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Why a Special Case for Children? - A Critique on the Juvenile Justice System

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ABSTRACT

The objective of juvenile justice is to treat youth who have been deviant and can be rehabilitated into the society so that their integration into the adult life is smooth. Various reasons which lead to juvenile behaviour have been stated in the article. The view that the care and protection of the juvenile offender in an institutional setting where deprivation of liberty is seen not as a punishment, but as a procedure for the reintegration of the juvenile into society is promoted.

I. INTRODUCTION

William Wordsworth, an English poet, has said, ‘the child is the father of the man’. It is said that a child is a reflection of the God and is assured for care and protection. Every child has a dream to become a good professional or to serve the nation in one or another form, but all are not lucky enough, some of them come into conflict with law by one or another reason, before attaining their age of majority.²

Children are the weakest and most vulnerable section of human population in any country since they are unable to raise their voice against those who injure them and it is for this ground, that a society must have two apprehensions, viz, (a) Children being most vulnerable, they are to be protected from all sorts of exploitation, physical, mental and moral; and (b) Children being the most delicate yet best human resource for future, they require growth, development and best care.

Definitions

As per Section 2 (13) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the phrase “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence.³

¹ Author is a student at Institute of Law, Nirma University, India.

² DR. KRISHNA PAL MALIK, ADMINISTRATION OF JUVENILE JUSTICE IN INDIA 33 (Allahabad Law Agency 1ed.2012)

³ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India)

Article 1 of the United Nations Convention on the Rights of the Child, which was adopted by the General Assembly on November 20, 1989 and to which India acceded in the year 1992, provides that all persons below the age of 18 years are to be treated as children, unless under specific laws of member countries applicable to the child, majority is attained earlier.⁴

II. CAUSES OF JUVENILE BEHAVIOUR

Criminologists have given various reasons for growing juvenile delinquency, including association with other delinquents, economic reasons, exposure to violence generated through media, child abuse, availability of firearms etc.

External causes:

Neighbourhood: To some extent, the neighbourhood also marks as one of the causes of juvenile behaviour. If an individual finds drunkard, gamblers and disputing couples around him, then this is all that he might fall into.

Atmosphere at home-An individual may have certain problems within his home which may have led him to do some wrong act, like treatment from stepmothers, poverty, effect of T.V. or Internet or other media. Such cases are mostly seen when there is least or excess of discipline exercised on children by the elders of the family.

Theoretical causes:

Bad company-The children who are in bad company enter and become a part of the world of crimes. Such individuals are inspired to commit crime by their peers or criminal friends.

Male phenomenon- Young boys in their adolescent period are naturally more aggressive and they pretend to be more strong, daring or powerful. They try to prove their masculinity by stepping into the world of crime.

Economic inequality-The economic discrimination would not cease to exist as the rich have become richer and the poor have become poorer. The wants and needs drive children to perpetrate violations just for fulfilment of their desires.

Rational choice-Many psychologists believe that this sort of conduct is simply the consequence of the intrigue or will of the wrongdoer himself. In alternative words, he/she commits an act of crime because he/she wanted to do that. This cause is most dangerous as the offender finds a certain degree of satisfaction after committing the crime and so sees nothing wrong in it.

⁴ DR. ANJALI KANT, LAW RELATING TO WOMEN AND CHILDREN 6 (Central Law Publications 2d ed. 2006)

Labelling-This is the hypothesis of our general public. For the most part, when we see somebody or hear somebody's inclusion in a wrongdoing, we really mark that person as a criminal and such labelled persons thus rarely make an attempt to come out of it.

Social disorganization-Earlier, the concept of joint family system was more prevalent than the nuclear family system. As our social framework is experiencing a change, families are detached, with the parents working and children took off alone, not being given enough consideration.

III. WHY A SPECIAL CASE FOR CHILDREN?

The main aim of juvenile justice is to treat the deviant young and to rehabilitate them into the community.

Mankind obliges to the child the best that it has to give. Acknowledgement by the world community of the priority to be accorded to children goes back to the earliest declarations of human rights.

“To look into some aspects of the future, we do not need projections by supercomputers. Much of the next millennium can be seen in how we care for our children today. Tomorrow's world may be influenced by science and technology, but more than anything, it is already taking shape in the bodies and minds of our children.”⁵

The children grow towards independence only with the help of adults-parents and families first, but when those adults cannot meet children's needs, society must replenish the rift.

