

“JUVENILE JUSTICE SYSTEM: JUSTICE THAT IS REHABILITATIVE?”

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INTRODUCTION

Children are accepted worldwide as supremely assets of the state. India is a developing country. In world's largest democracy, the largest child population of any country in the world, with approximately 450 million children under the age of 18. It has been recognized that children and young adults are a major human resource for development and key agents for collective social change. Juvenile Justice aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults. The Act came into force from 15 January 2016. Crime by juveniles is a harsh reality in India. In recent times juveniles were found to be involved in most heinous of the crimes such as murder and gang rape. It's a disturbing trend and society as a whole is anguished by such criminal acts by children. Many experts believe that the present law is inadequate to deal with the situation and we need changes in it so that for heinous crimes juveniles may also be tried and punished as adults. But there are views in opposition as well which do not subscribe to this view. A juvenile can be detained only for a maximum period of 3 years irrespective of the gravity of offence committed by him and he will be remanded to 'Special Home'. The Juvenile Justice (Care and Protection) Act, 2000 provides immunity to the child who is less than 18 Years of age at the time of the commission of the alleged offence from trial through Criminal Court or any punishment under Criminal Law in view of Section 17 of the Act. Recently due to major hue and cry in public against the increasing number of crimes being committed by the juveniles, the Government has decided to present the proposed amendment in law in the current Parliament itself. This amendment would have far reaching effects on our criminal justice system. Major changes have been imposed in the new amendment Act.

MEANING OF TERM JUVENILE

The definition of the term 'Juvenile' as per the act is that a "Juvenile" or "Child" means a person who has not completed eighteen years of age. According to International Law, a 'Child' means

every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC). Section 2 (k)3 of the Juvenile Justice (Care and Protection of Children) Act, 2000¹ defines “juvenile” or “Child” as a person who has not completed eighteenth year of age. The term “juvenile” has been defined under various legal legislations as per Child Labor (Prohibition and Regulation) Act, 1986 Section 2 (ii),² “Child” means a person who has not completed the age of 14 years. As per Child Marriage Restraint Act, 1929. Section 2 (a),³ “Child” means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. Going by the definition given under Immoral Traffic (Prevention) Act, 1956. Section 2 (a)⁴, “Child” means a person who has not completed the age of sixteen years.

JUVENILE JUSTICE SYSTEM

Juvenile Justice System has been framed and shaped by laws and is driven by local practices. Children and youth coming into this system are arrested and after the arrest they are screened and diagnosed by various organizations and the individuals. The main goal and outcome of the system is to make the youth accountable, prevent crimes and providing rehabilitation to the youth and avoiding dangers for the youth. It has become the natural part of adolescence of getting into the trouble and getting punished. For, some of the teenager’s punishment is worse than the crime. Youth suffer from multiple medical and psychological health problems in the criminal justice system. The major reason that troubled teens end up in the courts is the social barriers they face in their communities where families lack basic services for their mental health and social support from the society. There are no rehabilitation programs in their neighborhood, and less privileged youth are not considered lucky. The NJDC found that, nationwide, “no state guarantees lawyers for every child during interrogation, some of the major problems that are faced by the juvenile criminals are “racial discriminations, punitive conditions, detention before the trial and over criminalization. Some racial disparity that exists in adult facilities also exists in juvenile detention. Through various studies it has been found that Juveniles and adults face various problems such as many adults are detained in jails unnecessarily, thousands of children and the adolescents in detention center are without even being found delinquent as they are found locked up in large numbers for the nonviolent offenses. Each year, more than 2 million children, youth, and young adults formally come into contact with the juvenile justice system. Of

¹ Section 2(k) of Care and Protection of Children Act, 2000

² Child Labor (Prohibition and Regulation) Act, 1986

³ Child Marriage Restraint Act, 1929.

