



JUVENILE DELINQUENCY: RETRIBUTION OR REFORMATION?

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Abstract

The youth forms one of the most important backbones of a nation. Their personalities are the reflection of a nation's past, present and future. However, it is deeply saddening that the crime rate amongst juveniles is on a rise. The rate has increased across the globe and has a major percentage in India as well. The reasons can be numerous social background, poverty, lack of moral values, ineffectiveness of the education system, etc. What is even more worrisome is the way they are tried in the court of law. Since the person committing the crime is a juvenile, the scope of reformation broadens. However, with juveniles indulging in serious offences like terrorism, rape murder etc., the scope and equity of such a decision become highly questionable. Further, with remand homes serving as a ground for physical and mental exploitation, their credibility comes under the scanner. Our research aims at analysing the causes of juvenile crimes and gives a scrutiny of the Juvenile Justice Act, 2015 which is the principle legislation dealing with this subject. The research paper would also give an overview of the conditions of remand homes and prisons; and analyse whether such institutions would actually "reform" the future of the country. The paper would also give probable solutions to these problems and suggest reforms in the legal system. Lastly, we would analyse the approach and

legislation of various countries and give a comparative analysis with India.

Introduction

Nelson Mandela once said that "There can be no keener revelation of a society's soul than the way in which it treats its children." This holds the core for juvenile justice system across the world. Certain landmark cases have stated children as "a supremely important national asset"¹ and "the greatest gift of humanity"². Thus it is an accepted fact that the youth holds the key to our globe's future. However, with the present situation of juvenile crime across the world, the future of the globe seems bleak. As per "Statistical Year Book India 2017" released by Ministry of Statistics & Programme Implementation, the involvement of juveniles in heinous crimes such as Rape, Murder, Dacoity, etc. has increased since 2001. The report states that the juveniles convicted of crimes like rape, kidnapping and abduction has increased from 399 in 2001 to 1688 in 2015. The increase in juveniles convicted of dacoity from 122 to 1630 is heart-breaking. The increase in delinquents involved in rioting from 3196 to 6046. With such numbers, the law-makers as well as the citizens need to ponder over their moral compass. Before addressing the various issues pertaining to juvenile justice it would be prudent to consider what exactly constitutes a juvenile in India.

Concept of Juvenile Delinquency

The word juvenile originates from "juvenis", (in Latin) i.e young. In general a juvenile is a child who has been alleged to have

¹ Laxmikant Pandey vs. Union of India, 1984(2) SC 244, 249

² Bandhua Mukti Morcha vs. Union of India (1997) 10 SC 551-553



contravened some law which declares his/her acts as an offence. According to Section 2 (35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 juvenile means, “a child below the age of 18 years”. As far as delinquency is concerned it usually refers to a person who shows illegal behaviour and has deviated from course of normal social life. Etymologically, the term delinquency has been derived from the Latin word “delinquer” meaning “to omit”. The Roman used the term to refer to the failure of a person in case of performing the assigned duty or task. It was in 1484 when William Coxtton used the term “delinquent” to describe a person found guilty of customary offence. The word also found place in the famous Shakespearean play “Macbeth” in the year 1605. Thus while juvenile would refer to the age of the person accused, delinquency would pertain to the deviant behaviour of the person accused. Though the term “juvenile delinquency” is a fairly recent invention, the concept dates ages back. Socrates (470–399 BCE) has voiced the condition of the present youth through his ancient language - “The children now love luxury. They have bad manners, contempt for authority, they show disrespect for adults and love to talk rather than work or exercise. They no longer rise when adults enter the room. They contradict their parents, chatter in front of company, gobble down food at the table, and intimidate teachers.” Let’s fast forward the situation to today and focus particularly on India. The situation perhaps seems worse if not the same. Before we chalk out the solution, it would be better to understand the basis of the problem.

Reasons

A child when born is a blank slate. It would speak whatever you write and particularly do

whatever he/ she sees around them. Abraham Lincoln has said: “A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”. But is it actually in safe hands? A nation that prides itself to be the largest democracy of the world, nation which was once called the golden bird, a nation that was the “hub” of world education with universities like Nalanda and Taxila is unable to raise its youth in a healthy and secure environment. Ours is the very nation wherein a 23 year old youth- Bhagat Singh faced death in its very eyes. And ours is the very nation where teenagers were turned into revolutionaries in the Chittagong uprising. Ours is also a nation where a juvenile was involved in brutally raping a woman in a moving bus. This raises a serious question on our progress a “modern” country.

