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Juvenile Offenders: Judicial Approach and Theories

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ABSTRACT

The sentencing process in India towards children is very lenient. The role of the court is to impart justice. Once the trial is over, the decision of the courts comes out in the form of punishment to convict or if the court is satisfied that the accusation of a person fails then they acquit the person. The treatment offered to children is in the form of admonition, probation, and sending a person to correction home. Beyond this is fine, restitution and compensation are given as alternatives to sentences. In sentencing process, lower degree of punishment is a rule and higher is exception². The court should see the severity of the offence committed and give preference to the lower degree of punishment. If the court observes that the punishment has two options of giving imprisonment and fine, the fine to be given first preference.³When the nature of offence is grave and the demeanor of the offender demands more punishment than fine, then the judge should think about the alternative punishment for the offence. While awarding higher degree of punishment, it is duty of the court to give reasons for not awarding lower degree of punishment. It is not only the duty of the court to give preference to lower punishment, but it is the right of the accused as per fixed by law. There is a presumption of not awarding more punishment than prescribed by law. The punishment for the offender is decided on the basis of the prescribed set of rules and not beyond that. Whenever there is an alternative punishment then lower degree punishment to be awarded is a rule. The nature of the offence should be taken as a measure for deciding punishment whether to be deterrent, preventive, reformatory or rehabilitative punishment. It is very important to understand the antecedents of the offender before awarding a sentence. It gives age, education, family details, health problems, addictions and previous convictions of offenders.

Keywords: JJ act, severity, admonition, probation, reformatory, antecedent, judiciary.

¹ Author is a Research Scholar at University of Kota, India.

² Rawls, J. (2000), A Theory of Justice, Universal Law Publishing Co. Pvt. Ltd., Delhi.

³ Teeters, N.G; (1949), Institutional Treatment of Juvenile Delinquents, Nebraska Law Review 29.

I. INTRODUCTION

There is a difference between punishment and treatment. Punishment means to give pain for the offense committed. It is a lesson to the offender to deter him from commission of future crimes, the punishments are given for a definite end or sometimes punishment works as an end in itself. In this research, punishment is viewed as a treatment to the offenders. The main ideology is to treat the accused not to punish them. But due to disagreement of people this approach couldn't be applied everywhere. In India offenders below the age of 18 years are governed by J.J. Act, 2000, according to which a juvenile who has committed an offense can't be sent to jail but if found guilty is sent for observation under special homes.

The followings are the important factors in sentencing process and giving treatment: -

(A) Admonition

It is an alternative sentence offered under Indian laws. The important duty of the court is to what offences have been committed by the offender. The first-time offenders should be dealt with due care and not in a harsh manner. Releasing a person on admonition Admonition means to release the offenders after the advice to not do an act against it. It is a warning to the offender not to repeat the same act or indulge in any act which is a legal wrong. It is purely the reformatory punishment and gives the offender full opportunity to expiate and be a good citizen and return to the society. According to the J.J. (C and P) of the Children Act, 2000, the definition of juvenile mentions any person to be below 18 years of age and has indulged in criminal activities. It is the duty of the J.J.B to initiate an inquiry and find out the same. If the board finds out in enquiry and thinks fit, they can allow the juvenile to go home after giving him advice or admonition. The parents or guardian too are given counseling before releasing the juvenile as per Sec 15(1) of the Act. The POO Act 1958 also has the provision of releasing the offender on admonition as per Sec 3 of the Act. This provision is applicable to the offences under IPC for Sec 379, 380, 381, 402, 420 or any offence punishable with imprisonment for not more than 2 yrs. or with fine or with both under IPC or under any other law on condition that no previous conviction is proved against the offender. Previous conviction against a person shall include any previous order made against him for admonition or probation on good conduct.

There is a similar provision in the Cr. P.C, which says that if, any person is convicted of theft, dishonest misappropriation, cheating or any offence under the IPC, punishable with not more

⁴ Probation of Offenders Act, 1958.

than 2 yrs. or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, after considering the age, character, antecedents or physical or mental condition of the offender and to the nature of the offence, instead of sentencing him to any punishment release him after giving admonition as per Sec 360 (3) of Cr. P.C. There is provision of releasing the offender on admonition with compensation under Section 5 of the Probation of Offenders Act 1958. Under this provision, when the court directs the release of an offender on admonition, if the court thinks fit, may direct the offender to pay a sum of compensation as it may deem fit. The amount so ordered may be recovered as a fine or in civil suit as compensation. This amount may be as per the injury or loss caused to the other party.