⁴ Immoral Traffic (Prevention) Act, 1956

those children, youth, and young adults, a large number (65–70 percent) have at least one diagnosable mental health need, and 20–25 percent have serious emotional issues. Over two-thirds of youth involved with the juvenile justice system experience mental health problems, most of whom can be safely and more effectively treated in community settings than in the juvenile justice system. Juvenile crime is one of the nation's serious problems. Concern about it is widely shared by federal, state, and local government officials and by the public. In recent years, this concern has grown with the dramatic rise in juvenile violence that began in the mid-1980s and peaked in the early 1990s. Although juvenile crime rates appear to have fallen since the mid-1990s, this decrease has not alleviated the concern. Many states began taking a tougher legislative stance toward juveniles in the late 1970s and early 1980s, a period during which juvenile crime rates were stable or falling slightly, and federal reformers were urging prevention and less punitive measures. Some of the dissonance between the federal agenda and what was happening in the states at that time may have been caused by significant changes in legal procedures that made juvenile court processes more similar—though not identical—to those in criminal (adult) court. The main response to the most recent spike in violent juvenile crime has been enactment of laws that further blur distinctions between juvenile courts and adult courts. States continued to toughen their juvenile crime laws in recent years, making sentencing more punitive, expanding allowable transfers to criminal (adult) court, or doing away with some of the confidentiality safeguards of juvenile court. Many such changes were enacted after the juvenile violent crime rate had already begun to fall.⁵ The rehabilitative model embodied in the Juvenile Justice and Delinquency Prevention Act of 1974, focusing on the needs of the young offender, has lost ever more ground over the past 20 years to punitive models that focus mainly on the offense committed. Juvenile justice is the area of criminal law applicable to persons not old enough to be held responsible for criminal acts. In most states, the age for criminal culpability is set at 18 years. Juvenile law is mainly governed by state law and most states have enacted a juvenile code. The main goal of the juvenile justice system is rehabilitation rather than punishment. Juvenile justice basically means to give justice to the children or the juvenile who has attained an age of 16-18. The main purpose of rendering juvenile justice is not to punish the juveniles rather to rehabilitate. Juvenile justice is a wider concept which talks about juvenile delinquencies. There are various provisions that have been amended and new laws have been implemented after various cases and crimes that have been committed by the juveniles. There are juveniles who are “juveniles in conflict with law” who are alleged to have committed an offence.⁶

⁵ Mehta, N. *Child Protection and Juvenile Justice System, Mumbai*, Childline India Foundation, 2008

⁶ Vedackumchery, J. *The Police and Delinquency in India*, New Delhi, APH Publishing, 1996

JUVENILE OFFENDING AND ADULT OFFENDING

It is widely accepted that crime is committed disproportionately by young people. Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population group. In 2007–08, the offending rate for persons aged 15 to 19 years was four times the rate for offenders aged more than 19 years (6,387 and 1,818 per 100,000 respectively; AIC 2010). Offender rates have been consistently highest among persons aged 15 to 19 years and lowest among those aged 25 years and over. Juveniles are responsible for the majority of recorded crime. On the contrary, police data indicate that juveniles (10 to 17 year olds) comprise a minority of all offenders who come into contact with the police. This is primarily because offending ‘peaks’ in late adolescence, when young people are aged 18 to 19 years and are no longer legally defined as juveniles. The proportion of all alleged offending that is attributed to juveniles varies across jurisdictions and is impacted by the counting measures that police in each state and territory use. The most recent data available for each jurisdiction indicate that: Juveniles comprised 21 percent of all offenders processed by Victoria Police during the 2008–09 financial year (Victoria Police 2009); Queensland police apprehended juveniles (10 to 17 year olds) in relation to 18 percent of all offences during the 2008–09 financial year (Queensland Police Service 2009); juveniles comprised 16 percent of all persons arrested in the Australian Capital Territory during the 2008–09 period (AFP 2009); Eighteen percent of all accused persons in South Australia during 2007–08 were juveniles (South Australia Police 2008); Juveniles were apprehended in relation to 13 percent of offence counts in Western Australia during 2006 (Fernandez et al. 2009); and In the Northern Territory during 2008–09, eight percent of persons apprehended by the police were juveniles (NTPF&ES 2009). Juvenile offenders differ from adult offenders in a variety of ways, and as this paper has described, juveniles’ offending profiles differ from adults’ offending profiles. In comparison with adults, juveniles tend to be over-represented as the perpetrators of certain crimes (example: graffiti and fare evasion) and under-represented as the perpetrators of others (example: fraud, road traffic offences and crimes of serious violence). In addition, by comparison with adults, juveniles are at increased risk of victimization (by adults and other juveniles), stigmatization by the criminal justice system and peer contagion. Due to their immaturity, juveniles are also at increased risk of a range of psychosocial problems (such as mental health and alcohol and other drug problems) that can lead to and/or compound offending behavior. Some of the key characteristics of Australia’s juvenile justice systems (including a focus on welfare-oriented measures, the use of detention as a last resort, naming prohibitions and measures to address juveniles’ criminogenic needs) have been developed in recognition of these important differences between adult and juvenile offenders. It should be