A criminal is not a born criminal, there is a journey that he/ she completes before reaching such a stage. We as stakeholders of law come at a much later stage. According to various sociologists and psychologists the social as well as the emotional environment around a child play a crucial role in its development. A discrepancy in their upbringing would take years of correction. Therefore the causes of juvenile delinquency need to be seen in their socio-emotional environment. As already mentioned juvenile is a person below 18 years of age but has been charged with an offence usually committed by adults. So it is quite clear that juvenile delinquency is also a part of all those



behavioural change that occurs in a person's life while passing the stormy phase of adolescence, though it is not found in every adolescent³. The proportion of delinquency would vary from one individual to another. Psychologists usually refer to adolescents as a turbulent phase wherein one passes through rapid revolutionary changes in one's physical, mental, moral, and spiritual, sex and social outlook. They become emotionally unstable and frequent mood change is observed. It is the period of anxieties, worries, conflicts and complexities⁴. Change is the most constant phenomena, but what makes this change so cataclysmic in case of certain children. Psychologists across the world have tried to figure out these phenomena and therefore it has led the formation of various schools. Firstly we have the biological and psychological school in criminology which lays emphasis on the interrelatedness between the delinquent's physical constitution, biological factors and psychological personality traits. The school states that the resultant deviation in the behaviour is due to one's nervous system, endocrine system and physical constitution. In addition, the "biological" school in criminology ascribes considerable importance to genetic inheritance of criminal disposition as well as to a genetic anomaly in human chromosomes⁵. The proponents of this approach were Lombroso, Garofalo, Tappan, Kretschmer and Sheldon. Lombroso once posed a question- "How can an unhappy child protect himself/herself from the evil which is displayed in the brightest colours or, even worse, which is imposed by parental

authority or bad example given by a parent or another person responsible for the child's upbringing?" therefore are merely punishing a delinquent of being "unhappy". So are we merely punishing delinquents for having a physiological imbalance? Such is not the case. The biological school is therefore criticised in this regard. An over-emphasis on hormonal imbalance would be unnecessary. It would be prudent to club them with psychological factors which are influenced by the emotional, social and financial environment in which one is raised. The criminologists belonging to the psychological school in criminology agree that the child who experiences any sort of abuse or neglect, or any other form of child-threatening behaviour, may consequently exhibit pathological disobedience⁶. Disobedience, which is quite common among adolescents, is a constant transfer of unfulfilled childhood desires into aggressive behaviour. Further, immoral acts of the parents too jeopardise with the psychic of the child. Lombroso, noticed that a number of criminal offenders were either born out of wedlock by "sinful" parents or were orphans. Further it has been found that children usually imitate the immoral activities of the parents. This has been proved by Albert Bandura through his classical Bobo Doll studies. In this experiment children witnessed adults play with a rubber, inflated toy. The adults either behaved aggressively towards the doll, such as hitting it with a hammer, or kicking it, or interacted peacefully with the

³ Dr. Tomba Chingtham, Causes of Juvenile Delinquency in the Higher Secondary School Students, IOSR Journal of Research & Method in Education (IOSR-JRME) , 20, 20 (2015)

⁴ Supra

⁵ Miomira Kostić, Biological And Psychological Theories On Juvenile Delinquency, Law and Politics (Facta Universitatis) ,1, 3 (2013)

⁶ Supra



doll⁷. The crux of Bandura's social learning theory is that children (and adults new to situations) learn from others in the environment how to behave⁸. Thus we can safely conclude that violent and abusive childhood; unhealthy parenting; bad company play a key role in developing delinquents.

However apart from psychological and physiological factors, several social factors too play a major role. The most commonly held cause for delinquency has been held to be homelessness and poverty. However, urban towns offer a very contrary picture. An analysis of the family background of juveniles arrested in 2016 shows that 38,061 or 86% of the 44,171 minors apprehended lived with their parents; while another 4,550 (10.3%) lived with guardians. Only 1,560 of them were homeless. Child Rights Trust director Nagasimha G Rao stated that "The social environment is changing constantly. The way children spend time in schools is changing, with less friendship and more competition; parents have less time to give their children and we see a lot of cases where children come from families that have no financial problems, which indicates that the problem is something else." It is here that social institutions such as schools come forward. After one's parents, a child spends most of the time in school. According to Pathak, "School is usually thought as a constructive agency but when it fails to perform its designated functions, it may become by virtue of its negligence, a main

contributor to delinquency.⁹" Schools now days have become a ground for drug abuse and criminal activities. Further the education system being increasingly job oriented rather than being knowledge oriented fails to provide any morals to the students. This therefore leads to activities like drug abuse, peer pressure and sexual abuse. The last nail in the coffin is inserted by the media. Media particularly movies are a source of great influence upon the youth. However the increase in the objectification of women in films leaves no room for a substance based media. Another pillar of the media is the newspaper. The constant emphasis on sexual violence, dacoity, robbery, theft, murder etc puts a negative influence on the youth. Jerome Motto, says that "newspaper is one of the factors in encouraging suicide". He relied on his research result, "that suicide rate in the Detroit area dropped by 20% during the ten months strike when newspapers were not available". Lastly easy access to pornography influences the youth to indulge in sexual crimes.

