

JUVENILE DELINQUENCY: A CRITICAL ANALYSIS

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Abstract:

“All kids need is a little help, a little hope and somebody who believes in them.”

Juvenile delinquency is a serious problem and it is detrimental for the social order of nation. This problem is viewed as a socio-legal category invented in conjunction with the juvenile court; as a label applied to youth at the end of a chain of decisions involving the police, public and juvenile court officials and as form of behavior that violates legal codes, regardless of its detection or processing. The analysis of statistical data available at official sites shows increasing interest and involvement of juveniles in heinous crimes. Juvenile crimes have become such a common problem and they raise serious concern day by day. Those children who are involved in such crimes all over the world develop different rate of crime and world-view. With the time they increased their ability to think, develop their own views about the problems arising in their life. There is also a tendency of making comparison and there is complex in their mind. The problems arise when juveniles develop delinquent tendencies and having conflict with laws.

Key Words: Juvenile, Delinquent, Juvenile Justice System, Juvenile Justice Board.

Introduction:

Our Children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by society.¹

JUVENILE DELINQUENCY- What it means?

Etymologically, the term ‘delinquency’ has been derived from the Latin word *delinquer* which means ‘to omit’. The Romans used the term to refer to the failure of a person to perform the assigned task or duty. It was *William Coxson* who in 1484 used the term ‘delinquent’ to describe a person found guilty of customary offence. The word also found place in Shakespearean famous play ‘Macbeth’ in 1605. In simpler words it may be said that delinquency is a form of behaviour or rather misbehavior or deviation from the generally accepted norms of conduct in the society.

The early penology did not recognize any discrimination between adult and juvenile offenders so far punishment was concerned.² The problem of juvenile delinquency is therefore, essentially of a recent origin. The youngsters between a certain age-group are easily attracted to the temptations of life and lend into criminality. As is often said, the child of today is the citizen of tomorrow. The criminal tendency in youngsters must therefore, be timely curbed so that they do not turn into habitual criminals in their future life. It is with this end in view that most countries are presently tackling the problem of juvenile delinquency on priority basis. Many of them established separate juvenile courts to deal with young offenders and the procedure adopted in these courts radically differs from that of regular trial courts. In India, special

¹*Ibid*

²Sen P. K.: Penology Old & New, p. 149.

provisions providing for the care, protection, treatment, development and re habilitation of neglected or delinquent juveniles and their trial and disposition are enacted under the Juvenile Justice (Care & Protection of Children) Act, 2000 (Section 6 of 2000). Which are uniformly applicable throughout the country excepting the State of Jammu & Kashmir and rules under the Act enacted to be known as the Juvenile Justice Rules, 2007 which came into force w.e.f. October 26, 2007.

Causes of Juvenile Delinquency:

Violence in the Home: This is one of the largest contributing factors to delinquency is violence in the home. Every Tulsa juvenile criminal defense attorney will tell you that when a child is subjected to violence, they are in turn violent people.

Lashing out at others for the violence they experience at home is very common. Children subjected to violent actions, or those who witness it to others, are more likely to act but their fears and frustrations. They often have a “don’t care” attitude and this allows them to get into trouble more easily.

Violence in their Social Circles: If the neighborhood is in which a child lives is violent, the children will have a tendency to be more prone to delinquency.

Many people describe this as street survival methods because the child gets into trouble as a way to stay out of trouble from area gang members or violent people. In many cases, when you remove the child from this type of situation, their tendency for delinquent actions is removed.

Peer Pressure: Similar to neighborhood pressures, peer pressure from direct acquaintances can have an effect on how a child reacts to bad situations. If all of their friends are committing delinquent acts, the child may feel pressured to do the same to be accepted.

The best way to avoid this type of situation is to be actively involved with who your child is hanging out with on a regular basis. Know their friends. Know their friends parents. This not only instills confidence in your child to do the right thing, it can help parents keep their children away from bad influences.

Socio-economic Factors: Juvenile delinquency is more common in poorer neighborhoods. While all neighborhoods are not exempt from delinquent activities, it is believed they happen more in areas where children feel they must commit crimes to prosper.

Theft and similar crimes may actually be a result of necessity and not that of just a petty crime. The only true help for this situation is to make sure that children in these areas have access to what they need and understand that they do not have to commit a crime to get ahead in life.

Substance Abuse: Substance abuse in a home or by the child is a very common cause for delinquency. Children who are exposed to substance abuse often do not have the necessities they need to thrive and are forced to find these necessities in other ways. Others, who become dependent on a substance, may also need to commit crimes to sustain their habit.

