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Juvenile Justice – Is there any reform? A Comparative Analysis

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Minors hold the same importance as adults when it comes to being the primary stakeholders of the overall policies, environment, development, and future. However, can juvenile delinquents be treated like adult offenders? When they do not possess the same mental capacity when compared to their adult counterparts? When such juveniles, who are filled with passion and strength, are taken under the custody and supervision of authorities, the question of the foremost significance becomes how to treat them. Do punitive decisions serve justice to juvenile offenders, or do we have to let them go calling them kids? The paper deals with the aforementioned dilemma as it traverses the issues in the present juvenile justice system in India and also makes an attempt at tracking down the history and downfalls of the same. It reviews the models of other countries who have succeeded or failed in their systems, to find the perfect mixture that suits the needs and fulfills the demand of our nation and children. It is seen time and again that rehabilitation is the path to be taken when dealing with juvenile delinquency to reduce recidivism. However, there is no one straightjacket solution for all as each individual is different, with differing backgrounds, behaviour, and circumstances and hence the requirement of studying various models arises.

Keywords: *crime, delinquency, juvenile, punishment, rehabilitation.*

INTRODUCTION TO THE INDIAN SYSTEM

Recent news of a 19-year-old youth beaten to death by sticks and pipes in the juvenile observation home¹ at Jaipur made headlines striking the conversation on juvenile reforms once more. Juvenile delinquency is a gateway to adult crime². Children are the future of a country, the nation builders. So when it comes to children's reforms or juvenile delinquency, the measures should be special and tailor-made to their needs. The history of juvenile justice can be traced back to the advent of the East Indian Company when delinquencies were covered by the Hindu and Muslim laws. It was not until 1850 that a specific act was passed in this regard, namely the Apprentice Act. It provided for better livelihood and rehabilitation possibilities for children committing petty offences, to undergo apprenticeship training till they reach the age of maturity. After this, many specific laws were made to deal with the issue under the Code of Criminal Procedure, 1861, the Indian Penal Code, 1860, and the Reformatory School Acts of 1876 and 1897 which mentioned the opening of reformatory schools for convicts under 18 years of age. Gaining independence in 1947, the constitution was the guiding light for children's rights in India and covered it in "clause (3) of Article 15, clauses (e) and (f) of Article 39, articles 45 and 47"³. Several legislations governed the area of juvenile delinquency.

Children Act, 1960

It set up competent authorities and institutions for children⁴. Child Welfare Boards, children's courts, children's homes, special schools, observation homes, and after-care organizations were all a giving of the act. It also looked into bail, custody, and other matters of delinquent children.

¹ Dishank Purohit, 'Jaipur 19-year-old youth beaten to death by inmates of observation home' (*Times of India*, 18 May, 2022) <<https://timesofindia.indiatimes.com/city/jaipur/jaipur-19-year-old-youth-beaten-to-death-by-inmates-of-observation-home/articleshow/91637353.cms>> accessed 03 June, 2022

² J.P.S. Sirohi, *Criminology and Penology* (7th edn, Allahabad law agency 2013)

³ Juvenile Justice (Care and Protection of children) Act 2000

⁴ The Children Act 1960, Chapter 2

Juvenile Justice Act, 1986

It standardized the provisions of the children's act and came in line with the 1959 United Nations Declaration of the child.

Juvenile Justice (Care and Protection of children) Act, 2000

Repealing the previous laws, the objective of the act was to “amend the law relating to juveniles in conflict with law and children in need of care and protection”. It focuses on bringing a more child-friendly approach to the system of law. This was amended once in 2006 and then again in 2015 after the landmark Nirbhaya Judgement⁵. The main change in the law was to treat children lying in the age group of 16-18 years and be treated as adults if they are involved in a heinous crime. A recent amendment in 2021 takes a better look at adoption laws.

IS THERE AN ACTUAL REFORM? LIMITATIONS OF THE SYSTEM

Adolphe Quetelet, a prominent statistician and socialist from Belgium stated “the propensity to crime is at its maximum at the age when strength and passions have reached their height, yet when reason has not acquired sufficient control to master their combined influence”⁶. At this age, it becomes overly important to properly moderate the delinquents. But is the present infrastructure sufficient to do so? A visit to the juvenile centre may clear this question. I visited the place where the aforementioned news of the murder came from. Talking with the under-trial prisoners, it was noted that many of them had little to no guilt about their malicious actions and their effects. One of them even said that “there's no problem in coming back here”. The Juvenile Justice act believes in the restoration of the offenders rather than punishing them but in actuality, no reform or rehabilitation can be seen to take place. A Pittsburg study has revealed that 52-57% of juveniles continue to offend till at least 25 years of age.⁷ This suggests

⁵ *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1

⁶ Adolphe Quetelets, *Adolphe Quetelet's Research on the propensity for crime at different ages* (1st edn Cincinnati, Ohio: Anderson Pub. Co. 1984)

⁷ Stouthamer-Loeber, Magda, *Persistence and Desistance in Offending* (unpublished report, Pittsburgh, Pa.: Life History Research Program, University of Pittsburgh, 2010)

that there are major shortcomings in the Juvenile Justice System, which is not competent to perform its job

