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VARIOUS MEASURES FOR THE PREVENTION OF CRIMINAL LIABILITY OF A JUVENILE IN INDIA

AUTHORED BY - MEGHNA SHUKLA¹ & VIR VIKRAM BAHADUR SINGH²

ABSTRACT

“Children need love, especially when they do not deserve it.

” Harold S Hulbert, child psychiatrist

Juvenile is considered as a child who has not completed a specific age as mentioned in the law of any country and doesn't bear resemblance as an adult person and who can be made legally answerable for his criminal activities. The juvenile is a child who has alleged violated certain laws which declares his act or omission as an offence. A juvenile and a minor are used in different perspective in legal terms. The term juvenile is generally used in reference to a young criminal offender and minor is related to legal capacity of a person. In United States of America, every state has the authority or jurisdiction to determine the age of juveniles who is living within its own territory or jurisdiction; because in the USA different states have different age criteria with regard to offence committed by the juveniles³. But most of the states concur with maximum age set in the standards 1976. Under federal govt., “a person under the age of 21 years can be considered as juvenile delinquent for committing any offence but in some other States age limit is under 12 years or under 18 years. In majority of the States there is no lower age limit set for litigating child as a delinquent, in the Mississippi it is 10 and in the New York it is set as 7 years”

“There can be no keener revelation of a society's soul than the way in which it treats its children.” - **Nelson Mandela.**

We have to recognize the rights of the child in the societal framework, and there is need in an exemplar change from a „need-based approach“ to a „right based approach. The word „juvenile“ originates from „juvenis“, (in Latin) i.e young. The main object of juvenile justice is to protect all children including those who are in conflict with law and bring them within its domain. However, the word „conflict with law“ and delinquency is often interchangeable or

¹ LL.M. (Criminal And Security Law), Faculty Of Juridical Science Rama University, Kanpur.

² Associate Professor, Faculty of Juridical Sciences, Rama University.

³ Convention on Rights of the Child, 1959

can be used together which describes the children who are involved with the judicial system as a result of committing or being suspected of a crime. There has always been a clash between the protective approaches of juvenile justice and the traditional approach of criminal justice system which has created a major problem in front of our juvenile justice system. Despite our Constitution has guaranteed various civil rights and child centric services, still an innumerable Indian children, face discrimination and deprivation on many grounds.

Abraham Lincoln said: “A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”

KEY WORDS: Child, Juvenile, Rights Etc.

INTRODUCTION

Childhood is a universal human experience and has vital stakes. The future, development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. At present time the child is considered as an important social unit and is held to be entitled to all that makes for healthy living, sufficient recreation, schooling adopted to his natural living methods, intelligent home care and the right to develop his abilities to their fullest extent. The Supreme Court of India in *Bandhua Mukti Morcha v. Union of India* and others observed as follows: "A child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation developed or developing links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. The parents themselves live for them. Neglecting children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenry. Children are the greatest gift that has been bestowed upon humanity. They are the pillars on which the foundation of tomorrow is laid. They are useful human resources that can lead to the progress and development of a country. A healthy and

educated child of today is the active and intelligent citizen of tomorrow. Therefore, an important duty on the part of the State is to provide proper care and protection to children because the future of a nation depends on the physical and mental well being of the children. Hence, in this context it may be mentioned that the idea of social justice became a political doctrine of all the States and it was incorporated in their Constitutions particularly of those States that became independent after the Second World War.⁴

1.1 WHO IS JUVENILE

The word _Juvenile ‘has been derived from the Latin word juvenis’, which means young. Although the word child’ and juvenile’ have been used interchangeably as both fall in the same age group, yet in common parlance they are different. While the word child ‘relates to the image of simplicity’, innocence’ and need of care & protection’, the word juvenile’ is obdurate due to its relation with the court and the offence. A juvenile is a child who is alleged to have committed or violated some law which declares the act or omission on the part of the child as an offence. The concept of the juvenile varies from State to State for convenience. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law. Since long it has been universally accepted that a juvenile delinquent, in view of his level of maturity and age, cannot be equated with the grown up offender, and as such has to be treated in different manner from the adult offender. For this reason and requirement, various statutes have been passed by the legislature related to the juvenile delinquents. In India the age of juvenility is 18 years which has been fixed in view of India’s international commitments. Juvenile offenders and neglected children are easier to study, at the same time, it is much easier, far more helpful and infinitely more urgent to reform, or at least seek to reform them. In this context, the problem of juvenile delinquency deserves serious attention and it requires scientific investigation. It is the general thinking that the greatest problems of childhood are poverty, homelessness or disease. But delinquency is even worse a problem or evil when compared to these. Majority of criminals commence their lawless behaviour in their earlier years only, hence in order to control adult crime rate, one has to tackle the problem of juvenile delinquency⁵.

