

UNDERSTANDING JUVENILE DELINQUENCY: CAUSES AND CONCERN



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"We are guilty of many errors and faults; But our worst crime is abandoning of children, Neglecting the fountain of life, many of the things we need can wait, The child cannot wait; Right now is the time, His bones are being formed, His blood is being made and his senses are being developed, To him, we cannot answer 'tomorrow'. His name is 'today'

**-By Golden words by Gabriel Mistral
(Nobel Prize winner from Chile)**

Abstract:

"Modern societies seem to look at young people in a rather ambivalent manner. The last decades of the twentieth century provided us with a couple of telling examples from several countries. On the one hand, the children and juveniles are viewed as needing care and protection. If they become delinquent, educational measures are seen to be the appropriate if not pivotal answer to the problems they are causing or may suffer from. This is the prevailing attitude among the general population in the majority of countries in the world, so long as the offences committed by youngsters do not rise steeply in numbers and remain petty or moderate in quality. On the other hand, more serious crimes cause public concerns, and may even spark outrage when considered to be disgraceful; even more when attributable to the youth with a history of repeat offending. Hence, the present study aims to examine the causes of juvenile delinquency, the approach towards their rehabilitation or reformation and the way they are treated by the present legal system.

Key words: Juvenile, Delinquency, Police, Child, Crime

Introduction

Delinquency in children is a very serious and complex problem which cannot easily be solved by law alone. This could very well be understood as an outcome of various factors namely socio-economic, cultural, environmental and political, which yet has not been addressed and identified. It has been found that any child who has suffered injury in the frontal cortex before age seven develop abnormal behaviour resulting in frustration, anger and aggression (Khushid, 2008) . Also according to the Neuro-Science this prefrontal cortex is that part of the brain which fully matures in the last. So, the background factors have greater impact on the development of the child. These factors can very well transform one into serious or hardcore offender of tomorrow. According to the United Nations Convention on the Rights of the Child and the United Nations standard Minimum Rules for the Administration of Juvenile Justice, Juvenile Justice System should respect the human rights of juveniles, pursue the best interest of juveniles and promote diversion systems or

community treatments for them (Sugano, 2008, p. 96) . If we take a look globally Canada's first national juvenile justice law also recognized that the children or the youths are distinct from adults and they should not be held accountable in the same manner for the violations of the criminal law as that the adults are. According to the various sources at the international level the legal framework which govern the treatment of children including its treatment by the judicial system also, should resemble the assessment of the best interest of the children. The various standards and practices for juvenile justice all-round are changing again. Following the period of the harsh punishments of juveniles often based on the notion that the juvenile who has committed adult crime should be sentenced to prison for the adult time has now been undergoing the substantial shifts. Juvenile justice Act marked the new beginning; it mirrored a sincere desire to realize the two folded constitutional aspirations i.e. the state obligation to provide ideal conditions for the development and also must act to protect them against exploitation and moral and material abandonment.

Notion of Juvenile Delinquency

According to the criminologists, juvenile delinquency encompasses all public wrongs committed by juveniles in the age group of 12 and 18 generally. Sociologists adopt a wider and a more comprehensive perception of juvenile delinquency. They believe that different violations of legal and social norms, from minor offences to serious crimes, committed by juveniles, come under the ambit of juvenile delinquency. It also covers the status crimes i.e. those actions which would not have been considered an offence had it been done by adults. But owing to the age of the juvenile, such an action is deemed to be an offence. As per the United Nations Guidelines for the Prevention of Juvenile Delinquency popularly called the Riyadh Guidelines "youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood". According to these guidelines a large number of adults have in the process of growing up indulges in some or the other type of delinquent behaviour. But such criminal transgressions haven't necessarily resulted in their taking up criminal careers, as they grew up. However there is always a subtle threat that such juveniles may at times result in the formation of stable criminal groups even as they mature into adults. Delinquency is primarily a group phenomenon which is generally resorted to by certain subcultures of young people who have jointly assumed a particular identity. Social cohesiveness is characteristic feature of peer groups of juvenile delinquents who collectively reject societal values and ethos. Furthermore, the period of transition from childhood to adulthood proves difficult and problematic both to the children and to the community .

