



JUVENILE PROTECTION AND CARE THE CURRENT TREND IN JUVENILE JUSTICE IN INDIA: ISSUES AND CHALLENGES

Malay Srivastava ¹, Dr. Shashank Shekhar ²

¹ Research scholar, Department of law Shri Ramswaroop Memorial University, Lucknow, India

² Associate Professor, Department of law Shri Ramswaroop Memorial University, Lucknow, India



Corresponding Author

Malay Srivastava,
malay1589@gmail.com

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ABSTRACT

Children are the future of nations and the citizens of tomorrow. They are a valuable asset to the country and should be safeguarded from all legal aspects and nurtured in accordance with the provisions of the Indian constitution. The constitution of India aspires to create a robust community and, to achieve this; it has bestowed numerous rights upon children. The chapters on fundamental rights and Directive principles contain comprehensive rules for basic rights such as the right to life, the right to education, freedom of religion and thought, and protection against various forms of abuse and exploitation. A juvenile is typically defined as an individual under the age of eighteen who has been accused or convicted of a crime, either under the Indian Penal Code or any other legislation that prescribes penalty. The population of such children in India is growing rapidly, necessitating the need for care and protection. The Juvenile Justice (Care and Protection of Children) Act 2000 provided a clear definition of the term "juvenile". The United Nations Convention on the Rights of the Child in 1989 has included but not provided clear explanations in its global records. The history of Juvenile justice legislation in India illustrates the categories of marginalized juveniles and juvenile offenders that have been overlooked. Over the course of 80 years, specifically from 1920 to 2000, a strong differentiation was upheld between neglected juveniles and juvenile delinquents. There was no distinct legislation governing the administration of justice for adult criminals and juvenile offenders. It has been observed and acknowledged that children, due to their underdeveloped cognitive abilities, lack the capacity to comprehend the repercussions of their actions. Thus, the notion of segregating juvenile delinquents from adult offenders emerged, leading to the establishment of a distinct system of justice for young offenders.

Keywords: Juvenile, Delinquents, Abilities, Lack, Penalty, Community



1. INTRODUCTION

Children are regarded as divine blessings and are the most valuable assets, both individually and for the nation. It is our collective responsibility as people, parents, guardians, and society to ensure that children are given the chance to grow up in a favorable socio-cultural setting, enabling them to develop into responsible citizens who are physically fit, mentally sharp, and morally sound. The State has an obligation to guarantee that all children have equal opportunities for development throughout their growth, thereby reducing inequality and promoting social justice. Children are anticipated to exhibit obedience, respect, and possess virtuous qualities and commendable attributes. However, for different reasons, a significant percentage of children do not adhere to established social and legal norms. These

youngsters frequently engage in criminal behavior, which is commonly referred to as juvenile delinquency or juvenile criminality¹.

The issue of juvenile delinquency is not a recent one. It also existed in antiquity. The epic Mahabharata portrays instances of juvenile malevolence. Duryodhan devised a scheme to eliminate the formidable Bhim by offering him poisoned food with delectable delicacies. However, his malevolent plan finally failed. Although there were occasional occurrences, it is true that during that time there were limited opportunities for a youngster to deviate from the expected behavior due to a well-established social control system. The social fabric exhibited a high degree of resilience and was largely impenetrable to individuals with anti-social tendencies. Consequently, there was an absence of a specific legal framework to address the issue of adolescent delinquency. It is present in all communities, regardless of their level of simplicity or complexity. In India, a developing country, the incidence of adolescent delinquency is relatively low, although it is gradually on the rise. Of greater concern is the fact that the proportion of crimes perpetrated by minors in relation to the total number of reported crimes in the country has also experienced a recent increase. The analysis suggests that the elements contributing to delinquency are predominantly shared and interconnected, stemming from socio-economic and psychological causes. Factors such as poverty, fractured families, family conflicts, emotional mistreatment, migration from rural to urban areas, erosion of social values and traditional family structures, parental or guardian abuse, deficiencies in the education system, media influence, and unsanitary living conditions in slums contribute to the occurrence of juvenile delinquency. The failure of parents, family, society, and the nation to provide adequate care and attention to children has a harmful impact on their physical, mental, and overall development. The majority of the causes contributing to delinquencies are specific to the Indian environment. Any endeavor to prevent and manage these factors can yield positive outcomes for society. Children are a representation of the nation and embody its future. The international standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules 1985, and the UN Convention on the Rights of the Child 1989, are significant and have expressed the worldwide agreement to prioritize the needs of children involved in legal conflicts.