Legal Aspect

The primary legislation dealing with juvenile justice is Juvenile Justice (Care & Protection) Act 2015. The act was introduced in 2000. India redesign there court system and formed a new act. The old law which governed the minor delinquents was known as Juvenile Justice Act 1986 and was in conformity with the UN. This was however replaced by the act introduced in 2000. This law was later amended in 2006 and new ideas of vocational

⁷ Nathan A Heflick, Children Learn Aggression From Parents, Raising more peaceful children, (October, 1st 2019, 03:31PM) <https://www.psychologytoday.com/us/blog/the-big-questions/201111/children-learn-aggression-parents>

⁸ Supra

⁹ Shipra Lavania, 'Juvenile Delinquency' 1517 (1983)



programs and apprenticeships were introduced. From then onwards volunteer organizations have been allowed to work with the offender and to provide them work opportunity, job experience and education. The act was again amended in 2015, now it allows children between the age of 16-18 to be tried as adults if accused of some serious crime like murder and rape. Age of offender in this regard has always been a major point of debate. Under section 82 of Indian Penal Code children up to 7 years of age are considered to be *dole incapax*. This means that children below a certain age are incapable of determining their intent and consequences of the crime committed. Thus immunity is granted on the grounds that they lack the requisite *mens rea*. The 2015 act has however changed the age cap. Now a new bracket has been introduced i.e a person between the age of 16-18 can be tried as an adult in case of heinous crimes. The act further makes a demarcation between children in need of care and protection and children in conflict with law. While the former includes children who are in adverse conditions, requiring state support to become responsible citizens, the later are those children who have committed crimes. This can become more clear through Maneka Gandhi's statement while debating this act in the parliament- In one case, there is a child whose drunken father beats his mother everyday and inflicts pain on him and his siblings by stubbing cigarettes on their body. One day the child hits back at the father which leads to his death. In another case, few

boys of 16 years of age drug a seven-year-old girl and kidnap her. She is kept in a field for three days and is repeatedly raped by these young boys. While in the previous laws, the perpetrators would be left in both the cases by virtue of being "juvenile", in the present scenario the later would be held guilty and tried as an adult. Thus, the intent the acts of the accused have been given prime importance. However our question pertains to the fact whether intent can be judged on the basis of age? What would happen to an accused, who is below the age of 16 years? Assuming 3, 15 year old boys have been charged of rape¹⁰. What would be the possible recourse in that case? As per the provisions of the present law they would be sent to a reform home. Therefore, the entire purpose of reprimanding those in "conflict with law" is defeated. With the advancement in technology and easy access to information, the youth of today is more aware about the various aspects of their personality. This includes ones sexual urges. Hence juveniles in case of rape cannot be tried through a hard fast rule of age. In case of offences like theft and counterfeiting the prime motive might be to make money. However the nature of sexual offences is completely different.

Another aspect of this act is the observation homes. Section 39 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 states "*For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released*

¹⁰ Unknown, India schoolboys arrested for gang-raping classmate (October, 2nd 2019, 10:00AM) <https://www.bbc.com/news/world-asia-india-34941639>



on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.” Further section 39(3) of the Acts states that, “The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.”

However whether these observation homes actually act as reformative agents is a big question. Several cases of sexual assaults have been reported. For instance during individual counselling sessions at DSCH (David Sassoon Children's Home), it was noticed that lots of children had been groomed into the sexual abuse process, and many didn't realise they had been victims of the same. With time it was seen that many juveniles had themselves become perpetrators and the authorities even after being aware of such happenings had turned a blind eye. Another issue pertaining to these homes is that in practice children accused of heinous crimes and those accused of serious or petty crimes are made to stay together. The treatment towards both these categories is different. While a child in need of care of protection would be treated with love and affection; a child in conflict with law would be treated more harshly. Thus, preferential treatment towards the former would lead to frustration in the mind of the latter. Further it has been found that more than 15 children are meant to stay together in one room due to lack of infrastructure. This leads to health issues and violent behaviour. What we fail to understand is that these children often come from financially vulnerable backgrounds.

