

CRIMINOLOGICAL VIEWS ON JUVENILE JUSTICE SYSTEM IN INDIA

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ABSTRACT

Children are regarded as a society's most valuable asset. They are the guardians of all the aspirations that grownups see and hope to see realised in the future. Families and society as a whole are responsible for the physical, mental, and emotional well-being of children and teenagers, but lack of social control, biophysical adventures, acculturation, and other factors can lead to deviance in their behaviour, which can range from minor infractions to heinous crimes. When the perpetrators are minors, the concept of juvenile delinquency comes into play. The purpose of this study is to examine the juvenile justice system through the prism of societal needs, and then to suggest modern demands. It would be beneficial for the reader to grasp the various levels of juvenile justice, beginning with the definition of a juvenile, which is studied both sociologically and legally. It is simple to assess the causes of juvenile delinquency if you have a basic awareness of the history, theories, and causes of crime. The primary focus of this study is the Juvenile Justice (Care and Protection of Children) Act, 2015, which is India's primary juvenile justice legislation at the moment.

Keywords: *Delinquency, Juvenile, Philosophy, Reformation.*

1. INTRODUCTION

There are innumerable factors responsible for causing traits of criminal behaviour in children who are below a certain age of adult responsibility; many jurists, psychologists and criminologists developed various theories based on their own human experimentation and experience as to what are the causes of them. Generally a broad classification into 'biogenic, psychogenic and sociogenic'¹ theories are considered to understand the cause of delinquency. Further, many other theories have been categorized based on various grounds. The theories of juvenile delinquency may not always be relevant in every case. There comes a role of society before a crime is committed by child and the correctional agencies after it has been committed. India is a signatory to a convention which also affirms protection to juvenile delinquents from capital punishment.¹¹ It is true that progressive reformists believe in rehabilitating offenders but the people who are directly involved in action might not make a vision come true. Should there be theoretical actions? Yes, of course. Justice is not hit and trial. There is a need to re-structure legal and social systems. A progressive check onto philosophical foundations are tried to be carried out in this paper for a strong contention on theories and actions in juvenile delinquency. If we go back to ancient India, it is seen that parent was not supposed to punish a child below five years of age. Some Smritis, like the Brahd-Yama and the Sankha say that a boy over five and less than eleven, if guilty of some Patakas such as drinking Sura, has not to undergo penance personally but his brother, father or other relations or friends have to undergo for him and that if a 'child is

¹ D.C. Gibbons, *Delinquent Behaviour* (Prentice-Hall, Englewood Cliffs USA, 2nd edn., 1976).

¹¹ International Covenant on Civil and Political Rights, 1966, part III, art. 6.

less than five, then whatever the act may be, it is not deemed to be a crime nor a sin and the child is consequently not liable to any punishment or prayaschita.^{III}

2. HISTORICAL BACKGROUND

In India, the rule of *doli incapax* is followed through its penal law wherein ‘Nothing is an offence which is done by a child under seven years of age.’^{IV} If we take notes from other countries, the concept of protecting children from criminal liability due to meager understanding of right and wrong developed from moral basis. On a general note, age of seven years and below is considered totally free from such penalties but the question of delinquency comes above this age and below majority.

Society considers crime as any offence against the law. But shifting our minds from law to society which makes the law provided a structural change in humans. We were not ready to understand reasons of crime originate from society. A combination of two abstract criteria is generally regarded by legal scholars as necessary to define crime, namely, legal description of an act as socially injurious and legal provision of a penalty for the act.^V During the 1920s and 1930s, researchers at the University of Chicago were increasingly concerned with the effect that growing urbanization, industrialization, and immigration were having on the social organization of Chicago neighborhoods.^{VI}

While America connoted acculturation and structural deviance as an emerging factor for increasing crime, Indians adapted to English reforms like Borstals for providing adequate educational and vocational training to young offenders who are committed by the juvenile courts.^{VII} After the United Nations Declaration of the Rights of the Child in 1959, the Children Act was enacted in 1960 which was later repealed by the Juvenile Justice Act, 1986, this was modified by the Act of 2000 and presently after so many amendments the Juvenile Justice (Care and Protection of Children) Act, 2015 is the statute on the subject.

3. UNDERSTANDING JUVENILE DELINQUENCY

Etymologically, the word ‘delinquency’ is derived from Latin word *delinquer* which refers to ‘to omit’. The word ‘juvenile’ comes from the Latin *juvenilis*, which means ‘youthful’. It was *William Coxson* who in 1484, used the term ‘delinquent’ to describe a person found guilty of customary offence.^{VIII} But the concrete definition of the term is difficult to arrive at. Generally speaking, the term refers to a large variety of disapproved behaviours of children and adolescents which the society does not approve of, and for which some kind of admonition, punishment or corrective measure is justified in the public interest.^{IX} It is basically a mixture of every anti-social behaviour which leads to commission of certain acts prohibited by penal statutes like stealing, theft, hurt, murder, etc. The wide range of study from legal to social and psychological, has led to different opinions on the definition of the term and thus

^{III} Juvenile Delinquency, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/185477/6/06_chapter_01.pdf (last visited on October 7, 2020).

