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Rehabilitation and Social Re-Integration of Child in Need of Care and Protection: An Analytical Study

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ABSTRACT

The predicament of juvenile delinquency is as aged as society itself. Juvenile Delinquency is a very solemn and grave issue because it paves its way towards adult criminality. In order to solve the issue of juvenile delinquency, continuous efforts are being made by Criminologists and Penologists. Juveniles are to be dealt with in a very delicate manner different from that of adult criminals, and hence proper care, treatment, and rehabilitation must be given to them so that they can adjust to society and make themselves law-abiding citizens because children determine the future of any nation. Hence, a reformatory approach must be adopted for juveniles and young offenders rather than a punitive approach. The main purpose of the present research paper is to analyze the rehabilitation and social re-integration of children who need to be cared for and protected and also the judicial outlook and the initiative taken by the courts towards the rehabilitation and reformation of juvenile delinquents.

Keywords: Juvenile, Reformatory, Delinquency, Rehabilitation.

“Rehabilitation happens when teenagers are forced to connect to their communities and confront their mistakes.”

- Joaquin E. Diaz De Leon

I. INTRODUCTION

Crime has been considered as one of the main problems of society from the day human beings came into existence. It is not possible to think of a society without crime. Youths are more procumbent to crime, turmoil and criminal behaviour. The reason behind such an anti-social attitude has been assigned to childlike irresponsibility and pubescent clash. When power and craze reach peak point due to an increase in age, the proclivity of crime also reaches to the maximum. A child is not a criminal by birth; if the child is not looked after with care and

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affection at his/her tender age, then he/she will not flourish with material, psychological, ethical and pious ability into a person of admirable standing. When they are deprived of the love and affection which they are bound to get from their family, relatives, friends or any near and dear ones, they look out and search for the same and in some cases, they come in contact with the wrong companion and other abuses which leads the child to acquire a delinquent behaviour and traits. Delinquent acts are those acts which are dangerous to society and which are done by a person below a certain age as provided by an Act.³ Moreover, it is not an easy task to give a complete and clear definition of juvenile delinquency. If one defines the term 'juvenile delinquency' in legal terms, then it would mean any illegal act which is committed by a child of any age, as provided by the law as illegal for the time being in force, and the child who has committed the such act is called as a juvenile delinquent.⁴

It is a well-accepted fact that children are the wealth of any nation. Therefore, in order to preserve such wealth, it becomes necessary to take every possible steps to offer them prospects for their overall growth and development so that they become hearty people in the future. Those children who are being deserted in society fall easily under the vicious circle of crime.⁵ In the United Kingdom, the Gladstone Committee in 1895 agreed to the general assumption that today's juvenile delinquents would become unsentimental and merciless adult criminals in the future. If this is seen from another angle, then a profound understanding of juvenile delinquency and formulating preventive measures for the same will help in proving adult criminality.⁶

When one focuses on the problem of disadvantaged children, we frequently overlook juveniles who are in trouble with the law or who require care and protection. The rationale behind such ignorance is that these children get what they ought to have and hence endeavors are not mete out for their healing and rehabilitation. As the juveniles are quite undeveloped therefore they are amenable to their environment and they cannot figure out that their actions that are contrary to law.⁷ Each and every child needs love, care and protection and hence it is very much enviable to include all categories of children under the purview of the Juvenile Justice System. If those children are excluded, then the capricious authorities exercised by the police officers in matters of investigation will go unchecked. It is thus the duty of the State to make endeavor to prepare

³ Dr. S.S. Srivastava, *Criminology, Penology & Victimology* 448 (Central Law Agency, Allahabad, 4th edn., 2014).

⁴ Ahmad Siddique, S.M. Afzal Qadri, *et. al. Criminology, Penology and Victimology* 376 (EBC, Lucknow, 7th edn., 2018).

⁵ *Supra* note 1 at 390.

