security became a question of concern. The Geneva Convention of 1949 did not lay down any provision for the involvement of children in armed conflict. Additional Protocol I to the Geneva Convention adopted in 1977 provided under Article 77 Para I that the parties to the conflict shall take all feasible measures in order that children who have not attained the age of 15 years do not take direct part in hostilities and in particular they shall refrain from recruiting them into their armed forces.¹

During the armed conflicts of 1980's and 1990's, there were about 300,000 underage people actively involved in armed conflict. From the start of the new millennium these figure have slightly reduced to 250,000, but there have been all times and in all places children's involved in armed conflict. Child involved in armed conflict is referred not only to those who have carried guns but as including those who are involved in various capacities such as spying, runner guards, cooks etc. Several risk factors make young people vulnerable to conscription or voluntary involvement like poverty, family separation or living in war zones. Sometimes personal factors such as capacity to endure risk or revenge motive motivate employment in armed conflict.²

According to a UNICEF Report in 1996, due to armed conflict about two million children were killed, four to five million disabled, twelve million left homeless, more than one million orphaned or separated from their parents, some ten million psychologically traumatized.³

Impact of Armed Conflict on Children and Involvement of the International Community

The Graca Machel Report submitted in 1993 provided a clear and complete picture of how children are the worst victims and urged the United Nations to take concrete action. As a result a number of important measures were undertaken by the Security Council since 1999 including the Optional Protocol to the involvement of Children in armed Conflict which was approved in 2000. The Protocol emphasize on State parties to ensure that children below 18 years of age are not engaged in armed forces of the State or non-State. The Optional Protocol on the Involvement of Children in Armed Conflict was ratified by India on 30 November 2005 and is in effect since 30 December 2005. The report on the status of implementation of the Optional Protocol was submitted by the nodal ministry, Ministry of Women and Child Development, India, in the year 2011.

In the report, Ministry of Women and Child Development denies the presence of International or Non-International armed conflict in India⁴ which is in contrast to the annual report submitted by the Ministry of Home Affairs and the Ministry of Defense. Reports of non-governmental organization also reveal a different picture. The Asian Centre for Human Rights has for the first time prepared a comprehensive report on the recruitment of child soldiers by various State and Non-State forces in 2013. As for recruitment in Non-State forces, the recruitment is usually forceful. Whether voluntary or forceful, the fact remains that there are recruitments of children in various capacities.

The Optional Protocol used the term "armed conflict" but it is not defined in the instrument. In fact 'War' or more commonly used term 'armed conflict' though repeated in several international instruments, is nowhere defined. In 2005 the Executive Committee of the International Law Association (ILA) approved a mandate of the Use of Force Committee to produce a report on the meaning of war or armed conflict in International law in order to support the proper application of Human Rights Law.⁵ The report was approved in 2008. The Committee found that armed conflict has some minimal defining characteristics that distinguish it from non-armed conflict. According to the Committee all armed conflict has the two minimal characteristics:

¹Dr. H.O Agarwal supra at p.125

²War and Children: A reference hand book, (March 2,11am) <http://books.google.com/books?isbn=0313362084>.

³Children in war, state of the world's children, 1996, United Nations Children's Fund (UNICEF), see (March 28pm)https://www.google.co.in/?gfe_rd=cr&ei=fdPKVbHGNtbCOATvng2QCw&gws_rd=ssl#q=www.unicef.org%2Fsowe96%2F1cinwar.htm, <http://www.unicef.org/sowc96/1cinwar.htm>.

⁴Report of the ministry of Woman and Child Development 2011, submitted to the United Nation Committee on Rights of child, Point-15, P.7.

⁵International Law Association, the Hague Conference 2010, Final Report on meaning of Armed Conflict in International Law, P.4 (March 4, 2015 at 11 a.m.) www.ila-hq.org/.../2176DC63-D268-4133.

1. The existence of organized armed groups.⁶
2. Engaged in fighting of some intensity.⁷

Violence must be organized and intense. Intense violence implies engagement of state armed forces with non-State forces lasting for a considerable duration (duration of thirty hours in a combat in Argentina was considered as armed conflict) resulting in casualties and property destruction. Intensity of violence is measured by taking into account several factors such as duration and gravity of the armed clashes, types of government forces involved, types of weapon used and extent of the damage caused by fighting. The non-state actors/ militant to be engaged in armed conflict must be organized implying possessing a command structure, training, recruiting ability, communications and logistical ability.⁸ Armed conflict may be national or international. In International armed conflict armed forces of two States are involved, where as in Non-International armed conflict at least one of the two opposing sides is a non-State armed group. International Humanitarian Laws applies to both International and Non-International armed groups.⁹

These are some areas of India which are well known for armed conflict.

