

JUVENILE DELINQUENCY - RESTORATIVE JUSTICE JUVENILE HOMES IMPLEMENTATION IS THE ONLY REFORM

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INTRODUCTION

Children who break the law do not do so on their own free will, but rather as a result of restricted opportunities available for their development. Children from risk groups who get in conflict with the law are mostly victims of abuse and neglect, negligent and poor parenting, etc. The concept of Juvenile Delinquency is an evidence to show how society failed rather than assisting the rehabilitation. Penalizing child offenders and denying them second chances will lead to nothing but their reoffending when they grow up. Child offenders are still children.

Unlike retributive justice where the focus is on crime and violation of law, restorative justice aims at resolving problems through reconciliation and improvement of newly created situation. The victim's needs are respected; offender takes responsibility to show he understands the consequences of his crimes. It focuses more on the restoration of damage that the crime has done to people and their mutual relation rather than punishment of offenders. Three categories of people are directly affected by a crime, viz. Offender, victim and the immediate community. Their needs are to restore material and nonmaterial damage, take responsibility and restore good relations in the community. Emphasis is on the need of people and respect for human values and their personalities, and not just punishment of the offender.

The Juvenile Justice (Care and Protection) Act, 2015 made a departure from criminal justice model of punishment recognizing the negative influence of association with adult offenders and higher possibility of reformation of children in growing age where their capacities are still being built and developed. It adopts a path of reformation and rehabilitative measures using institutionalization as a last resort that too for a minimum period on recognized child care facilities popularly known as "Juvenile Homes".

Juvenile homes include those places where the child is kept during pendency of inquiry under the Juvenile Justice Act (Observation Homes) and the place where the child is sent and the Juvenile Justice Board determines the child in conflict with law (Special Homes), a place where child committing heinous offences are kept (Place of Safety), etc. The Act along with the model rules provide various standards with respect to services to be provided for social integration, infrastructural facilities, training etc. But there have been various instances where in the living conditions of children in Child Care Institutions are compromised. Realizing this, the Supreme Court in *Exploitation of Children in State of Tamil Nadu v. Union of India & Ors.* directed that all Child Care Institutions shall be registered under the Juvenile Justice Act in order to ensure they fall under the standards as mandated by the legislation and also directed the Ministry of Women and Child Development to undertake the task of Mapping & review of child Care Institutions under the Juvenile Justice Act in all districts of the country.

The research paper, after giving a conceptual explanation as to “Juvenile Delinquency” and “Restorative Justice”, moves on to explain the status of juvenile homes under the legislation together with analyzing the report of Ministry of Women and Child Development on “Review of Child Care Institutions” so as to suggest reformatory measures in order to achieve the ultimate goal of rehabilitation and reintegration of children in conflict with the law¹.

CONCEPTUAL ANALYSIS - “JUVENILE DELINQUENCY” AND ‘RESTORATIVE JUSTICE’

MEANING:

The second United Nations Congress on the Prevention of Crime and the Treatment of offenders (1960) defines Juvenile Delinquency as an act which if committed by an adult, would be considered a crime. Another Sociologically Scholar C B Mamoria states that “The phrase ‘juvenile delinquency’ may be loosely used to cover any kind of deviant behavior of children who violated normative rules, understanding or expectation of social system”

CAUSES OF JUVENILE DELINQUENCY

There is no single cause or single explanation for the development of delinquent behavior. Such causes can be classified into 1) Social factors and 2) Personality factors

SOCIAL FACTORS FAVOURING DELINQUENCY

Firstly, in a study conducted by Uday Shankar, it is shown that broken homes and families, lack of parental affection and security, lack of family ties and parental irresponsibility's etc are all contributory to delinquency. Secondly, a very large population of delinquents comes from poor homes. From Uday Shankar's study, it is shown that 83% of delinquents come from a poor family and it would not be an exaggeration to say that poor homes invariably become delinquents. Thirdly, there are some areas which are highly vulnerable to delinquent trends. When a child grows older, he goes into neighborhood and becomes a member of a peer group. If in case he joins a group which fosters delinquent attitudes, he is also likely to become delinquent. In support of this, Charles Shaw opined that "delinquency is a product of community force".

PERSONAL OR INDIVIDUAL FACTORS

It has been observed that a good number of delinquents are mentally deficient. When the relation between intelligence and delinquency is studied carefully, it is shown that intelligence quotient of a delinquent children is lower than the average I Q of normal children. Also, mental troubles and emotional maladjustments are also strong factors in delinquency. From a psychological point of view, delinquency is a rebellion and an expression of aggression which is aimed at destroying, breaking down or changing the environment. The rebellion is mostly against the social condition which denies the child his basic rights and satisfaction of his fundamental needs. Another view of psychology is that delinquent is governed by "pleasure principle". The delinquent wants to get immediate pleasure for his immediate satisfaction of his needs. So he becomes a victim to his own impulse. He is neither able to control his impulses nor able to understand the consequences of his actions. Delinquents are just maladjusted persons.