(B) Release For A Good Conduct On Probation

The meaning of the probation is the behavioral supervision of the first-time offenders or young offenders who had committed the first offense. The very procedure of this supervision is that the offender who is under the supervision must not commit a further offense and he must report to the probation officer regularly. The other meaning of the probation is that the supervision of the person under the circumstances and his suitability for which he is being tasted. According to Sec 5 of the J.J.Act, if a juvenile has committed an offence and if the JJB is satisfied on an enquiry and if the board thinks fit then the juvenile has committed such an offence however it is necessary to release the offender on the probation then the juvenile may be released on the probation even if anything contrary is contained in any other law which is time being in force. The juvenile may be placed under the care of –

- i.** Any parent, guardian, or other fit person, on such parent and guardian or other fit person by executing a bond with or without surety as a Board may require for the good behaviour of the juvenile, for a period not exceeding three years.
- ii.** Fit institution for not exceeding three years.

Sec 4 of the POO Act 1958 and Section 360 of Cr. P.C, empower the court to release certain types of offenders on probation of good conduct, if any person is not punishable with death or imprisonment of life or sentence of more than seven years. The court by which the person is found guilty has discretion to consider the circumstances of the case, nature of the offence and the character of the offender and release the person on probation of good conduct. This kind of punishment is applicable to a large extent to children below 21 years of age and women and it is extended to all offences other than death sentence and life imprisonment. The court may instead of sentencing the offender at once, direct the offender to be released on bond with or

without surety and with direction to appear whenever called upon. In the meantime, the person is directed to keep peace and good behaviour.

Before releasing a person on bond with or without surety, the court shall be satisfied that there is a fixed place of residence of the offender under the jurisdiction of the court and the offender is likely to be staying there during the period of bond. The court before making the order to release a person on probation of good conduct, shall consider the report if there are any of the probation officer⁵. The court may order in the interest of the offender or in the interest of the public may keep the offender under the supervision of the probation officer. The court, while making a supervision order, directs the offender to enter into a bond, with or without surety, to observe the conditions specified in the order. The court making the supervision order, shall explain to the offender the terms and conditions of the order. The above-mentioned provisions are not applicable to the following offences:

- Conviction under Prevention of Food Adulteration Act 1954
- Conviction under Defence of India rules 1962
- Conviction under Customs Act and Control Rules.

There is provision of releasing the offender on admonition with compensation under Sec 5 of the POO Act 1958. Under this provision, when the court directs the release of an offender on admonition, if the court thinks fit, may direct the offender to pay a sum of compensation as it may deem fit. The amount so ordered may be recovered as a fine or in civil suit as compensation. This amount may be as per the injury or loss caused to the other party.

(C) Perform Community Service

The J.J.B is empowered under Sec 15 of the J.J. Act, to give punishment to the juvenile in conflict with law to perform community service. This is a reformatory treatment which is given to the juvenile to expiate to his deeds. Such types of punishments are not meant for juveniles but applicable to any other criminal as per the offence committed by him. Sentence to clean Ambaji Temple for ten days, a man has been made to clean and wash the Ambaji Temple in Banaskantha. Judicial Magistrate, Patel has sentenced Mr. Shankarlal Joshi who was 53 years of age to clean and wash the temple floor for ten days. The convict Mr. Joshi was happy with the order of the court and mentioned that he received an opportunity to repent for the crime and offer service to the goddess⁶.

⁵ "Good act, bad Provision". The Hindu 26 May 2012.

⁶ TOI Newspaper of 1st Nov 2005

(D) Sending Juvenile To A Special Home

The J.J.B may make an order under Sec 15 of the J.J. Act to send the Juvenile in a Special Home. This order is made when the juvenile is above seventeen and less than eighteen years of age. He is sent to a special home for a minimum period of 2 yrs. In other cases, the juvenile is kept for a period till he ceases to be juvenile. The Board may after considering the circumstances of the case and the nature of the offence may reduce the period of stay of the juvenile in the special home, after recording the reasons for the same. The above-mentioned punishments are the basis of the Reformatory theory. This is also called as Utilitarian Punishment Theory⁷. The theory has the word 'Reformation', which means improvement, transformation, change, development etc. Reform means change and improvement of a person by correcting the faults of the person, removing inconsistencies and abuses and using modern methods of correction of the offenders. Reformation is an act of reforming; it is an act or process of reforming somebody especially for an improvement of behaviour.