Approximately two centuries ago, Adolphe Quetelet, a distinguished social statistician from Belgium, made an observation that adolescents, especially young males, are more susceptible to engaging in criminal behavior, disorder, and delinquency due to their impulsive nature or conflicts associated with adolescence. According to him, the inclination towards criminal behavior is most at the period when physical strength and intense emotions are at their peak, but when rationality has not yet developed enough to effectively regulate their combined impact. Given that the future of a nation is contingent upon its young generation, it is imperative to provide children with compassion and the highest level of care in order to safeguard this growing human asset. A kid is born with innocence, and if provided with nurturing care and attentive guidance, they will develop physical, moral, spiritual, and cerebral abilities, ultimately becoming a person of great size and excellence. Conversely, if a youngster is exposed to harmful environments, deprived of essential necessities, influenced by negative companionship, and subjected to various forms of mistreatment and temptations, it is quite probable that the child's development would be negatively impacted, potentially leading to delinquent behavior².

The renowned Nobel Laureate, Gabriel Mistral, expressed his apprehension regarding child care, stating that our gravest offense is forsaking the children and disregarding the fundamental basis of existence. Several of the necessities we require can be postponed, but the infant cannot afford to wait. This is the critical period when his skeletal structure is being shaped, his circulatory system is being established, and his sensory abilities are being cultivated. We are unable to respond to him tomorrow. The individual's name is Today. Given that our children are a valuable resource, it is crucial to ensure that they are given equitable opportunities for growth. This will enable them to become strong individuals who are physically healthy, mentally sharp, and morally sound, equipped with the necessary skills and motivations required by society. Radzinowicz noted that children and juveniles who are neglected are particularly vulnerable to becoming involved in criminal activities. He argued that adolescents have the highest proportion of involvement in violence because of their impulsive character, lack of long-term thinking, unquestioning enthusiasm, physical power, stamina, and thirst for excitement³.

¹ Sunil K. Bhattacharyya, *Juvenile Justice, An Indian scenario*, Regency Publication, New Delhi, 2000, p. 2

² Justice V. R. Krishnaiyer, *JURISPRUDENCE OF JUVENILE JUSTICE, A PREAMBULAR PERSPECTIVE* –Souvenir of the International Conference on shaping the future of Law hosted by the Indian Law Institute, Delhi on 21-25 March 1994.

³ Radzinowicz and Joan King, *The growth of crime The International Experience*, New York, 1977, p.17

1.1. SIGNIFICANCE OF THE STUDY

A significant expenditure is being incurred to sustain the structural requirements of the juvenile justice system itself. The youngsters are unaware of what they are receiving, as is society. The custodians of the juvenile justice system seem to prioritize the beneficiaries over the youngsters within the system. According to Mr. V. Krishna Iyer, any law that cannot be enforced is considered to be a malevolent law and should be abolished. It is important to clarify that the investigator does not oppose money for the care and protection of children, but rather opposes funding for the basic maintenance of the juvenile justice system. The objective of the proposed research study is to identify the primary obstacles in the juvenile justice system in order to propose necessary reforms. The study's relevance is as follows.

The study will thoroughly analyze the hypothesis by considering the nature and scope of the juvenile justice system in India, the conceptual and historical development of this system, relevant national and international instruments related to juvenile justice, writings and reports from renowned jurists and scholars in the field, and judicial decisions. Additionally, data from websites will be examined in detail. There may be more obstacles, beyond those that have been investigated thus far, that contribute to the dysfunction of the juvenile justice system in India.