Hence, delinquents are not born so, but they become so due to social circumstances and personal deficienciesⁱⁱ.

RESTORATIVE JUSTICE

The concept of restorative justice views crime as a violation of people and relationships. These violations in turn create an obligation to make things right. It aims to reestablish the balance that has been offset as a result of crime by involving the primary stakeholders in the decision making process on how best to restore the balance. It also includes offender accountability of wrongdoing, respect for all participants and centrality of victims throughout the process. From a restorative justice perspective, a criminal act on the part of a youth harms the relationship between the youth and the victim as well as the prosocial development of youth. Around 1970 - 1980, the response against youth delinquent was characterized by punitive ideological orientation but has since oscillated to rehabilitative and balanced approach.

CONCEPT DEFINED

Restorative justice is a contested concept without definite boundaries, making it hard to limit its essence to a particular philosophy. According to Van Ness and Strong, three core principles underlie the theoretical basis of restorative justice viz. Repairing harm, stakeholder involvement and transforming the role of community and government. The theory that most strongly associated with restorative justice practices and principles is Braithwaite's shaming theory which involves community acknowledgement and condemnation of wrongdoing. This is followed by forgiving the offender for their action and reintegrating them back into the community once they make amends and repair the harm of the victim and society. Shaming must be for reintegration as opposed to stigmatizing.

According to Daly, the long term viability of restorative justice depends on framing it as a judicial mechanism and not only as an alternative to retributive and punitive practices. Restorative Justice should be considered as an innovative approach to doing justice. In essence, restorative justice is one of another innovative tool to fulfill the goal of criminal justice system. Hence, restorative justice is a contemporary justice mechanism to address crime, dispute, bound and bounded community conflict. The mechanism is a meeting of affected individuals facilitated by one or more impartial judgeⁱⁱⁱ.

JUVENILE HOMES - APPLYING THE PRINCIPLES OF RESTORATIVE JUSTICE TO TREAT DELINQUENCY IN INDIA

The Juvenile Justice (Care and Protection) Act, 2015 replaced the 2000 Act in order to implement the standards as provided by the Child Rights Convention, United Nation Standard

Minimum Rules for the Administration of Juvenile Justice popularly known as the Beijing Rules, United Nation Rules for protection of Juvenile Deprived of Liberty, Hague Convention on the protection of Children & Co-operation in respect of inter-country adoption et. This is evident from the preamble of the 2015 Act.

One of the main features of the Act is that it provides separate chapter for Rehabilitation and Social Integration^{iv} where it categories the child offenders and provided for different kinds of treatment for different categories. Moreover, the process of rehabilitation and social integration under this chapter is based on individual care plan with an ultimate aim of restoration with family without supervision or sponsor or adoption or foster homes.

CHILDREN IN CONFLICT WITH LAW

Under section 2(13) of the Juvenile Justice Act, Children in Conflict with Law is the one who is alleged or found to have committed an offence punishable under law for the time being in force and has not completed the age of 18 years on the date of commission of the offense. Another category is the child in need of care and protection which is exhaustively explained in section 2(14)^v.

The Act provides for the establishment of Child Care Institutions which includes Children Home, Open Shelter, Observation Home, Place of Safety, Specialized Adoption Agency and a fit facility^{vi}. The observation home, special home and a place of safety is popularly known as Juvenile Homes established with a prime object of rehabilitation and social integration of child in conflict with the law. In order to ensure that the object has been achieved, the principal Act as well as the model rules provide for adequate safeguard to prevent the abuse of children and guidelines for the implementation of the objectives of the Act

SAFEGUARDS ON REGISTRATION

The Act provides that every Child are Institution must be registered with the concerned State Government within six months from the date of commencement of the Act and no new Child Care Institution shall function without registration under the Act. While registration, the State Government shall determine the capacity of the institution and its purpose, that is to say whether it is going to form observation home, special homes etc. The registration issued under the Act is valid for a period of 5 years and must be renewed accordingly. Yet, the State Government is empowered to cancel the registration of the institution if it is found to be in non-

compliance with the Act or rules made hereunder. Registration can be cancelled when it fails in its objective of rehabilitation and social integration^{vii}. Further, the inspection committee formed under section 54 of the Act can carry out inspection at the Institution to ensure compliance. All these provisions ensure that the functioning of every child care institutions in a state is under the control and supervision of the State Government which acts as a check on any abuse of children.

