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## WORKING AND FUNCTIONING OF JUVENILE JUSTICE BOARD UNDER JJ ACT 2015

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### ABSTRACT:

*Children are the future of any nation. Development of any country depends upon the way of treatment in which it treats its children. Children are the most vulnerable asset for any country and any country whether it is India or any other country in the world develops when they have power of youth. So it is necessary for any country to protect and develop the children. In the beginning of the society, children were the responsibility of society this custom has transformed and children became the responsibility of family then they became the responsibility of parents only but it is also changes day by day and today children are the responsibility of parents as well as state. State made welfare plans for children to develop their mental status and to protect them state made so many*

*laws to protect them such as POCSO ACT etc. but it has not completely change till today India is in transition phase and after international treaties and other pressures state are taking this thing seriously. But still children are suffering lots of problem and one of them is juvenile delinquency.*

**KEYWORDS:** country whether , responsibility of society.

### 1. INTRODUCTION :

Juvenile delinquency is one of the biggest problems of world today and it is taking a furious form. It can be read about juvenile delinquency cases almost in the newspaper. Not only petty but also lots of serious and heinous crimes doing by delinquents.

“Heinous offences” includes the offences for which the minimum punishment under IPC<sup>1</sup> or any other law for the time being in force is imprisonment for 7 years or more.<sup>2</sup> Nirbhaya case<sup>3</sup> is the object lesson of heinous crime.

Everyday thousands of children around the world get caught up in adult formal justice systems. Children are arrested and detained by police, tried by magistrates and sent to institutes including prisons, under system of justice which in many cases are set up for adults. Although there are lots of international guidelines on the proper administration of juvenile justice and community based conflict resolution and rehabilitation of child offenders children’s rights are special needs are being ignored.<sup>4</sup>

To ensure that the trial of juvenile delinquents is carried out in an amicable manner, **Section 27 of**

**Code of Criminal Procedure, 1973** asserts the jurisdiction in case of juveniles. It states that any offence is not punishable with death or imprisonment for life committed by any person who at the date when he appears or is brought before the court is under the age of **16 years**, may be tried by the court of chief judicial magistrate or by any court specially empowered under the juvenile justice act or any other law for the time being in force providing

<sup>1</sup> Supra 3

<sup>2</sup> Sec 2(33) JJ Act, 2015

for the treatment, training and rehabilitation of youth offenders.

The constitution of India also has special provisions for children to stop them and control juvenile delinquency as it is an established rule that 'an empty mind is devil's workshop.' So constitution of India provides in article 21 A that all children between the age of 6 to 14 should be provided with free and compulsory education. Article 45 also states that the state should provide only childhood care and education to all children below the age of 6.

So it is clear that Indian legal system is providing early childhood care and education to all children below the age of 14. It is provided just because to control juvenile delinquency support the children in childhood and to give them proper care, protection, prevention, attention, rehabilitation etc. it is very important to develop the character and personality of children that they should get this care, attention, and protection.

## 2.IMPORTANCE OF CHILD

Importance of a child is well recognized since ages. Importance of children can well be imagined and appreciated. Winston Churchill recognised their importance saying that there is no finer investment for any community than putting milk into babies. "Each of us must come to care about everyone else's children. We must recognize that the welfare of our children is intimately linked to the welfare of all other people's children. After all, when one of our children needs life-saving surgery, someone else's child will perform it. If one of our children is harmed by violence, someone else's child will be responsible for the violent act. The good life for our own children can be secured only if a good life is also secured for all other people's children."<sup>5</sup> The national policy for children adopted by the government of India in 1974 declared that the nation's children are a supremely important asset and their nurture and solicitude are the responsibility of state to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental, and social development. The state has undertaken to protect children against neglect, cruelty and exploitation.

"The supreme court of India emphasising the importance of child's welfare in **L.K.Pandey v Union of India**<sup>6</sup> rightly remarked:

The welfare of the entire community, its growth and development depends upon the health and well-being of its children. The great poet Milton put it admirably when he said: "children need special protection because of their tender age physique, mental immaturity and incapacity to look after themselves."

The preamble of the declaration of rights of the child, 1959 mandates that

"the child, by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection, before as well as after birth" and further it states that "mankind owes to the child the best it has to give."

Children are the ones who are very vital for deciding how the world is going to be after some years. Children are the future of nation and they are not essential but compulsory for any country. Children show the path for future if children are safe it means the condition of that country is good. Children need special care and attention. There is a saying that the mind of child is like a plain paper, on which write once and it will be stay forever. So this proper care and protection make them a responsible citizen of tomorrow.

