



JUVENILE DELINQUENCY IN INDIA: A CRITICAL STUDY

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“The child, by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth¹.”

ABSTRACT: -Children are extraordinary important asset for any country more so in India. The purpose of this paper is critically analyze the various relating to the delinquent behavior of the Juvenile which bring him in conflict with law and how for the Juvenile Justice system successful in providing specialized and preventive treatment services for children and young person as means of rehabilitation and improved socialization. The object of this paper is to identify the insights about the personal and family background of the Juvenile in under the conflict with the law and explore the various remedies which can be incorporated in the Juvenile Justice Act to make it more realistic and practical. Juvenile Justice Act 2000 is a social welfare legislation enacted not only for the safety of the children but for the progress of the society as a whole.

1. INTRODUCTION:-

Children in India, because of their sheer numbers, ought to have been the subject of prime focus of development planning, research, and welfare in India but it has not been so. The juvenile justice system (hereafter referred to as Juvenile Justices), as conceived by legislation, aim at providing care, protection, treatment development and rehabilitation of delinquent and neglected juveniles. But the care and services provided to them have been criticized as being insufficient and sub-standard.

The concept of juvenile justice was derived from a belief that the problems of juvenile delinquency and youth in abnormal situations are not amendable to resolution within the framework of the traditional processes of criminal law. The Juvenile Justice, therefore, is not designed to

¹ United Nation's General Assembly Resolution No.44/25 of 20.11.1985 on the Right of the child.

respondent to the needs of young offenders only. One principal role of the Juvenile Justice has been to provide specialized and preventive treatment services for children and young persons as means to 'secondary prevention', rehabilitation and improved socialization².

A systematic approach to juvenile requires that each of its component has a clear understand of this objectives of the system and they all take co-ordinate actions for achieving them. The care, protection, treatment, development,, and rehabilitation needs of children cannot be ensured by any one without support from other component. The police is the prime, and usually the first, state agency to come in contact with neglected and delinquent children. Its approach sets the course of the children's response to and trust in the other state instrumentalities. A penal reception by the police does not augur well for creation of a mutual relationship of faith and warmth between the children and the state machinery claiming to be working for their care and protection. At the same time, a relationship of trust created by the police may be destroyed if an equally sympathetic and understanding judiciary does not reinforce it. The most efficient and committed adjudicatory bodies cannot protect the best interests of the juveniles without adequate casework services, and institutional and community care agencies. As the best interests of the juvenile cannot be secured without adequate community support structures, their integration in the juvenile justice operations becomes a precondition for success. The aim of rehabilitation cannot be fulfilled, despite appropriate training programs, unless coupled with after care backup. Similarly, an exhaustive after care programme can achieve little if the environment or training facilities in the institutions are not conducive for children's development and rehabilitation. Basic data relating to children in difficult conditions and evaluative research feedback on the existing services are the pre-conditions for a comprehensive policy and its evolution.

2. MEANING AND DEFINITION.

Legal Definition of juvenile or child.

According to the Juvenile Justice (Care and Protection of Children) Act, 2000 Section 2(k) defines that "juvenile" or "child" means a person who has not completed eighteen year of age.

² Juvenile Justice: Before and after the onset of Delinquency working paper prepared by the Secretariat Sixth UN Congress on the prevention of crime and the treatment of offenders, Caracas, Venezuela, p.6(25 August to 5 September 1980), ACONE,87/5,4 June 1980

JUVENILE IN CONFLICT WITH LAW

Juvenile Justice (Care and Protection of Children) Act, 2000 Section 2(1) defines that “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence.

JUVENILE JUSTICE BOARD

According to the Juvenile Justice (Care and Protection of Children) Act, 2000 Section 4 defines Juvenile Justice Board –Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Board for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

OBSERVATION HOME

Section 2 of Juvenile Justice (Care and Protection of Children) Act, 2000 defines “Observation Home” means a home established by a State Government under Section 8 as an observation home for the juvenile in conflict with law.

SPECIAL HOME

According to the Section 2(v) “Special Home” means an institution established by a State Government or by a voluntary organization and certified by that Government under Section 9.

3. RECENT AMENDMENT IN JUVENILE JUSTICE ACT:-

- The bill will allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16-18 should be tried as an adult or not.
- The bill introduced concepts from the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption 1993 which were missing in the previous act.
- The bill also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined.
- The bill introduced foster care in India. Families will sign up for foster care and abandoned, orphaned children, or those in conflict with the law will be sent to them. Such families will be monitored and shall receive financial aid from the state. In adoption, disabled children and children of physically and financially incapable will be given priority. Presents giving up

their children for adoption will get 3 months to reconsider, compared to the earlier provisions of 1 month.

