Juvenile Delinquency and the problems in rehabilitation and social re-integration in the light of COVID-19

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Abstract

The term “Juvenile Delinquency” is used to describe the criminal acts of the offender who is below 18 years of age. When a juvenile commits crime then he comes in contact with the Juvenile Justice System and is punished according to the then existing law. During the trial of the case and after conviction delinquent juvenile is being kept in Child Care Institutions, Observation Homes, Special Homes, Place of Safety etc and the Government has made provision for inspection of these institutions registered under this Act on regular basis but the reality is opposite. The problem is that the Government has not developed the proper infrastructure to keep the children in conflict with law. Several children are kept in a small room which is not hygienic and a social distance is also not maintained there. So, there is a chance that COVID-19 pandemic may spread in these institutions.

The whole world is facing health related problems due to COVID-19 pandemic. The Government has also given instructions that a social distance should be maintained to defeat this pandemic. The Supreme Court in “Re Contagion of COVID 19 Virus in Children Protection Home” has taken cognizance suo moto and issued several directions to take measures in these homes.

The current situation needs some curative measures to keep the juveniles safe from COVID-19 pandemic and to help them in social re-integration, so that they may restart their life and forget all the dark side of their life which was the result of mistake or misfortune.

Keywords: Juvenile, Juvenile delinquency, Juvenile Justice System, Child in conflict with law, Child care homes, Observation Homes, COVID-19 Pandemic.

Introduction

Our Children are our greatest treasures. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation.

--------- Nelson R. Mandela
Children are the pillar of any country on which it’s future is built. They become creator of the nation. They develop at different rate and develop their own views with regard to family, society and other issues. This is the age when influence of same age group child becomes important. With the increase in age the physical and the mental development also occurs and they also develop strong sexual and romantic ideas. However, these are normal changes and there is no any abnormalities in it. It has been observed generally that the maximum sexual offences are committed by the juveniles, but this is not an absolute rule.

The rate of crime committed by the juveniles has increased very rapidly in last few decades. This may be due to rapid change in the environment of the child, economic conditions of family, family structure, lack of education etc. These are some basic reasons and there are some other reasons which are responsible for increasing juvenile delinquency.

**Juvenile and Juvenile Delinquency**

The term “Juvenile” has been defined under section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 [further known as The JJ Act, 2015] as “a child below the age of 18 years” and the same definition was given in the Juvenile Justice Act, 2000. When a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence, has also been termed as “child in conflict with law” under section 2(13) of the J.J. Act, 2015.

Juvenile Justice System is a legal framework which defines juvenile justice and provides special treatment and protection to delinquent juveniles. Age determination is the most important to determine the maturity level of the accused. Generally, a “Child” means a person who has not attained the age of 18 years and is unable to understand what he is doing is wrong or against the law. The Indian Penal Code, 1860 recognises the child below 7 years of age as “doli incapax”, means incapable to commit offence. It also declares that “Nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity to understanding to judge of the nature and consequences of his conduct on that occasion.” But, this rule has an exception that if the child between 7 to 12 years of age is mature sufficient to understand the consequences of his conduct, he may be punished for the offence he has committed.

Juvenile delinquency means a crime committed by an adolescent under the age of 18 years. Under the Juvenile Justice Act, 2000 the maximum tenure of punishment which could be given to the juvenile offender was 3 years irrespective of the gravity of the offence they have committed and there was no such distinction of heinous and normal crimes. In case of an adult offender maximum punishment which can be given is capital punishment. The J.J. Act, 2000 with regard to Juvenile Offenders believed that they must be given a chance to be reformed.
The reformatory theory of punishment includes sending them to reformation centre, juvenile homes, juvenile schools, Observation Homes etc and making them involvement in different types of programmes run by the Government or NGO’s.

During my research, I visited several observation homes and after interview session with officials of observation homes and inmates I reached on conclusion that the present Act [JJ Act, 2015] provides that if the juvenile between the age of 16-18 commits heinous offence, he shall be tried and punished as an adult but it does not focus on the juveniles who come within the age group of 14 to 16 years. The juveniles between the age group of 16 to 18 very well know their act and the consequences thereof. But, the condition is not same for the age group of 14-16 years. This age group is very sensitive, because at this stage of growth and development the juvenile feel many physical, mental, hormonal as well as other changes in their body and due to these changes they want to do new experiments, sexual activities are more common among the juveniles of this age group. One other important matter of worry is that juveniles of age group of 14-16 years are on high risk now, because after the enactment of the JJ Act, 2015 they are the softest target of the mastermind criminals. So, in my opinion the parents, guardians, members of civil societies and every persons should try to provide special care and protection of the juveniles of this age group.

**Causes of Juvenile Delinquency**

1. **Instability of Juveniles**

   The physical, psychological, biological and sociological factors are mainly responsible for juvenile delinquency. At this stage, adolescents becomes more conscious about their peer group appearance, style, food, liberty etc. Sometimes these are made available by the parents and sometimes this results due to ignorance of the parents towards their children and finally it results in juvenile delinquency.