1.2. STATEMENT OF THE PROBLEM

There has been a consistent pattern of experimenting in the juvenile justice system through the creation, modification, repeal, and subsequent creation of laws and regulations. Furthermore, the Supreme Court of India has established legal guidelines for the effective execution of the juvenile justice system since 1995. Despite the intervention of the Apex Court, both the central government and state governments have failed to implement even the key elements of the Juvenile Justice Acts until the adoption of the new Act in 2015.

In the case of Sheela Barse, the Supreme Court of India assumed the role of overseeing the enforcement of key provisions of the Juvenile Justice Act, 1986. The matter was resolved in 1995 with specific instructions. The Supreme Court has undertaken the task of overseeing the ongoing execution of key elements of the Juvenile Justice (Care and Protection of Children) Act, 2000 in the case of Sampurna Behrua. Despite the involvement of the Supreme Court, both the central government and state governments have been unsuccessful in implementing the key elements of the repealed Juvenile Justice Act, 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice Act of 2015

The Ministry of Women and Child Development and the National Commission for Protection of Child Rights acknowledge the persistent shortcomings of the juvenile justice system, as seen in the reports published on their separate websites. The cases of Sheela Barse and Sampurna Behrua also demonstrate the bleak state of the juvenile justice system's application.

There is undeniable evidence that the juvenile justice system in India is dysfunctional. Based on the evidence, the investigator concluded that there may be more obstacles that have not yet been investigated about the dysfunction of the juvenile justice system in India.

2. OBJECTIVES OF THE STUDY

The objective of the proposed study is to analyze the juvenile justice system in India. This study aims to provide a detailed analysis of the historical, legislative, executive, and judicial procedures of juvenile justice in India at a micro-level. The primary objective of this study is to identify the underlying factors contributing to juvenile delinquency and to examine the issue of juvenile delinquency from a sociological and criminological standpoint. Additionally, the study aims to assess the current provisions and policies pertaining to juvenile delinquency in India, and to evaluate the strengths and weaknesses of the existing legislation in order to develop a comprehensive and integrated juvenile justice system in the country.

3. RESEARCH METHODOLOGY

In order to enhance the effectiveness of the study, the research conducted in this study is based on doctrinal research. This method entails gathering information from primary and secondary sources, such as statutes, books

written by Indian and international writers, and articles published in journals and websites. An endeavor will be undertaken to utilize existing facts and information. The analysis of the legal provisions regarding the social status of juveniles will be conducted using an analytical method. The purpose of this study is to examine the historical context of the juvenile justice system in India and its current application. A thorough investigation will be carried out by examining the statutes, websites, journals, newspapers, and books. The footnotes and citations must adhere to the guidelines set forth in the Fourth edition of the Oxford University Standard for the Citation of Legal Authorities.

4. DISCUSSION

4.1. CHALLENGES TO JUVENILE JUSTICE LAWS IN INDIA

Section 4(2)(viii) offers protection for children who have experienced torture, abuse, and exploitation specifically for the purpose of sexual abuse. The provision offers safeguards for youngsters but neglects those who have previously experienced sexual abuse. The child's psyche is significantly impacted, resulting in societal shame.

Section 2(5) of the legislation defines "aftercare" as the provision of financial assistance to individuals who have reached the age of 18 but are under 21 years old. However, the subsequent issues might have been included as obstacles to achieving the desired outcomes of after-care institutions

Financial insufficiency

Stigmatization within institutional settings

Society's lack of awareness regarding the aftercare program.

Lack of adherence by parents to the aftercare plan.

A slight correlation exists between the young individuals and the professionals responsible for their post-treatment support.