There could be multiple theoretical underpinnings of juvenile delinquency. Sociologists generally associate juvenile delinquency with the condition of juveniles at home, their familial relations and the socialization that they undergo while growing up. Social relations and institutions which used to ensure a smooth process of socialization are rupturing and floundering fast and the young minds find themselves lost in the wilderness of the fast paced world. These juveniles often respond to the traumatizing and destructive changes in the social reality by engaging in deviant or criminal activities. Very often juvenile delinquency is the result of perceived insecurities of the child. The emergent identity crisis that the young ones experience while growing up can also push them into

the world of criminal activity. It is also to be noted that the ongoing process of rural migration and consequent urbanization is another major contributing factor behind juvenile delinquency. Urbanization leads to anonymity and thereby gives greater space for children to experiment with delinquent acts, without the threat of detection. Another factor contributing to juvenile delinquency is the failure of the social institutions to integrate the marginalized sections of the society into the mainstream. Those families which experience social exclusion often fail miserably to provide congenial atmosphere for their children. Their children thus fall prey to all sorts of delinquent forces. Juvenile delinquency can also see a rapid spurt concurrently with economic decline, political instability, and the weakening of major social institutions (including the State, welfare schemes and institutions). Thus we can safely conclude that any policy meant to deal with juvenile delinquency will be doomed to fail if family and community aren't made components of that policy. Any policy meant to combat the menace of juvenile deviancy must recognise the importance of family well-being.

Approach towards Juvenile delinquents

An ambience towards young people in trouble is not a new phenomenon in relation to justice for children. Crime constitutes the intentional commission of act usually deemed socially harmful or dangerous and specifically defined, prohibited and punishable under criminal law by virtue of their age and status of dependency on adults (Singh, 2003). A delinquent child has two statuses that of a child and that of offender. This dual status yields a dichotomous response from a community that wants to protect its children but be protected from its offenders. Juvenile justice policy in India is reflective of the constitutional mandate given under Article 15 that guarantees special attention to children through necessary and special laws, schemes and policies to safeguard their rights. The Constitution of India recognizes the vulnerable position of children and their legitimate claim to protection. The provisions of Section 82 and 83 Indian Penal Code, 1860 have also given protection to the children who have not attained sufficient maturity of understanding to judge the nature and consequences of his conduct. So, ever since then the child has been given proper protection and so it is said that 'A child below the age of 12 years is a blank canvas; he is neither a saint nor a devil'. He is nothing but the product of the environment around him. Thereafter in 1986, Parliament passed the Juvenile Justice Act (herein after JJA) for the whole country except the State of Jammu, thereby bringing in a uniform system of juvenile justice throughout the country. While it retained the scheme and primary features of the Children Act 1960, the JJA substituted the word "juvenile" for "child". It provided two separate authorities to deal with the two categories of delinquent and neglected children. The three new provisions provided for establishment of Advisory Boards, creation of a Children's Fund and appointment of visitors for each institution. In 2000, Parliament enacted the JJA 2000 as it found it "expedient to reenact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, 1989, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments (Addenwalla, 2006). It has been observed as a complete departure from the welfare approach. The cut-off age defining a child is different in various legislations. The issues

raised in relation to the age gives a glimpse of the complexity of this simple proposition. Every child has four rights namely; Right to protection, Right of survival, Right of development, Right to participation. The philosophy behind the act is not to punish a juvenile delinquent or neglected child but to bring him/her back to the mainstream and to ensure their above rights.

Ever since the Nirbhaya case shook the societal conscience in December, 2012 there has been a growing clamour to do away with any leniency that is shown towards the juveniles in cases of serious crime involving extreme depravity of thoughts and action. Not only the Nirbhaya case, but several other crimes committed by juveniles have left the society aghast and generated opprobrium against the juvenile delinquents. Henceforth, the latest transition in law is the passing of the Juvenile Justice Act of 2015. Here the juveniles in the age group of 16-18 years committing heinous offences are to be treated as like adult offenders. The Juvenile board will assess the mental and physical capacity of the juvenile to commit the heinous crime (provided under S. 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015 hereinafter JJ Act) and based on this preliminary assessment, the board will now decide whether to transfer the case to the Children's Court or the Session court (S. 2(20) of JJ Act, 2015) to be tried as an adult (S. S. 18(3).of JJ Act, 2015). Though no doubt the JJ Act is a step forward towards the protection and prevention of the offences committed by the juveniles in the manner provided above but still there exist lacunae's which proves the Act ineffective for different reasons because of the ineffective implementation of the provisions of the Act. Much of the ignorance relating to the system of juvenile justice was centred on the issue of age i.e. what will be the minimum age of criminal responsibility and the sentencing policy? Is there a difference lies between the age of criminal responsibility and the age for the juvenile justice responsibility? Why the age is legislatively fixed and not judicially determined? Even after various amendments the various issues relating to the juveniles like the issue of the age, the sentencing of the juveniles are still in public domain. There lies conflict between the protection of the juvenile offenders and the prevention of the crime by these offenders. Time and again because of the dynamic nature of the law the parliament has made efforts for bringing about the amendments in the law and so the law is very well existed in the today's scenario. Here the question lies in the fact that how effective it has proved? Whether there is loophole in the law or in the system itself? Debates are endless on the existing law and procedures for the juveniles but the time is for the reality check. In reality if we assess, the failure is on the part of various chains of agencies involved in providing justice to the child and resultantly an innocent child is at a higher risk of being punished and spoiled. The idea should be to adopt a child friendly approach in the adjudication and dispensing of matters in the best interest of children and for their ultimate rehabilitation through various institutions (Chaudhary, 2003).