2. **Economic Condition of the Family**

   Economic condition of the family also an important factor responsible for increasing rate of juvenile delinquency. Food, cloths, dwelling house, medical facility are the basic needs of every person and if his sources becomes insufficient in fulfilling these basic requirements then any one can commit offence. A juvenile has unlimited requirements and desires. If their parents become incapable to fulfil these requirements then the juvenile try to fulfil it themselves by stealing money from home or other places. And these tendency develop into habit which results finally into juvenile delinquency.

3. **Modern Life Style**

   Modern lifestyle is also a responsible factor for increasing rate of juvenile delinquency. The modern lifestyle and the rapidly changing society are making it very difficult for the juvenile to adjust in it. They face many problems related to cultural conflicts and since they become
unable to differentiate between right and wrong, so they easily move towards the wrong one. Use of drugs, injections, theft, robbery, murder etc are more common offence committed by the juveniles.

There are many other factors which are responsible for juvenile delinquency which has not been discussed here. Now a days, heinous offences like rape or murder is not an uncommon incident. When we read any daily newspaper, it contains near about 10 to 15 rape cases and several murder cases reported in different parts of the country. But, in the year 2012 “Delhi Gang Rape case” (commonly known as NIRBHAYA gang rape case) involved a brutal rape and fatal assault that occurred on 16th December 2012 in Munirka in south Delhi. The incident took place when a 23rd year old female physiotherapy intern was beaten, gang raped and tortured in a private bus in which she was travelling with her friend. Subsequently, public protest against the state and central governments for failing to provide adequate security for women took place in New Delhi, where thousands of people clashed with security forces. This incident drew the attention of everyone and the Legislature and the Judiciary also did not remain untouched with it because out of six accused one was a minor. The court decided that since the accused was minor at the time of commission of the offence so he is eligible to get the remedy of “Ex post facto law” under Article 20(1) of the Constitution of India which provides that “No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”.

After this incident the central Government amended the previous Juvenile Justice Act, 2000 and enacted the new Juvenile Justice (Care and Protection of Children) Act, 2015. For the first time term “heinous offence” defined as “the offence for which the minimum punishment under the Indian Penal Code, 1860 or any other law for the time being in force is imprisonment for 7 years or more” and also provided that if a juvenile between the age of 16 to 18 commits any heinous offence he shall be treated and punished as an adult. But, unfortunately, incidents of rape, murder and like offences by juveniles have not been stopped. It means that rigorous punishment or capital punishment cannot stop the heinous offences like rape, murder etc.

**Juvenile Justice System**

Child in conflict with law is the most vulnerable sections of children. For the development of a country Rule of law and access to justice for everyone is very necessary. In India, there is a separate justice system for adult and the juvenile. Juvenile Justice System includes the Juvenile Court, Juvenile Police, Juvenile Justice Board and the Governmental and Non-Governmental organisations and all of them have distinct functions.
Juvenile Police

In every police station, at least one officer, not below the rank of Assistant Sub-inspector is designated as child welfare police officer to exclusively deal with children either as victims or accomplice, in co-ordination with the police, voluntary and non-governmental organisations. In every district Special Juvenile Police Unit, headed by a police officer not below the rank of Deputy Superintendent of Police is constituted. When a juvenile commits any offence and is apprehended by the police, such child is handed over to the child welfare police officer and then he is produced before the Juvenile Justice Board.

In the light of COVID19 the Government has given certain directions to the police that if any person (either adult or juvenile), accused of any offence is arrested then at first he will be sent to the quarantine centre and he will stay there for a minimum period of 14 days. Physical appearance of the accused person is prohibited due to the COVID pandemic and the same direction has been given to the Juvenile Justice Board.

Juvenile Justice Board

A Juvenile Justice Board consists of a Metropolitan Magistrate or a Judicial Magistrate of 1st Class not being a Chief Metropolitan Magistrate of Chief Judicial Magistrate with at least 3 years of experience and two social workers, of whom at least one should be a women.

When a child is alleged to have been committed an offence is apprehended by the police, such child is placed under the charge of the special juvenile police unit or the designated child welfare police officer, who produces the child before the Juvenile Justice Board within 24 hours of apprehending excluding the time necessary for the journey. But, it has been provided that in no case a child in conflict with law shall be placed in a police lockup or lodged in a jail. Such child, if arrested shall be released on bail with or without surety. It has been further provided that such person shall not be so released if there is probability that such release may bring that person in association with any known criminal or he may defeat the ends of justice.

When such person is not released on bail by the Board, it shall make an order sending him to an observation home or a place of safety, for such period during the inquiry.

Child Care Institutions, Observation Homes, Special Homes, Place of Safety in the light of COVID-19

The rehabilitation and social re-integration of a child begins during the stay of the child in conflict with law in an Observation home, or special home or place of safety. The process of rehabilitation and social reintegration of children is based on the individual child care plan, and in this method preference shall be given to family based care, such as-by restoration to family or guardian with or without supervision or sponsorship or adoption or foster care. But, all
efforts shall be made to keep siblings placed in institutional or non-institutional care, unless it is in the best interest not to be kept together.