As to Section 21 of the Act, once a child reaches the age of 21, the Children's Court has the authority to determine whether the kid has successfully undergone rehabilitation and should be freed, or if they should be moved to a prison. This provision contravenes article 20(1)[37] of the Indian Constitution. Additionally, placing a 21-year-old adult among hardened criminals will result in the individual adopting their illegal behavior, which goes against the objectives of the Reformatory Theory.

As per Section 16 of the Act, if a child over the age of 16 commits a serious crime, the Juvenile Justice Board will investigate the child's physical and mental condition. Based on this investigation, the Board will determine whether to close the case or proceed with a trial. The primary deficiency of this section is that it assumes the child's guilt without evidence and violates Article 14 and 21 of the Indian Constitution, which outline fundamental rights, as the process is arbitrary and unreasonable.

4.2. ISSUES IN THE JUVENILE JUSTICE SCHEME

The Juvenile Justice Act, 2000 is undoubtedly a forward-thinking and proactive law. However, its effectiveness is debatable due to the emergence of several difficulties that have eclipsed its influence and implementation. The rising criminal inclinations observed among individuals under the age of 18, who make up 35% of our overall population, suggest that our current Juvenile Justice system is ineffective in adequately addressing the dual goals of safeguarding the public and rehabilitating young offenders. It is necessary to conduct a comprehensive evaluation of the juvenile justice system in order to not only reduce juvenile delinquency and promote the social integration of young offenders, but also to protect society from the criminal behavior exhibited by young individuals.

Sentencing discretion (Juvenile Blended Sentencing Scheme)

Section 15 of the Juvenile Justice Act outlines the possible sentences that can be imposed on a juvenile who has been found guilty of an offense, as determined by the board following an inquiry. These orders might vary from admonition, group counseling, community service, a fine, to an order to send the youngster to a specialized facility for a three-year period. The significance of this rule is that it strictly prohibits the placement of a child in a regular prison under any circumstances. The justification for this is that incarceration will exert a negative influence on these juvenile delinquents.

Nevertheless, the increasing trend of serious offenses perpetrated by young individuals has undermined the credibility of Section 15 of the Act. If a juvenile is accused of committing a severe offense and the judge believes that they

cannot be rehabilitated inside the juvenile system, it is completely pointless to handle their case under section 15 of the Act. The board should possess the authority to exercise their judgment in order to incarcerate the juvenile for a longer duration.

An effective strategy that can be utilized in these circumstances is a phenomena referred to as mixed sentencing. Blended sentencing refers to state legislation that let delinquent offenders, particularly those who are serious, violent, or persistent, to receive sentences from either a juvenile or adult court judge that include both juvenile and adult sanctions⁴.

The juvenile blended sentencing scheme grants juvenile court judges the authority to impose a conventional juvenile sentence on a juvenile offender. However, if the juvenile does not succeed in the program, the judge has the discretion to transfer the case to a regular criminal court. The implementation of this program in the United States is carried out by the Serious and Violent Offender Act (SVOA). The SVOA is classified as a type of juvenile blended sentencing. According to the SVOA, in the state being studied, judges in juvenile courts have the power to give a delinquent criminal a longer prison sentence than what is allowed for juveniles by adding an extra sentence for adults. Courts possess the power to suspend the adult component of the blended sentence, similar to other blended sentencing schemes. The SVOA, or Sentencing Reform Act, was enacted in the late 1980s and stands as one of the pioneering statutes in the United States that introduced blended sentencing. It grants juvenile court judges the authority to impose a combined sentence of up to 40 years for serious and violent juvenile offenders convicted of capital murder offenses and certain first-degree felonies. For certain second-degree felonies, the maximum sentence is 20 years, and for certain third-degree felonies, it is a combined sentence of up to 10 years. In order to be subject to legal action under this legislation, juvenile perpetrators must be within the age range of 10 to 16 and have engaged in one or more of the 22 specified severe and aggressive offenses as delineated in the legislation. The county prosecutor has the authority to decide whether to prosecute a delinquent under this act, instead of handling the case in ordinary juvenile court or obtaining adult court waiver, once the delinquent meets the age and offense standards⁵.