JUVENILE HOMES

OBSERVATION HOMES

Observation Homes are registered under section 47 of the Act. Observation homes are only for temporary reception, that is to say, to provide for the care and rehabilitation of Child in Conflict with law during pendency of inquiry before the Juvenile Justice Board. It normally ensures that legal aid is accessible to the child; the child attends every hearing and explains the process and progress of the case. It also lays a vital role in formulating the individual care plan, on the basis of which rehabilitation is carried out^{viii}. It provides for attending the child's needs & interest, manages home visits, educational and vocational training, etc.

A child is normally sent to an observation home when he is not under the charge of parent or guardian and bail has not been granted by the Court. Though Observation homes are similar to Jail for adult offenders where under trial prisoners are kept, there is no presumption at any level as to the guilt of the child. Neither the infrastructure, nor the services or conduct of the person in charge should resemble a prison.

Nevertheless, there will be segregation according to age and gender with sufficient consideration to physical and mental status of the child, the degree of offense alleged to have been committed, etc.

SPECIAL HOMES

Special Homes are registered u/s 48 of the Act. Once guilt is proved under Juvenile Justice Act, the Child in conflict with law shall be sent to special homes where they will be rehabilitated. It provides for reformatory services like education, vocational training, skill development, behavior modification therapy etc. It also performs some of the functions of the observation homes like formulating or reviewing the individual care plan. It ensures that the

child accepts the responsibility and takes accountability for the crime they have committed and begin the process of healing and transformation. It prepares the child of reintegration into family and community and ensures that he/she shall not commit crime again.

Special Homes are reformatory care facilities which houses children found to have committed an offence punishable with imprisonment up to 3 years and it is not a prison. They cannot be treated as criminals or prisoners and should be provided with much liberty. They must be counseled through the process of taking accountability and responsibility for their actions. They must be supported to make a fresh start with their lives and must be supported to become emotionally and financial self reliant as they reintegrate back into society.

Deprivation of liberty alone throughout the period of stay at Special Homes will not achieve reformation of children unless it is accompanied by a process where children begin to take responsibility for their actions and find ways in which they can help repair the harm they have caused. Taking accountability helps offender to come to terms with what they have done and accept themselves. It helps them find purpose, move forward with their lives and avoid crime in future.

PLACE OF SAFETY

Place of Safety is registered u/s 49 of the Act. It is established one per state whereas the observation homes and special homes are established for each district. It is established to place a person above the age of 18 years or a child in conflict with the law who is between the ages of 16-18 and is accused of or convicted for committing a heinous offense. The child/person is placed in the place of safety both during pendency of inquiry and after conviction. This institution is not created for any child entering the Juvenile Justice System. When a child in conflict with law is alleged or proved to have committed a heinous offense, such a child needs specialized, focused and designed intervention which would ensure the emotional, physical, social and economic wellbeing^{ix}.

REVIEW OF CHILD CARE INSTITUTIONS

The Juvenile Justice (Care and Protection) Act, 2015 aims at restoring the child back to his or her family. For this purpose, much emphasis is given to the institutions established under the Act. Service quality offered by these institutions needs to be accessed in order to determine

the success of steps taken by the Juvenile Justice Act. But, one of the major issues that have aroused recently is the child abuse in the Child Care Institutions.

EXPLOITATION OF CHILDREN IN ORPHANAGES IN STATE OF TAMILNADU V. UNION OF INDIA & ORS.

In this case, nearly 100 children, brought all the way from Mizoram, were living in unfavorable conditions in an orphanage in Kuzhithurai in Kanyakumari District of Tamilnadu. Later, it was found that these children below the age of 16 were illegally transported from North Eastern States. Their parents handed over them due to poverty and poor social background and they thought that the children will be provided with better education and health care. The Hon'ble Supreme Court took serious note of this issue and issued directives on 07/02/2013 and stated that "As Children Homes were run by Government/NGO/Private Persons; the State Governments are required to conduct a detailed survey with regard to those Children Homes. These entire Children's Homes are required to be registered under the Juvenile Justice Act, 2015 and a status report with respect to unregistered Children Homes and protective measures taken to prevent child abuse on such unregistered Children Homes has to be submitted by each States. The States are also required to indicate the steps taken by them for the implementation of Child Welfare laws....."

