

JUSTICE TO JUVENILE: WHO'S LIFE INTO CRIME

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Abstract

According to legal terminology, juvenile is an adolescent person between children and manhood or womanhood, as the case may be, who indulges in some kind of anti-social behaviour, if not monitored or checked, may transform himself or herself into a potential offender and will become a source for all anti-social activities in the society. The need for the special protection of children was felt by the international community long before in 1924, when the Geneva Declaration on the Rights of the Child was adopted. The Vienna Declaration and Programme of action makes a humanitarian summons on nations in the articles relating to the rights of the child. The needs of children and our duties towards them have been expressed in our Constitution. The National Policy for Children envisages that the State should undertake several measures for the attainment of the objectives mentioned in the policy. Different Acts also adopted by India for juvenile.

Key words: *Declaration, Constitution, Protection, Juvenile.*

Juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus, the concept of social justice was to be seen as relevant to the development of children and young person's generally and to endangered or adjudicated young.

The term Juvenile Justice is, therefore, used to refer to social as well as juridical justice. India seeks to provide social and juridical justice to neglected and delinquent children through the use of code, constables, court, and residential institutions for both categories of children, those committing an offence and others living in circumstances likely to lead them into a life of crime. Therefore, the juvenile justice system in India is neither fully civil nor fully criminal.

The word 'juvenile', according to legal terminology, is an adolescent person between children and manhood or womanhood, as the case may be, who indulges in some kind of anti-social behaviour, if not monitored or checked, may transform himself or

herself into a potential offender and will become a source for all anti-social activities in the society. Juvenile delinquent is one who breaks the law, is a vagrant, and persists in disobeying orders, whose behaviour endangers his or her personal life and the life of others. The Government of India has ratified the Convention on the Rights of Child on the 11 December, 1992; The Juvenile Justice (Care and Protection of Children) Act, 2000, also stresses the need of protecting child and caring.

Juvenile Delinquency, on the other hand, refers to a disapproved and unaccepted behaviour of children and adolescents, which the society charges some kind of admonishment, punishment or corrective measure in the larger interest of public. It includes rebellious and hostile behaviours' of children and their attitude of indifference towards the society. Lack of parental care and control, broken family and deprivation of love and affection, the age of puberty among girls, low intelligence, unhappy home atmosphere, parental rejection, unhealthy neighbourhood, school environment, bad company, consumption of drugs and alcoholism are some of the causes throwing the children to develop childish impulsiveness or adolescent conflict ultimately leading to Juvenile Delinquency position. If the children of today are not taken care properly, tomorrow they may become obstacles for their self-development, development of others and will become a big hindrance for peace progress of the society.

Problems of broken home, urbanization and industrial slums and the rapid change of ecology of delinquency pattern invoke a serious apprehension, which calls for constant study of the problem and its monitoring with sympathy and understanding. India in general and the State of Andhra Pradesh in particular are not exception to this problem.

International Concern over Rights of Children

The need for the special protection of children was felt by the international community long before in 1924, when the Geneva Declaration on the Rights of the Child was adopted. This Declaration consisted of 5 principles wherein the protection and development of the child in every aspect of life was given a priority. The 1959 Declaration on the Rights of the Child was another landmark. It consisted of 10 principles, which enriched and developed the 1924 Geneva Declaration. The need for special protection, opportunities and facilities for the growth and development, name and nationality, benefits of social security and the need for love, care and affection for the harmonious development of child's personality was once again stressed.

The Declaration covered other aspects important for the development of the child such as, free and compulsory education and opportunity for play and recreation etc.

Exactly after 30 years of the Declaration on the Rights of Child on 20th of November 1989, the General Assembly of the United Nations adopted unanimously the Convention on the Rights of Child, which is the complete document on the rights of child. The Convention is based on strategy of rights and the implementation and enforcement of these rights; it envisages an important role for the legal system in realizing these rights. The Convention defines child as a person below the age of eighteen years, whose best interests must be taken into account in all situations. It consists of 54 articles, which can be divided into 4 categories as follows:

The Survival Rights: These rights deal with a child's right to life, and living, nutrition, shelter, health care services etc, are basic needs for survival.

The Development Right: These are the rights, which are necessary to reach its full potential such as right to education, play and leisure, freedom of expression, religion etc. and the preparation of the child for a responsible life in a free society.

The Protection Rights: They require that the children be protected against all forms of abuse, neglect and exploitation such as child labour, drug abuse, sexual exploitation and traffic in children etc.

The Participation Rights: These rights allow the child to express itself freely, to join associations and to assemble peacefully and to participate freely in cultural life and arts and also recognize the right of a child to have access to information from a diversity of national and international sources which is necessary for the child's social, spiritual and moral-well being, physical and mental health, to reach complete and responsible adulthood.