The Juvenile blended sentencing plan is a potential solution for rehabilitating severe, aggressive, and persistent offenders who cannot be rehabilitated through the conventional boundaries of the juvenile justice system.

Doctrine of waiver

In recent years, there has been a noticeable global trend towards reducing the particular procedural and disposal protections granted to minor offenders. This method is commonly known as "waiver" or "bind-over." The USA has taken the lead in this process, adopting a neo-correctionist approach aimed at enhancing the accountability of young individuals for their criminal actions and safeguarding the public⁶. During this procedure, juvenile offenders are transferred to the criminal courts and are handled in accordance with standard procedures. The reasons considered prior to granting a waiver include advanced age, the gravity of the offense, the juvenile's criminal record, and the effectiveness of earlier treatment attempts. In order for a judge to transfer a case to adult courts, they must determine that the young person is no longer responsive to the rehabilitation options available in the juvenile system⁷. This trend has also been observed in welfare-oriented countries like the Netherlands, Belgium, Canada, and Japan.

Within the American juvenile system, state legislatures often utilize three statutory waiver mechanisms: judicial, legislative, and prosecutorial⁸. Judicial waiver grants the power to the judge of the juvenile court to determine the transfer outcome. Usually, the statute will include a series of reasons to assist the judge in reaching this decision. Legislative waiver refers to the situation when the state legislature has made a legal decision to remove specific offenders and offenses from the authority of the juvenile court. According to this particular law, the youngster will be prosecuted in a court for adult criminals once the prosecutor brings charges that fulfill the standards set by the law. Prosecutorial waiver statutes grant the prosecutor the authority to determine the jurisdiction in which the juvenile will be tried.

⁴ Patrick Griffin, Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform 4 (2008).

⁵ C. R. Trulson et al., A Problem of Fit: Extreme Delinquents, Blended Sentencing, and the Determinants of Continued Adult Sanctions, 22 Criminal Justice Policy Review 263-284 (2010).

⁶ Neal Hazel, Cross national comparison of youth justice 35 (1 ed. 2008), http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf (last visited Aug 3, 2015).

⁷ Ibid.

⁸ David L Hudson & Alan Marzilli, Juvenile Justice 31 (2010).

Typically, this is accomplished by granting concurrent jurisdiction to both the juvenile and adult criminal courts for a range of offenses, giving the prosecutor the option to file immediately in adult criminal court at their own discretion⁹.

4.3. LANDMARK CASES

The Supreme Court, in the case of Sanjay *Suri v. Delhi Administration*¹⁰, issued a directive for the release of juvenile inmates who are awaiting trial. The ruling emphasized that the prison authorities should not consider the age of the juvenile unless it is explicitly stated in the documents that support their imprisonment.

In the case of *Jayendra v. State of UP*¹¹, the Supreme Court reviewed the High Court's decision to condemn a child to prison for committing a crime. The Supreme Court requested a report from the jail's medical officer to ascertain the child's age. It was discovered that the child was 16 years and 4 months old at the time of committing the offense. As a result, the imprisonment sentence was nullified, and the convict was promptly released.

The Supreme Court, in the case of *Munna v. State of UP*¹², issued specific guidelines concerning the presence of children in jails. The Supreme Court ruled that regardless of a child's culpability for an offense, they should not be subjected to mistreatment. Individuals should not have their fundamental rights restricted when they are incarcerated.

In the case of *Bhoop Ram v. State of UP*¹³, the Supreme Court upheld the verdict made in the case of Jayendra v. State of UP. It was further established that the moment at which an offense is committed is enough to ascertain a person's age.

