



THE GUARDIAN STATE AND THE CHILD: JUVENILE JUSTICE SYSTEM IN INDIA

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Abstract: *Children in India, because of their sheer numbers, have been a prime focus of development planning and research, and state welfare. Although not conspicuously high on the governance agenda, the protection and promotion of the rights of the child in India has emerged as a major preoccupation of social and human rights movements. The Constitution of India states that children must be protected against all abuse and exploitation. The National Policy for Children in 1974 declared that the nation's children are a supremely important asset and that their nurture and solicitude are the responsibility of the State. Despite this, the majority of children in India continue to live without a childhood. The juvenile justice system as conceived by legislation, aims at providing care, protection, treatment, development and rehabilitation of delinquent and neglected juveniles. But the care and services provided to them have been criticized as being insufficient and sub-standard.*

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Children constitute over 400 million of the billion plus population in India. It is indeed an important factor in shaping the future of any nation if childhood can be endowed with the minimum requisites for healthy growth and development. Unfortunately, it is not happening today despite some of the key steps and initiatives taken by governments and a number of significant interventions of the judiciary and international as well as civil society organizations. Is the problem with the numbers, or with the institutions, or with the policies themselves? Or is it the lack of adequate social/ political will or low priority in the scheme of governance? Moreover it is within the ambit of this study to engage with the idea of childhood, its construction and reconstruction in due course of history, and how it has given shape to the laws relating to juvenile delinquency.

The profile of children in India reveals that a majority of them are living in conditions of want, deprived of basic survival subsistence and development opportunities. High rates of child marriage, school dropouts, child labour, and handicapped children, are indicators of the need for intervention by the state. And within this existing profile, the increased problem of juvenile delinquency and increased number destitute children, adds more to the list. Mandatory Childcare and protection had been accepted as the responsibility of the modern welfare state, it has now become obligatory on the part of the state due to the shift from welfare to rights for fulfilling the needs of children following the United Nations Convention on Rights of the Child. In India, too, the state has accepted the responsibilities of providing care and protection to children, especially those caught into the web of juvenile justice system. However, at the end of the day, all such concern and international commitment and obligation remains implemented only on papers and even if there is some positive change comes to notice, the speed of such visibility needs to be questioned.

HISTORICAL BACKGROUND

Historical developments have shown that the growth of juvenile justice system in India has not been a continuous process backed up by any scientific analysis of the development pattern. Rather, it has been a result of periodic concern generated by situations or National or International events.

The Apprentices Act was passed in 1850 as the first legislation to deal with juvenile delinquents in colonial India. As per the provisions of this act, children between ten to



eighteen years of age found indulging in crime were placed in apprenticeship in a trade.¹ The Indian Penal Code (IPC) though passed in 1860, was not a law specifically dealing with juvenile justice, though it had some provisions that dealt with underage criminals. Section 82 of the IPC granted blanket immunity to a child below seven years of age, applying the principle of *doli incapax*, a Latin term meaning 'incapable of crime'. The IPC, in other words, assumes that a child less than seven years of age does not have the capacity to form a mental intent to commit a crime knowingly. Section 83 of the IPC is an extension of Section 82 with a rider attached. It grants qualified immunity to a child aged between seven to twelve years of age.² The Reformatory School Act of 1876 had a provision that empowered the government to establish reformatory schools and to keep young criminals there till they found employment. Thereafter, a jail committee was appointed in 1919 following the recommendations of which separate legislations dealing with juvenile delinquency were enacted in different provinces, the first ones being in Madras, Bengal and Bombay (in the form of the Madras Children Act, 1920, Bengal Children Act, 1922 and Bombay Children Act of 1924).³ After independence, in 1960, the Children Act was passed. It provided for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories.

The Supreme Court in *Sheela Barse V/s Union of India* suggested that, instead of each State having its own Children's Act in other States it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. This led to the passing of the Juvenile Justice Act, 1986, for the care, protection and rehabilitation of 'juvenile delinquents' and 'neglected children'.⁴

This act was soon replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 on account of deficiency in the 1986 Act. The basic scheme of this Act remained the same as that of the Juvenile Justice Act, 1986; it only had a few additional features. A significant point to note is that the 2000 Act replaced the word 'delinquent juvenile' and

¹ Prakash D. Haveripeth, "Juvenile Justice-A Hard Look", *International Research Journal of Social Sciences*, Vol.2 (1) (January 2013): 38-40.

² Ibid.

³ Ibid.

⁴ Ved Kumari, '*The Juvenile Justice System in India: From Welfare to Rights*' (New Delhi: Oxford University Press, 2004), 99.



'neglected juvenile' with the term 'juvenile in conflict with law' and 'children in need of care and protection', which was done to remove the stigma attached to the previous terms. Protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. The Act also had for the first time an additional provision of 'Adoption' on the basis of child consent, which was completely missing in the previous Act. This Act was further amended in 2006 and 2011, thereby broadening the definition of 'child' including all section of children, even the children suffering from dangerous diseases, mentally ill children and children with addictions.