⁶ *Ibid.*

⁷ Dr. Kamaljit Kaur, "Rehabilitation and Reintegration of Juvenile in conflict with Law with reference to Adoption and Foster Care under The Indian Juvenile System" 3 *PAPRIPEX-Indian Journal of Research* 4 (2014) available at: <https://independent.academia.edu/DRKAMALJITKAUR> (last visited on December 05, 2021, 08:25 PM).

a proper plan which will ensure in providing care, treatment and rehabilitation to all those children on a personal level. It is important to adopt a model under the juvenile justice system which will work for the welfare of child and enforce child rights.⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, provides specific provisions for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles.⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015 has formulated some sensible and cautious strategy for the rehabilitation and social reintegration of children who are kept in children's homes or shelter homes by any of the substitute processes such as adoption, foster care, sponsorship, or sending the children to an after-care organization.¹⁰

Due to urbanization and increase in population, the problem of mistreated children has increased manifold. In order to ensure protection of children from various social evils, the Constitution of India has provided many articles which contain various provisions for protecting the children from being abused. Some of the important articles which acts as a shield for the protection of children which includes Article 15, Article 39 (e) and (f), Article 21, Article 21-A, Article 45 and Article 47. The Indian government went a step further by backing the United Nations General Assembly's adoption of the Convention on the Rights of the Child. The said convention highlights social integration of children who are sufferers from socio-economic wrongs. To control and prevent crime in society, it is of utmost importance that adequate provisions must be made for rehabilitation and social re-integration of the maltreated children's.¹¹

In India, the number of children who need care and protection is immense and hence there condition is feeble. These conditions can only be conquered through appropriate rehabilitation and reintegration procedures. Rehabilitation is not a static process; rather it is active and vibrant. It is an effort and step forward for helping those people who are unable to do something on their own. Rehabilitation helps in recuperating physical and emotional health. Rehabilitation also helps in gaining appreciation in the society. It boosts up the self-confidence by creating more opportunities for them which helps in their overall sound development and fortifies them in the society.¹²

⁸ Kabita Chattopadhyay, "Problem of rehabilitation and social reintegration of children in need of care and protection a criminological study of law and correctional administration relating to juveniles with reference to West Bengal" *Shodhganga* 6 (2002) available at: <https://shodhganga.inflibnet.ac.in/handle/10603/172768> (last visited on December 05, 2021, 08:35 PM).

⁹ Prof. (Dr.) N.V. Paranjape, *Criminology & Penology (including Victimology)* 666 (Central Law Publications, Prayagraj, 18th edn., 2019).

¹⁰ *Supra* note 7 at 18.

¹¹ *Id* at 17.

¹² *Id* at 19-20.

II. DEVELOPMENT OF THE IDEA AND PROCESS OF REHABILITATION AND SOCIAL REINTEGRATION OF JUVENILES OF INDIA

Rehabilitation is often interchangeably used with the term reform. Rehabilitation here is used to mean treatment of the lawbreakers. It is meant for those who are in need of support for individual or societal problems. Those who speak in favor of rehabilitation always say that rehabilitation is a theory of treatment and not a philosophy of punishment.¹³ Child in need of care and protection are those sections of the society who have faced or are facing the behavior of atypical society.¹⁴

Literally speaking, rehabilitation is a process of putting back the derelict children to adequate situation so that they can rejoin the society and get recognition by acting as a responsible citizen. It gives a better approach to life. It affords sanguinity and trust which provides a cultured and civilized importance to the offender. Rehabilitation also uses the abilities of proficient workers who are given instruction on modern communal theories. The main idea behind rehabilitation is that punishment should be used as a measure to bring a constructive modification in the attitude and character of the offenders. George Bernard Shaw stated that if someone punishes other by using retributive measures, then the offender is injured, but when reformative measures are used, the offender is improved and it is not possible to improve men by inflicting injuries upon him.¹⁵

With regard to social re-integration, the end of rehabilitation may also be related to the intricacy of re-integrating the ex-offenders back into the society after imprisonment of an extended duration. The main idea and focal point of re-integration is to re-create relations with the society. Parole, which is one of the re-integrative attempt not only provides protection to the people but also is a benefit for the reprobates. Booming re-integration is not an easy task but inventive steps may be made out to implement the same. A person who has been convicted and imprisoned loses track of many prerogatives. He or she gets terminated from jobs, they are left behind by their families, and they do not get any financial support from anyone and hence are compelled to commit petty offences to earn their livelihood. Therefore endeavor should be made to strengthen the family alliance so that the children can get back to their homes for their proper and fair growth which is the main objective of rehabilitation. It was during the time of refugee movement when rehabilitation began to evolve.¹⁶

¹³*Id* at 27.