Counseling and treatment for this type of situation is the only real remedy to help these children. This type of situation can cause their self-worth to deteriorate and allow them to commit acts that they would not otherwise have considered.

Lack of Moral Guidance: Parental or adult influence is the most important factor in deterring delinquency. When a parent or other adult interacts with the child and shows them what is acceptable behavior and what is considered wrong, the child is more likely to act in a way that is not delinquent.

It is very important for a child to have a bond with a good adult who will influence their actions and show them the difference between what is right and what is wrong.

Even if your child has committed an act of delinquency, their lives are not over. You, as their care giver have the chance to turn around their lives and show them how to change their ways.

It starts with hiring a quality Tulsa juvenile criminal defense attorney so that they can receive a fair trial. Once they have gone through this process, as a care giver, you can begin to change the influences in the child's life so that they can start fresh and go into adulthood with a clean slate.

Justifications which the Juvenile may advance against their Delinquent Act-

David Matza (UK)³. In his theory of delinquency has attributed the following justifications or excuses which the juveniles very often advance to explain or neutralize their criminal activity:-

- (1) They usually deny responsibility by claiming that the act was a result of uncontrollable passion, accident, poverty or parental neglect etc.
- (2) The delinquent may take the plea that no one is actually harmed, either physically or financially by his criminal act. Those indulging in alcoholism, drug-trafficking, vagrancy etc. It may justify their act on this ground. They may even perceive it as an act being done for their victim's good.
- (3) He may claim that the victim was also criminal and therefore, he should not complain or that the victim was the first to start trouble, hence, he has no moral justification to attribute criminality to the delinquent. For example, in the case of sex-offence, the delinquent may allege that it was the victim who initiated the cause or in case of domestic violence, that the victim deserved the violence because he or she had misbehaved.
- (4) The juvenile offender might claim that since everyone has at sometime or other committed a criminal act, hence no one has a moral justification to blame or condemn him.
- (5) The approval of the gang or group or criminal organization may be more important to the delinquent than that of his family or society and he may justify his criminal act on that ground. This is generally true with juveniles associated with criminal gangs whose loyalty they consider more important than that of their own family members.

Juvenile Delinquency in other countries –

The problem of juvenile delinquency still remains a paradox despite unbridled efforts on the part of penologist to curb this menace several causes such as slum-dwelling, poverty, neglect or partiality by parents towards their children. Lack of parental care and social security may be attributed to the unprecedented increase in juvenile delinquency.⁴ The situation in European countries in this regard is, however, not so alarming as in United States where the problem has touched its climax in recent years. *Ms. Sophia M. Robinson* in her learned article entitled "Why Juvenile Delinquency Programmes are Ineffective" has aptly pinpointed the cause of the failure of preventive efforts in suppressing juvenile delinquency in United States.⁵

Norway – In Norway, the criminal cases of young offenders between the age group of 14-18 are referred to the Municipal Juvenile Welfare Committee consisting of 5 members. This committee functions to suggest adequate measures with regard to juvenile delinquents. The Enactment Of Child Welfare Act, 1953. However, provides the delinquent child should be allowed to stay at home and the Juvenile Welfare Committee should take preventive steps by visiting the delinquent's home at frequent intervals and suggest

³Matza David: Delinquency & Drift (1964) p. 39.

⁴ Observation made by Prof. HonsHeff formerly Chief of Vienna's Psychiatric Neurologic University Clinic.

⁵ Quoted by David Dressler in Readings in Criminology (2nd Reprint). P. 681.

effective measures to keep the offenders away from criminality. There is greater emphasis on medico-psychological method of treatment of young delinquents in recent years.

Turkey- Turkey has shown keen interest in juvenile justice. Even though rate of juvenile delinquency is not high, slightest rise in child delinquency excites concern in that country because of the stronghold of the family institutions.

The eminent Turkish scholar *Nephan Saran* dealt with socio-cultural peculiarities of the children under 18 years of age who were involved with the police of Istanbul during 1956-1968. He observed that theft, sexual offences, violence, smuggling and pick pocketing were the most prevalent crimes and delinquency was concentrated in the age group of 16-18 years. The main causes of the delinquency were crowded families, unemployment, poor housing and culture conflict.

International Concern for Juvenile Justice –

The immensity of the problem of juvenile delinquency has been engaging the attention of penologists at international level also. The International Penal and Penitentiary Commission⁶ worked successfully on the prevention of crime and treatment of offenders until October 1951 and repeatedly stressed on the necessity of rationale and humane treatment methods which could be avoid the need of keeping juvenile offenders in prison in order to disassociate them from the criminal world.