The object of punishment is actually only rehabilitation⁸. The supporters of this try to prevent crimes by different reformatory programs. The current system in prison provides education and treatments to remove their criminal tendencies. The skills developed in the prisoners during their period of sentence help them to become good members of society. The reformatory is an institution or reform school, meant to keep the young offenders. This is also meant to reform somebody who has committed an offence. This theory expounds that a criminal can be reformed into a good citizen as a law abider by giving him treatment during the imprisonment period. Under the theory of reformation, a criminal is treated as a patient and a mechanism to treat offenders should be like a doctor. The criminal is in need of a doctor and not jailor.

Under this theory punishment is not given to the criminal but he is given reformatory treatment. He should be reformed by giving him training to go back in society after his sentence is over. There are two things combined in this theory⁹:

The offender should be treated in a form by which he can be converted into a good citizen.

1. He should be trained for some work during the period of sentence, so that after completion of that period he can re-establish himself in a society and he should be trained in such a way that he should not commit crime in future.

The aim of the reformatory theory as found in the poem of George Bernard Shaw, as quoted

⁷ Adenwalla. M, Beyond the Protection of Juvenile Legislation, Combat Law, (2004).

⁸ Article on Criminal Law- Encarta Reference Library

⁹ Prof (Dr.) K.C.Jena, Prof and Dean , P.G.Dept of law, Sambalpur University, Burla(Odisha), paper "Female feticides and infanticide in India: The emerging issues" which is published in Law profile, Vol3, issue 2, Feb 2012

by the Hon'ble SC in the Case of *Mohd. Giasuddin Vs. State of A.P*¹⁰. “That if a person has to be punished retributively, he must be given injury. If a person is to be improved, he must be given the opportunity to improve Because men cannot be improved by injury.”

The Modern Law Methods are based on reformation of the offender and seeks to correct the criminals and transform them into good citizens. They should not be penalized for their wrong deeds. As early as 1787, the Society of Friends named as Quakers in Pennsylvania started reform as a major program in prisons. Prison came to be known as penitentiaries, because criminals become remorseful when they are kept in prison and change their behaviour. However, it was until the late 19th century that rehabilitation became a sole purpose under the Criminal punishment system in the U.S.A. The prisoners integrate through the reformatory programs in prisons, and it helps to avoid future criminal activities. With a passage of time, the criminal justice system developed, and brought a change in the punishment system. Individualized treatment started and the offenders were given a reformatory mode of punishment. As against the other theories of punishment, reformatory theory seeks to bring a change in the offender and rehabilitate him.

Thus, this kind of punishment is used as a method to reclaim the offender and not to torture him or punish him. The reformatory view of penology suggests that this punishment is the only one which can give a better future prospect to the offender. However, it was observed that the hardened criminals do not respond favourably to the reformatory methods. The reformatory punishment can be given as follows¹¹:

1. Keeping a person in a mental institution, where he can get a psychological counselling
2. Keeping a person in drug rehabilitative centres, where he can be subjected to get rid of drug habits and made aware about its ill effects.
3. Keeping a person under vocational training centres, where he will be taught about the skills of productive methods for future employment.

The punishments differ according to the personality of the offender. The reformatory methods are for the development and the benefit of the person, and it should be reached till the person at the right time. This will help the offender to come back to the society as a normal person.

¹⁰ AIR, 1977 SC 1926

¹¹ Pt. ParmanandKatara, Senior Advocate, Supreme Court of India, Eminent Criminal Lawyer, nominated for a Nobel Prize, stated in his research paper “Supreme Court illegally confirmed child hanging. (A fair criticism)” Published in Vol 3 Issue 9, sept 2012 in Law profile a monthly legal Journal.