¹⁴*Id*.

¹⁵*Id* at 29.

¹⁶*Id* at 30.

Juvenile Justice is based on the concept that conventional notions of criminal jurisprudence cannot unravel the predicament of delinquency and non-delinquency. Therefore the Juvenile Justice System has provided for effective measures to deal with the problem of delinquency by providing certain precautionary actions to tackle with the problem. Three models of juvenile justice were recognized in the 7th UN Congress Prevention of Crime and Treatment of Offenders. These models were named as- the due process model, the welfare or *parens patriae* model and the participatory model. When the juveniles and adolescent persons who are engrossed in the lawful procedure and they require defense on substantive and procedural rights, then the due process model offers justice. When the juveniles need encouragement with respect the financial and communal security and comfort when they are in proximity with legalized procedures, *parens patriae* model or the welfare model intrudes to offers juvenile justice. The participatory model observes juvenile justice which requires that the society should actively participate in eliminating the harmful behavior of young persons, the adolescents who indulge in crime must be put together into the ordinary public life, and it also requires that there should be less interferences of the legal system.¹⁷

In India, Juvenile Justice System cannot be described, referring to the above said models. A combination of the above models like welfare, customized justice, justice and crime control models will have to be applied. The crime control and justice model is appropriate for the delinquent's child in India.¹⁸

III. EVOLUTION AND GROWTH OF THE PROCESS OF REHABILITATION OF JUVENILES IN INDIA

The Indian Constitution has number of provisions which works for protecting the interest of children in India. Though such provisions are there in the constitution but they have not been implemented properly in our society. People criticize the care and services provided to such children on the ground of deficiency and below quality standard.¹⁹

We can have a sketch of the growth and development of the juvenile justice system in India by referring to its history which started back in the year 1773 and continues till today.²⁰

Before 1773: The idea of juvenile justice in India was not developed before 1773. The task of maintaining and supervising the children were entrusted upon the guardians. The personal laws

¹⁷*Id* at 34.

¹⁸*Id.*

¹⁹*Id* at 37-38.

²⁰ Dr. Shivani Verma, *Criminology, Penology and Victimology* 550 (University Book House Pvt. Ltd., Jaipur, 2019).

were invoked to decide the civil and criminal actions of the children's. However, the ultimate control of looking after and controlling the children were left upon the parents.²¹

From 1773-1850: The domination of the East India Company was popular during the period 1773- 1850. The East India Company began its functioning as a trading company and it became a governing body with time.²² During this time phase, the western countries were working for the overall reformation period. India was also influenced by this. Due to the abuse by the Britishers, many people were compelled to move to backwards areas and many children became impoverished and delinquent. In 1843, the first orphanage was set up which was named as "Ragged School" in Calcutta for indigent children's upon a request made by the Indians to Lord Cornwallis who was the then Governor-General of India.²³

From 1850-1919: India saw a drastic transformation during the period from 1850-1919 in the society due to industrialization and growth of populations. All these brought a new class of delinquent and ignored children which needed proper involvements. Some important laws were passed at this time which included the Indian Penal Code, 1860, the Apprentice Act, 1850, The Criminal Procedure Code, 1851 and the Reformatory Act, 1876 and 1897. Those children who committed offences which were relatively trivial in nature and were between the age group of 10 to 18 years, were covered under the Apprentice Act of 1850. The convicted children were required to work as apprentices for businessmen to complete their sentences.²⁴ The Indian Penal Code, 1860 under Section 82 and 83 provides for exoneration from crime to those children who are below seven years of age and between seven years and twelve years of age. Section 82 speaks about a child who is below seven years of age is *doli incapax* which means a child who has not attained seven years of age is incapable of committing a crime. He/ she cannot be charged of any criminal offence. However, Section 83 of Indian Penal Code, 1860 states that a child who has reached the age of seven but has not yet reached the age of twelve is *doli capax*, it depends upon the maturity of such children to understand the nature and circumstances of his or her deed.²⁵ Separate Trials were arranged for those persons who were below fifteen years of age under the Code of Criminal Procedure, 1851.²⁶ Those persons were kept in reformation centers and not in jails. Provisions for Probations were also incorporated under the Code.²⁷

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴ The Apprentice Act, 1850 (Act No. 19 of 1850) s. 1.

