



Juvenile justice in India: An analytical study of the impact of imprisonment for juvenile offenders

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Abstract

Juvenile Justice System is most progressive and enlightened system adopted by the world citizenry with all round growth of children. The prime focus is to reform the deviants and provide care to the unprotected child. As far as practicable, a child to be rehabilitated and restored to the family. The special court to adopt the doctrine of parents' patria while adjudicating the matter of child in conflict with the law. The article evaluated the Juvenile Justice System in India in the light of general philosophy and other parameters.

Juvenile delinquency is a serious offence and it is detrimental for the social order in any country. There is a trend of increase in juvenile crimes world-over, with more and more involvement of the youth in violent crimes. India shows similar trends of increasing rate of violent crimes committed by the juveniles. It is a very serious concern for the nation and solutions to end the problem need to be sought very carefully. Indian legal system and judiciary has responded to these trends and has brought some amendments in the laws pertaining to juvenile justice in India. This paper aims at looking at the causes of juvenile delinquency and explanations given by scholars from various fields to explain the problem. The analysis of statistical data available at official sites indicates increasing involvement of the juveniles in heinous crimes. To contain the problem of juvenile delinquency in India, the Act pertaining to Juvenile Delinquency has been amended and now trial of juveniles involved in heinous crimes is held as adults.

Keywords: Parents, patria, rehabilitation, delinquency, juvenile justice system, constitutional law, delinquency, heinous crimes, trial, adults

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. Despite the constitution's vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children the majority of children in India continue to live without a childhood. The juvenile justice system, as conceived by legislation, aims 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.

Juvenile Justice System is the most progressive bit of legislation adopted for children. The newest amendment in this regard was the Juvenile Justice (Care and Protection of Children) Act 2015. The act came into force from 15 January 2016 after it received presidential assent on 31st December 2015. It was implemented with the hope of rehabilitating them, with their overall development.

Initially young offenders were treated in criminal law in the same way as adult offenders. It is unfair for a child who is not mature enough, to be punished with the punishment as that of an adult. He needs to be rehabilitated and as far as possible restored to his family with the minimal punishment possible. Due to this, the Juvenile Justice Act was passed. An age limit of 18 years was prescribed in this act well as punished by Juvenile Courts.

In a few days, the need for a more stringent system for juveniles was felt because of the many horrible crimes committed by them. There was a lot of public demand for punishing these juveniles as adult. Because of which the Juvenile Justice Act was amended. The latest in this regard

is Juvenile Justice (Care and Protection of Children) Act, 2015. In this amended act, the age bar for juveniles has been lowered down to 16 from 18. Now, everyone above the age of 16 will be tried in the court of law for heinous crimes, as adult.

Meaning and Concept

Juvenile Justice System is a system coming within the area of criminal law administration of justice. This is a system adopted for the young person not old enough to be held responsible for criminal acts. It is adopted as correctional measures for Juvenile delinquency. The etymological term 'Juvenile' means young person or any young person's retaining the nature and characteristics of a child. The term 'Delinquency' connotes 'failure to observe norms of society or omission of duty, involving with crime or doing any wrong. The term 'Justice' means 'concern for justice, fairness, equitableness' or a concern for peace and genuine respect for people. It is a principle of moral rightness in the pursuits of fair treatment against unfair behavior. The meaning of the syntax 'juvenile delinquency' is doing of some act against society by young persons. The terms 'Juvenile Justice' means what is just, fair and equitable to the child or young persons in shaping their personality in the society. 'Juvenile Justice System' means a process to deal with the problem concerned with children and society. The main purpose of JJS is to insulate children by resorting to appropriate treatment and create an environment to develop a positive human personality. JJS is socio-legal measure to create an atmosphere for the treatment of delinquent juveniles. All most all countries of the civilized world have adopted Juvenile Justice Law to treat the young offender in the most equitable manner, so that they can lead a peaceful

moral and democratic life. JJS applicable to the persons; those are under 18 years of age. Juvenile Justice is administered through Juvenile court, a court which is child friendly in nature. The main goal of this System is to adopt rehabilitative measure rather than punitive measures. If a child is commits or any wrong young person turns delinquent, the Juvenile court takes measures for foster care and soft treatment through special institutions. So that Juvenile offender can find a path to lead a decent life.