<sup>3</sup> Case Held At Delhi In 2012

<sup>4</sup>Law Relating To Juvenile Justice In India Chaudhary RN, Rev.By Ska Naqvi Jaisi (Adv.) & Sharath Tripathi(Adv.) 4<sup>th</sup>edn., Allhabad Publication House Allhabad, Rep 2015

<sup>5</sup> Lilian Katz, Director of the ERIC Clearinghouse for Early Childhood Education and Professor of Early Childhood Education at the University of Illinois

<sup>6</sup> Indian Police Journal vol. LXII no 1 January to March 2014

### 3.WHO IS JUVENILE

The term "juvenile" is derived from a Latin word *juvenis* meaning young. The term "juvenile" is defined by each member of state of the UNO in the manner compatible with its legal system and social welfare objectives.

Clause 35 of Section 2 defines the word juvenile as "a child below the age of 18 years."<sup>7</sup> There is a broad distinction has, however been made between juveniles in general and juveniles who are alleged to have committed offences. Section 2(13) defines "child in conflict with law" as a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offences."<sup>8</sup> Determination of age, therefore assumes great importance in matters brought before the juvenile justice boards. In fact chapter 4 of juvenile justice act, 2015 deals exclusively in conflict with law and provides a complete code in regard to juveniles who are alleged to have committed offences which are otherwise punishable under the general law of crimes.

"Almost in all cases concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be the committee by seeking evidence. By obtaining-

- (a)(i) The matriculation or equivalent certificates, if available, and in the absence whereof;
- (ii) The date of birth certificate from the school (other than a play school) first attended, and in absence whereof;
- (iii) The birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i),(ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board which will declared the age of the juvenile or child."<sup>9</sup>

Dictionary defines juvenile as:

An adjective juvenile means pertaining to, characteristics of or suitable children and as a noun it is used in sense of a young person.

- (a) Juvenile of pertaining to, characteristic of or suitable of or intended for young person.
- (b)(i) Juvenile of pertaining to, characteristic of or suitable of or intended for young person.
- (ii) Young, youthful
- (iii) Immature, childish, infant
- (iv) Young person
- (b) Pertaining to, suitable for, or intended young persons, young
- (c)(i) Young pertaining or suited to youth or young people
- (ii) Having or retaining characteristics of youth
- (iii) Childish
- (d) A person below the legal age of responsibility and above a certain minimum age, who is held to be punishable for breaking the law, or designating young offenders against the law or the offences committed by them especially in juvenile delinquency, delinquent, also juvenile adult.<sup>10</sup>

In the end it can said that juvenile is a child who unlike an adult person having not attained prescribed age, cannot be held liable for his criminal act. The age criteria for being a juvenile vary from place to place whether it can be country or state. In ancient India a parent was supposed not to punish a child who is under 5 years of age for any offence. As per law then prevailing a child of such tender age should be nursed and educated with love and affection only.

<sup>7</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>8</sup> Ibid

<sup>9</sup> Abdul Razzaq V. State of UP AIR 2015

<sup>10</sup> Supra 14

#### 4. MEANING OF DELINQUENCY

The word delinquency is made from a word 'Delinquer' which means 'to omit'. In the roman period this word is used for the people who fail to do their assigned work. William Coxson was the first person who used this word in 1484 AD for a person who found guilty of convention crimes.

In the simple words delinquency means:-

- (a) A tendency to neglect and uncaring
- (b) An antisocial misdeed in violation of the law by the minor.
- (c) Fault, offence, omission of duty
- (d) (i) Failure in or neglect of duty or obligation, fault, guilt
- (ii) A shortcoming a misdeed or offence.

After observing above definitions it can be said that when a individual deviates from the course of normal social life. This behaviour is known as delinquency. There can be lots of reason behind this behaviour such as:-

- (i) Poverty
- (ii) Delinquent gene
- (iii) Family conflicts and criminality
- (iv) Low intelligence and academic failure
- (v) Extra energy and no proper use of energy
- (vi) Bad company
- (vii) Loneliness etc

Thus "Juvenile Delinquency" means a behaviour of a child or youth that in marked by violation of law, persistent mischievousness, antisocial behaviour, disobedience, or intractability as to the ward correction by parents and to constitute a matter for action by the juvenile court and "juvenile delinquent" means a minor who cannot be controlled by the parental authority and commits criminal and anti social acts as vandalism or violence. A child or youth characterised by juvenile delinquency. However, the most common criteria employed is chronological age.