Formation of Syndicates

Almost all of the time, offenders in juvenile homes are kept together whether they are convicted of murder or petty thefts. With no work to do and having tons of time, they start to 'gang up' forming connections and syndicates to meet when they are released and commit bigger offences outside. This is not a story that someone is weaving but actual reports of the same have come out in recent years.⁸

Mental Health

Mental health issues are one of the major concerns and reasons for the commission of an offence. Up to 70% of youth in juvenile facilities have met the criteria for one mental disorder.⁹ Although the Juvenile Justice Act provides for specific staff and counselling for mental health patients, it is not visible in reality as there exists a lack of understanding of child psychology, proper staff, and facilities for the said purpose¹⁰. This is ever so often coupled with substance abuse in children found 86.44% of the time¹¹.

Substance Abuse

The Juvenile Justice (Care and Protection of children) Act, 2011 talks about the "Transfer of juvenile or child as are mentally ill or addicted to alcohol or other drugs"¹², juveniles who are

⁸ Kenneth John 'Juvenile homes: A nursery for serial offenders?' (*Hindustan Times*, 20 Aug 2018) <<https://www.hindustantimes.com/lucknow/juvenile-homes-a-nursery-for-serial-offenders/story-pmuph5qNGgcyHSpj12aohl.html>> accessed 14 June 2022

⁹ Jennie L. Shufelt, M.S. Joseph J. Cocozza, 'Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study' [2006] NCMHJJ < https://www.njjn.org/uploads/digital-library/Youth-with-Mental-Health-Disorders-in-the-JJ-%20System_Shufelt-and-Cocozza-NCMHJJ-6.2006.pdf > accessed 07 June 2022

¹⁰ Shipra Tiwari, 'Juvenile Justice System in India and the Mental Health of Juveniles' (*SCC Online Blog*, 5 June 2021) <https://www.sconline.com/blog/post/2021/06/05/juvenile-justice-system/#_ftn10> accessed 07 June 2022

¹¹ Shridhar Sharma, Gautam Sharma, and Bristi Barkataki, 'Substance use and criminality among juveniles-under-enquiry in New Delhi' [2016] 58(2) *Indian J Psychiatry* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4919962/>> accessed 08 June 2022

¹² Juvenile Justice (Care and Protection of children) Act 2000, s 58

“addicted to alcohol or other drugs which lead to behavioral changes in a person, the competent authority may order his removal to a psychiatric hospital or psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 (14 of 1987) or the rules made thereunder.” The thing to be kept in mind is that the addiction does not always lead to a major behaviour change, but induces the juvenile to steal goods or money to buy them. They are mainly in the starting phases of addiction, for them, there are no separate provisions as they continue to commit crimes after being released to feed their temptations.

Bullying and Violence in Facilities

Another major defeat of the acts is the persistent violence and bullying in juvenile facilities mainly done by senior inmates.¹³ There are numerous reports of sexual assaults, physical abuse, exploitation, and ill-treatment in observation homes, shelters, and other facilities.¹⁴ This seems ironic enough when the crime is prevalent in a place whose whole purpose is to stop it.

A COMPARATIVE ANALYSIS

There are many limitations that the Indian System needs to overcome to lower the toll on society. Taking a look at countries around the world and how they deal with juvenile delinquencies may provide a possible solution to the existing ambiguities.

UNITED STATES

The first Juvenile Court in the United States was brought into being in the year 1899 in Illinois by reform-minded citizens who wanted to “treat kids like kids”. By the 1920s, every state had its juvenile court. Because the system was meant to deal with kids, it was kept pretty informal with no prosecutors, witnesses and other court officers, until the famous judgement of *In re Gault*¹⁵ in 1967 where a 15-year-old was kept in an overnight detention centre and sent to a

¹³ Ashwaq Masoodi, ‘Inside a juvenile home’ (*Mint*, 25 May 2015) <<https://www.livemint.com/Leisure/X4DChvj7KCXVjegttegBI/Inside-a-juvenile-home.html>> accessed 03 June 2022

¹⁴ Asian Centre for Human Rights, ‘India’s Hell Holes: Child Sexual Assault in Juvenile Justice Homes’ (ACHR 2013)

¹⁵ *In re Gault*, (1967) 387 U.S. 1

training school for 6 years, all because of making a prank call. After the case, the process of law was formalized in juvenile courts, having court counsels and other significant officers. However, this was not the end of the struggle for juveniles as several other instances and laws led them to jail for petty crimes. One of the infamous corruption scandals was caught in the documentary “Kids for Cash” where petty offenders were sent to ‘reform camps’ to keep them full.

Although several judgements have highlighted the difference between adults and kids in the sentencing process, it does not transform into reality as the rehabilitation goals remain unmet, focusing on the punishment.¹⁶ The system fails to assimilate the convicted youths into society. There may not be much to learn from the American juvenile system, but it sure serves as a model of how rehabilitation should be the end goal of the juvenile justice process which would otherwise become a failure for the judiciary.

