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JUSTICE SYSTEM FOR THE JUVENILE IN INDIA- Ishitta Grover¹**Abstract**

Juvenile justice, as a field, encompasses various legal and rehabilitative measures aimed at addressing the needs of young offenders within the criminal justice system. This abstract delves into the complex dynamics of juvenile justice, examining its historical evolution, contemporary challenges, and future prospects. Originating from the concept of *parens patriae*, which emphasizes the state's role as a guardian of juveniles, modern juvenile justice systems seek to balance accountability with the recognition of youthful immaturity and potential for rehabilitation. However, this balance often faces significant hurdles, including disparities in access to resources and services, racial and socioeconomic inequalities in sentencing and incarceration rates, and evolving societal attitudes toward juvenile offenders. Moreover, the proliferation of technology and social media presents novel challenges in preventing and addressing juvenile delinquency. As the field progresses, efforts to promote evidence-based practices, enhance diversionary programs, and foster community-based alternatives gain prominence. Ultimately, the future of juvenile justice hinges on the commitment to equitable treatment, comprehensive support systems, and innovative strategies that prioritize the well-being and potential of young individuals entangled in the justice system.

I. Introduction

In India, the definition of Juvenile delinquency presents no such problems as are faced in the 'USA' and some other countries. The concept is confined to the violation of ordinary penal law of the country so far as the jurisdiction of the juveniles who are in conflict with

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law and children who are in need of care and protection is called Juvenile Justice (Care and Protection of Children) Act, 2000. This law has replaced the earlier law governing juveniles and which was known as Juvenile Justice Act, 1986 which was in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as Beijing Rules. 1985).

However, the Juvenile Justice (Care and Protection of Children) Act, 2000, which replaces the Juvenile Justice Act, 1986 is primarily designed to give effect to the provisions of the UN Convention on the Right of the child, 1989 (ratified by India on December, 1992). The Convention laid stress on social re-integration of child victims, to the extent possible, without resorting to judicial proceeding.

“Juvenile” or “Child” means a person who has not completed eighteen years of age². The Act prescribes a uniform age for both boys and girls. Under the Juvenile Justice Act, 1986, which was repealed by the Act of 2000, “juvenile” meant a boy who had not attained sixteen years of age or a girl who has not completed eighteen years age. The question then is the date that is to be reckoned for determining the age of the juvenile. Whether it is the date of commission of the offence, or the date of arrest or trial. Earlier, the Supreme Court has taken a liberal stand, holding the age on the day of commission of the offence as the relevant age,

But some High Court had taken a view that age at the date of first trial was material for determining the age. This view was supported by Supreme Court in case of *Arnit Das v. State of Bihar*³ where the Supreme Court laid down that the crucial date for determining the age of juvenile is the date when he is brought before the competent authority and not date of commission of offence. It is almost a settled law that where an accused appears to be minor, it is the duty of Magistrate to enquire into his age for possible eligibility under the Juvenile Justice System.

II. Meaning of juvenile Delinquency

Juvenile Delinquency is legal term of behavior of children and adolescents that in adult would be judge criminal under law. In the United States, definitions and age limits of

² Section 2(k) of Juvenile Justice (care and Protection of Children) Act, 2000

³ (2000) 5 SCC 488

juvenile vary. The maximum age being set at 14 years in some and as high as 21 years in others. The 16 to 20 years age group, considered adult in many places, has one of the highest incidences of serious crime. A high proportion of adult criminal have a background of early delinquency. Theft is the most common offence by children; more serious property crimes and rapes are most frequently committed in later youth.

“Boys will be Boys,” was the old way of referring to youthfully breaking of rules. Now days this propensity has an official name, it is Called juvenile delinquency¹³. Almost all youths commit acts of which they could be arrested and taken to court. But it is a much smaller group that ends up being officially define as delinquent. Official delinquents are predominantly male. In 1965 boys under 18 years were arrested five times as often as girls were referred to juvenile courts.¹⁴ the second UN Congress on Prevention of crime had without attempting to formulate a standard definition indicated that the meaning of the term juvenile delinquency should be restricted as far as possible to violation of Criminal Law and that even for protection specific offences which would penalize small irregularities or maladjusted behavior of the minors, but for which adult will not be prosecuted should not be created⁴. The offences committed comprise, for the most part such breaches of law as would be punishable in an adult by penal servitude or imprisonment – stealing, burglary, damage, common assault and soliciting; in this list also be added certain other misdeeds which none but a child can commit, as truancy and beyond parental control. And one or two which while offending against no explicit enactment, may become a ground of official intervention.

a. Delinquency in Girls

Sexuality Theme was reiterated by a group of British Researchers like John Cohie, Valerie Cowie and Eliot Slater. Who argued that dysfunctional families are the source of female Delinquency. There is universal agreement among Criminologist that the girl and women fall foul of the law much less frequently, than men and boys and that when they do so, by and large the delinquencies’ do not take on the aggressive and socially destructive qualities of much of the criminal behavior of the males, and can in fact be regarded in a less serious light.