The pressing problems of juvenile delinquency in developed and the developing countries drew attention of the United Nations to work out some guiding principles for Juvenile Justice System. The United Nations Asia and Far East Institution made significant contribution in this behalf as a result of which the 7th U.N. Congress on Prevention of Crime & Treatment of offenders adopted, in September 1985.

India being a U.N. member has responded favourably to this call of the international body and enacted a comprehensive law on the subject called the Juvenile Justice Act, 1986.⁷13.5

Juvenile Justice in India:

Available statistics on juvenile delinquency in India reveal that the problem is not as tense in the western world. This may be due to variations in living conditions such as greater family affiliations and parental control, stronghold of religious convictions and due regard for moral precepts in Indian society. This is not to suggest that the proportion of juvenile delinquency in India is negligible. The impact of western civilization and temptation for luxuries and pompous life has greatly disturbed the modern Indian youth. Consequently, there has been a considerable growth in crimes committed by juveniles. India like other country, also seeks to tackle the problem of juvenile delinquency on the basis of three fundamental assumptions:-

- (1) Young offenders should not be *tried*, they should rather be *corrected*;
- (2) They should not be *punished* but *reformed*;
- (3) Exclusion of delinquents i.e. children in conflict with law from the ambit of Court and stress on their non-penal treatment through community based social control agencies such a Juvenile Justice Board,⁸ Observation Homes,⁹ Special Homes¹⁰ etc.

⁶ This was called International Penal Commission before 1928.

⁷ This Act was repealed and substituted by the Juvenile Justice (Care & Protection of Children) Act, 2000 (*w.e.f.* 1st April, 2001) *see* Appendix VI.

⁸ Section 4 of the Juvenile Justice(Care & Protection of Children) Act, 2000.

⁹ Section 8.

¹⁰ Section 9.

The Indian law contains a more precise and clear-cut definition of juvenile delinquency. It provides that any violation of existing penal law of the country committed by a child less than 18 years shall be an act in conflict with law for the jurisdiction of the Juvenile Justice Board.

General Principles of Juvenile Justice

Welfare v. Justice Models

The sentencing of an individual convicted of a criminal offence is largely driven by three key considerations:

Retribution (Punishment), Deterrence and Rehabilitation . In the case of Juvenile offenders the principles of rehabilitation is often assigned the greatest weight.¹¹

Special consideration for juveniles within the criminal justice system is not a new concept. In Roman law, the principle of *doli in capax* protected young children from prosecution owing to the presumption of a lack of capacity and understanding required to be guilty of a criminal offence. Most countries have some provisions for special treatment of children who come into conflict with the law; however the degree to which this is provided varies across the world.

Juvenile Delinquency in India- Current Trends

The legal definition of child affects how the courts in a country deal with the offenders. As per the international norms, and also under the Juvenile Justice System in India, a minor or a child cannot be tried in the same manner as an adult. A child is treated as *doli incapax*, with no mensrea- he/she is not capable of understanding the consequences of action. Thus, nothing is an offence done by a child between the age of 7-12 years, who has not attained sufficient majority to understand the consequences of his/her action, and did not know that he/she was doing wrong which are punishable under the provision of IPC, 1860.

The *National Crime Records Bureau* (NCRB) data shows that there has been an increase in crimes done by the juveniles, especially by those who are comes under the age of 16-18 years.

The Juvenile Justice Bill was introduced in the Lok Sabha in 2014, after it was felt in the post- Nirbhaya case that some action has to be taken against the increasing involvement of juveniles in the age of 16-18 years in serious/heinous offences. The serious offences have not been in the Indian Acts per se, but they may be taken to mean the category of crimes which would entail implementation issues, and the new bill intended to close these loop holes.

The bill introduced concepts from Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption 1993. It was laid down under the bill of 2015 that the Juvenile Justice Board will decide whether a juvenile offender in the age of 16-18 years should be treated as an adult. Those juveniles who commit heinous crimes such as Murder and Rape (which invite punishment of 7 years or more) should be treated as adults. However, if the Board decides, the juvenile can be sent for rehabilitation.

The Juvenile Justice Act has paid lot of attention to preventive measures in controlling juvenile delinquency. Keeping in mind the weakening family and community control on individual members, the Act has emphasized on the role of family in controlling juvenile delinquency (Prakash Haveripet, 2013). Family is the most fundamental structural and functional unit of society. According to the Act, family plays a crucial role in the taking care, nurturing and protecting the children. Thus, the children are groomed to become responsible members of society. The family keeps the children away from bad habits, such as substance abuse, watching pornography etc.