²⁵*Supra* note 19 at 550.

²⁶*Id.* at 551.

²⁷*Id.*

With the passing of the Reformatory Schools Act, 1876, the penal policy of India saw a shift from punitive to reformation and the concept for reformatory schools for offending children also came into being.²⁸ However when the Reformatory Schools Act²⁹, 1897 was passed, it provided for treatment and rehabilitation of youthful offenders. It required that boys until the completion of eighteen years of age who have not completed fifteen years of age, should be kept in reformatory schools.³⁰

From 1919-1950: During this phase, India was moving towards Independence and hence the country witnessed a shift in its juvenile justice system. The Indian Jail Committee had suggested for establishing a Special Children's Act under which separate courts shall be formed for the juveniles. Further, the provincial governments did commendable job by passing separate laws for juveniles within the limits of their area and jurisdiction.³¹ The Madras Children Act, 1920 was enacted which contained provisions relating to the guarding the children and adolescents and the custody, trial and punishment of the juveniles.³² In 1922 and 1924 the provinces of Bengal and Bombay had also passed their own separate Children's Act.³³ After India got its independence in the year 1947, the Constitution of India³⁴ came into force which contained specific articles which were meant for children like Articles 15(3), 23³⁵, 39 (e) and (f) and 45³⁶ of the Constitution.³⁷

Post 1950: Efforts from both the governments and non-governments organization were seen for the development of juvenile justice system in India. The Children's Act, 1960 was passed by the Government of India to deal with the growing disregard towards the delinquent children as a result of partition.³⁸ With the passing of the Code of Criminal Procedure in India in the year 1973 certain provisions were also included in the Code mainly in favor of the Juveniles.

The Indian Government later on passed another important inclusive legislation which was named as the Juvenile Justice Act, 1986 with the intention of providing care, protection, treatment and rehabilitation for deserted and juvenile delinquents. The Act also provided for

²⁸ *Supra* note 19 at 551.

²⁹ The Reformatory Schools Act, 1897 (Act No. 8 of 1897) "An Act to amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders."

³⁰ *Supra* note 19 at 551.

³¹ *Id.*

³² *Supra* note 19 at 551.

³³ *Id.*

³⁴ The Constitution of India, 1950.

³⁵ Art. 23(1) "Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

³⁶ Article 45 "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

³⁷ *Supra* note 19 at 551.

³⁸ *Id.*

settlement of matters relating to disposition of delinquent juveniles. Under this Act, Juvenile Courts and Juvenile Welfare Boards were also established.³⁹ Later on it was found that the Juvenile Justice Act, 1986 was ineffective in its implementation and hence changes were required to be made in the Act. Consequently a Bill was passed to amend the Juvenile Justice Act, 1986. Many states lacked essential infrastructures such as Juvenile Welfare Boards, Juvenile Courts, Observation Homes, Juvenile Homes, Special Homes, and After-Care Programs, according to the report.⁴⁰ The adoption of the Convention on the Rights of the Child widened the gap between oratory and actuality, and the Juvenile Justice (Care and Protection of Children) Act of 2000 was passed to bridge the gap. Later on it was felt that changes were needed to be brought for incorporating the provisions of similar and unvarying age for boys and girls as well as provisions like adoption, foster care and non-institutional measures including community participation. Therefore for meeting this necessity, the Juvenile Justice (Care and Protection of Children) Act, 2000 was substituted by the Juvenile Justice (Care and Protection of Children) Act, 2015. Further the Juvenile Justice (Care and Protection of Children) Act, 2015 was amended in the year 2021. The amended Act was named as Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

IV. PROVISIONS FOR REFORMATION AND REHABILITATION UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

There is a necessity of having a proper and appropriate mechanism for treatment of juvenile delinquents because juvenile delinquency is not a simple problem; it has lots of complications. Sutherland has suggested that there are two ways in which the occurrence of crimes has been tried. The first method suggests that the incidence of recurring crimes should be minimized and the second method stresses upon preventing committing of crimes for the first time itself.⁴¹ The two most significant methods in order to provide treatment to the juvenile delinquents are rehabilitation and reformation. Through the adoption of these two ways it will help the juveniles to correct themselves and reside in a normal way like other human beings in the society in a civilized manner.