⁴ Seminar on Juvenile Delinquency, Role of Police, C.B.I. Report (1965) p.13

He further says that the sex difference must lie close to the etiological factors that go to the causation of delinquency and an effort must be made to understand it⁵. The evidence of those who have made comparative studies runs consistently in one direction (By Fernald Bingham, Healey and Bronner, Sheldon and SeleanorGlucek, Bagot, Otterstrom, Acheson and Williams, Wattenbeg and Saunders, Monahan, Morris, Schofield, Walker). Comparing delinquent girls poor homes, with more mental abnormality in the family, with poorer moral standards, worse discipline, more often a broken home, more frequent change of home more conflict at home and more distributed more marked in girls than in boys, the girls have worse school record, and more often have developed a hostile reaction towards schooling they show a larger degree of rejection of family influence, their working careers are worse.

Delinquent girls more often than boys have other forms of impaired physical health; they are noticed to be oversized, lumpish uncouth and graceless with a raised incidence of minor physical defects. Yet with all this greater amount of abnormality, the peak age of delinquency comes about one year later in adolescent girls than in boys and the ultimate outlook for social adjustment is better for girls than boys.

Thereof the authors have attempted to interpret the differences, Otterstrom suggests that (1) girls are less hereditarily prone to delinquency than boys and so (2) require greater influence from their environment to fall into bad ways. Differences between the sexes in hereditary pre-disposition could be explained by sex-linked gene. Furthermore, the female mode of personality, more prudent more timid, more lacking in enterprise, may guard her against delinquency, the behavior of boys may be more sensitive to environmental influences, and may need relatively small stress to become delinquent compared with large stresses needed in the case of the girl. the greater immunity enjoyed by the female can be impaired by physical and psychological disadvantage of many unusual strength. Watterberg and Sauders probably find the above statement acceptable. The emphasis that delinquency in the two sex is most alike in form and frequency in prepubertal age, before the rapid sexual differentiation of adolescence of adolescence has begun. Defect of interpersonal

⁵ JohnCowie, ValerieCowieandEliotSlater, DelinquencyinGirls, HumanitiesPress, 1968, p. 168

relations especially conflicts within the family play a large role in causing delinquency in girls than boys: and much male delinquency results from the kind of social life (e.g. gang life) which the adolescent enters. Girls having historically made up a very low percentage of the juvenile justice population, offending by the girls is on the rise today. It is not that only the overall number of juvenile delinquency cases for non-violent crimes is on the rise, but also the girls are accounting for a larger proportion of the delinquency pie than they did during the 1980s. While the crime which are violent in nature and are done by the juveniles has decreased overall since 1985, girls are prone to commit more of those offenses than they did in 1985. Knowing that there has been an increase in the involvement of the girls in the justice system, but understanding the underlying causes of it since research about female offenders is lacking hitherto²⁹. It may happen to appear that the boys and girls in the justice system are more alike in comparison of being different at the first glance. Both these genders in the justice system are the same in many aspects, such as being more aggressive, having more mental and health problems, and tend to experience more risk factors which basically include child abuse or poverty when put in comparison to the non-offending counterparts of them. Some subtle differences between both these gender offenders cannot be neglected.

Women offenders have to face various offences and at times even brutality at the hands of the Police Officers. They are generally looked down upon by the police and hence are treated with disrespect which also outrages the modesty of the women offenders. A woman who has been brought in for an inquiry shall only be treated as a suspect and not as a proven offender. It has been observed that women have to face immense trouble and a disrespectful demeanour during the process of the inquiry at the police station and the same is continued even after they have been convicted and sentenced to jail⁶. The police officers tend to use physical force on these women and this is done by both the male and female police officers. Physical violence here refers to the intentional use of the physical force which has the potential for causing a grievous injury, harm, disability, or even death of the

⁶Raffel, Sokoloff, Natalie J. McGraw-Hill, *The Criminal Justice System and Women: Offenders, Victims, and Workers*. (2nd edition) Barbara 1995.

person on whom it has been inflicted upon, it also comprises, hitting, shoving, biting, restraint.