Role of Agencies in combating Juvenile Delinquency

Judicial Trends:

The judiciary has always played an active and a supportive role for juveniles at the time of punishing an offending juvenile. . This is evident in the case of **Kakoo v. State of A.P (1976)^{viii}**. In this case a Kakoo named boy of 13 years of age has committed rape on a small child of two years. He convicted and sentenced for four years rigorous imprisonment. When this case reached the Apex court, the court adopting a humanitarian approach Justice Sarkaria observed that an excessive long

imprisonment term is sure to turn a juvenile delinquent into adamant criminal and has also laid emphasis that in case of child offenders current punitive trends appreciation a more humanitarian approach and so after the above observation and the proper reasoning reduced the sentence to only one year's rigorous imprisonment. Court was of the opinion that the juveniles are to be detained separately from adult prisoners, preferably in a reformatory school. From this time onwards the Supreme Court had got into the mould of sensitivity towards juvenile offenders and there was a series of judgments reducing sentences and expounding on the sentencing jurisprudence which was up till now indifferent to juveniles. This was the approach which was and now also being adopted by the judiciary in dealing with the cases involving juveniles in conflict with law.

Justice **Krishna Iyer** in case of **Satto v. State of Uttar Pradesh (1979)**^{ix} enunciated the "aim of criminal justice to be correction informed by compassion, not incarceration leading to degeneration. According to him in India the approach of the criminal law should be that the child offender be given humane nourishment and they should not be the target of harsh punishment. Upbraiding the state he points out the situations of the juvenile homes and their lack of orientation." There is a lot of discretion rests on the judges to consider the determination of the deprivation of the liberty of the juveniles. Krishna Iyer J. vehemently puts forth that it is time that the notion that secure detention is good for the child be thrown light on. He further submits that some legal absolutes seem imperative; jail for the juveniles should be forbidden; status offenders should not be put into safe custody; determinate limits should be set on how long a child can be detained before or after adjudication. He also relied on the "pre-sentence" reports which are emphasized by the United States Supreme Court in which before the imposition of sentence on the accused a report is submitted which consists of the background and surroundings of the defendant also along with the circumstances or the mental capacity the offence has been committed which will facilitate the sentence to be given to the juveniles in conflict with law. The judge has to assure that the proper course is adopted for the juveniles in conflict with law keeping in view the relevant information provided under the report.

In the case of **Salil Bali v. Union of India (2013)**^{xi} a three-judge bench judgment headed by Altamas Kabir C.J. the court analysed certain core issues regarding the juvenile in conflict with law. Court in the above case addressing the issue of the status of the juveniles has observed that though there are exceptions regarding the criminal behaviour of the juveniles in the age group of 16-18 years but according to the court observation such examples are not of such extents as to permit change as according to them it is better to try and reintegrate children into mainstream society rather than allow them to develop into hardened criminals. Later in the recent past in a case of **Dr Subramanian Swamy and others v. Raju Thr. Member Juvenile Justice Board & Another (2014)**^{xii} an appeal was filed by Dr Subramanian Swamy, he contended that with respect to the object and purpose behind the enactment, the true test of "juvility" is not the age but the mental maturity of the offender and so with this regard the Act should be read down in order to understand the above purpose and would save the Act from unconstitutionality. The court on the above arguments is of the opinion that works placed goes on to show that studies of adolescent brain composition clearly indicate that upto the age of 18 years regions of the brain that regulate such things as foresight, impulse control and resistance to peer pressure are in a developing stage. These are normative occurrences that a teenager cannot control and not an extreme illness or defect.

Here in the above discussions of the judicial opinion over the various contentions make us clear that the judiciary after going into the expand study is trying to understand the psyche of the juvenile. Considering them as the last resort for justice they are playing a compassionate and proactive role in keeping the balance in the society by giving just and equitable treatment to the juveniles in conflict with law. Let us keep our fingers crossed and wait for our Hon'ble Supreme Court for evaluating the provisions on the standards of our great and dynamic constitution and the various international obligations specially the UN Convention on the Rights of the Child (UNCRC) 1989.