One of the main principles of criminal justice administration is to provide punishment to the offenders. A change has been seen in the punitive ideology which has altered its importance

³⁹*Supra* note 19 at 552.

⁴⁰*Supra* note 8 at 55.

⁴¹Patil Raghunath Keshavrao, "Rehabilitation of juvenile delinquents criminological and legal perspectives" *Shodhganga* 155 (2003) available at: <https://shodhganga.inflibnet.ac.in/handle/10603/217367> (last visited December 17, 2021, 08:33 PM).

from vengeance to prevention and ultimately it has adopted reformatory measures and social integration of the persons who do not abide by the law. The main idea behind the reformatory theory of punishment is treatment of patients rather than punishing the offenders. Reformation helps in rectifying the juveniles and rehabilitation helps the juveniles to reshape themselves in a positive manner with other people in the society. Hence reformation should work on the mental level of juveniles and rehabilitation should be done from societal viewpoint.⁴²

Rehabilitation deals with the sensible and feasible difficulties of the persons; it deals with past, present and future activities of individuals. In the matters of juvenile delinquents, rehabilitation implies decreasing the anti-law attitude of the juveniles through a strategy of involvement and interference in an organized manner. Rehabilitation of Juveniles or Juvenile Corrections is synonymously used to mean reformation. When the juveniles are provided treatment with the aim of rehabilitation and by using different techniques and activities it means correcting the juveniles.⁴³

The main objective of the juvenile justice system is rehabilitating and socially integrating the juveniles by reinstating their self-respect and self-esteem and to make them ordinary and normal within the family or through alternate care programmes.⁴⁴ There are certain provisions regarding rehabilitation and social integration of juveniles in India under the Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Rules, 2007.

V. PROCESS OF REHABILITATION AND SOCIAL RE-INTEGRATION

Section 39⁴⁵ of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter mentioned as JJ Act, 2015) contains provisions for the process of rehabilitation and social re-integration.

The process of rehabilitation and social integration of the kid will begin based on the child's particular care plan. Family-based care, such as restitution to family with or without monitoring, sponsorship, adoption, or foster care, is preferable. If a child in dispute with the law is not released on bond, observation homes are an appropriate venue to begin the process of rehabilitation and social integration.⁴⁶ Wherever the child has been placed, the process of rehabilitation and social integration will commence, and if the child cannot be placed with a

⁴²*Id* at 157.

⁴³*Id* at 159.

⁴⁴ Vijay Hansaria and P.I. Jose, *Juvenile Justice System Along with Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules, 2007* 161 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn, 2012).

⁴⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).

⁴⁶*Id.* s. 39 (2).

family for any reason, the child will be placed in an institution created under this Act for such children.⁴⁷ Pecuniary Assistance shall be provided to the child in conflict with law and children in need of care and protection when they vacate the special homes or place of safety on attaining eighteen years of age so that they can restore to unity and adjust themselves with the society.⁴⁸

Open Shelter⁴⁹: The State Government either on its own or through voluntary or non-governmental organizations shall set up or maintain open shelters in such numbers as is required and those open shelters shall be registered under the JJ Act, 2015.⁵⁰ The Act states that the open shelters shall perform its roles as community based facility for those children who need housing assistance. However, such assistance should only be offered for a limited time in order to safeguard them from abuse or to wean them off of a life on the streets.⁵¹ It shall be the duty of the open shelters to send monthly information of those children who are taking such services to District Child Protection Care Unit and the Committee.⁵²