^{IV} The Indian Penal Code, 1860 (Act 45 of 1860), s.82.

^V Stuart Henry and Mark Lanier, *What is Crime?: Controversies Over the Nature of Crime and what to Do about it* 208 (Rowman & Littlefield, 2001).

^{VI} Charis E. Kubrin and Ronald Weitzer, “New Directions in Social Disorganization Theory” 40 *Journal of Research in Crime and Delinquency* 374-402 (2003).

^{VII} The Borstal School and Reformatory Schools Act, 1897.

^{VIII} N. V. Paranjape, *Criminology, Victimology and Penology* 661 (Central Law Publication, Allahabad, 17th edn., 2017)

^{IX} Id.

Caldwell prefers to keep it raw and adjust according to the particular State wherein he states that it includes all acts of children which tend them to be pooled indiscriminately as wards of the State.^x

According to Indian law, there are two categories of Juveniles, namely,

- (i) Juveniles in conflict with law, and
- (ii) Juveniles in need of care and protection.

Juvenile means a child below the age of eighteen years.^{XI} Juvenile in need of care and protection means the child who is found without any home or settled place of abode and without any ostensible means of subsistence; or who is found working in contravention of labour laws for the time being in force or is found begging; or living on the street; or who resides with a person (whether a guardian of the child or not) and such person does any of the act mentioned therein; who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or who is being or is likely to be abused for unconscionable gains; or who is victim of or affected by any armed conflict, civil unrest or natural calamity; or who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.^{XII}

Juveniles in conflict with law are actual offenders and dealt by Juvenile Justice Rules 2007. The very special feature of the Act is that a juvenile who has committed an offence is not addressed as 'juvenile delinquent' but 'juvenile in conflict with law'. It is a progressive approach towards reformation of the young offenders.

4. CRIMINOLOGICAL REGIME: FINDING THE BASIS

There are three major views on the basis of juvenile delinquency viz., Biogenic, Psychogenic and Sociogenic. While studying about biogenic factors we can ponder upon Cesare Lombroso's criminal atavism where he postulated that criminals represented a reversion to a primitive or subhuman type of person characterized by physical features reminiscent of apes, lower primates, and early humans and to some extent preserved, he said, in modern savages.^{XIII} A typical criminal according to biogenic theorists have certain facial and bodily characterization. This kind of categorization was disapproved on logical basis by other philosophers who supported psychogenic and sociogenic factors.

According, to very large group of psychologists and criminologists, psychiatric and psychological factors are certain ground of delinquency. Clarence Darrow became a potent force in the movement for revised standards of culpability, and his utilization of psychiatric testimony in the Loeb-Leopold trial in 1924 represents a milestone in the progressive integration of psychological knowledge and law. His distinction between "legal insanity" and "mental disease", along with his argument that both relieve the individual of personal culpability for criminal behavior, underlies more recent judicial decisions such as that of the District of Columbia Court of Appeals in

^x Rober G. Caldwell, *Criminology* (The Ronal Press Company, 35th vol., 1956).

^{XI} The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(35).

^{XII} Id., s. 2(14).

^{XIII} Marvin E. Wolfgang, "Pioneers in Criminology: Cesare Lombroso (1835-1909)" 52 *The Journal of Criminal Law, Criminology, and Police Science* 361 (1961).

Durham v. United States in 1954. Other courts have recognized “irresistible impulse” as outside the limits of legal culpability.^{xiv}

“[The delinquents are] less adequate than the non-delinquents in capacity to operate on a fairly efficient level and have less emotional stability ... they are more dynamic and energetic, much more aggressive, adventurous, and positively suggestible, as well as stubborn ... more inclined to impulsive and non-reflective expression of their energy-drives ... Such temperamental equipment is in itself highly suggestive of the causes for their greater inclination to ignore or readily break through the bonds of restriction imposed by custom or law.”^{xv}

The differential association paradigm prescribed by Sutherland and Cressey^{xvi} believes that criminal behaviour is not inherited and it gets adapted from the intimate groups of the person. This theory focuses on social objects like movies, internet, news, etc. as carriers of instincts which can be either good or bad depending upon its association with the subject. Walter Reckless^{xvii} believed that both internal like individual desires, wants etc. and external like peers, family, unemployment etc. forces run when a juvenile avoids or commits a delinquent act. Merton’s famous phrase of ‘social structure and anomie’^{xviii} says that people are tended to achieve culturally recognized goals and when those goals are not seized there occurs anomie which leads into rebellion, retreat, ritualism, innovation or conformity.