- A person giving alcohol or drugs to a child shall be punished with 7 years imprisonment and/or Rs.1 Lakh fine. Corporal punishment will be punishable by Rs.10,000/- or 3 months of imprisonment. A person selling a child will be fined with Rs. 1 lakh and imprisoned for 5 years.
- The bill allows for juveniles 16 years or older to be tried as adults for heinous offences like rape and murder. Heinous offences are those which are punishable with imprisonment of seven years or more.
- The Bill mandates setting up Juvenile Justice Boards and Child Welfare Committees in every district. Both must have at least one woman member each.
- The decision to try a juvenile 16 years or older as an adult will be taken by the Juvenile Justice Board, which will have a judicial magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation.
- The Child Welfare Committee will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children.
- Any child found committing any crime will now be sent for a preliminary assessment for a period of three months, up from the earlier one month. A clarification is added that the preliminary assessment is not a trial, but to assess the child's capacity to commit the crime.
- There will now be proper training of special juvenile units in the police force.
- NCPCR and SCPCR will be the nodal authorities to be responsible for monitoring implementation, the publicity of the amended act, and to take into cases that arise out of the Act.

4. JUVENILE JUSTICE –ADMINISTRATION AND IMPLEMENTATION

Following issues are required to be taken care of by the government, the lawmakers, the NGO's, and the society at large:

- The entire juvenile justice system should be 'child-friendly' with a focus on the empowerment of the child.
- The juvenile court remains the venue with the most hope of rehabilitating society's troubled families and youth. To function well, it needs qualified and committed staff, funds and effective dispositional options along with community support.
- Children are to be made aware of their rights.

- A grievance mechanism is to be provided in all institutions or homes wherein children can have access.
- Clear rules are to be laid down to deal with the staff who physically and sexually abuse children. (23-296) Health, nutrition, education, and vocational training facilities are to be updated for CEDC.
- All accredited journalists, public interest litigation lawyers, researchers, academicians and legal aid organizations need to be given the right to visit any institutions and interview any inmate.
- Social audits by independent bodies are to be made mandatory for the institutions where CEDE are lodged.
- Media should be friendly towards child rights and highlight pending cases, missing children, facilities in homes and children's grievances and views.
- Trained social workers are to be attached to the courts as per the Juvenile Justice Act.
- Institutionalization should be the last resort. Closed institutions should be gradually eliminated. Only open institutions with family-type environment should be allowed in future. Partnership between government-run institutions and voluntary organization is essential so that there is no situation of either/or, but a relation of complementarities between institutional and non-institutional services. Existing institutional infrastructure should be utilized as a base for initiating the non-institutional services so that there is a gradual phasing out of institutional care. A linkage should be established between both the approaches.
- Non-institutional services should be given statutory recognition. The Juvenile Justice Act, 1986 should clearly mention that institutionalization should be the last resort and the courts should opt for rehabilitation within the families and the communities. The functionaries and staff of the institutions, when reoriented and sensitized to the needs of children and the advantages of non-institutional services, would support the de-institutionalization of the child in a phased manner.
- The Juvenile Justice Act should contain special provisions to reflect the new approaches relating to the child care. The Juvenile Justice Act should be liberally constructed so that each child under the jurisdiction of the juvenile court shall receive, preferably in the child's own home, the care, guidance, and control that will serve the child's welfare and its best interests. The court's intervention should build on the family strengths and be responsive to the family needs.