Foster Care⁵³: Children in need of care and protection shall be placed in foster care, including group foster care, for their care and protection on the Committee's orders, after following the procedure as may be prescribed in this regard, in a family that does not include the child's biological or adoptive parents, or in an unrelated family recognised by the State Government as suitable for the purpose, for a short or long period of time.⁵⁴ Foster families shall be selected based on their skill, intention, competence, and previous know-how of taking care of children. After taking into consideration the number of children, fund shall be provided by the State Governments on monthly basis through District Child Protection Unit.⁵⁵ It shall be the duty of the foster family to provide the means of education, health, and nutrition of the child.⁵⁶

Sponsorship⁵⁷: Individual Sponsorship, Group Sponsorship or Community Sponsorship shall be undertaken by the State Governments.⁵⁸ Medical, nutritional, educational, supplementary supports to families, to Children Homes, to Special Homes shall be provided by the sponsorship programmes.⁵⁹

⁴⁷*Id.* s. 39 (3).

⁴⁸*Id.*s. 39 (4).

⁴⁹*Id.* s. 43.

⁵⁰*Id.* s. 43(1).

⁵¹*Id.*s 43(2).

⁵²*Id.*s 43(3).

⁵³*Id.* s. 44 (1).

⁵⁴*Id.* s. 44 (2).

⁵⁵*Id.* s. 44(4).

⁵⁶*Id.* s. 44(6).

⁵⁷*Id.* s. 45.

⁵⁸*Id.* s. 45 (1).

⁵⁹*Id.* s. 45(4).

After-Care Institutions⁶⁰: When a child completes eighteen years of age and leaves a child care institution, he or she may be given monetary assistance to aid with the child's reintegration into society in the manner that may be prescribed.⁶¹

Observation Homes⁶²: The juveniles who require protection for a small period of time during the stage of inquiry or trial are kept in an Observation Home.⁶³ In every district or group of districts there shall be an Observation Home which must be established by the State Governments either on its own or by voluntary or non-governmental organizations. Section 41 of the JJ Act, 2015 requires that such Observation Homes be registered. When an inquiry under the Act is pending, the Observation Homes must give interim relief, protection, care, and rehabilitation to a child who is in violation of the law.⁶⁴

The State Governments may enact regulations under the Act to provide for the management and monitoring of observation houses, as well as the standards and various types of services to be given by them for the rehabilitation and social integration of a child accused of breaking the law.⁶⁵

Special Homes⁶⁶: The State Government may establish and maintain special homes in every district or group of districts for the rehabilitation of children who are in conflict with the law or have committed any offence and are sent there by an order of the Juvenile Justice Board made under section 18 of the Act.⁶⁷

Adoption⁶⁸: Regarding adoption, Section 56(1) provides that, in order to ensure the right to family for the orphan or abandoned children or surrendered child, adoptions shall be resorted to as per the provisions of the Act.⁶⁹ Adoption of a kid from a relative by another relative, regardless of religion, is permitted under the Act and the adoption regulations of the authority.⁷⁰ The adoption of a juvenile can exclusively made as per the provisions of this Act.⁷¹ All inter-country adoptions must be conducted in accordance with the terms of the Act and the authority's

⁶⁰*Id.* s. 46.

⁶¹*Id.* available at: https://legislative.gov.in/sites/default/files/A2016-2_0.pdf (last visited on December 19, 2021, 11:06 PM).

⁶²*Id.* s. 47.

⁶³*Supra* note 8 at 709.

⁶⁴*Supra* note 58 s. 47(1).

⁶⁵*Id.* s. 47(3).

⁶⁶*Id.* s. 48.

⁶⁷*Id.* s. 48(1).

⁶⁸*Id.* s. 56.

⁶⁹*Id.* s. 56 (1).

⁷⁰*Id.* s. 56(2).

⁷¹*Id.* s. 56(3).

adoption rules.⁷²

Hence, these provisions have been made by the Government of India to rehabilitate and socially re-integrate the children who are in conflict with law and those children who are in need of care and protection. Even after having such provisions, due to lack of proper implementation, satisfactory results has not been yielded out.