⁴ Edwin R.A. Saligaman (Editor-in-Chief), Encyclopedia of the Social Sciences” Vol.III, 1951 reprint, page 380.

⁵ Prof. N.V. Paranjape – _Criminology and Penology”, 10th Edition, 2000, page 356.

1.2 DEFINITION OF A JUVENILE

In India, before passing of the Children Act, 1960 there was no consistency regarding age limit of juvenile delinquent. Bombay Children Act 1948 defined “Child” – “means a boy who has not completed the age of 16 years or girl who has not completed the age of 18 years”. The U.P. Children Act defined “Child” – “as a person under the age of 16 years”. Under the A.P. Children Act 1920 “Child” means “a person under 14 years and when used to reference to sent to certified school applies to that child during while period of detention notwithstanding that the child attains the age of 14 years before expiration of that period”. The Saurashtra and West Bengal defines “a Child as a person who has not attained the age of 18 years”. Haryana Children Act has also maintained this difference in defining “child as a boy who has not attained the age of 16 years and a girl who has not attained age of 18 years”. Juvenile Justice Act, 1986 defines “a juvenile or child, who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age”. Government of India while discharging its international obligations revoked the JJA Act, 1986 by 2000 Act and the distinction regarding the age between male and female juveniles was done away. According to the new law, age of juvenile for both male and female involved in conflict with law has been fixed at 18 years. A juvenile in conflict with law under the JJ (C & P) Act, 2000 is “a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of said offence”. And under the Juvenile Justice (Care and Protection) Act 2015 juvenile defined under section.2 (35), “juvenile means a child below the age of eighteen years”.

1.3 THE CONCEPT OF JUVENILE JUSTICE SYSTEM

Concept of juvenile justice system was emerged from a thought that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the structure of the traditional processes of criminal law. The Juvenile Justice System is designed to respond to the needs of young persons who have been convicted for a crime and their rehabilitation with reforms. Main objective of the Juvenile Justice System is “to provide and preventive treatment services for children and young persons and then secondarily rehabilitation, and improved socialization”. During the Seventh United Nation Congress on prevention of Crime and the Treatment of Offenders, three approaches to juvenile justice were identified, namely, firstly the due process model, secondly the welfare or parents partial model and last and third is the participatory model. The Juvenile Justice System is one of measure taken by the government to achieve the dream of the Constitution of India concerning to the

welfare and care of children. The Constitution recognizes the special status to children through Articles 15(3), 21-A, 24, 39(e) and (f), and. The treatment of offenders is recognized by three models of juvenile justice system on the basis of existing approaches to deal with juvenile delinquents⁶.

1.4 UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY

1.4.1 FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme⁷.
5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:
 - a. The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special

⁶ The Object and Reasons Appended to the Children Act, 1960.

⁷ Ferdinand, T.N., The Offence Pettrans and Family Structure of Urban, Village, and Rural Delinquents. Journal of criminal Law, Criminology and PoliceScience,55,1964,86-93.

- care and protection;
- b. Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
 - c. Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
 - d. Safeguarding the well-being, development, rights and interests of all young persons;⁸

1.5 SCOPE OF THE GUIDELINES OF THE UNITED NATIONS

1. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.
2. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State⁹.

1.6 GENERAL PREVENTION FOR THE JUVENILES

1. Comprehensive prevention plans should be instituted at every level of Government and include the following:
 - a. In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
 - b. Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
 - c. Mechanisms for the appropriate co-ordination of prevention efforts between governmental and nongovernmental agencies;

⁸ Friedmann, W. *Law in a Changing Society*, Chapter - 6, *Criminal Law in a Changing World*“, Second Edition, Third Indian Reprint, 2003, page 226.

⁹ Bentham, J. *Theory of Legislation.*“ (1975), Reprint 1979.

- d. Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- e. Methods for effectively reducing the opportunity to commit delinquent acts;
- f. Community involvement through a wide range of services and programmes;¹⁰

1.7 SOCIALIZATION PROCESSES FOR THE JUVENILES

A. FAMILY

1. Every society should place a high priority on the needs and well-being of the family and of all its members.
2. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.
3. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.
4. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".
5. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

¹⁰ Thapa Nishi Ph.D Thesis, „Protection and Care of Juveniles, the Recent Trend in Juvenile Justice in India,‘ University of North Bengal, 2012 available at @INFLIBNET; URI : <http://hdl.handle.net/10603/165875>, last visited on 26th December 2017.

6. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities¹¹.

B. EDUCATION

1. Governments are under an obligation to make public education accessible to all young persons.
2. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:
 - a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;
 - b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;
 - c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
 - d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
 - e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;
 - f) Provision of information and guidance regarding vocational training, employment opportunities and career development;
3. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.
4. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments¹².

¹¹ Trojannovicz, R.C. Juvenile Delinquency; Concept and Control. New Jersey; Prentice Hall Inc.1973, 57-60

¹² Eaton, J. W. and Polk, K., Measuring Delinquency. Pittsburg; university Pittsburg Press,1961.

