

HEALTH CARE OF JUVENILES: ISSUES AND CHALLENGES IN INDIA

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ABSTRACT

Children are the future of any country. The growth of a country depends upon the development of forthcoming generations. Juveniles are called such children who are less than eighteen years and because of having committed the crime the penal system of the country has decided to let them remain in juvenile care homes and reformation houses. The Indian penology System believes in reformation theory which sets out the principle 'hate the crime not the criminal' and states that if any person being a juvenile having committed any wrong act or crime or omission of any act then we should try to mould and deviate him from repeating the same or indulging in any crime again. Such sick persons should be motivated in imparting personality development programme and career build up schemes. Prisons, reformation homes are not providing the bed of roses. There are lots of challenges come before the detainees to tackle and consequently keep the adverse effect on the lives of concerned persons. Though, there are various laws and rights to protect them but what is the practical availability of such laws. It is proclaimed that Juvenile centres, reformation homes & prisons will try to reform persons, detained therein but there are various instances to show that their tyranny is increased which is causing danger to their physical & mental health. To analyze the situation is the whole objective of the research paper under study.

KEYWORDS: Laws and Rights, Physical and Mental Health

INTRODUCTION

Children are the dawn of humanity and hopes of nation's future. Winston Churchill recognised their importance saying that there is no finer investment for any community than putting milk into babies. This appeal to the people everywhere, this fundamental faith in juvenile justice, this reorganization of the worth of the infants born and unborn, is the beginning of juvenile justice Justice Krishna Iyar says¹ "Child is the father of man" and in order to enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education; acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.

Due to their vulnerability and dependence they are exploited by unscrupulous economic forces, poverty, resulting in the practices of child labour, abuse, neglect and their involvement in crimes which undoubtedly obstructs the process of blossoming of children into healthy and able citizens enjoying the blessings of liberty. The Constitution makers conceived right to all-round development of children.² Such children who have indulged in any crime the penal system should treat them with sensitivity and try to mould the path of their lives to come back to the normal routine life and should motivate them for achievements so that they can become a positivist and ever growing children and can help the country in its growth. Personal liberty is the fundamental right of every human being and when the person whose liberty is curtailed, is a child, the law should be more conscious about him and in the protection of his rights. Juvenile should be deprived only

with his right to locomotion not with his rest freedom. Life is the most valuable and cherished asset which should be maintained with due care.

Information from different sources indicates that there is a high prevalence of mental illness among incarcerated individual than among general population. Young people in prison have an even greater prevalence of poor mental health than adults Mental Health resources for Young Offenders³ Juveniles lodged in different reformation homes and detention centres are the victims of various types of exploitations they are facing the problem of torture, mal treatment, sexual abuse, depression, anxiety, habit of taking drug these problems led the tendency of mental disorder among them.

The object of the paper is to discuss and find out that whether the rights which are granted to juveniles are availed by them under the legal system. To reach at the conclusion the legal statutes, reports and case law will be analyzed. The reports published in news papers will also be discussed under the research paper in question.

JUVENILES AND JUVENILE DELINQUENCY

According to section 2(k) of "THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000" "juvenile" or "child" means a person who has not completed eighteenth year of age; and Section 2(l) of the Act defines "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. While juvenile delinquency may be defined as any act or conduct of a juvenile which is socially undesirable. Juvenile delinquency generally means the failure of children to meet certain obligations expected of them by the society. The juvenile delinquent has even been defined as "a child trying to act like a grown up". The term delinquency has been derived from the latin word 'delinquer' which means 'to omit'. It was William Coxson who in 1484, used the term delinquent to describe a person found guilty of customary offences. A liberal interpretation to the term 'delinquency' is given by the sociological thinkers. This view is well expressed by the definition given by Clyde B. Vedder who says, 'juvenile delinquency refers to the anti-social acts of children and of young people under age. Such acts are either specifically forbidden by law or may be lawfully interpreted as constituting delinquency, or as requiring some form of official action. The Definition of delinquency includes conduct, which violates the law only when committed by children. A child is delinquent only when so adjudged by a juvenile court, following a formal complaint. There are various causes in juvenile delinquency. Juvenile delinquency takes place in various forms and very in degree, frequency, duration and seriousness and involves different forms of specialization like drug addiction, sex offences, predatory acts etc.