The problem of child (juvenile) delinquency, like many other social evils, is linked up with the imperfections and maladjustment of society and is also connected with the present day system of education to some extent. This system aims more at the training of the intellect than the education of the emotions which play such a vital part in the formation of the pattern of the child's behavior and personality. But the idea is gradually gaining wider acceptance that the juvenile delinquent needs the sympathy and understanding of the society and social agencies and not the heavy hand of the law. It has taken an unimaginative and insensitive society many dark centuries to achieve this degree to understanding.

Earlier in day of your anti-social children were put to gruesome death in a vain attempt to eliminate such undesirable elements form society and to deter the respective ones in Britain. In the closing years of the 18th century, a 12 years old child, who was accused of stealing a spoon was beheaded, but such steps did not lead to a decrease of stealing a spoon was but such steps did not lead to a decrease in the incidence of Juvenile delinquency. Right thinking people all over the world, therefore began to think of other means to deal with this critical problem. A good many years of legal and humanitarian concern for the welfare of children climaxed on the establishment of the first Juvenile Court in 1899 in Chicago. Our country followed suit and soon children courts, correctional institutions, special schools, probation services, etc became special features of juvenile system.

b. Nature and Extent of Juvenile Delinquency in India

To point out the juvenile delinquency is on the increase is not correct statement keeping in view the recent statistics available to us. But it may be interesting and useful to find out the rate at which it is manifested in a higher degree than in others. It will be also interesting to note the pattern of juvenile delinquency items of differentials based on age, sex and religion. Crimes committed by the juvenile may range from petty offences to heinous offences. It has been found the offences committed by juveniles to the total IPC crimes report in the country has shown a declining trend since 1989. From 1.2% during 1989, the share of juvenile crimes has steadily gone down. Though it showed some marginal increase between 1995-1996, but again went down to 0.5% during 1997-99.

Under the IPC a total of 16509 IPC cases were registered against juvenile during the

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years 2001 showing an increase of 78.1% against such cases in 2000. Similarly a total of 8332 cases of juveniles were reported under SLL during 2001 as against 5141 cases in 2000.

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment .

The profile of children in India reveals that a majority of them are living in conditions of want, deprived of basic survival, subsistence, and developmental opportunities. High rates of child mortality, school dropouts, child labour, handicapped children, and the problem of juvenile Childcare and protection had been accepted as the responsibilities of the modern welfare state but become obligations of the state with the shift from welfare to rights for fulfilling the needs of children following the UN Convention on the Rights of the Child. Through social welfare programmes and the Juvenile Justice System, states have undertaken the responsibility of ensuring developmental opportunities to children living in conditions of want and showing Signs of social maladjustment.

Juvenile delinquency has become a global phenomenon these days, despite intensive rehabilitative measures and special procedure for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency The industrial development and economic growth in India has resulted into urbanization which in turn has given rise to new problems such as housing, slum dwelling, overcrowding, lack of cost of living in urban areas make it necessary even for women to take up outdoor jobs for supporting their family financially. With the result their children are left neglected at home without any parental control. Moreover,

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temptation for modern luxuries of life lures young people of resort to wrongful means to satisfy their wants. All these factors cumulatively lead an enormous increase in juvenile delinquency in urban area.

CONCLUSION

Undoubtedly, juveniles in conflict with law and children in need of care and protection are defenceless and they need special protection. The state guarantees special treatment to them through statutory law. However, in practice, they often get victimized by legal and procedural entanglements. They are more prone to human rights violations at the hands of state agencies, their own family and community in the form of arbitrary detention, cruel punishments, torture and abuse. In recent years, the problems of children in need of care and protection and those in conflict with law has been receiving considerable attention both of the government, NHRC, social activists as well as the civil society at large. But, the problems encountered by them are of gigantic nature and all that is being done is not sufficient. If the problems faced by them are not taken into account, we as a society would be failing in our duties. It is therefore of paramount importance that as a society we must devote full attention to ensure that they are properly cared for so that they have their rightful place in the society. For this to happen, there is need to spread awareness on the problems faced by them as well as build-up the capacities of all those dealing with them.

In India too, the state has accepted the responsibility of providing care and protection to children. It has sought to provide such care and protection to delinquent and neglected children through welfare schemes and the Juvenile Justice System. However, studies have shown that the schemes are inadequate and the Juvenile Justice System is malfunctioning.

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