International Concern

Acknowledged by the role played in social and economic conditions in streaming the children with conflict in law. By this it resulted in the separate legal system for juveniles as by different juvenile proceedings in different part of world. As many problems as to the human rights as rape, theft, drug dealing, prostitution was not recognized till much time. As many declarations and conventions were been done for the proper upliftment of juveniles in different part of world as UN Declaration, 1959, as also the UN Convention for the rights of the child, 1989, Beijing rules, 1985 and Riyadh guidelines, 1990, than the universal declaration of human rights, American convention ad also African treaties as all these concerns internationally speaks about the health, mental and other things for the development of children in different parts as the juveniles are only the main asset of any country and also the main points of all these concern deals with the rehabilitation of juveniles who are indulge in different crimes and how they be different from adult offenders, so it is main point of juvenile justice system all over.

Constitutional Provisions

The Indian constitution which came into effect from 26th January, 1950, after independence of India from British regime on 15th of August, 1947 accorded a special status to children through various provisions made especially in Chapter - III under the Fundamental Right Chapter and Chapter - IV relating to Directive Principles of State Policy. It envisages for children a secured childhood free from exploitation and injustice. While the Fundamental Rights are guaranteed to both persons and citizens, the Directive Principles are fundamental in the governance of the country and it shall be the duty of state to apply these principles in making laws. In some cases these Directive Principles have a positive aspect as it supplement fundamental rights in achieving a welfare state.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: 15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

15 (3) Nothing in this article shall prevent the State from making any special provision for women and children ^[1].

Article 20 (1) No person shall be convicted of any Offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor he subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

Article 20(2) No person shall be prosecuted and punished for the same offence more than once.

Article 20(3)

No person accused of any offence shall be compelled to be a witness against himself ^[2].

Article 21.

No person shall be deprived of his life or personal liberty except according to procedure established by law ^[3].

Article 39:

Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing ^[4];

- a. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- b. that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment ^[5].

Law on juvenile justice in India

As far as legal protection is concerned, the first ever uniform law concerning juvenile justice in India was enacted in the year 1986. Prior to enactment of uniform legislation for the entire country, most of the States in India had special legislations in the nomenclature of Reformatory Schools Act and Children's Act which governed the subject of regulation of acts of delinquencies committed by children and their reformation. To some extent the Probation of Offenders Act 1958 in the post-colonial period also had a provision to discharge a person over 16-years who has not attained 21- years on probation at the time of conviction, provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order ^[6] [Section- 5 (1) (a)]. Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order including any additional requirements proposed to be inserted therein under subsection (2) or (3)) and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

While the Reformatory Schools Act 1897 made provision for establishment of the reformatory schools for male delinquent children up to the age of fifteen who were sentenced for an offence punishable with transportation or imprisonment for life, the Children's Act mostly made provision for establishment of special schools with provision of care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children along with manner of trial of the delinquent children. Considering, the unequal treatment meted out to Children under different state legislations under the title of Children's Act along with the central legislation enacted by Indian Parliament under the same title in 1960 only for Union Territories, the Supreme Court of India in Sheela Barse vs. Union of India ^[7], observed that instead of different state having different law there should be a uniform legislation on the Subject.

Accordingly, the first ever uniform legislation for children in conflict with law was enacted by the Parliament of India, which has of course termed such children as Juvenile Delinquent along with a provision for neglected child, under the title of Juvenile Justice Act 1986 which came into

operation in 1987. However, due to several deficiencies inherited in it the Act of 1986 was replaced in the year 2000 by the India Parliament. The changing attitudes towards criminality by children which was reflected in Supreme Court decisions like Amrutlal Someswar Joshi^[8], Ramdeo Chouhan and Arnit Das^[9] as well as the need for a child friendly juvenile system were some of the factors that also led to the passing of the new Juvenile Justice (Care and Protection of Children) Act 2000. As this act remain in force for many years but then felt the need to amend this act as with changing scenario crime rate also changes with speed and after the NIRBHAYA Case^[10] there is big revolution to change it then in 2014 a bill passed and in next year an act was passed as juvenile justice (care and protection) Amendment act, 2015.