The state of children is a very sensitive barometer of the effects of social and economic changes, and those effects are especially devastating in situations of armed conflict.

Governments have a virtuous responsibility to recognize the human rights of children as individual citizens at all levels of society, as they have equivalent status with adults as members of the human family.

Children are more governed by the action-or inaction-of government than any other class as almost every area of government policy influences children to some degree, either directly or indirectly.

There are heavy costs of failing children. Governments are fully well informed from research findings that what happens to children in the early years, within the family and with in other forms of care, significantly determines their positive or negative growth or development. This, in turn, determines their cost or contribution to society spread over the remaining of their lives.

⁵ KOF A. ANNAN, *Secretary General of the United Nations*, 1999

The views of the children barely touch the actions of the government as they generally haveno vote and thereby no part in the political process.

The nourishing development and enthusiastic participation of children are uniquely crucial to the optimum development of any society. A parallel concern should be to shield their future environment.

IV. RESTORATIVE JUSTICE

Restorative justice famously is a story both ancient and modern as it describes both the oldest means of nonviolent conflict resolution and the most recent framework for remedying long-recognised deficits in our criminal justice system.⁶

A restorative philosophy emphasizes problem-solving approaches to discipline, attends to the social/emotional as well as the physical/intellectual needs of students, recognizes the importance of the group to establish and practice agreed-upon norms and rules, and emphasizes prevention and early restorative intervention to create safe learning environments.⁷ Though the most satisfactory way to deal with the problem of crime is to take preventive measures, though preventive measures are expensive, but so is the cost of crime to the community.⁸

V. CONCLUSION

The juvenile justice system was created over one hundred years ago “to save young people from the savagery of the criminal courts and prisons,” by removing juveniles from the criminogenic influences of the criminal justice system while providing rehabilitative interventions and it appears that the founders of the juvenile court largely got it right.⁹ Sentencing young offenders as adults increases the number of chronological juveniles confined in adult prisons and poses substantial challenges for adult correctional officials.¹⁰

The trend to try juveniles as adults is incompatible with rehabilitative, deterrent and retributive rationales for punishment and with the related rationales for having a discrete system of juvenile justice in the first place and so a sound criminal jurisprudence entails that we stop treating juvenile offenders as little adults.

While restorative justice is being successfully practiced in many countries even for such serious

⁶ PETER DRAHOS, *REGULATORY THEORY* 483 (ANU Press 2017)

⁷ K PADMAJA, *JUVENILE DELIQUENCY* 218 (Amicus Books 1ed. 2007)

⁸ GEORGE WHITECROSS PATON, *A TEXTBOOK OF JURISPRUDENCE* 380 (G.W. Paton & David P. Derham ed., Oxford University Press 4d. Ed. 1972)

⁹ K PADMAJA, *JUVENILE DELIQUENCY* 177 (Amicus Books 1ed. 2007)

¹⁰ Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 *THE UNIVERSITY OF CHICAGO P.J.* 189, 190 (1998)

offences as murder and rape by adults, leading to decrease in repeat offences by them, the Indian Parliament buckled under the political and emotional pressure cheated by one bad case of barbaric gang rape in which one of the accused happened to be a child on the verge of attaining majority. It is a well-accepted principle that one bad case never makes for a good law. Ignoring that sound practice, India chose to take the most regressive step of introducing retributive approach for young children as knee jerk reaction despite the experiences of countries like the USA and the UK which have reported that children tried as adults end up committing more offences in their later life compared to children who were treated within the juvenile justice system.¹¹

To conclude by restating what Gandhiji said about the children and their role in peace and human development:

“If we are to reach real peace in this world, and if we are to carry on real war against war, we shall have to begin with children. And if they will grow up in their natural innocence, we won't have to struggle, we won't have to pass fruitless, idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which consciously or unconsciously, the whole world is hungering.”¹²

¹¹ VED KUMARI, THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015: CRITICAL ANALYSIS

15 (Universal Law Publishing 2017)

¹² DR. NIRMAL KANTI CHAKRABARTI, LAW AND CHILD 72 (Dr. Nirmal Kanti Chakrabarti ed., R. Cambay & Co. Private Ltd. 2ed. 2011)