Keeping them in such dilapidated conditions would just reinforce negative behaviour. Lastly these homes lack proper administration in terms of the children's daily routine. It has been observed that most children lack a proper daily routine due to which they are sitting idle most of times. Thus the noble intent behind setting up observation homes has been seriously jeopardised by lacklustre enforcement.

Retribution or Reformation?

The entire nation was in shock after the horrific Nirbhaya incident and equally shocking was the involvement of a 17 year old. The incident triggered a debate surrounding the need to alter the juvenile justice system and reduce the age limit of a juvenile offender to be tried as an adult from 18. Prior to this even if the juvenile had committed a heinous offence, he/she cannot be tried like a hardened criminal. In response to this lacuna, the government passed the Juvenile Justice Bill (Care and Protection of Children) 2015 and thereby allowing the minors in the age groups of 16-18 to be tried as adult in case they commit heinous crimes. Punitive action on the part of the courts usually serves four purposes. They form the 4 theories of punishment. First theory of punishment is the deterrent theory. This tends to protect the entire society from following the footsteps of criminal. Giving punishment for a crime leads to negative conditioning of the people. They form a clear opinion about what is wrong and what is right. Thus the purpose of the deterrent theory is to show the futility of crimes in the society. Secondly, we have the retributive theory. This serves the vindictive side of the society. Any person wronged would want the offender to be punished. Therefore the entire purpose of retribution is to punish the



offender and make him pay for his follies. The third theory of punishment is preventive theory. Herein the punishment is given in order to prevent the further commission of the crime by the criminal itself. Lastly and perhaps the essence of juvenile justice is the reformatory theory. Herein the offender is punished with an attempt to re-educate the criminal. Our juvenile justice system is based on the reformatory theory. It is believed that since the person committing the crime is below the age of 18 years, there is a scope for re-altering the discrepancy of the mind. However, with the recent amendment, the system would now be able to successfully balance the reformatory approach with the other approaches of punishment. The youth of today live in an extremely globalised era wherein the acts of one can be easily imitated by the other. Thus in order to deter the rest of the youth it is important to punish the perpetrators irrespective of age especially in sexual offences. Further, the amendment needs to be credited for introducing a victim centric approach in the juvenile system, whereby the interest of the victim as well as the society at large has been taken into consideration.

Juvenile Justice in USA and Pakistan¹¹

In present era, a movement for the special treatment of juvenile offender has started. There are many different legislation which are framed by the countries related to juvenile delinquency. Juvenile justice is a major concern across the globe, therefore what steps should be taken against a minor who has committed a criminal offence and what law to be made to reduce juvenile delinquency is a major task for law makers. So, different

countries have different laws for juvenile justice. Juvenile justice encompasses various aspects such as to ensure the safety, condition, treatment and proper care of a juvenile who is in the custody for committing the delinquent act. Juvenile age range varies from country to country as no universal standards are followed. United Nation made many efforts to unify the juvenile justice among the countries but despite many attempts failed.

Juvenile justice law in Pakistan: In Pakistan, Juvenile Justice System Ordinance was introduced in 2000. The act was made to protect the ill-treatment towards juvenile offenders.

As per the Pakistan Penal Code criminal responsibility for most of the offence is at 7 and section 83 lays down that any child between the age of 7 and 12 are considered to be doli incapax. In contrast to India any child arrested or detained who is below the age of fifteen and the offence is punishable with imprisonment of less than ten years shall be treated as if he was accused of the commission of a bailable offence. Further if a child is fifteen years and above is arrested, the court may refuse to grant bail if there are reasonable grounds to believe that such child was involved in heinous, gruesome offence or offence shocking to public and any time before offender convicted of an offence punishable with death or life imprisonment.

Juvenile justice in United States: The laws of US carry a glimpse of the Common Law system of UK by virtue of being a colony of Britain before independence. In 1825 New York House of Refugees were formed by the

¹¹ The reason behind taking Pakistan and United States was that Pakistan, like India is a developing country, while US is a developed nation.