VI. ROLE OF JUDICIARY IN MATTERS OF REHABILITATION OF JUVENILES

The function of judiciary is very noteworthy and significant in relation to deciding cases relating to juveniles. The decisions of the court reflect the attitude of judiciary towards reformation and rehabilitation of the child. Law is made by the legislature but judiciary find out the loopholes and brings them out through their decisions and put forwards new things which the legislature has failed to do.⁷³ In the matters of juvenile delinquents and their rehabilitation, the judiciary has shown a great contribution in solving many problems through their decisions.

The Supreme Court of India has examined that through cruelty and disrepute, one cannot rehabilitate a person. A criminal is also a human being and also has emotions despite of the crime being committed by him.⁷⁴

In *Sanat Kumar Sinha v. State of Bihar*⁷⁵, the dreadful condition of juveniles suffering in jails for many years has astonished the Bihar High Court. The Court ordered that the trials of juveniles should be complete within one year and in certain cases the prosecution needs to be quashed. The Court further proposed that the juveniles should be placed in schools and the government should bear the expenditure.⁷⁶

In *Krishna Bhagwan v. State of Bihar*,⁷⁷ boys under the age of sixteen and females under the age of eighteen were found to have underdeveloped minds due to their immature age, should be given treatment as a class. The reason being that many children who have not received or are not receiving proper care, love, guidance from the guardians comes into contact with malevolence parts of the society. The Court suggested that legislature can provide for extraordinary treatment for such children with the aim of reforming them so that they can lead

⁷²*Id.* s. 56(4).

⁷³*Supra* note 52 at 201.

⁷⁴*Inder Singh v. Delhi Administration*, AIR 1978 SC 1093 “The Supreme Court observed that you could not rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he stills a human being and has feeling. If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such, treating him like an animal will only get negative result from him.”

⁷⁵ AIR 1989 Pat. 1024.

⁷⁶*Supra* note 53 at 203.

⁷⁷ AIR 1989 Pat 217.

to normal life in the society.⁷⁸

In *Gaurav Jain v. Union of India*⁷⁹ the Supreme Court has decided the issue of probability of starting separate schools and hostels for the children's of prostitute. The Supreme Court has observed:

It is the responsibility of the state, as well as all volunteer non-governmental organizations and public-spirited individuals, to rescue them from prostitution and rehabilitate them so that they can live a life of dignity, self-employment, education, and financial assistance. Marriage and family acceptance are also essential factors in rekindling self-respect and self-confidence in them. The Department of Women and Child Welfare under the Ministry of Welfare and Human Resources should be in charge of the rescue and rehabilitation of child prostitutes and children, and should devise strategies for the efficient and successful execution of reform and rehabilitation schemes. In addition, the Supreme Court established a Committee to investigate and report on the issue of children of fallen mothers.⁸⁰

In *Sheela Barse v. Union of India*,⁸¹ the Supreme Court has observed that:

The Children Act, which may be enacted by Parliament, should include mandatory provisions for the social, economic, and psychological rehabilitation of children who are either offenders or are abandoned, destitute, or lost, in addition to provisions for investigation and trial of crimes against children under the age of 16. It went on to say that it is not enough to simply have legislation on the subject; it is also, if not more important, to ensure that such legislation is implemented with zeal and that only lip sympathy is paid to such legislation, and that non-implementation is not justified by a lack of funds on the part of the states.⁸²

The spine of rehabilitation lies in the bail of juveniles. In *Daljit Singh v. State of Punjab*,⁸³ the Punjab and Haryana High Court has held that:

Section 18 of the J.J. Act, 1986 states that whenever a person accused of a non-bailable offence and who appears to be a juvenile is arrested and brought before

⁷⁸ *Supra* note 53 at 202.

⁷⁹ AIR 1990 SC 292.

⁸⁰ *Supra* note 53 at 204.

⁸¹ AIR 1986 SC 1773.

⁸² *Supra* note 53 at 209.

