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Juvenile Justice in India

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Abstract

Children are the future of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. But the last decade has seen a huge leap in the rate of Juvenile crime in a developing country like India. Today, Juvenile crime is like a disease in our society. This paper starts with describing the evolution of Juvenile Justice Legislation, from pre-independence era to Post-independence India; and specially looks at the guidelines of Juvenile Justice Act, 2000. In spite of the presence of that welfare law for such children, there is a rise in the number of Juvenile offenders across the country. So, a pertinent question peeped in our mind whether Juvenile offenders who commit heinous crimes should be treated as adults. The paper also tries to find out the causes and types of Juvenile Crimes in our society. In the concluding part, some suggestions have been made for preventive measures of Juvenile Crimes.

Keywords: Juvenile, Crime, Delinquency, Offenders, Juvenile Justice Act, Juvenile Justice Board, Heinous crime

Introduction

The word “Juvenile” originates in a Latin word ‘Juvenis’ that means young. A ‘Juvenile’ or child means a person who has not completed eighteen years of age. Children are greatest national resource. They represent the nation and the coming future of the country. But what is worrying more is that the share of crimes committed by juveniles to total crimes reported in India has increased in the last some years. Juvenile crime, formally known as juvenile delinquency, is a term that defines the participation of a minor in an illegal act. And Juvenile Justice is the legal system that aspires to protect all children, bringing within its ambit ‘the children in need of protection’, besides those ‘in conflict with law’. Most of the factors causing delinquency are in plenty in a developing country like India. In this context, this paper tries to highlight the growth and development of Juvenile justice system in India, extent of the types and causes of Juvenile justice delinquency and lastly try to suggest some preventive measures of Juvenile delinquency in India.

Historical Background

International scenario:

In 1704, Pope Clement XI first introduced the idea of the ‘instruction of profligate youth in institutional treatment. Then Elizabeth Fry established a separate institution for juvenile offenders. Subsequently, in Britain, Reformatory Schools Act and Industrial Schools Act were brought a statute book. The first Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. In England, the first Juvenile Court was set up in 1905. And the first probation law was enacted in the state of Massachusetts, USA in 1878 and in England in 1887.

The second and sixth UN Congress on Prevention of Crime and Treatment of Offenders¹ in 1960 and 1980 discussed in detail the problem of Juvenile delinquency. They decided that there should be the standard Minimum Rules for the Administration of Juvenile Justice. Subsequently, it was accepted that special attention should be given to prevent Juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard Minimum Rules for the

Administration of Juvenile Justice. In 1989, the UN Convention on Rights of the Child (CRC) draws attention to four sets of Civil, Political, Social, Economic and Cultural rights of every child. The Convention provides the legal basis for initiating action to ensure the rights of children in society.

Indian Scenario:

- **Pre-Independence Era:**

India has a long history of providing separate treatment for juvenile offenders. Differential treatment for children can be traced as far back as the Code of Hammurabi in 1790 BC, the responsibility for their supervision and maintenance being vested on the family. During the colonial regime, in 1843, the first center for those children called 'Ragged School' was established by Lord Cornwallis. The period between 1850 and 1919 was marked by social and industrial upheavals. The Apprentices Act, 1850,² chronologically the first law which required that children between the ages of 10-18 convicted in Courts, to be provided vocational training as part of their rehabilitation process. Even the Indian Penal Code (1960) exempts children under the age of seven years from criminal responsibility. It also exempts children between the ages of seven to twelve years, because they have not attained sufficient maturity of understanding to consequences of their delinquency. For the treatment of Juvenile delinquents, the next landmark legislation was the Reformatory School Act,³ 1876 and 1897. Under the Act, the court could detain delinquents in a reformatory school for a period of two to seven years but after they had attained the age of eighteen years, the court would not keep them in such institutions. The Act of Criminal Procedure, 1898 provided special treatment for juvenile offenders. The Code provided probation for good conduct to offenders' up to the age of twenty one. Then Indian Children Act came from the Indian Jail Committee (1919-1920). Individual provincial government chooses to enact separate legislation for juvenile in their respective jurisdictions; provinces of Madras, Bengal and Bombay passed their own children Acts in 1920, 1922 and 1924, respectively. These laws contained provisions for the establishment of a specialized mechanism for the treatment of juveniles.