1.8 LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

1. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.
2. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.
3. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.
4. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.
5. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person¹³.

1.9 RESEARCH, POLICY DEVELOPMENT AND COORDINATION

1. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.
2. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.
3. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.
4. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations¹⁴.

¹³ Sethi, T.D. „Precursors of Juvenile Courts in India“, Journal of Indian Law Institute (Vol. 24:4) page 504.

¹⁴ 8Sellin, T. and Wolfgang, M., The Measurement of Delinquency. New York; John Wiley and Sons, Inc., 1964.

5. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.
6. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.¹⁵

1.10 SIGNIFICANCE OF SEPARATE JUSTICE SYSTEM FOR JUVENILES

The concept of separate courts, institutions and procedures for juvenile offenders and their differential treatment is quite a recent development. Earlier children were tried for their offences in ordinary criminal courts and punished at par with adult offenders. It was only when the new penology based on reformatory and rehabilitative ideals, came to be applied, it was realised that courts, procedures and prisons meant for adult offenders cannot serve the interests of juvenile offenders. If children are kept in jails and are allowed to mingle with adult offenders, it would have the effect of exposing them to harmful influences of hardened criminals. Friedmann observes, A revolution of far greater proportion has, during the last generation, taken place in the treatment of juvenile offenders. Almost universally today, in civilised countries, the juvenile offender (usually a person between the age eight to eighteen) who not so long ago used to be subjected to the harshest penalties and thrown together with hardened criminals - is now subjected to a special procedure. Children are the easy victims of the unlawful activities be it the petty offences or something as serious as trafficking or war crimes. Perhaps this is because of their innocence or their vulnerability, it is important to recognise that children are not born into crime; they may be led into it. They are innocent and therefore need to be protected and safeguarded. They need redirection and channelisation of their spirits and energies. This requires a sensitive heart and a proactive mind that could counsel them.

A change in the perception of the causes of delinquency at the late 19th century emerged which was grounded in the newly emerging sciences of sociology, criminology, psychology and psychiatry. Rather than behaviour being determined by social and environmental forces as viewed by sociologists, psychologists and psychiatrists looked explanations within the person's

¹⁵ Uma Tripathi, "The Criminal Responsibility of the Under Age in India : An Analytical Study in Light of the Amended Juvenile Law", *Orient Journal of Law and Social Sciences*, Volume X, Issue 11, October, 2016.

psychological make-up. Children often become delinquent by force of circumstances and not by their choice. Therefore, they cannot be considered as criminals and it would be undesirable to try them under regular criminal justice system on par with adult criminals. Hence a justice system of juveniles has to be evolved laying emphasis not on punishing the juvenile delinquent but to reform, educate and rehabilitate him. Thus, it came to be realised that the juvenile justice jurisprudence has to orient itself towards the social welfare and reformation of the juvenile, and not to decide his guilt or innocence or punish him in response to a crime¹⁶.

CONCLUSION

In India, the focus has always been and still is on reformatory justice i.e. reformation of the juvenile in conflict with law. In many countries looking after the victim i.e. restitution and restorative justice is being given more importance. Restitution means compensating the victim or restoring the harm caused either to physical body, mental health, property or reputation of the victim. Reformatory justice concentrates only on the reformation of the offender and doesn't involve itself with the victim. Restorative justice focuses on rehabilitation of both the victim and the offender and also aims at restoring the broken trust relationship between the two.

Restorative justice also differs from criminal justice in its concepts. Restorative justice focuses on the harm caused by the offender while criminal justice focuses on the offender. In criminal justice the State has the responsibility of punishing the offender, while in restorative justice it is for the offender who has to correct the harm done to the victim. In criminal justice the victim has a passive role as a prosecution witness, while in restorative justice victim has a prime role. In criminal justice the involvement of the community, which though is not a direct victim of the crime but is affected by the crime, is not given much importance. In restorative justice the community is actively involved in providing an opportunity to the offender for his reformation and rehabilitation. Criminal justice is concerned mainly with the crime which has already taken place in the past while restorative justice looks at the future and focuses on repairing the damage caused .

The study has been undertaken with a view to examine the juvenile justice system in India, the historical background of the various laws passed by the legislature from time to time and the

¹⁶ Kumar Vivek Kant, „Justice for Juvenile“ The Indian Police Journal. January – March, 2015. Pg 106.

protection accorded to the juvenile under these laws. This is a doctrinal study and the landmark cases as decided by the Supreme Court and High Courts have been analysed. The latest law of the land has been discussed along with the circumstances in which it was brought into existence. On the basis of the study certain conclusions have been arrived at and some suggestions have also been made¹⁷

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¹⁷ Dr. Bikram Kumar Das. „Juvenile Justice in India“. 2008 pg 28.