- a) The Maoist and security forces conflict concentrated in the tribal belts of Andhra Pradesh, Chhattisgarh, Odisha, Jharkhand and Bihar;
- b) The Jammu and Kashmir conflict zone;
- c) The conflict areas of North Eastern states comprising the states of Assam, Tripura, Nagaland and Manipur.¹⁰

Recently the conflict has spread over to other neighboring states of those already affected, thereby affecting major part of the country. Armed conflicts results in severe human rights violations. "Rights are violated both by the State forces and Non-State armed forces".¹¹ In internal armed conflicts between the State and non-State forces women and children suffered severely. The employment of children by armed opposition groups have surfaced as the worst threat to their well-being.

RECRUITMENT OF CHILD SOLDIERS (ARMED OPPOSITION GROUP)

Article 4 (1) of the Optional Protocol states that, armed group that are distinct from the armed forces of the State should not under any circumstances recruit or use in hostilities persons under the age of 18 years.¹²

The Protocol clearly prohibits recruitment of children by armed opposition groups under any circumstance. But reality on the ground reveals rampant recruitment of child soldiers, whether forceful or voluntary, by the opposition groups in violation of the Protocol in India. "There is no official estimate of the exact number of such child soldiers, but it is believed that there are at least 3000 child soldiers of which 500 are in North East and Jammu and Kashmir and 2500 in the Left Wing Affected areas in the conflict. It was reported that in 2013, there were 4000 child cadres employed by Naxalites including girls to strengthen their base. They were recruited for gathering information about the movements of security forces, collect rations & as couriers".¹³ In Assam many children are forced to join the non-state forces at very early age. Studies have revealed that a new phenomenon is that new factions emerge on disagreement with the older factions and to swell their ranks recruit cadres irrespective of age and gender. North East Research and Social Networking, an NGO, have interviewed many child combats in North East (Assam and Manipur) on condition of anonymity and laid down their narratives which throw ample light on the fact that there are child combatants and many circumstances which fuel their engagement to tasks unsuited to their age. The case studies below are of youths from Assam.¹⁴

Case Study:

1. Stone thrower case of Jammu & Kashmir:

In the past, stones were pelted by the Kashmiri youth on the police in the streets of Srinagar for expressing their anger during 1931 Kashmir agitation. Most of the 'stone-pelters' were school and college going

⁶ ibid.

⁷ ibid

⁸ ibid

⁹International Law Association, the Hague Conference 2010, Final Report on meaning of Armed Conflict in International Law, P.4 ,(March 4, 2015 at 11 a.m.) www.ila-hq.org/.../2176DC63-D268-4133.

¹⁰Child Protection and Child Rights>Vulnerable Children>Childrens Issues>Children in Armed Conflict (March 6 at 7 am). <http://www.childlineindia.org.in/children-in-armed-conflict.htm>.

¹¹Bharti Ali and Praveena Nair, Twenty years of CRC: A Balance Sheet, (March 5 at 1 p.m.) <http://books.google.co.in/>

¹²http://www.unicef.org/gambia/Optional_Protocol_to_the_Convention_on_the_Rights_of_the_Child_on_the_involvement_of_children_in_armed_conflicts.pdf (March 6 at 2 pm).

¹³The Times of India, 6th September, 2013.

¹⁴ Case is taken from 'Impact of Conflict on Children in Assam and Manipur States of India' (2014), Study done by; NERSWN: the North East Research and Social Networking, Kokrajhar.

students. After the rise of insurgency and separatist movement in Kashmir conflict, the stone pelting incidents became prominent in Kashmir. Young Kashmiris, children of the conflict, made stones and rocks a weapon of choice against government armed forces, side-stepping the tag of a terrorist movement linked with Pakistan. The unrest represents a conscious transition to an unarmed mass movement, one that poses a moral challenge to New Delhi's military domination over the region. After the year 2008, stone pelting incidents in the valley were reported on regular basis, the prominent among them were recorded in 2010 Kashmir Unrest and 2016-17 Kashmir Unrest, nevertheless minor skirmishes were also reported in those intermediate years.