- **Post-Independence Era:**

In post-independence period, the Juvenile Justice policy in India is structured around the Constitutional mandate prescribed in the language of Articles 15 (3), 21, 24, 39 (e) and (f), 45 and 47, as well as several international Covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

The Juvenile Justice Bill, in conformity with Beijing Rules, was first introduced in the Lok Sabha on 22nd August, 1986, and the Central Children Act was replaced by this Juvenile Justice Act.⁴ The Law came into force in all the union territories but the States having no juvenile law were free to adopt it. '.....in 1974, India declared its National Policy for children. The policy included, among other things training and rehabilitation of delinquent, destitute, neglected and exploited children.'⁵ The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992. This Act has been further amended in the year 2006 and 2010. The Act provides a special framework for the protection, treatment and rehabilitation of children in the purview of the Juvenile Justice System. It has established the Child Welfare Committee to address the needs of 'Children in need of care' and the Juvenile Justice Board to deal with 'children in conflict with the law'. So, it deals separately with two categories of children. Juveniles accused of a crime or detained for a crime are brought before the Juvenile Justice Board, not in a

regular criminal court, under this Act. The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman. 'Police are the first major component in the justice system for juveniles.'⁶ A Special Juvenile Police Unit (SJPU) shall be set up in every police station. A child is usually brought before the JJB by a police officer or person from the SJPU. For the 'children in conflict with law', the Act envisages to establish Observation Homes and Special Homes. For the 'Children in need of care and protection', and a law has also been made to establish Comprehensive Children's Homes. Any organization or person who brings a child before the court should inform their local police unit first. The police have twenty four hours to produce a child before the court once he/she is arrested. Once the child has been brought before the JJB, the child is registered into the closest Observation Home. 'A Probation Officer (PO) has played a pivotal role under Juvenile legislation.....If a Juvenile is released on bail, pending inquire his contact with the PO should continue...It is the PO who will be the Juveniles guidance, and lead to the Juvenile's self-realization of his wrongs and the will not to repeat the sami on release after completion of inquiry.'⁷ JJB are meant to resolve cases within a four months period. Effort shall be made to release the juvenile on bail or probation. Under the JJA, 2000 the maximum sentence for a juvenile who has broken the law is three years in a protective home, no matter how serious the crime is.

The roles of aftercare organization are not less important. 'After care organizations are for the care, guidance and protection of Juveniles in conflict with law or children in need of care and protection who have completed their terms in the Special Homes or Children's Homes and their rehabilitation process is not completed. Aftercare is the means and rehabilitation is the end.'⁸ After care organization shall enable such children to adapt to the society and encourage them to live a normal life. An amendment was made to the Act in 2006, with main emphasis on speeding up the administration of Justice for Juvenile and Model Rules 2007 and that amendment in the Act has further added to the effectiveness of this welfare legislation. 'The Model Rules under the Juvenile Justice Act provide that the state Government shall provide for training for personnel of each category of staff in keeping with their statutory responsibilities and specific job requirements.'⁹ Based on the resolution passed in the conference of Chief Justice of India 2009, several High Courts constituted 'Juvenile Justice Committees' to be headed by sitting judges of High Courts. Juvenile Justice Act was further amended in 2011 and some provisions laid down in the Act were deleted as these provisions were discriminatory to the persons affected from leprosy. The Government of India is once again contemplating for further amendments and the draft Bill is pending before Ministry of Law and Justice for scrutiny.

In spite of having such a comprehensive law in India, it is often felt that there is an inherent risk of violation of child's rights within the Juvenile Justice system. 'There is a growing feeling that the police should be more serious in the case of children who need special care and these feeling comes mainly from an international thinking in favour of the police action for the welfare of neglected children.'¹⁰ In our country, there is not much awareness about proper implementation of the legislation. Child 'in need of care and protection' are continued to languish in poorly managed institutions and child 'in conflict with law' are to be treated as criminals. 'Once again a 'child-friendly' police system need to be ensured through ongoing sensitivity trainings.'¹⁰ The improvement of 'child friendly' juvenile justice system is a gradual process, which requires intensive follow-up and long-term commitment.

Juvenile Justice System abetting crimes by minors?

In spite of the presence of careful child acts, the last decade has seen a huge leap in the rate of juvenile offenders in India. According to the latest National Crime Records Bureau, crimes committed by juveniles constituted 1.2% of the total crimes reported to police in 2012. Crimes committed by juveniles have increased by 85% between 2001 and 2011.