Social conditions for the rise of problem of Juvenile Delinquency

The technological onslaught has speeded up the process of industrialization and urbanization. Because of these twin processes, more and more people are migrating from villages to towns and cities. Migration forces the breakup of joint and cohesive family system. It also uproots the family's even viable rural community that provided emotional support and acted as conduct stabilizer at one time was disturbed due to electronic media and various other information technology factors.

The impact of such a social disruption is greatly felt by lower stratum of society. Therefore, it is they who have to bear the brunt of family disintegration the most. At home, owing to the absence of working parents, the children are ordinarily left to themselves, unsupervised and unburdened, ultimately creating favourable conditions for the rise of the problem of Juvenile Delinquency. The use of the term Juvenile Delinquency has been

made for the wide variety of undesired behaviour on the part of grown-up children including the adolescents. In certain cases it signifies the misconduct whereas several others have used it to refer a child who chronically turned from school as delinquent involved in burglary or rape or in pinching things or engage in pre-marital sex. Thus, the term is applied to deviant behaviour ranging from misconduct to such offences, which are punishable in the court of law. Thus, Juvenile Delinquency becomes universal phenomenon and hence it has received the attention of all the Policy-Makers, Legal experts, Sociologists, Psychologists, Researchers, Academicians, Government and non-government organizations etc., all over the world. The attention of governmental and non-governmental organizations was drawn to the plight of juvenile delinquents, and efforts are being made to neutralize the negative effects of juvenile delinquents on the development process of Indian society through enactment and implementation of a number of legislations, policies and programmes both at micro and macro levels. Despite these efforts, the desired objective of the eradication of juvenile delinquents in India in particular and the third world in general is yet to be realized.

Rights of Juvenile Delinquents and the Constitution of India

Children are supremely important national asset and are the greatest gift to humanity. These juridical eulogies are not hallow claims: their imprints may be found in the Constitution, whereas the Constitution has in several provisions, including clause (3) of Article 15, clauses (e) and (f) of Article 39, Article 45 and 47, impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

The rights guaranteed to an accused person are nearly the same as in the American Constitution except that the right to trial by jury has not been given in Article 39(e) and (f) says that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 says that the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Through 93rd Constitutional Amendment Act, 2002, Article 21 A was inserted in the Fundamental Rights Chapter after realizing the importance of enforcing free and compulsory education as a Fundamental

Right. Article 47 says that the State shall regard the raising of the law of nutrition and the standard of living of its peoples and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. India also, there is no provision corresponding to the right of speedy trial as given in the American Constitution though the same is now read into Article 21 of the Indian Constitution. The rights against self-incrimination, the right to have a lawyer of one's choice, the right against exploitation, right to primary education were also guaranteed under Indian Constitution.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The Vienna Declaration and Programme of action makes a humanitarian summons on nations in the articles relating to the rights of the child. Part D of the Vienna Declaration dealing with the rights of the child must become the locomotive of Juvenile Jurisprudence. The World Conference at Vienna emphasized the principle of "first call for children," and underlines "the importance of major National and International efforts especially those of the United Nations Children's Fund (UNICEF), for promoting respect for the rights of the child to survival, protection, development and participation.

However, childhood and youth are subject to many visible and invisible sufferings and disabilities. The Juvenile Justice System is a major integral component of child welfare and has significant role to play as far as the problem of Juvenile Delinquency is concerned. The Juvenile Justice system as an alternative to the criminal justice system for juveniles was developed since ages past because of the necessity of special protection and care to the juvenile offenders. In 1980, the Sixth United Nations' Congress on the Prevention of Crime and treatment of Offenders held in Venezuela discussed the problem of Juvenile. Art. 21(A) was inserted through 86th Constitutional Amendment in 2002. The Right to Free and Compulsory Primary Education Act 2009 Guarantees the Right to Primary Education to all the Children between 6 to 14 years.

Delinquency in detail: They decided that there should be the Standard Minimum rules for the Administration of Juvenile Justice. Every child has its human rights and they should not be denied to it by anybody. Hence, they said that there should be laws to protect the right of the children. Further, the meeting held in Beijing on 14th May, 1989, discussed various areas of Juvenile Justices and recommended the following Standard Minimum Rules.

1. New methodological approaches should be developed. This should be in addition to those relating to the “hidden delinquency studies”. The purpose should be to provide information for effective planning in crime prevention.
2. The number of female juveniles taking drugs and involving in the commission of crimes has gone and the problem should be studied in depth.
3. Attention should be given to social, economic, educational, political and cultural factors associated with different kinds of violent activities by the juveniles and the youth.
4. Encouragement to educative rather than punitive steps for preventing and controlling youth criminality should be given.
5. The most important recommendation was on the exploited, abandoned, abused or neglected children. Such children should get special attention as those children may suffer from psychological disorders and various other mental health problems.