There are two concepts, named delinquent child and neglected child always overlapping to each other, and creating confusion in the mind, so distinction between both concepts is necessary for understand the bare meaning of delinquent child. The New York State Law defers between the both concepts as follows:-

#### 5. MEANING OF DELINQUENT CHILD

On the one hand the juvenile delinquent means a child over seven and under sixteen years of age:

- (a) Who violates any law of the state or who commits any act which if committed by an adult would be a crime, except any child fifteen years of age who commits any act which if committed by an adult would be a crime punishable by death or life imprisonment, unless an order removing the action to thee children's court has been made and field pursuant to section 312 f subdivision (a) and (b) of code of criminal procedure.
- (b) Who is incorrigible, ungovernable or habitually disobedient and beyond the control of his parents, guardian, custodian of other lawful authority
- (c) Who is habitually truant
- (d) Who, without just cause and without the consent of his home or place of abode.
- (e) Who engages in any occupation which is in violation of law
- (f) Who begs or solicits aims or money in public places
- (g) Who associates with immoral and vicious persons
- (h) Who frequents any place the maintenance of which is in violation of law
- (i) Who habitually uses obscene or profane language or
- (j) Who so deports himself as wilfully to injure or endanger the morals or health of himself or others.<sup>11</sup>

<sup>11</sup> supra 18

In short we can say that the behaviour of juvenile delinquency may include such acts such as truancy, incorrigibility, disobedience, lying, running away from home, visit places of ill repute and coming home late at night. Delinquent in the sociological view is a child whose activities cause concern and alarm to parents, teachers and others responsible for his care and education.

## SUGGESTIONS

After all above I want to give some suggestions for the betterment of the juvenile justice in Rohilkhand region as well as in India.

### On the Basis of the Critical Study the Following Suggestions are given:

#### 11.1 JUVENILE JUSTICE BOARD

1. There is no meaning of members in juvenile justice board. So there should be no concept of head of board every member should be equal there and one more thing which I want to add that Act provides qualifications referred in section 4 of the Act, a special training programme must be prepared and the officers of the Board including the Principal Magistrate should be given training of child psychology and child welfare.
2. Ambience of the place where the Board holds enquiry should be child friendly. Wearing of black coats, using raised platforms or Dias etc should be avoided. The child must be made comfortable and feel free from fear of any person. Sittings can be held by the Board in the observation homes.
3. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should also be provided to the Board for smooth discharge of duties.
4. There should be a proper maintenance of files and case records. and with this digitalisation of system is needed for transparency and corruption free atmosphere.
5. Video linking of the homes should be provided for children to facilitate inspection and supervision by the Board to keep a check on anything done against the best interest of the child.
6. All two other members in a Board should be a person with a minimum qualification of law degree.
7. For giving good services to the juvenile and the parents of the child, they should be treated psychologically in consultation with a psychiatric. For the same, a psychologist and one social worker, who has awareness of the relevant law, must be appointed in the Juvenile Justice Board.
8. Co-operation of NGOs and other social organizations may also be sought for by the J J Board in addition to special juvenile police unit and Probation officer. Probation officer should be given the sufficient training that how they have to prepare the social investigation report which will help the JJB. Lady probation officer should be appointed instead of government probation officer for the preparation of social investigation report.
9. One government welfare official should be appointed by the government to work as a liaison officer between the NGO and Juvenile Justice Board child welfare committee. In this regard, the State Government Welfare Department may organize seminar, sensitization and orientation programme inviting all the probable officials, police personal who are responsible for better delivery of justice to the children

#### 11.2 TREATMENT OF JUVENILE

1. Juvenile should be brought before JJB within 24 hours.
2. The age of the juvenile should be determined with reference to the date of commission of the offence. A detailed scientific investigation for determination of the age is not required.
3. The Board should ensure that privacy rights of the juvenile are not violated. Sec 3 should be followed in true legal spirit.
4. The juvenile has the same Constitutional safeguards like other adult offenders. The statement of the juvenile under section 313 Cr PC should be recorded and if he/she wants to adduce evidence then that should also be allowed.
5. Whenever a juvenile is produced before a magistrate not empowered to exercise the powers of the board under the JJ Act such magistrate should without any delay record such opinion as regards the

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juvenile and forward the records and the juvenile to the Board and the board shall hold the enquiry as if the juvenile had originally been brought before it.

6. Judges in the juvenile courts should be trained to recognize the educational, social and treatment needs of the children in crisis.
7. Mere implementing the laws without there being proper infrastructure or its proper implementation remains incomplete. This part should also be simultaneously dealt with by all concerned government or nongovernmental agencies.
8. For proper implementation and giving relief to the juveniles determination of age is a relevant factor. In India because of many reasons many children do not have birth certificates so even in absence of age proof the beneficial provision of the Act should be made applicable to the child in appropriate cases.

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