United States for the prevention of juvenile delinquency. It was the first juvenile center in North America. This program expanded to various cities in US and in 1899 their first juvenile court took place 1899 in Cook County, Illinois. Guidelines were provided to the judges about the law but in due course of time exceptions were made, rules were broken and juvenile justice took a more flexible approach. Juvenile centers in America were criticized as they were not providing proper facilities and education and not taking proper measures to control the juvenile delinquency. Juveniles thus after completing their sentences would take to crimes again. The history of juvenile crime policy over the course of the twentieth century is a narrative about the transformation of the law's conception of young offenders. At the dawn of the juvenile court era in the late 19th century, most youths were tried and punished as adults. Judge Julian Mack famously proposed in a Harvard Law Review article that a juvenile offender should be treated "as a wise and merciful father handles his own child." Like the other progressive reformers who worked to establish the juvenile court, Judge Mark viewed youths involved in crime first and foremost as children; indeed, by his account, they were no different from children who were subject to parental abuse and neglect.¹² Presently, in United States, slogan "adult crime adult time" is being adopted. With regards to age presently, in 38 states of US, upper age of juveniles is seventeen years while in other three states it is fifteen years.

¹²Manmeet Singh, Juvenile Delinquency in India, U.K. and U.S.A (October , 2nd 2019, 05:10 PM) <http://www.legalservicesindia.com/article/2006/Juvenile-Delinquency-in-India,-U.K.-and-U.S.A.html>

¹³ Dr. Shivani Goswami & Dr. Neelu Mehra, Juvenile Justice Systems in United States and India: Modern

In heinous crimes even life imprisonment can be granted to child aged twelve years which is considered to be the maximum punishment¹³. Potential Juveniles who can commit serious offences are detained in a secured and sound environment and are further made to participate rehabilitative programs. Additionally rigorous punishments relating to drugs and gang related offences, stringent treatment such as boot camps and blended sentence have also been introduced to put them right¹⁴. As far as the jurisdiction part is concerned if a child usually 13 or 15 commits a grave and grim crime then their case is automatically shifted to adult court. Jurisdiction of juvenile courts is automatically waived in such cases¹⁵.

Suggestions

Observation homes are a combination of a preventive and reformative approach. However with the present condition they tend to defy both. What is required is a proper administration of these homes. For this we recommend that the government should conduct regular inspections. Further the authorities rather than being government employees consist of professional psychologists. Instead of employing psychologist for counselling only, they should be involved in the administration of these homes as well. There should be regular medical check- ups in these homes considering the poor sanitation conditions.

Violence against children endangers their fundamental human rights. It is therefore

Scenario and Much Needed Modifications, Journal of Law and Criminal Justice, 251, 254 (2014)

¹⁴ Supra

¹⁵ Supra



imperative to convince individuals and institutions to commit the time, money, expertise and other resources needed to address this global problem. A number of United Nations instrument reflects a preference for social rather than judicial approaches to controlling Juvenile Delinquency. The Riyadh Guidelines assert that the prevention of Juvenile Delinquency is an essential part of overall crime prevention in Society, and the United Nation Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) recommend instituting positive measures to strengthen a juvenile's overall well being and reduce the need for State intervention. Prevention requires individual, group and organizational efforts aimed at keeping adolescents from breaking the law. Thus keeping this in mind Government and Social organizations in India should work hand in hand to spread awareness about delinquent behavior. The awareness should not be restricted to educational institutions only but to places like slums, brothels etc. Furthermore countries across the world use various methods of discouraging delinquent and criminal behavior. While some focus on punitive prevention intended to instill fear in potential offenders by making sure they understand the possibility of severe punishment, or action that may be taken to

prevent recurrent crime, which includes explaining the negative aspects of an offence to a delinquent and attempting to reconcile offenders and their victims¹⁶.

As per the Riyadh Guidelines, "A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them." For instance in a number of towns in the United States the establishment of basketball programs for adolescents led to a decrease in the crime rate by 60%. Keeping this in mind regular vocational activities should be organized by correction homes by the India Government. Though certain homes do offer vocational and educational purposes, they are highly unorganized and lack regularity. Also programs for preventing gang delinquency should endeavor to integrate children and youth into organized group activities. This can be achieved through social service agencies or organizations such as the YMCA, YWCA, Girl Guides and Boy Scouts, as well as independent activities also serve this purpose¹⁷.

Thus we can conclude that, a law would not be sufficient to prevent delinquent behaviour. A collective effort by the society and government together needs to be taken in order to safeguard the future of our nation.

¹⁶ Ebere Sunday Chisom, Knowledge And Awareness Of Juvenile Delinquency Services By The Residence Of Nsukka Local Government Area (October, 2nd 2019, 4:30 PM)
https://www.researchgate.net/publication/306281208_KNOWLEDGE_AND_AWARENESS_OF_JUVENILE_DELINQUENCY_SERVICES_BY_THE_RESIDENCE_OF_NSUKKA_LOCAL_GOVERNMENT_AREA

¹⁷ United Nations. Dept. of Economic and Social Affairs, World Youth Report, 2003: The Global Situation of Young People (2003)