5. ACTION FRAMEWORK

It is well said that, “Children must be taught how to think, not what to think.”^{xix}The Juvenile Justice (Care and Protection of Children) Act, 2015 provides the national framework for juvenile delinquents and derives its source from various international instruments too. The statutes, policies, judicial decisions and statistics provide us the combination of philosophical and pragmatic dealings. Here are some of the main contentions on practical regime:

- How is a person decided to be juvenile? – It is very well stated that juvenile is a person below the age of 18 years^{xx}, but how is the age proved is a relevant question. The Supreme Court has in a case observed that entry in the school register as to date of birth is admissible to determine age but the probative value of the register has to be taken into consideration.^{xxi} It is also directed by Court to hold inquiry and record findings onto the juvenility.^{xxii} The criteria for determination of juvenility and claim are lenient to the cause that a juvenile shall not be arbitrarily pushed into chains of law.
- Juvenile Justice is ‘Special’ – It is very well mentioned in the Act that the juvenile in conflict with law is dealt by the Juvenile Justice Board^{xxiii} and child in need of care and protection is dealt by the Child

^{xiv} John W. McDavid Boyd and R. McCandless, “Psychological Theory, Research, and Juvenile Delinquency” 53 *Journal of Criminal Law and Criminology* 2 (1962).

^{xv} Sheldon Glueck and Eleanor Glueck, “Unraveling juvenile delinquency” *The Journal Harvard University Press* 32 (1950).

^{xvi} Gary F. Jensen, “Parents, Peers, and Delinquent Action: A Test of the Differential Association Perspective” 78 *American Journal of Sociology* (1972).

^{xvii} Walter C Reckless, “A new theory of delinquency and crime” 45 *Fed. Probation* (1961).

^{xviii} R. E. Hilbert and Charles W. Wright, “Representations of Merton’s Theory of Anomie” 14 *The American Sociologist* (1979).

^{xix} Margaret Mead, *Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilisation* (William Morrow Paperbacks, 2001).

^{xx} *Supra* note 11 at 3.

^{xxi} *Deoki Nandan Dayma v. State of Uttar Pradesh*, (1997)10 SCC 525.

^{xxii} *Izaz Ahmad v. State of Madhya Pradesh*, 2001 (1) C.Cr.J. 212 (MP).

^{xxiii} *Supra* note 11 at 3, s.4.

Welfare Committee^{xxiv}. Although their respective workings are statutory and extensively mentioned in the Act like special juvenile police unit^{xxv}, Probation Officer or Child Welfare Officer^{xxvi}, child care institutions^{xxvii}, rehabilitation and re-integration^{xxviii} etc.

- Statistical Analysis –

In a thorough empirical analysis conducted by National Commission for Protection of Child Rights the data on 'Case' status is enthralling where majority shared that they didn't know about case status.^{xxix}

As many as 1,614 rapes and 1,456 other sexual assaults were committed by juveniles in the country in 2017, reveal the latest data of the National Crime Records Bureau (NCRB).^{xxx}

6. REFORMATIVE APPROACH

The inclusion of presumption of innocence, right to be heard, avoidance of abuse, care, and protection in the Juvenile Justice Act of 2015 clearly received appreciation. Rehabilitation is a more progressive treatment or correction for delinquency after a youth has committed a crime. To promote their adolescent cognitive and behavioural senses, a separate facility for the constructive development of juvenile delinquents is required. How could criminology, once it has progressed to the point where it focuses on the rehabilitation of adult criminals, turn away from juveniles? Reformation is essentially the opposite of deterrence; it entails changing the offender's behaviour rather than delivering punishment. How far reformation is beneficial can be seen from the fact that juveniles get vocational, educational and other trainings in the correctional centers. There are numerous causes for delinquency in juveniles like broken homes, peer pressure, exclusion, bully, racial discrimination, drug abuse, poverty etc.

The law not only uses a developmental approach in determination of juvenility but also after the proof of guilt. It specifically fulfills the notions given by theories and divides the children as abandoned child^{xxxi}, child^{xxxii} and surrendered child^{xxxiii} all based on social, psychological and physiological characteristics. The primary objective of any community based or institutional rehabilitation of child and juvenile is to restore and protect them. In *Sunil v. State*^{xxxiv}, the Madhya Pradesh High Court clearly said that the Court must do participatory justice and exercise *suo motu* powers rather than be a silent spectator.