Family situations, abusive & alcoholic parents, victim of abuse, poverty, inconsistent discipline, parental indifference, school dropout, wandering into street, gang culture are out of those responsible factors which lead to the juvenile delinquency. It is the responsibility of every adult to ensure 'to every child a childhood'. The statistics of juvenile crimes in the country against total crime in the country indicates steady decline in early 1990s and static in late 1990s and then again rose significantly in early 2000 and still increasing gradually. It has been observed that children at the threshold of adulthood -in the age groups of 16-18 years are more prone to taking up criminal activities. This increase may be partly attributed to inclusion of delinquent boys from 16 to 18 years for the first time as per new definition of Juvenile Justice Act, 2000.⁴ The one of the famous case of India Nirbhaya Case, in which a girl was gang raped and inflicted serious injuries because of which she died one of the accused was below 18 and tried to take benefit of law was the worst situation and not only the failure of social as well as legal norms but also the failure of disposal of justice.

International Conventions

The right of all persons deprived of liberty to the highest attainable standard of health is guaranteed in a wide range of international instruments, including human rights treaties at the international and regional levels, United Nations resolutions and agreed model standards and guidelines for the treatment of prisoners adopted by the UN General Assembly. The right to health of prisoners is articulated within economic, social and cultural rights under which the right is universal and non-discriminatory in application.⁵ Article 12 of The International Covenant on Economic, Social and Cultural Rights adopted on 16 December 1966, affirms “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The human rights treaties and bodies that have examined questions of health in prisons. There are various Conventions which protect the rights of juveniles as a human being for instance, International Convention on Civil and Political Rights, 1966 International Convention on Economic, Social and Cultural Rights, 1966, Standard minimum rule for the administration of juvenile justice, Convention against Torture and other Cruel, Inhuman or Degrading Treatment.

India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect, right to information, right to expression and right to nutrition etc have been defined as basic rights of children by the Convention on the Rights of the child.

Convention on the Rights of the Child, 1989 recognizes the right of child in matters of health, education, nutrition, development and protection against maltreatment, sexual abuse, exploitation, torture either physical or mental. The right to medical care is guaranteed to young persons in prison under the right to health in Article 24 of the UN Convention on the Rights of the Child.⁶ In addition to defining specific human rights protections, each treaty also establishes to monitor the progress of states towards meeting the obligations enshrined in the treaty. The Committee on the Rights of the Child monitors the implementation at country level of the Convention on the Rights of the Child, and so on.

The Preamble of the WHO Constitution, states that “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”. Article 2 of the WHO Constitution details over 20 areas of necessary action in order to achieve the objective of enabling all persons to attain the highest possible standard of health.

Article 2 identifies the need to strengthen health services, take action to prevent the spread of diseases, address mental health issues and to improve nutrition, housing, sanitation, recreation and other aspects of environmental hygiene. This broad and universal concept of health is of particular resonance in examining the issue of prisons, and ensuring that prisoners are entitled to adequate medical standards. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has similarly been cited within the international jurisprudence, and used as a basis for defining standards of detention within international law.⁷

INDIAN CONSTITUTION & OTHER LEGISLATIONS

Constitution of India is the paramount law of India and gives life line to all laws enacted and prevailing in India. The Constitution of India grants right to equality under Article 14, while Article 15(3) of the Constitution permits to make a special provision in favour of the children and women as well as under Article 21 the right to personal liberty which is

dynamic in it and has imbibed all aspects of life and declares void all activities which are trying to derogate and under value the dignity of any individual in any way irrespective of his status. Right to education under Article 21-A of the Constitution of India, under Article 22 protection against arbitrary arrest and detention, under Article 23 prohibition of traffic in human being and forced labour, under Article 24 prohibition of employment of children in hazardous activities. Article 32 provides remedy to file Writs before the Supreme Court for enforcing the fundamental rights. Similarly the High Courts of various States are empowered under Article 226 to enforce not only the fundamental rights but other statutory and legal rights of citizens. Besides fundamental rights Constitution of India establishes the goal of directive principles for state policy enshrines under Article 39(e) not to be abused the tender age of children not the indulgence of children in childhood in dangerous industries under 39 (f) the children would have the right to opportunity and facilities to develop in a healthy manner and protection against exploitation and also Article 45 is to protect the childhood. Article 47 considers it the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. Further, State's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health.⁸

India adopted a National Policy on Children in 1974 for achieving the above said rights for its children which reaffirmed the Constitutional provisions for adequate service to children both before and after birth and through the period of growth to ensure their full physical, mental and social development. The Juvenile Justice Act, enacted in 1986, was the first common legislation to govern the juvenile justice system which was replaced by The Juvenile Justice (Care & Protection of Children) Act, 2000, Right to Free & Compulsory Education) Act 2009, Child labour (Prohibition and Regulation) Act, 1986 & now the Protection of Children from Sexual Offence Act 2012, are enacted to give protection to children. In spite of these, there are various enactments to protect the persons who are incarcerated as Prisons Act, Prisoners Act, and Prisoner's Reformation Act.