Judicial Trends on Juvenile Justice System in India

Juvenile Justice (Care and Protection of Children) Act, 1986, 2000 and 2015 has been framed by parliament of India streaming its dedication towards the international community and also performing its international duty and showing its diligence towards different UN rules and guidelines. So in that conformity with the international standards and rules providing for upliftment of the children in need of care and protection and for the better treatment and early disposition of juveniles in conflict with the law. The role of the Supreme Court of India and various High Courts has been very appreciable in interpreting the provisions of the new enactment in such a way that advances the cause of the juvenile justice. The judicial trends set by the Supreme and High Courts are guiding factors for the lower judiciary. The beneficial provisions have been applied and benefit has been given to a number of juveniles whose cases had even attained finality and they were undergoing sentences. It has also been the efforts of the courts at the time of final disposition of the case that an opportunity for reforming himself is provided to the juvenile in conflict with the law by way of proper training and providing necessary care and protection for absorbing the juvenile in the mainstream of life.

Gaurav Jain v. Union of India^[11], the SC while dealing with writ petition under Article 32 of the Constitution pertaining to the plight of the prostitutes or fallen women and their progeny, spoke about the Preamble of the Constitution and stated that it is an integral part of the Constitution of India and that the juvenile have the right of proper care and protection and also of rehabilitation with the proper right of dignity and equality in the society and the people should welcome them in a mainstream of social life without any pre stigma joined on them in any of the way.

In Laxmikant Pandey v. State^[12], the Apex Court of India observed that the juvenile should have the right of love and affection and also of proper security and this is possible only when they are brought up in proper family background and also there should be inter country adoption as by making proper laws over that point.

Subramanian Swamy VS. Raju and another Member^[13] of Juvenile Justice Board, some incidences that become so revolutionary that they shook the society or nation. One of such incidence Delhi Gang Rape Case which held in December 2012 in a running bus where some persons rape and murder a girl but the irony is that one of them is juvenile and he is to be released after small punishment of three years and that also to be imprisoned in special homes

as after the brutal rape and murder. In same case Dr. Subramaniam Swami, a senior lawyer of Supreme Court moved to the Supreme Court of India and put the point of not releasing the juvenile in any case seeing crime but the Supreme Court told its inability to do the same as there was no proper law for it and tell him to approach the parliament for it and in the same matter; the amendment was done changing the age for heinous crimes. And also, they change there by their company as by living with criminals in special homes. And it also been seen that juvenile leaving special homes do more heinous crimes so, it is been a question on the authorities that the work for which they are under engagement is fulfilling properly^[13].

In the present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., U.S.A. This movement has been started around the 18th century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20th November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as “*The Juvenile Justice (Care and Protection of Children) Act, 2000*”^[14].

The Juvenile Justice, 1986 which repealed the earlier *Children Act, 1960*, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985^[12]. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of Jammu and Kashmir. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were

1. The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile.
2. It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.
3. It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders^[15].

Impact of Imprisonment for Juvenile Offenders

Some of the cases that involve youth offenders are severe enough that they get transferred into an adult criminal court proceeding. Most juveniles must be at least 16 years old to be eligible for a waiver into an adult court, removing the protections that the juvenile justice system offers. Some minors who have had multiple arrests in the past and qualify on age may also have their case moved.

When juveniles receive a trial in an adult court, then there are more constitutional protections that apply to their case. This waiver also creates the possibility of a severe sentence being imposed for their conduct. It also creates the possibility of having teens serving their time at a correctional facility meant for adults.

There are several other factors that might create a waiver into adult court for some youth. If past rehabilitation efforts have not worked or when youth services would need to work with the individual for a long time, then minors as young as 13 might be eligible for a transfer.

Several advantages and disadvantages of juveniles being tried as adults must be reviewed in each case to determine if a waiver into adult court is the best option.

List of the Advantages of Juveniles Being Tried as Adults

juvenile threshold for consequences associated with severe crime.

Most juvenile offenders can have their records expunged or sealed when they reach the age of 18, 21, or 25 in most countries. When there is a waiver into the adult court, then a conviction does not become hidden in such a way. Over 300 people are killed each year because of the actions of an individual under the age of 18 in India, which is one of the highest rates of such activity in the world today. Removing the leniency as a child transition into adulthood creates an incentive to avoid criminal conduct in the first place.

Consistent structure within the justice system.

When children commit horrendous crimes, they can come back into society without the same notifications that adult offenders must provide. Jasmine Richardson killed her parents and brother so that she could be with her boyfriend at the time and she was only 12 years old. Investigators determined that she had stabbed the young boy in the chest several times while her older boyfriend, who was 23 at the time of the incident, slit his throat.