In 2012, police in India charged 27,936 juveniles for alleged involvement in crimes including murder, rape and rioting, according to NCRB. Among those who face Juvenile Justice Boards in 2012, two third (66.6%) were aged between 16 and 18 years, according to NCRB data. According to the NCRB¹² data, 485 juveniles were involved in rape cases in 2002 and the figure swelled to 1,175 in 2012. But the alarming facts that the delinquent activities have also been plummeting. Worse still, youngsters, are not just committing petty crimes, but rather heinous crimes like rape and murder. It gets tough for the police to deal with juvenile offenders because the law possesses a lot of restrictions. Some glimpses of delinquent activities in different corners of our country are mentioned hereunder:

October, 2012: A 16 year old Delhi boy killed a 4 year old boy.

Dec., 2012: A 23 year old medical student is raped by six men, one of whom is juvenile.

August, 2013: A 22 year old photojournalist is raped by five men at Shakti Mills in Mumbai. One of the suspects is under 18.

September, 2013: A 12 year old girl is raped by five boys' ages between 12-16 years.¹³

One of the six men involved in the Nirbhaya gang-rape¹² in Delhi, was a juvenile at the time of committing the crime. The juvenile will walk away a free man after three years at a reformatory home as per the Juvenile Justice Act. Members of the All India Mahila Sanskritik Sangathan staged a demonstration in the city to protest against an order passed by the JJB in New Delhi directing a 17-year old convict in the gang-rape of a 23-year old physiotherapy student to undergo three years, the maximum tenure prescribed under the JJ Act, in a Correctional Home. The protestors called for more stringent punishment to the offender. There were demands from some in India to reduce the upper age limit for juveniles from 18 to 16, in light of the Delhi gang rape case. However, child rights activists said that changing this section of the law in response to a public outcry over few cases, would be a regressive step. In July, the Supreme Court dismissed eight petitions brought by the public asking Supreme Court to rule that crimes of rape and murder committed by juveniles should be punished under adult laws and that the upper age limit for juveniles be lowered to 16. But a subsequent petition-currently being considered by the Supreme Court, asks judges to consider the mental maturity of the juvenile delinquents instead of his or her age in cases where a young person is accused of involvement in a particularly serious crime. Juvenility is mainly a state of mind, and not only a state of body.

We may now take a look at the causes and types of Juvenile Crimes seen in our society.

Types of Juvenile Delinquency:

Juveniles are capable of committing the same crimes as adults. Because of the offender's status as minor, their acts are considered to be delinquent. There are three major categories of juvenile delinquency: (a) violent crimes which result in bodily injury, such as assault, rape, murder; (b) property crimes are committed when a juvenile uses force or threat of force to obtain the property of others and (c) Drug-related crimes involve the possession or sale of illegal narcotics. These three types of delinquency are listed in the documents of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Different classifications of Juvenile delinquency and delinquents have been given by various authors. A few important classifications are given below:

Eaton and Polk¹⁴ in 'Measuring Delinquency' classified the following kinds of juvenile offences:

- i) Minor violations which include minor traffic violation,
- ii) Property violations,
- iii) Major traffic violations which include automobile theft,
- iv) Human addiction which include alcohol and drug addiction,
- v) Bodily harm which include homicide offences.

Ferdinand¹⁵ in his “The offence Patterns and Family structure of Urban, village and Rural Delinquents’ presented two categories of juvenile offenders as follows:

- 1. Neurotic offenders’ delinquency is the result of powerful unconscious impulses, and
- 2. Character Disorder offenders who come from disorganized family and have had a barren environment in their childhood.

In ‘Juvenile Delinquency; Concept and Control’, Trojannovicz¹⁶ mentioned juvenile offenders in the five categories. They are: a) Gang-organized and Collective Delinquency, b) Unsocialized-aggressive Boys, c) Accidental Offender, d) Occasional Delinquency and e) Professional Delinquency.

Schafer¹⁷ in ‘Introduction To Criminology’ envisaged four types of Juvenile delinquents:

- 1. Mentally defective who involved in petty crimes;
- 2. Situational offenders whose delinquency is precipitated by a crisis or external event;
- 3. Psychotic offenders do not have contact with reality; and
- 4. Cultural offenders who live in an economically and socially deprived condition.