JAPAN

Japan is one of the societies with the lowest crime rates. The Japanese established their juvenile justice system parallel to the American system but have now managed to surpass its western counterpart and make a unique system of its own.¹⁷ One of its major aims is the “sound development of Juveniles” as it focuses on applying “protective measures to correct their personality traits and modify their environment”.¹⁸ The foundation of the system was laid in the year 1870 by establishing a Disciplinary Institute. Although it worked as a reformatory, it was not successful in making great advancements. Over the years it set up many laws and institutions in the same regard but it was not until the 1947 Constitution that the judiciary (family courts) took hold of the juvenile justice system. The Japanese have a two-fold system governing juveniles, first is the Juvenile Law whose main function is to protect the delinquents and society. The second is the Child Welfare Law which promotes healthy development into

¹⁶ Conor Walsh, 'The (Unfinished) Growth of the Juvenile Justice System' (2016) 50 New Eng L Rev 237

¹⁷ Eric Paul Berezin, 'A Comparative Analysis of the U.S. and Japanese Juvenile Justice Systems' (1982) 33 Juv & Fam Ct J 55

¹⁸ Japanese Juvenile Act, s 1

adulthood.¹⁹ One of the best things about the system is the high standard on which they recruit judges and the training through which the probation officers go through because they form an integral part of the justice system. A number of officers that are absent in the Indian system form an integral part of the legal process there. These include medical officers, psychiatrists and psychologists, and family court counsellors. The police are an interesting component because of their level of corporation with the people. They have earned genuine respect in the community and work closely with them for crime prevention and peacekeeping. This technique has proved to be successful against crime.²⁰ Along with this, they have a system of releasing juvenile offenders and have established various schools to help them rehabilitate into society.

SINGAPORE

Another interesting model is seen in the Singaporean individualized rehabilitation system where the focus is on reducing recidivism by focusing on individual-specific information like the severity of the offence, developmental needs, social environment, etc. The court also involves parents playing a huge role in their child's rehabilitation. This system is twofold wanting to strike a balance between focusing on the welfare of youth as well as serving justice by punishing them for crimes. A refreshingly new framework is being developed in the country called the "Risk - Need - Responsivity Framework".²¹ Firstly, the principle of risk is related to the level of supervision required per offender in proportion to their risk. It also suggests that "low-risk offenders should not be provided with intensive interventions so that interactions with higher risk offenders are minimized".²² This directly deals with the problem of the formation of crime syndicates that we saw earlier by separating the delinquents into risk-associated categories. Further the need and responsivity principles focus on targeting

¹⁹ M. Shikita and S. Tsuchiya, 'The Juvenile Justice System in Japan', in Via Giulia (ed), *Juvenile Justice: An International Survey* (Rome: United Nations Social Defense Research Institute, 1976)

²⁰ Walter L. Ames, 'The Japanese Police: On the Beat' in Whitmore Gray (ed), *Current Studies Japanese Law* (Michigan: Center for Japanese Studies, 1979)

²¹ Jonathan Raphacis Chua, Chi Meng Chu, Grace Yim, Dominic Chong & Jennifer Teoh, 'Implementation of the Risk-Need-Responsivity Framework across the Juvenile Justice Agencies in Singapore' (2014) 21 *Psychiatry, Psychology and Law* 877

²² D. A. Andrews, J. Bonta, & J.S. Wormith, 'The Risk-Need-Responsivity (RNR) model: Does adding the Good Lives model contribute to effective crime prevention?' (2011) 38 *Criminal Justice and Behavior*, 38, 735

dynamic criminology needs relating to criminal behaviour and the style and mode of intervention that match a juvenile's abilities to learn respectively. This model has proven to be highly effective as juvenile delinquency rates in the country have by over 40% in the past decade.²³

CONCLUSION

Children are the most precious but sensitive resource for a country. It is upon the system that governs them to decide how they turn out to be as adults. The topic of juvenile delinquency is one to be dealt with utmost care. One thing that comes out for certain is that rehabilitation is the road to go on when dealing with minor offenders. Treating and punishing them like adults won't serve justice to anyone. The question arises of the extent to which the authorities should go to achieve that. The secret lies in between the extremes of punitive judgements and completely letting them loose to even feel guilty. Is making them literate the simple answer? No, as it is seen that the number of educated offenders is more than illiterate ones.²⁴ There has to be a fine mix of education, counselling, awareness, training, and punishment. Institutions like the Ashiyana Foundation conduct restorative programs that have helped many offenders of leading a better life outside of jail. India certainly has plentiful downsides to its system ranging from gang formations and substance abuse to bullying and violence in facilities but it is never too late to learn from other countries whose methods have fallen or succeeded. Where approaches like that of Japan and Singapore allow us to at restoration through new perspectives, the US shows what can go wrong when a system is corrupted. "A seed requires light, sun, and water to grow. Or else it withers away with the winds".

²³ The National Committee on Prevention, Rehabilitation and Recidivism, 'Report on Youth Delinquency 2021' (Ministry of Social and Family Development, Republic of Singapore 2021)

²⁴ Aneesha Bedi "Educated' juveniles committed crimes more than the 'illiterate' ones in 2017, says NCRB' (*The Print*, 24 October 2019) <<https://theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/>> accessed 08 June 2022