- The Juvenile Justice Act should be suitably amended to provide that representatives of all non-institutional services are present at the entry point, i.e. at the Juvenile Welfare Board and, Juvenile Courts to prevent institutionalization of children.
- Rights of the girl child relating to arrest, interrogation, and release should be protected.
- Standards should be set for quality services in childcare standards for recreation, rehabilitation, and counseling, standards of childcare should be laid down as per the convention on the rights of the child. Inspection should be done on the quality of these services provide to the children.
- Only violent, serious offences are to be regarded as ‘offence’s far as children are concerned. Needy, dependent, neglected children and children in especially difficult circumstances are to be kept of the judicial system. Schemes and welfare measures for their protection and empowerment need to be formulated. Families of such children are to be empowered.
- There should be a separate and exclusive investigation agency for children.
- Appointments of personnel in the juvenile justice system should be made by an independent body. Schemes for rewards and incentive along with punishment should be formulated for personnel. Accountability of functionaries is to be taken into consideration.
- Quality education and vocational training for children should be arranged in consonance with the present market requirements.
- Mentally and physically disable children are to be provided with special residential facilities and education.
- Special treatment for victimize and sexually abused children should be provided. Grants to organizations should depend on the ratings of the quality of services provided to children and not on the number of children as is being done now.
- There should be reservation of seats in higher education and jobs for children from the institutions.
- More involvement of the community, NGO’s, and child welfare agencies should be encouraged.
- Training of all the functionaries to be made continues and ongoing. Special focus should be on the core staffs who directly deal with the children, attenders, caretakers, security staff, cooks, probation officers, and superintendents.
- Inspection and monitoring of the institutions and organizations are to be conducted by an independent agency.
- There should be periodic evolution of programmes that are conducted in the institutions.

- A separate department for missing/runaway children with extensive links with print and television media should be organized.
- The juvenile should participate in decision making process in the issues affecting him/her.
- Judge should visit the place of detention for necessary observations and review of their orders.
- Records relating to children have to be properly maintained.
- Interactions and sharing of expenses between juvenile court and juvenile welfare board and institutions should be encouraged.
- To the court, legal aid and legal representation should be provided to the child. The medical and psychiatric assessment and treatment need to be humanely and more sensitively carried out.

5. CONCLUSION AND SUGGESTIONS:-

The Juvenile Justice (Care and Protection of Children) Act, 2000 is more in line with the recent thinking and the emerging need of the treatment and handling of juveniles. The objective of this legislation is to ensure the care, protection and development needs of the children, who are either neglected or have come into conflict with law constituting delinquency.

1. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should be provided to the Board for smooth discharge of duties.
2. There should be a proper maintenance of files and case records.
3. Video linking of the homes should be provided for children to facilitate inspection and supervision by the Board to keep a check on anything done against the best interest of the child.
4. At least one of the two social workers in a Board should be a person with a minimum qualification of law degree.
5. Juvenile should be brought before Juvenile Justice Board within 24 hours.
6. The age of the juvenile should be determined with reference to the date of commission of the offence. A detailed scientific investigation for determination of the age is not required.
7. In no case the juvenile should be sent to prison in default of payment of fine or defaulting of furnishing security.
8. Judges in the juvenile courts should be trained to recognize the educational, social and treatment needs of the children in crises.
9. Principle magistrate should not be entrusted with any other work of the criminal court except the Juvenile Justice as the Board is required to complete the enquiry within 4 months.

10. Due to the variations in the state rules from state to state, there is an ambiguity regarding proper implementation of the provisions of the Act. Therefore, common rules should be followed throughout India in all Juvenile Justice Board.
11. Stay in special home or observation home to be ordered only in exceptional cases and for strong reasons which are to be recorded.
12. The Board should also ensure that the police officer who apprehends a juvenile should inform the parent or guardian to the juvenile regarding such apprehension.
13. The Board shall not adjudicate the proceedings without calling for the report of probationer officer.
14. Summary procedure prescribed should be adopted during enquiry.
15. As soon as a juvenile 'in conflict with law' is apprehended by the police he/she should be placed under the charge of the special juvenile police unit or the designated police officer.
16. A time limit should be fixed for investigation. Juvenile police officer, who investigates the case, must submit the final form within 60 days or 90 days depending upon the nature of the offence from the date of complaint.
17. The police department also plays a very important role in ensuring child protection. But, practically police officials are not aware about provisions of the Juvenile Justice Act. Hence, awareness programmes should be conducted at the police station level wherein principal magistrate and members of Juvenile Justice Board, members of child welfare committees and NGOs should also be involved.

These suggestions would be helpful for the policy makers to make further improvement in the Juvenile Justice System, so that the future of this country is saved. In brief, it can be said that juvenile justice system in India has gained momentum. Attitude and perception towards Child Rights needs a change. On the legislation side a lot of work has been done in India but implementation part still requires improvement. The laws enacted require to be effectively implemented to achieve the desired goal of welfare of the children. The society must encourage children's participation in matters affecting their rights as services to the children are no longer a charity. A good intended legislation, properly and sincerely implemented with teleological vision in interpretation, can significantly reverse the tendency to be in conflict with law in the juveniles. In that event the juveniles, as future leaders, would provide a better world for us to live in.