THE ROLE OF JUDICIAL DECISIONS AND REPORTS OF COMMISSION

Legislations, statutes, reports of commissions cannot make a miracle if the active judiciary is not available to protect the rights of civilians. This is the fact which makes more important the role of judiciary in any country because only the independent judiciary can take the decision being free of any influence. In India, judiciary has played its' role very actively to eliminate the prison atrocities in the interest of their inhabitants. We are living in a democratic society where the government and its organs do the work in the interest of the common public to avail the justice at its' extreme point. National and International Covenant state that juveniles should be incarcerated separately from adults and separate care homes and reformation centres are established for them but afterwards there are the instances of the fact that they are being lodged in jail not even a single moment but for the several times this is the violation of their right because of this carelessness they have to suffer many problems as of sexual exploitation, physical and mental torture, undue influence, engagement in works against their will as well as their continuous living with adults and habitual criminals imbibe in them the habit of alcohol, drugs & have the tendency to convert them into habitual offenders. A social activist *Sheela Barse* filed a petition in Court one other pity situation came before the court, which depicted the true availability of human rights in prisons. *Sheela Barse* requested the court to release the girl aged 16 years from jail. Ordering on the petition the court held that it is a matter of regret that despite many provisions, a child is kept in jail. A child is an asset of the country and it is the

responsibility of the State to keep safe the children and to make efforts for the full development of his /her personality.⁹

But afterwards again in NHRC submitted in its' report that one 11 years old girl was living in jail with adult prisoners. In June, 2016 a case came before us of Delhi care home situated in Lajpat Nagar in which a girl living in care home complained about being molested by the care home's superintendent when a visit was made by the minister of the concerned government and he was arrested after filing of complaint.¹⁰ Because of being careless and ignorant attitude towards the juveniles continuously, they face the problems of depression, mental disorder and become victim of serious diseases.

In *Gaurav Jain v Union of India*¹¹ the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry. The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The activism of the Indian Supreme Court to protect the children from various type of exploitation is commendable.

In the *M.C. Mehta v. State of Tamil Nadu*¹², Supreme Court of India emphasized on national Constitution and international instruments, including the Convention on the Rights of the Child, the Indian government is required to ensure that children do not engage in hazardous work. In *Lakshmi Kant Pandey v Union of India*¹³ with object of ensuring the welfare of the child J. Bhagwati directed the Government and various agencies to follow some principles as their constitutional obligation to ensure the welfare of the children. This is an extremely important case relating to the adoption of Indian children by persons inside and outside India. In the absence of legislation, the Supreme Court framed elaborate guidelines in the matter.

In *Sheela Barse v. Union of India*¹⁴, the land mark judgment delivered by the Supreme Court in which it was emphasised that a central act is needed for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. It further stressed the need not only of having a legislation, but to enforce it with all earnestness and plea like financial constraints would not serve our purpose in building up of powerful human resources who are to take the reins of nation in its forward march. The Supreme Court also questioned the non enforcement of the Children Acts, it directed the states to ensure that the Act is brought into force and implemented in accordance with the provisions contained therein. The Supreme Court issued directions to the state government to set up necessary observation homes where children accused of an offence could lodged, pending investigation and trial will be expedited by juvenile courts.

In *Sheela Barse v. Secretary, children Aid Society*¹⁵ the Supreme Court commented upon setting up dedicated juvenile courts and special juvenile court officials and the proper provision of care and protection of children in observation Homes. In *Vishal Jeet v Union of India*,¹⁶ The Supreme Court issued appropriate directions on a PIL to the state Governments and all Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of the young fallen victims. In *Sakshi v Union of India*¹⁷ Supreme Court directed the government/ Law commission to conduct a study and submit a report on the means of curbing child abuse.