¹¹Piquero A, Steinberg L. Rehabilitation versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States. Macarthur Research Network on Adolescent Development and Juvenile Justice, 2008.

Conclusion:

The Juvenile Justice Act of 2016 can be seen as a very progressive step of the Indian government towards keeping pace with changing trends in juvenile crimes.

The essence of Human Resource Development is education, which plays a significant and remedial role in balancing the socio-economic fabric of the country. This invests towards improving the quality of human life. Although development brings economic gain to society in general, specific measures are still required to ensure that they reach the disadvantage and the weaker sections of the population such as Women, Children, and Destitute, Disabled and Aged persons. It is said that children face problems like child neglect, child abuse, child labour, delinquency etc. As per the Indian perspective two types of juvenile delinquency exist; juvenile in conflict with law and child in need of care and protection.¹²

Related to this other studies have suggested that there are persisting patterns of delinquency in poverty level neighborhoods regardless of changing occupants; this “culture of poverty” argument has come into disrepute among many social scientists. The gang, a source of much delinquency, has been a common path for adolescents, particularly in the inner cities. Not until the development, after 1899, of the juvenile court was judgment of youthful offenders effectively separated from that of adults. The system generally emphasizes informal procedure and correction rather than punishment.

In order to limit the problem of “*juvenile delinquency*” and “*child neglect*”, the Indian Constitution under Articles 24, 39(3) and 45 made provisions for the protection, development and welfare of the children, much before UN Convention on Rights of Child, 1989. Union Government adopted a national policy of children in 1974 which reaffirms the Constitutional provisions and declares that it shall be the policy of state to provide adequate services to children both before and after the birth and through the period of growth to ensure their full physical, mental and social development to bring out the operations of juvenile justice system in the country in conformity with UN Standards Minimum Rules for the Administration of Juvenile Justice. Hence Juvenile Justice Act, 1986 was repealed and later replaced by Juvenile Justice (Care and Protection of Children) Act, 2000 and later by Juvenile Justice (Care and Protection of Children) Act, 2015.

In conformity of the objective of the Juvenile Justice (Care and Protection of Children) Act, 2015 there are several residential institutions setup by the Department. For holistic development of the child, the Ministry has been implementing the world's largest and most unique and outreach programme of *Integrated Child Development Services (ICDS)* providing a package of services comprising supplementary nutrition, immunization, health check up and referral services, pre-school non-formal education¹³.

Though Union Government as well as Government of States has adopted various schemes for the welfare of children and these schemes have brought considerable improvement in the status and children, yet these schemes are not that much fruitful for improving the condition of children in India.

For a long time human rights were considered or relevant only for the adult world. Children had no right. It should be now realized that formulating rights for children, far from the parental responsibilities, provides norms for a proper discharge a their responsibilities and ensures state support as well as support from the civil society for the realization of the rights whether it is socio-economic support to the family, providing educational infrastructure or setting up an appropriate legal framework for protecting the rights of the children.

The enormity of the problem can be caused by the fact that according to an International Labour Organization Survey there are about 215 million child workers aged between 5 and 14 in the world. We have children working in the *zari* industry, silk industry, carpet weaving, lock making, metal industry, fast food,

¹² The Juvenile Justice (Care and Protection of Children) Act, 2015.

¹³ <http://wcd.nic.in/icds/htm>

and etc. The parameters are shifting. When the right to education up to the age of 14 is a fundamental right we cannot have working children - a kind of cheap and exploitable labour.

In order to cope with this burning problem some suggestive measures are as follows:

The Government should make further efforts to actually implement the enforced laws properly and to remove certain inherent shortcomings in the existing schemes in order to make them more effective.

The Department of the Social Welfare is the link between Juvenile Justice (Care and Protection of Children) Act, 2015, Convention on Rights of Child and the constitutional provisions such as Article 15 (3), Article 21-A, Article 39 (e) & (f), Articles 46 and 47, which impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. But the need is to effectively implement the provisions and to have a strict approach towards the achievement of all the promises being made to the generation of future by the State.

The media attention to children either as offenders or as victims can have a very damaging effect on the child. We have many instances where identities of such children have been disclosed by the media. It has a disastrous impact on the child. The Act provides for not disclosing such a child's identity in the media and for not publishing his photograph. But, the police and even its juvenile unit often ignore in practice these provisions. So there is a big scope for a programme to sensitize the personnel associated with the Juvenile Justice (Care and Protection of Children) Act, 2015 including the Special Juvenile Police Unit on the importance of understanding and protecting such children.

Always have strong outside eyes makes clear that no jurisdiction, regardless of the good intentions of its leaders and agencies, should monitor its own system.

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