This timeline, amongst other things, traces the chronology of events that marked the development of juvenile justice law in India. The data pertaining to 2012 cited in the last section, which was obtained from the National Crime Records Bureau of India, forces us to think about the actual working of the law and trace the reasons for its ineffective implementation. Significant changes have been made since then, however, without any additional financial commitment from the state, and so this is likely to meet with the same fate as similar to its predecessors on the implementation front. There are other whole lists of reasons too, that has contributed in its fragmented to the sporadic approach to the implementations.

1. Reasons for Fragmented Implementation of the Juvenile Justice System

The most important factor has been the reason most often for its improper implementation has been paucity of funds. However, there are other sorts of evidence to show that the system suffered not so much due to lack of funds, but mostly due to frittering away of scarce resources or by adopting of more expensive measures with lesser outcomes like institutionalization prospects for rehabilitation.⁵ There were other various reasons too, revealed by a close scrutiny of the pattern of development and implementation in the field of juvenile justice system.

1.1. Prevailing Negative Attitude

The negative attitude of the general public towards criminals and the criminal justice system prevails in case of the juvenile justice system too. This is mainly because of its natal tie with

⁵ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (New Delhi: OUP, 2004), 305.



the criminal justice system. For instance, the Indian Penal Code though passed in 1860, is not a specific legislation dealing with juvenile justice; nevertheless it has some provisions when it comes to underage criminals--Section 82 of the IPC. The term 'Juvenile' has a stigma attached to it. The belief that, such children, even though have spent some time in care centers and juvenile homes, still happens to have traits of the criminal behaviour — leads to difficult task of settling those children back into the society. Hence, at the end of the day, such prevailing attitude creates no less significant obstacles in proper implementation of the laws related to these children.

1.2. Lack of Organized Pressure

One of the main factor for the improper implementation of the juvenile justice system in India , has been the lack of organized pressure on the state either from the beneficiaries of the system or any other group involved in it to improve the policy or operations. While the beneficiaries of the system —the children's, mostly coming from low economic and social background, and also with no political voice, lacks the ability to organize themselves and lobby for protection of their interests in any articulated form. Their parents are also in no better position to do so. Moreover, various voluntary organizations and workers have been involved in the welfare of children, but have still not evolved any mechanism of co-operation and coordination among themselves or jointly raise their voice against the gross injustice done with these children, and a place of priority for them by the state. Individual instances of taking up the cause of these children have been visible more or less, but a joint and a continuous pressure on the government to brace itself seriously to ameliorate the conditions of these children is still missing. The malfunctioning of the state system and bureaucratic rigmarole have generated cynicism among the social workers and kept them away from the official machinery.

The periodic reports of mismanagement, exploitation, or abuse of children in the existing state institutions generate criticism of the state but not any outcry for protection of children. Welfare of children or control of juvenile delinquency has not become a political issue. This is mainly because neither is there any adequate pressure from children, their parents or social workers or general public (only recent outcry came in the form of Delhi Gang Rape Case of December 2012), nor have the pattern or ratio of juvenile delinquency rung any alarm bells and most importantly they don't constitute any vote bank (having no



voting right, as universal adult suffrage in India calls those voters eligible who have crossed 18 years of age). It is in absence of an immediate political mileage, various issues relating to the proper implementation of the juvenile justice system have not found priority with political parties though they all have a general welfare approach towards them.

1.3. Unawareness and Untrained official/ Caretakers

Given the poor social, economic and educational background of the beneficiaries of the system, it is to be expected that they would be unaware of the rights, duties and obligations of the state vis-à-vis children. However, the existing study reveal that most of the personnel related to juvenile justice system at various levels are also ignorant of the concept, philosophy, and even the law. A more serious problem comes from the narratives of the juvenile delinquents, as it clearly shows the injustice done to them by competent authorities. As, Dr.Yogesh Snehi, presented the narratives of seven juvenile delinquents of Delhi-based juveniles homes.⁶ The narratives revealed by the delinquents, shows how inadequate the law has been enforced and how untrained the law enforcers were. In most of the narratives, complaints regarding beaten up by the authority in charge and forceful confession of the crime tends to be obvious. This complains also states that how officials deal with even minor mischief inmates with corporal by punishments.⁷ All these shows, how inadequate laws have been and how India being one of the signatory of United Nations Convention on the Rights of the Child, fails to ensure its conformity. A serious demand for having laws which are more stringently enforced and adequate training of the law enforcers i.e. Police is the call of the time.

1.4. Welfare Perception

Various studies show, all works and services under the juvenile justice system are perceived as the welfare activity by the state, rather than an obligation on part of the state. The priority granted for fund allocation or implementation is bound to be low due to this perception. Moreover, despite the declaration by the state in the National Policy on Children in 1974 that a nation's Children are a supreme 'National Asset', neglected and delinquent children are still treated as the subject of welfare. Here in lies the problem. In the course of this study, it was found that though there has been this shift from 'welfare' to

⁶ Yogesh Snehi, "State and Child Justice: Stories of Delinquent Juveniles", *Economic and Political Weekly*, Vol. 39; No. 41 (January 2004): 4512-15

⁷ Ibid, 4513.