II. VIEW OF INDIAN JUDICIARY ON REFORMATIVE THEORY

- The Hon'ble SC has stressed on the rehabilitative aspect of the punishment. In the Case of *Mohd. Giasuddin Vs. State of A.P.*¹², that the crime is a pathological way, and a criminal can be taken back to the society by rehabilitating him rather than punishing him to take revenge. The reason to turn antisocial has to be countered not by treating the offender with cruelty but by reculturing him with a good training. Hence the goal of reformative punishment is the training of the offender to take him back into society. It can be analyzed that today; human beings are using punishments for reshaping a person who has turned criminal and so the modern community has an agenda to rehabilitate him.
- The Hon'ble SC, In the Case of *T.K.Gopal alias Gopi Vs. State of Karnataka*¹³, has observed that the theories of punishment have different approaches, the reformatory theory has a therapeutic approach. It regards the criminal as a sick person, who requires treatment and try to eliminate those conditions which are responsible for his crime commission.
- In the Case of *N. V. Rao Vs. State of A.P.*¹⁴, the Hon'ble SC, held that the main object of punishment is curative. More stress should be given 207 on rehabilitation rather than retribution and keeping persons under rigorous prison terms.
- In the Case of *Rajendra Prasad Vs. State of U.P.*¹⁵, the SC gave a view that the retributive punishments are no longer valid. The deterrence and reformative punishments are the modes of punishment to be made applicable to the offenders as per the nature of crime committed by them.
- In the Case of *Saradhakar Sahu Vs. State of Orissa*¹⁶, the court cleared its view by stressing on the modern modes of punishments. The reformatory punishments are emphasized by the court for the rehabilitation of the offender.
- In the Case of *Punchu Vs. State of Orissa*¹⁷, it was held that, it is always good to extend to the modern method of penology for treating the delinquents. The reformation of the delinquent should be the ultimate for bringing back in the society. The probation is a

¹² AIR 1977 SC 1926.

¹³ (2000) 6SCC 168.

¹⁴ AIR, 1978 SC 480.

¹⁵ AIR 1979 SC 916.

¹⁶ 1985, Cr.L.J 1591.

¹⁷ 1993 Cr.L.J 953.

part of reformatory theory. Many criminals commit crimes due to the circumstances, so they should be extended the benefit of probation. The young offenders to be rehabilitated for their better future.

According to Carr, this is a coercion and correctional cycle¹⁸. The cycle begins with the apprehension of the juvenile offender and ends at the clinic or welfare agency. The nine stages are as follows: -

1. Apprehension or referral of the offender to the juvenile court
2. Detention of the juvenile in the observation home
3. Probation officer's social investigation into the juvenile's past and the circumstances led to the offence.
4. Examination by the Juvenile court/Juvenile Board/Child Welfare Committee of the legal facts submitted by the prosecution.
5. Examination by the Board or committee, of the probation officer's social investigation report and other clinical reports available on the juvenile in respect of his deviant behaviour.
6. Adjudication and disposition by the Board, or determination concerning need of treatment by the Juvenile welfare committee.
7. Treatment Institutional (Sending to the institution) or non-institutional (Probation with supervision or without supervision) and placement to a fit person or foster parents.
8. Gradual attenuation of treatment, in probation it means decrease of supervision and in Institutionalization, it means release on license.
9. Aftercare and follow up of the discharged offender. Termination of and discharge from treatment in case of offenders successfully rehabilitated.

According to Carr, the agencies involved in this are police, the detention homes, the board, the probation officers and the institutions. They help in moving the correction cycle. The young offenders can be treated by two different approaches-

1. *Individual method of treatment*, is generally adopted by psychologist, psychiatrist, and social workers. They deal with the young offenders by personally interacting with them.

¹⁸ Professor Lowell J. Carr, in *Delinquency Control* in 1940 and adopted by MS Sabnis in juvenile justice and correction in 1996.

They study the background circumstances of the young offenders and try to apply sympathetic methods to correct them.

2. *Group method of treatment* is generally followed by sociologists, where they try to correct the social structure, which is the reason for a child turning delinquent.

Accordingly following are the therapies which are generally applied for treating the delinquents¹⁹.