Police Handling of Juveniles:

Law enforcement is the foremost task of the police and for that matter they should play a proactive role in preventing the criminal activities in the society. Especially with regard to the juveniles their approach should be more responsible in dealing with the delinquency. Police is the first agency which comes in contact with the juvenile delinquents and so their role plays a very important role in dealing with them. Special trainings should be given to them in order to understand the psychology of the juveniles. Many of the times the juveniles are forcedly pushed into the criminal activities so that the bigger criminals can get an escape from their criminal acts. So special attention is supposed to be given to these innocent juveniles who come in conflict with law unintentionally. For appropriate and effective dealing with the juvenile special and trained police unit is required. In the year 1955, first United Nations Congress was held in Geneva on the prevention of crimes and treatment of delinquents, which has pointed out that specially trained police officers should be appointed for this purposes, as the police is the first in contact with the delinquents and so they required special training and skill. Another point of action is of ensuring protection to the released juvenile delinquents against the threats and victimization by providing benevolent and obtrusive supervision. The 'Guidelines for Action on Children in the Criminal Justice System Recommended by Unites Nations Economic and Social Council' vide Resolution 1997/30 of 21 July 1997 are in line with the Beijing Rules, which has directed all the states to establish specialized unit in order to deal with the cases involving children. Also according to Clause 58 of the UN Guidelines for the Prevention of Juvenile Delinquency (hereinafter, "Riyadh Guidelines"), specialized police personnel must be trained in order to "respond to the requirements of child and should be familiar with the programmes and referral possibilities for the diversion of children from the justice system." Even though nationally and internationally there exist guidelines for the protection of the juveniles but the ground reality should not be different from the set procedures.

Under the JJ Act, 2015 special duties are imposed upon the police looking into the sensitivity attached to the juvenile apprehension and detention. Special juvenile police unit (SJPU) (provided under S. 107 of JJ Act, 2015) has been formed in each district comprising of the Deputy Superintendent of Police, Child welfare Police officer (CWPO) and two social workers who are attached to the District child Protection Unit of the concerned District. This special unit is basically the watch-dog for providing legal protection against all kinds of offences against the children and also they take a charge of the instances of non-compliance for further legal action. The SJPU or the CWPO has the duty to record the information of the offence alleged to have committed by the child in

his daily diary and also record the information of the social background of the child with the circumstances under which the child was apprehended and thereafter should produce the child before the Board before the first hearing (provided under Rule 8 of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016). The above procedure shall be followed only if the child is apprehended of the heinous crime otherwise in case of petty offences or serious offences the child should not be apprehended and should be produced before the Board. The Police, SPJU and CWPO all these should work keeping in mind the best interest of the child even though the offence alleged to have been committed is of heinous nature. The child should not be compelled in any manner to confess his guilt, should not be forced, should not be hand-cuff, chain and the child should not be send to the lock-up. The police shall comply with the whole procedure as prescribed by the law consciously and try to make speedy disposal of its duties. The Police basically should try to work with the voluntary organizations, community based organizations in order to report the cases of the children victims of various exploitations and also the children who are in conflict with the law. The main responsibility of the police is to create trust in the minds of the juvenile and to deal with them with decency and dignity while conducting the investigation. It is the responsibility of the police to change the perception of the juvenile. The approach of the police towards children should be that of a guardian, giving sympathetic care in providing them proper care and protection. No torture or harassment should be resorted to by the police in order to extract information from them. Specialized knowledge should be given to the authorities in order to understand the child psychology and the approach while dealing with them should be reformatory or social rather than penal in the best interest of the child. It is hoped that besides sensitizing the police officers, the various procedures and guidelines followed by the police officials will go a long way in bringing about a change in the mindsets. This would further assist us in creating a system where the instances of child in conflict with law and the child abuse would be the last such instances with that child.

Conclusion and suggestions

On a more philosophical note, we can say that nothing one does for a child can ever be wasted. Small acts of kindness done towards the child can have great impact and may go a long way in transforming a deviant juvenile into a great man. One should also not forget that children are great imitators. So if the society is to improve, we must necessarily forgive the children, even if they are delinquents but at the same time societal interest cannot be put to stake. If we show mercy towards them, even the most hardened juvenile delinquent may be reformed. Under the JJ, Act nothing is looked into from the perspective of the victim or the victims who are juveniles. What is suggested through this study is not the retribution for juveniles but a cooperation and proactive support from the various agencies involved in keeping justice. For the purpose of controlling the delinquency there need an effective implementation of the Juvenile Justice Act, by creating public awareness and by conducting orientation programs, by providing training to the professionals and law enforcement agencies and also after care protection should also be given to the released juveniles. Juvenile homes should not be underestimated as mere transit points rather they should have trained staff capable of exerting a positive beneficial influence on the juvenile delinquents. Police should also be passionate about upholding the rights and dignity of the juveniles otherwise the system would be unsuccessful.

There is a dire need to create a mechanism for assessing the needs and requirements of the juveniles and this should be reviewed regularly. India needs to adopt a model which could balance between the need to rehabilitate the juvenile offenders and at the same time take responsibility for his crime and ensure justice for the victims. As a parting note one would say that “every child one encounters is a divine appointment” and we must do our best to uphold the sanctity of this divine entity, if the society is to flourish and thrive.

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