7. CHALLENGES

When it comes to heinous offences, it is stated that if the child is under the age of 16, the procedure for serious offences must be followed; however, if the child is over the age of 16, an assessment in accordance with Section 15 must be made, which states that the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, as well as his ability to commit such offence. The Board may enlist the

^{xxiv} *Supra* note 11 at 3 ,s.29.

^{xxv} *Supra* note 11 at 3 ,s.107.

^{xxvi} The Juvenile Justice (Care and Protection of Children) Rules, 2007, rule 87.

^{xxvii} *Supra* note 11 at 3 ,s.40.

^{xxviii} *Supra* note 11 at 3 ,s.39.

^{xxix} Tata Institute of Social Sciences, "A Study Commissioned by National Commission for Protection of Child Rights on Juvenile in Conflict with Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan" (Mumbai, 2016).

^{xxx} Crime in India Table Contents, available at: <https://ncrb.gov.in/en/crime-in-india-table-addtional-table-and-chapter-contents?page=10> (last visited on October 9, 2020).

^{xxxi} *Supra* note 11 at 3, s. 2(1).

^{xxxii} *Supra* note 11 at 3, s. 2(12).

^{xxxiii} *Supra* note 11 at 3, s. 2(60).

^{xxxiv} 2001 (1) C.Cr.J. 149 (MP).

help of an experienced psychotherapist. According to Section 15 of the Act, a juvenile offender, between the ages of 16-18, who has committed a heinous offence^{xxxv}, may be tried as an adult by putting him to trial under the criminal justice system. It depends on factors like capability and foreseeing the consequences and circumstances in which the offence was committed. It is the Board's responsibility to determine if the crime is heinous and also after that the psychological balance of the accused should be managed. Seeing the rising number of cases and that very high rated criminality is leniently dealt, the Act of 2015 made such provision. We cannot deny the fact that if Section 15 is fulfilled there is no question on why the juvenile should not be tried as adult. After the tragic Nirbhaya Rape Case, an emotional agitation grew among people. The point of friction in delay also dealt with juvenile being one of the accused. After the case, the Juvenile Justice Bill, 2014 was passed as the present Act and dealt with three categories of offences viz., petty, serious and heinous offence. The clash of understanding on those offences was rising where the minimum sentence is 7 years or maximum offence starts from 7 years like attempt to murder^{xxxvi} and abetment of suicide^{xxxvii} was pointed out recently by Hon'ble Supreme Court that this fourth category be dealt as serious offence^{xxxviii}. The intention of legislature can be said as unclear here which surely needs judicial hold up. The Law Minister, Ravi Shankar Prasad; the Women and Child Development Minister, Smriti Irani; the External Affairs Minister, Jaishankar; the Health Minister, Harshvardhan; and the Food Processing Minister, Harsimrat Singh Badal all attended a meeting in the context of this issue. The meeting reviewed how terrible crimes should be separated into pre-meditated and crime perpetrated as a result of a fit or wrath. The government chose to include a District Magistrate on the Board of Juvenile Justice Board due to the high volume of work and pending cases in the courts. The Juvenile Justice (Care and Protection Amendment Bill, 2021) was then drafted, which stated that serious offences will include this fourth category.

8. CONCLUSION

It demonstrates that the Indian judiciary has begun to support individual citizens. The Indian judiciary is emerging as a partner and facilitator in the country's efforts to improve juvenile justice. Within the framework of the country's constitution and juvenile justice legislation, the judiciary is taking proactive steps to ensure the well-being of children. The goal is not to torture delinquents with the threat of punishment, but to assist and lead them in promptly exiting juvenile delinquency and progressively maturing into responsible people in the future. Heading away from nitty gritty of laws one can move back to philosophical foundations. For an overall conclusion one can deduce that internal hormonal and cognitive differences makes the juvenile adventurous towards experiments of which he doesn't have total control and when he cannot find means to execute them he moves to a subculture where his ideas can be acted upon. Some social factors also exploit the well-being of juveniles like racism, inequality, discrimination etc. The adolescent immigrant crisis in America or the hit and run cases in India, cause may be different but the consequence is destruction of a person and public at large. After the structural analysis, we can say that there may be genuine emotional reasons for causation of juvenile delinquency but perhaps not legally acceptable results. It is quite evident to say reformatory theory has proved fundamental in juvenile justice but lacuna in the statutory provision which can be seen as both a pro or con based on circumstance is debatable.

^{xxxv} Heinous Crimes and Culpability of Juveniles, *available at*: <https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/287006/7/14%20chapter%205.pdf> (last visited on October 9, 2020).

^{xxxvi} The Indian Penal Code, 1860 (Act 45 of 1860), s. 307.

^{xxxvii} The Indian Penal Code, 1860 (Act 45 of 1860), s. 306.

^{xxxviii} *Shilpa Mittal v. State of NCT OF Delhi*, (CrI.) No. 7678 of 2019.