(A) Psychotherapy

This is required when there is not a good relationship or bonding both the child and his parents or his guardian. Due to this the mental and emotional development of a child remains very low and sometimes completely absent. The child in such cases can not satisfy his personal demands from his parents which leads a child to turn aggressive and antisocial. In this therapy a child is provided with all the love and care which was not provided to him/her. A child is kept in a very joyous environment with no fear of being punished. The child is given an opportunity to express his/her views and given an atmosphere as per his/her behavior²⁰.

(B) Reality Therapy

Sometimes it is very difficult for a person to fulfill the basic needs of life, in reaction to committing them; the person may act in an irresponsible manner. Reality therapy is one in which a person delves into the past experience and lives in the present and so it helps the person to act in a responsible manner. Unlike psychotherapy it is not concerned with the past of the person, but it targets the present of the person. This proves very helpful to the delinquent children, because it does not treat them on the basis of their past behaviour but helps them to behave in a responsible manner and improves their present as well as future²¹. Under this therapy a child is expected to obey rules, but he does not obey it, he is not rejected. This is a very good way of treating a child; it gives the child strength and opportunities to develop. Reality therapy can be used by any person whether a police officer, social worker, counselor, teacher or family member or a friend. This is a very easy and time-consuming mode of treating delinquent juveniles.

Example: If a child is insulted by one of the friends, then a child may get angry and try to

¹⁹ Comanor WS, Phillips L (2002) The impact of income and family structure on delinquency. *Journal of Applied Economics* 5(2): 209- 232.

²⁰ Bridges KB (1927) Factors contributing to juvenile delinquency. *Journal of Criminal Law and Criminology* 17(4): 531-580.

²¹ Agarwal S, Kumar N (2016) Juvenile Justice (Care and Protection of Children) Act 2015: A Review. *Space and Culture, India* 3(3): 5-9.

assault a friend. But in such a situation he is made to understand that it is a general thing and happens amongst friends, he should take it as a funny thing and ignore it. Friends are always helpful to you. The child may understand the thing if put in a right manner²².

(C) Behaviour Therapy

The object of this therapy is to bring changes in the behaviour of delinquents by positive or negative attributes towards them. By active or pleasant attributes, the child will become positive. The negative attribute or negative way of behaviour with the child will reduce the negative attitude of the child. The behaviour therapy by positive attribute proves more successful²³. The act of giving physical punishment, threat, insult, confinement are the negative attributes and admission in school, giving money, freedom to play are the positive attributes.

(D) Active Therapy

This therapy is useful for those children who are verbally weak or lacking in communication in front of individual or group of people²⁴. In this a child is made to be in a group of six to eight persons. Here the child is given scope to play or to do some artistic work. The Child who is aggressive will reflect through his activity. And since there is no such competition or other way of retaliation his emotions will be discharged accordingly.

(E) Environment Therapy

This therapy²⁵ is for those children who become deviant due to the reaction of the unfavourable social conditions. These children are provided with an atmosphere, where they can satisfactorily adjust themselves and make a change in their behaviour.

III. CONCLUSION

The role of judiciary is very crucial in determining the controversial questions which are not redressed properly by the existing laws. The child abuse and juvenile delinquency are the two sides of the same coin but the legislature has not yet realized this aspect and so the laws pertaining to its prevention are not being implemented properly by the law enforcing agencies. The SC as it is the Guardian for us, is very much alert and timely makes the pronouncements for the betterment and healthy development of children. Now a day even the other courts are very much sensible about the child issues and their good development and hence they are even

²² Sorabjee, S.J. (March 3, 2005), Juvenile and the Death Penalty, Sunday Express, New Delhi

²³ Patel V, Flisher AJ, Nikapota A, Malhotra S (2008) Promoting child and adolescent mental health in low- and middle-income countries. *J Child Psychol Psychiatry* 49(3): 313-334.

²⁴ Kakar S (2015) Juvenile Justice and Juvenile Delinquency in India. In *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, USA

²⁵ Cicourel, A.V. (1968), *The Social Organisation of Juvenile Justice*, John Wiley and Sons, inc. New York.

giving harsh punishments for the perpetrators of child abuse and when it is the time to deal with JCWL, our judiciary is very much taking care of the young age and the developing mind of the juvenile before pronouncing a step to be taken against a juvenile delinquent and the courts are giving more emphasis to give a reformatory way of punishment to the juvenile and directing the concerned agencies for their protection in custody and rehabilitation after they are released from the custody.