2. The case of Sushil (name changed):

Sushil is 19 years old now. He incidentally went into insurgency, when he was 16 years old. He hails from a very poor family living on the daily wage of his parents. He has four sisters. After passing class X with good marks, he could not afford to join college, unlike his friends. He was depressed. At that time one of the members of insurgent group approached him. The person briefed him about the mission of the group and lured him to the prospect of earning. He instantly decided to join the group and is now a renowned member of the group. Initially he was tasked with assisting seniors and rigorous training, then he was enrolled to combat. He said that he was happy with his position. He believed, he is fighting for a social cause.¹⁵

Terrorist activities are a condemnable task at all levels of national and international laws. It is difficult to grasp the reason of persons who engage in terrorism, more so when the person is minor, lacking sufficient knowledge to make informed decision. The Convention on the Rights of the Child, grant participatory decision making right to a child. Whether minors are decision makers or not is a complex jurisprudential and philosophical question and there is much theorizing about it. There arises questions that even if minors are given the right to decide, it might lead to decision against parents. Hence children's right to decide must be limited especially when decisions are apt to change course of life.¹⁶ Decisions of children affecting the social norms deconstruct their notion of sanctity. Although by reason of age, certain unlawful acts of children are dealt less severely, nevertheless, they are held accountable. International law requires that minors should be treated in fashion that focuses on their rehabilitation and reintegration, and accounts for their relative vulnerability and culpability.¹⁷ International Criminal Court indicts person for recruiting child soldiers and not the child soldiers themselves. The focus is on the person recruiting and not the child soldier.¹⁸

There is no simple explanation behind the development of delinquent behavior among children.

According to an American Psychologist, Jerome Brunner, the causes of juvenile delinquency are: bad company, adolescent instability and impulse, mental conflict, extreme social suggestibility, love of adventure, motion picture, school dissatisfaction, poor recreation, street life, physical conditions of all sorts, sudden impulse; and vocational dissatisfaction.

According to I.G. Police, Gwalior, Attention Deficit Hyperactive Disorder (ADHD) has also become a vital cause behind rising rates of delinquent juveniles over the previous decade (10 years). Children brought up in nuclear families in the urban areas become attention seeker. Due to working parents or parents being judicially separated. He disclosed the following data related to the juvenile delinquents:

Number of crimes reported in 2016 = 173

Number of crimes reported in 2017 = 345

Number of crimes reported in 2018 = 379

The causes of juvenile delinquency may be classified under the following major factors:

Social factors,

Personal factors,

Economic & other factors.

SUBSTANCE ABUSE:

Children are the future leaders of the country. They are the future protector of human community and the culture of the land to which they belong. They are the pillars of the developing nation. They are in that age where they explore and experiment with everything from learning to comparing and here they require utmost guidance and good atmosphere around them. But the problem arises when these children indulge themselves

¹⁵supra note , Impact of Conflict on Children in Assam and Manipur States of India' at p. 24.

¹⁶Parents -Decision making about children's mental health care: ethical. Available at apt.rcpsych.org/content/10/4/301(March 5, at 9 pm)

¹⁷Myra Khan , International Laws concerning the recruitment and use of Child Soldiers and the Case of Omar Khadr, The Betty G. Headley Senior Essay Award(March 6 2015, 5 p.m.) www.sju.ca › ... › Library & Archives St. Jerome's University.

¹⁸ idbi

into wrong company and break law and order. However, this mainly happens due to several causes behind them.

Some children not only disobey the law but quite often break it and thus get caught in the cobwebs of law. These children break the law because they do not care for it. Some break it to eke out of life. They sometimes become carriers of illegal drugs; become a part of the ring. They are often employed by alcohol mafia to sell illicit liquor. They act as pimps of brothels.¹⁹

THE EASY ACCESS TO MEDIA:

For the rise in juvenile delinquency, the overexposure of media among children. Today's youth watch crime serials on TV with a lot of interest. Those who have criminal instincts together with intelligence and need for fast money can easily get inspired by such serial and movies with heavy dose of violence. Tools like cell phones, motorbikes, laptops, computers, along with branded clothes, have become to be had at any cost for youngsters even if their parents cannot afford or do not want to buy such things for them.

Besides, exposure to internet, TV and peer pressure are increasing the children curiosity. For example of parents indulge in partying, drinking, or smoking, etc., which is naturally going to affect their children. There are a lot of checks and controls that parents can use while bringing up children and it all depends on how they use these control mechanism. Here, we are discussing the role of various factors in making small minds indulge in such Derogatory acts. However, the act has failed in dealing this menace effectively.

LACK OF LOVE, SUPPORT, ATTENTION AND EVERYTHING WITH SUGAR ON IT:

The love factor is vanishing very fast from our society. A child who is showered with love and understanding from his parents and the social circle will never develop criminal tendencies or get into such activities. Well this is the consensus and is not entirely wrong. The homes from which delinquent children come are often characterized by one or more of the following conditions:-

Other members of the family are criminalist, alcoholic, or immoral.

One or both parents are absent by reason of death, divorce, or desertion.

There is a lack of parental control due to ignorance, indifference, or desertion.

Home disturbance exists, as a consequence of domination by one member, favoritism, jealousy, over solicitude, over severity, abuse, neglect or crowded living conditions.

Relatives or other cultural differences are present.