'right' approach, yet this shift have not produced any significant results. The only change one witnessed has been in the name of Ministry to that of Ministry of Social Justice and Empowerment but nothing has changed in its approach or programmes/policies. While this ministry deals with children falling within the ambit of the juvenile justice system, the Ministry of Human Resource Development remains in charge of the 'ordinary' children. While, the Juvenile Justice (Care & Protection) Act, 2000, has been enacted with the apparent objective of bringing the law in accordance with the rights approach of the United Nations Convention on Rights of the Child, in actuality, its provisions fails to reflect that policy change.

Having shown the loopholes and linkages between piecemeal policy, fragmented implementation and malfunctioning of various organs under the juvenile justice system—the former leads to the latter. It is now time to think and talk about any possibility of change in the existing status-quo, in form of a solution.

Strategy for Change

The first and foremost requirement to think and move towards the direction of change lies in clarifying the conception of children who are the 'beneficiaries' of the juvenile justice system. The reason for the failure of the juvenile justice system is less linked with children's behaviour being not amenable to reform or children showing irresponsible behaviour despite opportunities given to them to change their earlier situation, but it's a sheer failure on part of the state to take a concrete view of their situation, they are found in, and have a more and concerned outlook towards them. There is also the need to break away the perspective of the juvenile justice law being for the 'other'. The stereotyping of these 'other' children as being cunning and tough and hence not entitled to the same care and protection to be provided to 'normal' children who are vulnerable and innocent, needs to be changed. Hence, there is a list of things, one suggest, if implemented, can bring about positive change in the lives of these children. It is even very difficult to differentiate between a neglected juvenile and delinquent juvenile — even though one is the cause of the other. The fact that delinquent children are only a few percentage of all children covered under the juvenile justice system is not generally unknown. Parallel schemes for neglected children outside the juvenile justice system did very little to clarify their position.



While paying lip service to the welfare principle, the operations under the juvenile justice system result in lot of hardship to children instead of providing care and protection and opportunities for all round development. It has been observed that, children perceive the juvenile justice system as being oppressive rather than protective and caring. It is this perceived outlook, which one needs to change. The juvenile justice system will continue to function in isolation, and children brought within the system will continue to be institutionalized, until and unless the community and civil society groups is involved in this process, but not discharging the entire functions of the State. More voluntary groups, institutions, persons and places should be given recognition as places of safety, fit person, fit institutions, observer homes, care centers and special homes. Close supervision of the community-based programmes would be required to ensure that the child and the person in whose supervision or care he/she is placed fulfill their obligations under the placement order. There is a need to increase appointments of social workers, and other fit persons as members of the juvenile justice board, the child welfare committee, and the advisory board, as well as their training, needs to be given a place of priority while implementing Juvenile Justice (Care & Protection) Act, 2000.

The most important element for rehabilitation of institutionalized children, namely after-care, must be given a significant place in the scheme of implementation of the juvenile justice system. Family as the unit of care for children must also be given priority. The available data on juvenile delinquent shows that a majority of them have been living with their parents, and belonging to families with low income and are illiterate. These facts point to the need for evolving a programme for children and their families to strengthened and improve their financial positions and educational backgrounds and integrate them within society. As the problem of destitute, neglect and delinquency among children are interlinked, a close link between poverty alleviation programmes and childcare must be forged. Provisions such as income-generating programmes for the adult member of the maladjusted children's family are more likely to achieve the objective of care, protection, development and rehabilitation of delinquent and neglected children

However, what is noteworthy is that the Indian state has almost always responded to International and National events that brought focus on children. The Central Children Act of 1960 followed closely on the heels of the United Nations Declaration of the Rights of the



Child, 1959. Adoption of Beijing Rules by the United Nations General Assembly and suggestion of the Supreme Court in the Sheela Barse Case for a uniform law for children for the whole country immediately preceded the passing of Juvenile Justice Act, 1986. Sheela Barse's proposal for a Uniform Juvenile Justice Code and later her suggestions for amendment in the Juvenile Justice Act of 1986 were discussed by all officials in great details and concern. With the adoption of the Convention on Rights of the Child by the United Nations General Assembly, children moved center-stage once again in the 1990s. A number of consultation at the national and regional levels and India's first report to the Committee on the Rights of the Child outlining its concrete achievements and gap in implementation of its commitments seem to have been behind the introduction of the Juvenile Justice (Care & Protection) Act, 2000 and thereafter.

All the changes, thus suggested here, are necessary for the changing nature, scope, and operation of the juvenile justice system in India. However, not all changes can be brought about immediately. The strategy for change suggested here aims at initiating of the process of change. The impetus provided by a beginning, it is hoped, is expected to lead to demand for further change.

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