Part-II of the Rules refers to investigation and prosecution of cases involving juveniles. Some of the important points are as follows:

1. Upon apprehension of juvenile, notification of such apprehension should immediately be given to his parents or guardian.
2. Release of the juvenile should be considered immediately by the judge or other competent official or both.
3. Promotion of the well-being of the juvenile should be the only consideration.
4. Dealing juvenile offenders without resorting to formal trial by a competent authority must be promoted.
5. All Law Enforcement Officers including police should receive specialized training in Juvenile Delinquency. There should be special police exclusively for the prevention and control of juvenile.
6. Rules dealing with the detention of juvenile delinquents awaiting trial are as follows:
 - a) Detention of juvenile delinquents awaiting trial should be used only as a last resort. Detention shall be only for the shortest period, which will further encourage alternate methods of closed supervision, placement in families, in educational institutions etc.
 - b) A juvenile detainee awaiting trial shall be entitled to all rights and guarantees of the United Nations' Standard Minimum Rules for the treatment of Prisoners. They

shall also be entitled to all rights protected by the international Covenant on Civil and Political Rights.

c) Under trial juvenile detainees shall be kept separate from adults. They shall be kept separately in a separate institution or at least in a separate part of the institution where adult inmates reside.

d) All Juvenile detainees are entitled to get care, protection and all necessary individual assistance, social, vocational, psychological, educational, medical and physical while they are in custody. In this backdrop, one should understand the problem of Juvenile Delinquency in India.

Sec. 2 (w) of Juvenile Justice (Care and Protection of Children) Act, 2000

Thus several conventions and other instruments have included juveniles as part of International Jurisprudence by the United Nations. However, each nation must have a special ombudsman for Juvenile Justice, with power, *sue motto*, to investigate, hear cases, render verdicts and take action, including punishment.

The National policy for children

The needs of children and our duties towards them have been expressed in our Constitution. The National Policy for Children adopted by the Central government in 1974 covers a comprehensive health programme, nutrition services, free and compulsory education, special attention to children of weaker sections and those who are socially handicapped, delinquent or otherwise in need of rehabilitation. Even in litigations involving them, children's interests are to be given paramount importance.

The National Policy for Children's 1974 states:

“The nation's children are supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by the society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice”.

The National Policy for Children envisages that the State should undertake several measures for the attainment of the objectives mentioned in the policy. It follows therefore without saying that children who are socially handicapped, who have become delinquent, who are victimized, who are abused or have taken up begging for making an income or are otherwise in distress, should be provided with facilities of education, training and

rehabilitation and should be helped to become good, decent, useful and law abiding citizens. Hence, it has become the declared aim and policy of the people of India to see that children are protected against neglect, cruelty, victimization and exploitation. They should be given facilities for special treatment, education, rehabilitation and care by the State. The year 1979 was celebrated as the International Year of the Child and the Government of India once again proclaimed its commitment for the activities meant for the proper development and upbringing of children in the country.

Rational for a Separate Justice System for Juveniles and Children

Justice system available for adults is neither desirable nor suitable for children and young offenders. Children lack maturity, they are in their formative years and it is easier to mould them.

Modern criminal jurisprudence recognizes that no one is a born criminal and that many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, all efforts must be made for bringing about the reformation of young offenders and preventing their association with hardened criminals. Association of youthful offenders with hardened criminals can have disastrous and devastating consequences.

In the past, penal laws and its administration were to fit the crime, not the offender. Child offenders were treated on the same lines as adult criminals if they were above the age of legal responsibility. However, gradually, with the sweeping social and economic changes together with the rapid progress of sciences dealing with the social circumstances and behavior, punitive and deterrent criminal justice has been replaced by a predominantly reformatory approach to the offenders considering their personal and social characteristics.

Children are the most vulnerable group in any population and in need of the greatest social care. They require the protective umbrella of society for their proper growth and development. The Apex Court of India has held in Supreme Court Legal Aid Committee v. Union of India AIR 1989 SC 1278 that children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene-physical and mental condition. It is the Statement of objects and reasons of the Children Act, 1960 responsibility of the society and is one of the paramount obligations of those who are in charge of governance of the country today to attend to the children to make them appropriate citizens of tomorrow.

The framers of our Constitution also kept in mind the welfare of children as supreme. The constitution contemplates special provisions being made by law for

protecting and safeguarding their interest and welfare. Various States enacted Children Acts to give effect to this national policy providing for special treatment to children. These Acts were later replaced by Central Legislation i.e. Juvenile Justice Act 1986. In tune with the changing National and International Scenario the Juvenile Justice (Care and Protection of Children) Act, 2000 was brought. On the basis of Nirbhaya case again the present Act i.e. the Juvenile Justice (Care and Protection of Children) Act, 2015 was coming into force.

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