noted, however, that while juvenile offenders differ from adults in relation to a range of factors, juvenile offenders are a heterogeneous population themselves. Sex, age and Indigenous status, for example, play a part in shaping juveniles' offending behavior and criminogenic needs and these characteristics should be considered when responding to juvenile crime. The seriousness of offences committed by juveniles is taken into consideration under the JJ Act and Rules in the following ways: Juveniles who are not released on bail, are required to be first placed in the reception unit of an institution called the Observation Home (OH), pending inquiry, Here along with age, physical and mental status, the degree of offence allegedly committed is also considered in order to classify and segregate the juveniles so that all children residing there get the requisite care and protection while in the Home.⁷ Juveniles who are alleged to have committed a serious offence may also be housed in a place of safety,⁸ instead of the OH during the period of inquiry.⁹ The State Governments have been empowered to frame Rules to provide for the classification and segregation of juveniles also in Special Homes (SH) (institutions where a juvenile may be placed as per a final order of the JJB) on the basis of age, the nature of offence committed, and their mental and physical status.¹⁰ The JJB can also pass a final protective custody order¹¹ that a juvenile above 16 years of age who has committed an offence "so serious in nature" that it would not be in his interest or the interest of other juveniles in an SH to place him there and that none of the other measures specified would be suitable, be kept in a place of safety.¹² Juveniles who have been found guilty of committing heinous or serious offences can, at the most be sent to an SH for a maximum period of three years. At the time of passing final orders, the JJB can also reduce the period of stay if it satisfied that it is necessary to do so having regard to the nature of the offence and the circumstances of the case. Such juveniles, like all others, are entitled to be socially integrated/rehabilitated through adoption, foster care, and sponsorship and after care.¹³ After Care organizations are mandated by law to take care of juveniles after they leave the SH for the purpose of enabling them to lead an "honest, industrious and useful life"¹⁴, and 'to facilitate their transition from an institution-based life to mainstream society for social re-integration'¹⁵. Such after care can be provided for a maximum of three years, and for a juvenile between 17 and 18 years of age till he/she attains the age of 20 years. All juveniles in after care come under the jurisdiction of the JJB. The law demands that intensive individualized attention

⁷ Section 8(4) of JJ Act, 2000

⁸ Section 2(q) of JJ Act, 2000

⁹ Sec 12(3) of JJ Act, 2000

¹⁰ Section 9(4) of JJ Act, 2000

¹¹ Section 16(2) of JJ Act, 2000

¹² Proviso to section 16 of JJ Act, 2000.