Economic difficulties such as unemployment, poverty, or management of financial affairs.²⁰

Relevant Cases on the issue:

Ryan International School Murder case: In September 2017 at Rhyan International School, Gurugram, a 16 year old student of eleventh standard was accused of slitting a seven year old student of second standard in the school toilet. After investigation it was found that the eleventh standard student killed his junior because he thought that as a consequence of the murder, school will be closed and he will be able to escape his exam which was on the same day. (Cases like this point out towards the stressful education system in the present scenario and development of criminal mentality among the students to escape from it). The Juvenile Justice Board had declared that 16 years old Accused juvenile shall be tried as an adult in the court.

In July 2008, one more similar case occurred in which- a 14 year-old student who was teased by other student in the school and was feeling homesick, was behind the murder of two schoolchildren in a hostel run by spiritual leader Asaram Bapu's ashram in Chhindwara town. The juvenile admitted to the school that he wanted to go back home because he was obese and the other children used to tease him. This led him to kill the children in his school so that it will also be closed and he will be able to go back home.

Ulla Mahapatra vs The King AIR 1950 Ori 261: This is one of the landmark judgment on this topic. In this case, an 11 year old boy had picked up a knife and advanced towards the victim uttering threatening gestures, 'I will cut you to bits' which he actually did and killed the victim. The court held that the boy's entire conduct led to the one inference which was that he knew, that a cut inflicted by the knife would effectuate his intention of hurting the victim. He fully understood the nature and consequences of his conduct on that occasion and was therefore held guilty of murder under section 302 of IPC and was sentenced to transportation for life.

¹⁹ R.V. KELKAR, LECTURES ON CRIMINAL LAW, LECTURE 21, 377.

²⁰ NEW ECONOMIC FOUNDATION: FURNISHING COSTS: HOW LOCKING UP CHILDREN IS MAKING BRITAIN LESS SAGE; 2010

Mercedes Hit and Run case- In July 2016, it was the first case after the enactment of the new Juvenile Justice Act, 2015 whereby the accused was tried as an adults. A youth ran over 32-year-old person by his speeding Mercedes in the national capital on 4 April 2016. The court dismissed the boy's plea to be tried as a juvenile for case of death of the pedestrian.

Some Judgments related to juvenile delinquency:-

In **Kulailbrahim v. State of Coimbatore**²¹ the court laid down that that it is the right of accused to raise the question related to juvenility at any point even after the disposal of case under section 9 of juvenile justice act, 2015

In the case of **Deoki Nandan Dayma v. State of Uttar Pradesh**²² the court held that the age mentioned in the register of school can be taken to be the determining factor of age of child and it will be counted as the admissible evidence for the purpose of claim of juvenility.

In the case of **Krishna bhagwan v. State of Bihar**²³ the court laid down that the date for considering the age of juvenile should be on which the offence has been committed.

In **Sheela Barse v Union of India**, the Supreme Court expressed concern for a uniform law for juvenile offenders. In the view of recommendations, The Juvenile Justice Act, 1986 was passed which aimed to lay down a uniform legal framework in the country by establishing juvenile welfare board and juvenile court. The Act provided a more specialized approach for the child to be investigated, prosecuted, treated and rehabilitated. The Act classified children as neglected and delinquent in order to provide different arrangements for their treatment. Under changing social approach towards criminality by children reflected in various Supreme Court decisions like *Amrutlal Someshwar Joshi v State of Maharashtra*², *Ramdeo Chauhan v State of Assam*.³

Arnit Das v State of Bihar led to the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2000. The Preamble of the Act states that it is a law to consolidate the law on juveniles in conflict with the law and children in need of care and protection, by providing adequate care, protection and treatment by addressing their developmental needs and by adopting a child friendly approach in the adjudication and disposal of matters in the best interests of children.

Sher Singh vs State Of U.P, the court held that 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.

Deoki Nandan vs State of Uttar Pradesh, the court held that for determining the age of juvenility the date of birth entered into school documents are admissible evidence. *Krishna Bhagwan vs State of Bihar*, the court stated that for the purpose of trial under juvenile justice act 2015, the age on which offence was committed comes into consideration in deciding the juvenility.

But later this case was overruled by **Arnit Das vs State of Bihar** in which court held that it is applicable to a particular matter that neither the definition of juvenile, nor any other provision contained in the Act provides the date by reference to which the age of a juvenile has to be determined so as to find out whether he is a juvenile or not date to decide juvenility should be the date on which the accused is brought before the competent authority.

Jhabua Murder case- The rare case were juvenile is treated as adult and this may be the first case in India where minors are awarded life imprisonment because their crime was so heinous that they were tried as adult.

²¹ AIR 2014 SC 2726

²² 1997:0 SCC 525

²³ AIR 1989