CONCLUSIONS AND SUGGESTIONS

Kofi A. Annan, the Secretary, general of UN observed that 'there is no trust more sacred than the one the world holds with children, there is no duty more important than ensuring their rights are respected and their welfare is protected.¹⁸ In spite of the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, for the majority of children in India it is still a dream and 'the future of the country' continues to live without a cared, protected and meaningful childhood. The juvenile justice system as conceived by legislation aims at providing care, protection, treatment, development, and rehabilitation of delinquent and neglected juvenile. Children are held the greatest gift of humanity.¹⁹ A report of UNICEF in 2005 on the state of world's children under the title "Child under Threat", speaking regarding India, mentioned that millions of Indian children are equally deprived their right of survival, health, nutrition, education and safe drinking water.

The future, development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. Juvenile delinquency creates hurdles in the development of child. By controlling juvenile delinquency we shall be controlling and checking the future criminals. It can no more be disputed and is an open admitted fact that tendency among young people to commit crime and indulge in anti social activities is increasing. Childhood, a universal human experience has vital stakes.

There are various programmes and strategies which may be undertaken to control and prevent juvenile delinquency. Broadly the programmes can be categorised under two heads:-

(I) Individual Programme (II) Environmental Programme

- Individual Programme consists of Clinical programme, Educational Programme, Mental Hygiene, Parent education, Recreational programmes and Removal of inferiority complex etc.
- Environmental programme consists of Community Programmes, Publicity, Parental love and affection and Family Environment etc.

Police has also important role to play to control juvenile delinquency. However, law and law enforcement machineries have a major role to play to control delinquency in the society. The basic or main function of the police is to enforce the laws. However, the police have a vast role to play in controlling and preventing the crime by the juvenile offenders. For appreciating the role of the police as preventive force a deep scrutiny of police working with special reference to the juvenile delinquents has to be made. The police administration requires a new vision and approach towards the children committing offence. For effectively dealing with the problems of juvenile delinquency a Special Juvenile Aid Police Wing is required which should have specially trained police officer and officials. These police personals should undergo a special Training Programme regarding working with the children and should be sensitised towards their special needs.

A formal Juvenile Justice system may be justifiable to a certain extent; there must be some concrete and comprehensive plan of action. It should be evolved for the well being and welfare of all children who, due to various situational compulsions, are totally marginalised or left out of the social stream. We also need to evolve an appropriate policy framework for the protection, care and development of neglected children involving the active cooperation and participation of individuals, groups, communities and civil society at large. Keeping this in view, a few suggestions may be

offered as control of delinquency needs effective implementation of Juvenile Justice Act, with full public awareness and proper orientation and training to professionals and law enforcement agencies. Application of UN Rules for Juveniles Deprived of their Liberty (1990), advocacy for various legal provisions provided for juveniles and proper mechanism should be created to assess the needs and requirements of the juveniles and it should be reviewed regularly. The approach of the agencies like police involved in the system may be more of reformative character rather than pure penal. The objective may be to reform the delinquents, rather than just to punish them. Government should put more emphasis of useful and attractive beneficial long-term schemes for Juveniles so that they feel motivated to join main stream of the society and regain their self-confidence, which is generally lost because of the callous attitude of the society. State Governments and Union Territories administrations should encourage and provide support to voluntary organization to start or modernize juvenile services including community services. Longer association of community and voluntary organizations in the schemes of Government programs like nutrition for all, literacy, health, eradication of child labour, etc. shall help to a great extent to weed out delinquency. All the stakeholders should give coordination and networking, as the aims of juvenile justice could be achieved mainly through concentrated and co-ordinate functioning.

Children are the most precious asset of the nation and the all necessary attempt should be made by including them into the growth of the nation and such juvenile who has gone on the wrong route, efforts should be made to divert him and motivate him to come back into civilized society. Every child has a right to health care whether he is juvenile or a normal child. Juveniles are already victim of destiny & their circumstances so they need more care and affection. They should be understood that there is no charm or glamour on the path of crime. Life takes rest in the lap of peace and calm. Evil and sin loose always only but the right attitude wins in the end. Government officers, laws, courts, policy makers, parents should take proper care of them and their attitude. Their cases should be disposed without undue delay. In care homes proper and effective medical facility should be available to avoid any inconvenience. Vocational training programme and education schemes should be implemented and enforced.

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