SUMMARY OF THE REPORT

- The Report emerged with a database of 9589 Child Care Institutions. 8744 CIs were run by NGO and the remaining 845 CCIs were supported by Government. Some states had more than 1000 CCIs with Tamil Nadu being on top with 1647 CCIs, followed by Maharashtra with 1284 CCIs the followed by Kerala 1242 CCIs.
- Even though registration is mandatory, only 32% of CCIs (3071) were registered under the Juvenile Justice Act, 2015 which means majority of CCIs was outside the purview of the Act. Standard of care and protection in such unregistered institutions remain unmonitored which is clearly an issue.
- With respect to standard of care including individual bedding, proper nutrition, toys for children, hygiene, educational training, etc. it was found that these were not adequately addressed in many of CCIs. In terms of 'Child-Caregiver ratio', the data shows that

CCIs of Chandigarh (88%), Tamilnadu (86%) etc. are fulfilling this norm to a high degree whereas Nagaland (7%), Pondicherry (8%) etc. have less than 10%.

- Another area of concern is the non-establishment of grievance redressal machinery including management of Children committee. Most of such mechanisms are not in place in many CCIs, thereby limiting or eliminating the options available for children to express their views and concerns to the appropriate authorities. Not only does this create a vulnerability to abuse, it is also against the principle of the Juvenile Justice Act.
- Even though the methods to tackle and deal with indiscipline behavior have been listed in Juvenile Justice Rules, the common practice followed in many CCIs can be categorized as form of corporal punishment

CONCLUSION

The principles of Juvenile Justice Act 2015 recognize family as best place for nurturing Children and institutionalization as a last resort for safety and shelter. But in India, there are a large number of Children housed in various CCIs. It is important to ensure that institutional care for children is available and the quality of such care and protection is ensured so that it does not become detrimental to their mental behavioral, emotional and social development. With the advent of new issues in institutional care for children, statistics show that children in institutional care experience delayed physical, behavioral and cognitive development. The lack of one-to-one human contact, play facilities, wholesome nutrition, adequate space, medical care etc are commonly observed problems amongst children who spent long span of time in CCIs.^x

Though theoretically the institutionalization appears to be the best method of restorative justice for juvenile delinquency, the practical problems, as highlighted by the report nullifies all the arguments brought by philosophy in favor for institutional care. As stated in the preceding paragraphs, no one is born delinquent. All that a juvenile delinquent need is institutional care and the Juvenile Justice Act, 2015 incorporating the principles of restorative justice, established Child Care institutions. Instead of introducing new concepts in the Act, the only reform that the juvenile homes need is the proper implementation of existing rules. The government has done its role of highlighting all the statistics through definite numbers. Now it is the duty of those in charge of Child Care Institutions to implement the reforms.

REFERENCES

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- ⁱⁱ. C N Shankar Rao, Principles of Sociology with an Introduction to Social Thought, (S Chand, New Delhi), 2015
- ⁱⁱⁱ. Living Conditions in Institutions for Children in Conflict with Law, Ministry of Women & Child Development, March 2017
- ^{iv}. Chapter VII of the Juvenile Justice (Care and Protection) Act, 2015
- ^v. Section 2(14) - “child in need of care and protection” means a child—
- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
 - (ii) who is found working in contravention of labor laws for the time being in force or is found begging, or living on the street; or
 - (iii) who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
 - (iv) 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
 - (v) 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
 - (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
 - (vii) 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
 - (viii) 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
 - (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
 - (x) who is being or is likely to be abused for unconscionable gains; or
 - (xi) who is a victim of or affected by any armed conflict, civil unrest or natural calamity; or
 - (xii) 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 solemnization of such marriage;
- ^{vi}. Section 2(21) of the Juvenile Justice (Care and Protection) Act, 2015; The scope of this research paper is confined only to child in conflict with law and therefore, only observation homes, special homes & place of safety will be dealt in detail.
- ^{vii}. Section 53 - Rehabilitation & social integration services -
- (i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;
 - (ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;
 - (iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs: Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall apply;
 - (iv) skill development;
 - (v) occupational therapy and life skill education;
 - (vi) mental health interventions, including counseling specific to the need of the child; (vii) recreational activities including sports and cultural activities;
 - (viii) legal aid where required;
 - (ix) referral services for education, vocational training, de-addiction, treatment of diseases where required;
 - (x) case management including preparation and follow up of individual care plan;

(xi) birth registration;

(xii) assistance for obtaining the proof of identity, where required; and (xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.

^{viii}. Section 39 of the Juvenile Justice (Care and Protection) Act, 2015

^{ix}. P Hymavathi, Living Conditions in Institutions for Children in Conflict with Law, Vikaspedia, (4th Aug, 2017), <http://vikaspedia.in/education/child-rights/living-conditions-in-institutions-for-children-in-conflict-with-law/place-of-safety>

^x. Asha Bajpai, Child Care Institutions in India are in dire need of Reforms, DNA (Jan 16, 2019), <https://www.dnaindia.com/analysis/column-child-care-institutions-in-india-are-in-dire-need-of-reforms-2708362>