⁸³ 1992 Cr LJ 1051.

the court, that person shall be released on bail, notwithstanding the provisions of the Code of Criminal Procedure or any other law in force at the time.⁸⁴

Thus, it is seen that the judicial approach towards juveniles are more oriented towards reforming the juveniles and provide rehabilitation to them and restoring them to their original position which they had prior in committing the crime. The Courts before the pronouncement of judgments goes through many factors associated with the juveniles and then comes into conclusions like what were the reasons which has compelled the juveniles to commit such acts, the family background of the juveniles, the psychological condition of the juveniles etc. The Courts in the past have taken some positive initiatives to reform and rehabilitate the juveniles and has provided them with better scope for their development and growth.

VII. CONCLUSIONS AND SUGGESTIONS

The issue of juveniles is very delicate and utmost care is to be taken while tackling such an issue. There must be an organized procedure which must be followed sincerely while dealing with the problems of juveniles keeping in view various factors into account like natural, emotional, household, educational, monetary and even political conditions in which a child is brought up. Today we see that corruption has become rampant across the globe which has lowered the moral values of people to minimum. If steps are taken to bring back these moral qualities in each and every human being, then the delinquent attitude and criminal behavior can be reduced to a great extent.

Children are considered to be national asset as they determine the future of the nation. Children do need a shield from the society to protect themselves from the evil hands so that they can also have a better life. Therefore, paramount consideration must be given to the interest of children. The Government must ensure that its plans and strategies are administered in such a way that the children are given facilities to grow and evolve in a blooming and thriving way.

Children should be protected against exploitation in any form, including child labour or bonded labour, malnutrition, sexual abuse, physical abuse, mental abuse, and ignorance. It is the responsibility of the guardians at home, the teachers at school, and the state as a whole to ensure proper care and protection for the well-being of the children. They only require love and attention. If we want to change the juvenile to a responsible citizen of the society then we as a part of the society have to arrange certain provisions so that the juveniles feel themselves free to adjust with the society. Such provisions shall include admission to schools without fees as

⁸⁴*Supra* note 53 at 217.

right to education is their basic right, prohibition on child labor, securing good health of children, providing adequate nutrition to them etc. As a member of a civilized society we would be successful if we can collectively join hands to create an environment for the neglected children where they will get compassion, people will understand and love them. These efforts will help in reducing the children from being juvenile delinquents.

The Government should fulfill its constitutional mandate given for the benefit of the children of India. The Government and the Non-Government Organizations should work collectively to deal with the issue of juveniles.

One of the most excellent ways out for rehabilitating the juveniles is adoption. The figures of adoption are rising day-by-day in India. People should take the societal responsibility of adopting the children so that the children's get a sound and healthy environment for their development.

Moreover, the correctional institutions should be given adequate funds through sponsorships. If they get the requisite funds then they can arrange better facilities for the juveniles in the correction homes. They must be endowed with sufficient amount of money, clothes, foods, stationeries and other essential accessories.

The Juvenile Justice Act should be made more effective and it must be properly implemented. At this point, we would not suggest for enacting a new law for juveniles but the existing Act is sufficient to deal with the juveniles. Further, as per the present JJ Act, 2015, the obligation of the State Government to establish the Observation Homes is not mandatory. It must be made compulsory by substituting the words "shall" for "may" under Section 47(1) of the JJ Act, 2015.

It is seen that the after-care homes are not running efficiently. The most essential task of the after care home is counseling. But they are not providing counseling to the convicts in a dynamic way which does not fit the present day requirement. The after-care homes are unable to perform their functions because the employees are paid a deficient salary, there is an insufficiency of funds for the functioning of the homes, and the employees are not properly trained in the matters of counselling. Therefore, the State Governments must endeavour to provide sufficient funds to the after-care homes so that they can carry out their functions enthusiastically and comfortably.

Therefore, today rehabilitation and reintegration have become complicated task because the number of children who need care and protection is large in numbers. However, the JJ Act 2015 has acknowledged and classified the children who are in need of care and protection in various groups as per their place in society. The laws relating to juveniles are sufficient, but the actual difficulty lies in the approach of the people who are directly dealing with the children. When

we use the word “Home” we find a psychological and soul stirring affection, but the same kind of affection is missing in correction homes; we need to find out the reason behind it. Why children are still neglected in society, such questions need to be answered.