In the case of *Raj Singh v. State of Haryana*¹⁴, the Supreme Court ruled that the age of the individual involved in an offense should be determined at the time the offense occurred. However, in the case of Arnit Das v. State of Bihar¹⁵, this judgment was overturned. In this case, R.C Lahoti, J. pointed out that it is important to note that neither the definition of a juvenile nor any other provision in the Act specifies the date by which the age of a person should be determined to determine if they are a juvenile or not¹⁶. In this case, the Supreme Court ruled that the age of the child must be assessed at the moment they are presented to the competent authorities. The basis for this verdict is that the highest court has recognized the issue of youngsters being held in adult prisons due to a lack of evidence to verify their age.

In the case of *Raj Singh v. State of Haryana*¹⁷, a minor who was under the age of 16 at the time the offense began was found guilty under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced to imprisonment. However, the Supreme Court determined that according to section 2(e) of the Juvenile Justice (Care & Protection) Act, 1986, a juvenile who has been found guilty of an offense is still considered a juvenile. As a result, the entire trial was invalidated.

In the case of Gault¹⁸, the U.S. made a decision where a 15-year-old juvenile criminal was sent to a state industrial school until the age of 18, whereas an adult would have received a \$50 fine and a 2-month prison sentence as punishment. The constitutionality of Arizona's statute has been challenged on the grounds that it grants the judge unrestricted authority to determine the penalty for an offense. Arizona contended that the primary objective of the juvenile justice system is to segregate juveniles from criminal proceedings, and that the penalty imposed on them is intended to be rehabilitative rather than punishing.

5. CONCLUSION

Based on the 2015 report from the National Crime Records Bureau on "Juveniles in Conflict with Law," Among the entire group of minors apprehended for various crimes, 4,757 lacked the ability to read and write, while 14,229 had

⁹ Rebecca House, Seen But Not Heard: Using Judicial Waiver to Save the Juvenile Justice System and Our Kids, 45 The University of Toledo Law Review 149-180 (2013).

¹⁰ AIR 1986 SC 414.

¹¹ AIR 1982 SC 685.

¹² AIR 1982 SC 806.

¹³ AIR 1987 SC 1329.

¹⁴ 2000 (6) SCC 759.

¹⁵ AIR 2000 SC 2264.

¹⁶ Id., p. 2267

¹⁷ (2000) 6 SCC 759.

¹⁸ Decided by U.S Supreme Court, May 15, 1967.

received schooling only up to the primary level. Combined, these two categories comprised 45.9% of the total number of minors apprehended in 2015. Out of the total number of juveniles seized, 85.6% (35,448 out of 41,385) were children who lived with their parents. Only 3.9% of homeless youngsters, namely 1,622 out of a total of 41,385, were found to be engaged in criminal activities. Upon analyzing the statistics from NCRB, it is imperative to effectively execute the current policies established by the Government for the welfare of children, such as the mid-day meal policy and the recently introduced Samagra Shiksha through the Union Budget 2018-2019. Furthermore, as per the 2015 National Crime Records Bureau Report, the following data illustrates that the majority of juvenile offenders fell within the age range of 16 to 18 years. Lowering the age of juvenile delinquents from 18 years to 16 years, as stipulated in the Juvenile Justice (Care & Protection) Act, 2015, is not an effective approach. The Indian Legislature's efforts to fulfill the obligations outlined in the Convention are commendable. However, it is imperative for the government to ensure proper implementation of the Act and adopt a reformative approach. Additionally, the government should strive to involve juveniles in skilled work to enable them to lead a peaceful life in the future. The exponential advancement of technology and the widespread availability of information at one's fingertips are altering the mindset of children, leading to their involvement in heinous crimes committed by those under the age of 18. The government, non-governmental organizations (NGOs), school and college administrations, instructors, and parents collaborate to devise strategies to safeguard children against the detrimental effects of mobile devices, television channels, the Internet, and adult films. Prosecuting and punishing juveniles for committing crimes, just like adults, increases the likelihood of them becoming hardened criminals at a young age. Therefore, it is necessary to provide special protection and care for them, since they represent the future of the country.

CONFLICT OF INTERESTS

None.

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None.

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