Richardson's sentence was complete after a final review on May 6, 2016. The maximum penalty she could receive at the time was imprisonment of 10 years. Now she can live anywhere despite being a convicted triple homicide offender. Waiver into adult courts can help to prevent this issue ^[16].

Services not always available youth system

The two primary advantages that juveniles have as a convicted adult offender is that there is access to schooling and vocational skill development. Youth services will provide some of these services as well, but from an instructional perspective instead of trying to develop a life skill. Some adult facilities have better access to mental health support funding than juvenile facilities. There could be specialized help for addictions, learning disabilities, or other concerns that may have led to the initial criminal conduct in the first place.

Opportunity to teach children about accountability

Criminal conduct is not always a learned behavior, but some households can treat it as acceptable conduct. Illegal activities should always carry consequences, whether that means a parking ticket is issued or someone stands before a jury to answer charges. Most consequences handed out by the youth system stop at the age of 21 unless unusual circumstances exist. If Malvo had been tried in the juvenile system, he would have likely received a sentence of 4 years for his participation in 10 murders instead of four life sentences.

When there is a structure in place that allows for a waiver into the adult justice system, juveniles can learn more about accountability. It teaches them the expectations that society has for their decisions and conduct ^[17].

Disadvantages of Juveniles Being Tried as Adults

Juveniles become subject to most adult penalties

The Supreme Court of India has ruled that convictions of juveniles under the age of 18 that involve a life sentence are too severe. That doesn't mean a sentence can't be handed down that involves several decades of time. When a waiver into adult court occurs, then there are more severe sentences involved in a case when compared to what they would receive at the youth level.

Judged in adult court don't have the same range of treatment or punishment options, such as ordering counselling or imposing a curfew.

Adult court doesn't into account the maturity of the child

The physical and psychological development of children makes them prone to making certain decisions. Teens tend to be impulsive risk-takers because of this issue. When children are younger than 15, then there may not be an understanding of the consequences of their criminal conduct. Some kids might not even realize that they have broken the law.

Difficulty to seal an adult criminal record than juvenile ones

When children commit a crime, their records are usually sealed as they become adults to give them an opportunity to succeed in life. That means most offenders do not need to list past convictions once they reach a specific age, like 18 or 21 in most instances.

If a conviction occurs in adult court for a juvenile, then expunging that record becomes more of a challenge. Their conduct will become available to the public throughout their life unless there are certain rules or laws in place that allow this action. Several stipulations must be met even when it is possible that could make it challenging for youth to meet.

Fewer opportunities for rehabilitation in adult court

Juveniles that receive sentences in adult court are usually given lengthy prison stays or long-term treatment that restricts their freedom well into their adult years. An incident in Delhi where two 12-year-old girls stabbed their classmate resulted in sentences of 25 and 40 years respectively at a mental institution. Both juveniles decided to plead guilty in the case. That means after their time is over in these facilities when one girl will be 52, there will be few options available to start a new life.

Significant risks Placing youth in an adult prison cell

Most youth who receive a lengthy prison sentence as an adult are kept in solitary confinement until they are old enough to enter the general population. Kalief Browder committed suicide because of the psychological impact of spending several years by himself in this way. Teens who receive an adult sentence are almost 40 times more likely to successfully commit suicide while behind bars compared to adults or juveniles sentenced to a youth facility.

There are currently 10,000 children and teens under the age of 18 housed in adult prisons throughout the Country.

Standardized sentencing in adult courts

The “get tough” laws of the 1990s imposed strict standardized sentences on those who were found guilty of the crimes with which they were charged. Judges have little leeway as they impose a sentence after a conviction or when someone pleads guilty. These rules apply even when children are as young as 10 after a waiver into adult court occurs. The only exception involves a life sentence or what would be considered capital punishment. That means a lengthy sentence for something as simple as stealing a backpack or being in possession of certain drugs could create long-term consequences for the entire family to manage.

Adult sentences cause juveniles for higher recidivism rates

When juveniles are being tried as adults, convicted, and sent to an adult prison, then their recidivism rates increase dramatically. Only 15 states in India have provided data on this specific outcome, but the information shows that kids being treated as an adult have a recidivism rate that is 6 times higher. When juveniles are sentenced to youth facilities instead, adults are two times more likely to make their way back to jail or prison.