Causes of Juvenile Crimes:

There is no single cause of Juvenile crimes, but there are many and varied causes. Basically, causes of Juvenile delinquency may be of three types:

A. Biological Causes: Biological problems such as speech and hearing problems, irritation, excessive strength etc. may lead to delinquency.

B. Socio-Environmental Causes:

- 1. Mobility: Migration of persons to a new place where they are strangers offers them opportunity for crime.
- 2. Cultural conflicts: Cultural conflicts between inhabitants are immigrants’ results in deviant behaviour and enormous increase in crime.
- 3. Family background:
 - i) Family structure: The nature and structure of the family are largely responsible for carving out the personality and that personality makes up of the children. A functionally adequate family encourages growth, confidence, frankness and ability to face reality. ‘..The young human being needs to remain emotionally dependent on a mother figure for a considerable number

of years. Without this attachment we know that children have difficulties in formation early relationship with other children.¹⁸ Delinquents mostly come from functionally inadequate homes.

ii) **Broken Homes:** Broken Homes means a home where either of the parents is dead or living separately. In such situations, the child feels insecure and thereby finds his way on the cross roads. He is exposed to the anti-social activities, which he adopts to satisfy himself and in the process, he is led towards delinquency.

iii) *Child's Birth order is the family:* It is found that the intermediate children are attended less by parents as compared to the oldest and youngest children who lead the intermediate children towards delinquency.

iv) **Parent-child Relationship:**

Misunderstandings, hard feelings, insufficient love and open conflicts between parents and child results in dissatisfaction and hostility in the child. Subsequently, such dissatisfaction and hostility precipitates social deviance. Alcoholic parents and constant quarrel between parents make the home environment intolerable for the children that lead to delinquent behaviour of the child. Even excessive punishment also leads to child's involvement in anti-social activities because of his feelings of frustration. Parents are responsible for teaching their children how to live in a normal life within their limits.

4. Socio-economic condition:

The poverty contributes a major factor in commission of crime. Now-a-days, money is the parameter to measure the social status of a man in society. The crimes in the high circle of society easily are covered up through money. The rich-poor divide is considered to be instrumental in promoting youth crime.

C. Psychological factor:

Certain mental disorders that involve difficulties in the regulation of emotions and impulsive behaviour make children prone to criminal behaviour. Even depression can lead a person to adopt criminal ways. It acts as a vent to one's suppressed anger and aggression.

D. Others:

A few others causes of Juvenile crime may be noted as under:

i) Bad company; ii) Extra-pocket money; iii) Revenge factor; iv) Poor literacy rate; v) Over exposure to media, vi) Lack of values; vii) Cheap literature; viii) Love of adventures; ix) Early sex experience; and x) Mental conflicts etc.

Preventing Juvenile Delinquency:

It is widely proved that early-phase intervention represents the best approach to preventing juvenile delinquency. In order to prevent juvenile crime's we have to deal not only with maladjusted children whose difficulties bring them before law but also with those who while not violating laws are disturbing others in school and other places. First of all, we should identify such juveniles and thereafter give them treatment. Prevention requires individual, group, organizational efforts that aims at keeping aimed at keeping juveniles from breaking the law. Through the economic sector, development programmes with the professional training, vocational educations are the areas which can help and prevent youth involvement in

delinquent activities. In legal application of JJA it is vital for the authorities to be involved in the Juvenile justice system to build effective partnership with civil society. Involvements of NGOs and local communities can also help in preventing juvenile gang delinquency. Government should put more emphasis on attractive beneficial long-term schemes for juveniles so that they regain their self-confidence and feel motivated to join main stream of the society.

Conclusion

From the above discussion we can say that serious crimes like rape and murders also go unpunished with the offender wearing the grab of juvenility. So, an amendment in the existing act is definitely necessary. But juvenile crimes can not be stopped only through the proper implementation and amendments of Juvenile Justice Act. It is vital to make aware of civil society about this disease that exists in our sick society. Juveniles involved in crimes are not criminals, in fact, they are victims of society. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home and in school. Parents and teachers play a significant role in nurturing the mind of a child. Instead of labeling them as 'criminals' or 'delinquents'- steps need to be taken to give them a scope of rectification and it would be better if the errors in their lives (involving social and psychological) are brought to their notices. The problem of child crime like many other social evils is linked up with the imperfections and maladjustment of our society. The ideal is gradually gaining wider acceptance that juvenile delinquent needs the sympathy and understanding of our society and not the heavy hand of the law.

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