¹³ Sec 40 of JJ Act, 2000

¹⁴ Sec 44(b) of JJ Act, 2000

¹⁵ Rule 38(1) of JJ Model Rules, 2007.

be provided to such juveniles. Probation Officers, the key duty bearers in this regard, are required to undertake a number of responsibilities that are vital to achieve the goals relating to juveniles who commit serious offences including developing various kinds of care plans, facilitating after care,¹⁶ and mentoring, monitoring, supervision, and reporting the progress of each juvenile. Individual Care Plans (ICPs) must be prepared for all juveniles within one month of their admission into an institution in order to ensure they get individualized attention in their journey towards reformation, rehabilitation, social mainstreaming and restoration back into the community. The JJBs are required to pass final orders based on these ICPs prepared by a probation officer or voluntary organization on the basis of interaction with the juvenile and his family where possible. Moreover, a Mental Health Care Plan, with recommendations from experts has to be maintained in every case file and integrated into the ICP of every juvenile. The Management Committees that are to be set up in every institution are also required to meet every month to consider and review the 'individual problems of juveniles..., provision of legal aid services and institutional adjustment'¹⁷, prepare Pre-release restoration plans, as well as post-release and follow up plans as part of the ICP for juveniles who completing their term of placement in a Fit Institution or SH and to also review these plans on a quarterly basis.¹⁸ Given that juveniles who commit serious crime are likely to have problems related to mental health and/or chemical dependency, if a juvenile appears to the JJB as being mentally ill, or addicted to alcohol or other drugs which leads to behavioral changes, an order can be passed directing that the child be sent to a psychiatric hospital/ nursing home. In such cases the JJB may, on the advice given in the certificate of discharge of the psychiatric hospital/nursing home, order to remove such juvenile to an Integrated Rehabilitation Centre for Addicts or similar centers maintained by the State Government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance). The law permits such removal to be made only for the period required for the in-patient treatment of such juvenile. India must adopt an idea of Restorative Justice which is basically about the Punishment above prison. Juveniles should be given punishment instead of keeping them in prison or just putting them behind the bars for a period of time. It is of no value. Culpable homicide is not a heinous offence that a juvenile must be hung to death or could be given lifetime imprisonment; rather he should be punished severely that he would remember that punishment for the rest of his life. Hence, India must look into the provisions of restorative justice. It is high time that restorative justice as practiced in many countries be introduced in India for addressing the anguish of the victims. Restorative justice

¹⁶ Sec 44 of JJ Act, 2000

¹⁷ Rule 55 (6) (a) (v), JJ Model Rules 2007.

¹⁸ Rule 50 (12) (c) and 17 (3), JJ Model Rules 2007.

focuses on rebuilding the broken relationship between the offender and victim by addressing the need of the victim to question the accused, to find answers to questions only the accused may answer, to seek apology from the offender, to have the wrongdoer right their wrong, to participate in the choice of order in the case. Even though the Juvenile Justice Act 2015 does not specifically provide for restorative justice, an individual care plan worked out with active participation and inputs from the victim's family may lead to better justice to the child and the victim's family.

CONCLUSION

Juvenile justice system is more concerned with the rehabilitation of its charges than is adult criminal justice. Rehabilitation in India is certainly an important factor, but it does not guarantee that after being released the juvenile will not go back to committing the crimes. Therefore, the need arises that the juvenile justice Act must be amended. Government must realize that there is a need to provide justice to the victim and not the criminals. In the heinous offences, offenders must not be left free to walk in the society. Juveniles must be tried as adults in the heinous offences and must be tried before the detention. To address the needs of the children, there have been many steps taken by the Government as Juvenile Justice Boards has been set up to fulfill the sensitive needs of the children. In order to improve the juvenile justice system in India, laws need to be updated to reflect the current understanding of the brain development and criminal behavior over the life course, such as raising the age of the jurisdiction of the juvenile courts and ending the prosecution, removing all the youth and adolescents from the adult prisons; pretrial detention should be limited. This paper has highlighted what are among the most viable ways of bringing current practices in line with India's promises with respect to children entering the country's juvenile justice system. The way forward should therefore be to demonstrate that the reformatory/rehabilitative/ model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it.