Some youth facilities report a 0% recidivism rate after 12 months and about 40% after five years. Adults have a rate of 7% after 12 months and up to 80% after seven years from their release date.

Adult understanding of criminal conduct onto a child

Adolescence period is the period of transition from the period of childhood to adulthood and is also the period which prepares a person for accepting the role of the adult life. This period is characterized by a vast number of changes in the child with respect to their biological, psychological and social characteristics. Some research, which Grayson N. Holmbeck calls psychoanalytic perspective, have tried to view this period as a period of storm and fury and characterized by the conflict-personality. This view is generally based on the observations of the clinical psychologists who are treating the children with adolescent problems. However, the public policy formulation and public perception are still in tune with this view. This perspective is also being amplified when it is used by the writers who work for the media outlets who characterize this period as rebellious, frustration-oriented and conflict driven which needs immediate correction^[19].

The issue with this disadvantage is that adults often try to place their decision-making processes onto the actions of a child. Prosecutors and investigators see lying or criminal decisions as an adult response when there may not be an understanding of what is happening to them.

Adequate Services for juveniles as adults not available

Older teens sometimes waiver into the adult system and receive specific services, such as GED classes, that can help them with the rehabilitation process. Younger children do not receive this option at all when sentenced to an adult facility. Most jails and prisons are not set up to receive juvenile offenders in the first place, so there are no youth-specific options available for correctional officers to use. That means these individuals may have zero opportunities to develop the critical competencies and life skills that could lead to future successes^[18].

The opposite may actually occur in some situations. When youth are around adult offenders, then these people become the “replacement” teachers, parents, and idols. Prison can become a place where youth really learn what it means to become a criminal.

More minority youth go into the adult system in India than other groups

Over 80% of the defendants of robbery cases in the Seattle area were under the age of 18 according to data released in 2016. The same report also notes that half of the teens were using a firearm at the time they committed the crime. When reviewing the racial data from the juvenile justice report, over 40% of the teens that were given charges were Asians-Indians despite the fact that only about 6% of the city is of the same demographic.

When the disparity of criminal conduct is that large, then the root cause of the issue is more societal than individualized. Locking teens behind bars for a long time might be a “feel good” strategy that implies a safer society, but it doesn’t solve the problems for the next generation.

Fair jury trial of Juveniles not effective

Teens and youth who receive a waiver into adult court do receive the benefit of a jury trial. What they do not get is a panel that is reflective of their age group. When kids as young as 9 can be put on trial for severe crimes, it is a group of adults that will decide that juvenile’s fate. India requires that youth be at least 18 to be empanelled onto a jury, so having someone judge the content of a case from a different perspective may not result in a fair trial.

Liabilities for transferring juveniles into adult courts

When children are charged in the juvenile justice system, there is a general responsibility of the parent to find appropriate care and counselling to facilitate rehabilitation. The household may have civil liabilities as part of that action. When youth receive a waiver into the adult system, then these requirements can disappear. The state becomes the custodian of the child, which means there are fewer ways to make victims whole again after the incident^[20].

Factors that place juveniles at risk for offending and reoffending are broad and multisystemic in nature, involving complex interactions between individual, family, community, school, work, and peer group systems. For any intervention to be effective, it must address all risk factors or criminogenic needs, and thus be tailored to the specific aspects of an individual’s “social ecology” that are key to their offending behaviors^[21].

Conclusion

All the stake holders to be guided by the principles, while discharging function concerning children. In India, social legislations are always proved abortive due to improper infrastructure and co-ordination Different homes prescribed, does not have an environment of home. These clogs of Juvenile Justice System need to be resorted to. Juvenile Justice System is based on the principle of social welfare and rights of the child. The prime focus of the Juvenile Justice System is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order. Children are the future resources of the country. They must be transformed from

negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carries the dreams, we need to make the dream reality in Indian Juvenile Justice perspective. Prisons are notoriously inadequate, even for adult inmates. For juveniles, incarceration, particularly with adult offenders, has been shown to be more damaging than rehabilitative. This vulnerable population suffers negative consequences when placed in an environment that fails to address, and often heightens, existing mental health, learning, and behavioural problems. Not only are juveniles more at risk of suicide, victimization, and assaults in adult facilities, there is also a lack of health.

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