It has been provided by the Act that for the child in conflict with law the process of rehabilitation and social re-integration shall be undertaken in the Observation Homes, if the child is not released on bail or in Special Homes or Place of Safety or Fit Facility or With a Fit Person, if placed by the order of the Juvenile Justice Board. In the process of rehabilitation and re-integration of children following services are provided by these institutions -

- Basic requirements such as food, shelter, cloth, medical etc.
- Equipments such as wheel chairs, hearing aids etc.
- Appropriate education, special education for children etc.
- Skill development, occupational therapy and life skill education etc.
- Separate arrangements for boys and girls.
- Arrangements for safety and protection.

These are the provisions of statutes, management and arrangements of facilities in the above institutions which have been established to provide rehabilitation and social re-integration of child in conflict with law only available on paper, the actual position of these institutions are quite different. The government has established Observation Homes, Special Homes, Place of Safety at different districts of Bihar but many of these institutions are facing many problems like-they do not have their own building, lack of staff, lack of infrastructure, lack of medical facility and many others.

Maximum of these institutions are being run in a private owned buildings and maximum of these buildings do not fulfil required infrastructure for these institutions. There is lack of hygiene, water, light, fresh air, arrangement of toilets etc. Inmates are kept in a small room more than it’s capacity and due to this reason they face many problems related to health.

**Muzaffarpur Shelter Home case**

Here, it is expedient to discuss “Muzaffarpur Shelter Home Case” which drew the attention of the whole of India. This case was related to a shelter home that ran under a non-governmental organisation named as “Sewa Sankalp Evam Vikash Samiti” at Muzaffarpur, Bihar, where cases of sexual abuse, rape, torture and murder were reported. In a medical examination, sexual abuse of 34 out of 42 inmates living at the Shelter was confirmed.

In this incident, a First Information Report was lodged on dated 31st May, 2018, against 12 people. The aforesaid shelter home was headed and run by Brajesh Thakur, and was running several other NGOs and a Hindi newspaper called “Pratah Kamal”. Because of the political connections of Brajesh Thakur, involvement of government officials, the delay caused by the CBI in investigation and the most important thing, failure of Government to protect the
inmates residing in the shelter home and prohibit these incidents, everyone criticised the government. The Honorable Supreme Court also took cognizance suo moto and ordered the CBI to investigate as soon as possible and transfer the case to New Delhi.

In May, 2018, Tata Institute of Social Science, Mumbai (TISS) carried out a social audit of Shelter Homes across the Bihar for the year 2017. TISS submitted it’s report in April 2018 which revealed repeated sexual abuse of inmates at a short stay home in Muzaffarpur, Bihar. After it’s report, the government registered the F.I.R. on 31st May and the inmate girls were rescued from the Shelter Home and shifted to Madhubani, Patna and Mokama.

Later on, the medical Board of PMCH, Patna confirmed the sexual abuse of a majority of the girls of the Balka Grih. The main accused of this case was booked in another case in which 11 women were missing from another shelter home, which was being run by his NGO. Medical test confirmed that out of 42 girls housed at Balika Grih, 34 were sexually abused, forced to undergo illegal abortion, one was allegedly killed and buried on the shelter home campus. After threat the authorities dug the campus of shelter home but did not found any human skeleton.

On January 20, 2020 the court convicted Brajesh Thakur and 18 others. On February 11, 2020 the court sentenced Brajesh thakur and 11 others to “Life Imprisonment”.

This case is the complete failure of the Government in proper arrangement of rehabilitation, protection, safety etc, in child care institutions. Many officials, leaders and mastermind criminals are involved in this case. The inmates were supplied to different places. Rape, sexual abuse, murder, missing etc are very common in these institutions. The care takers make available these inmates to different place after giving them drugs, injections etc. It seems that the Government has lost it’s control over these institutions.

**COVID-19**

COVID-19 pandemic is a global challenge for health and well-being. It is an infectious respiratory disease caused by severe acute respiratory syndrome corona virus 2 (SARS-CoV-2). It was first identified in December 2019 in Wuhan, Hubei, China, and resulted in an ongoing pandemic. As of October 17, 2020, 39.2 million cases have been reported across 189 countries and territories, but the WHO estimates that around 800 million people in total may have been infected. The disease has killed 1.1 million people; more than 27 million people have been recovered. The disease spreads most often when people are physically close. It spreads very easily and sustainably through the air, primary via small droplets and sometimes in aerosols, as an infected person breathes, coughs, sneezes, talks etc.

India has the second largest population in the world after China and has one of the densest populations. So, there is a chance that infection may spread rapidly in the country. Recommended measures to prevent infection are frequent hand washing, social distancing,
covering coughs and sneezes, quarantine and keeping unwashed hands from the face. The use of face masks, clothes covering face has been recommended by the doctors and health organisations. But wearing mask is best remedy to prevent contagion of COVID 19, because as the scientists say that the pandemic spreads through air, saliva, droplets of spit etc. COVAXIN is India’s first indigenous vaccine developed by our scientists, which has an efficacy rate of 81% after it’s phase 3 trial. COVISHIELD is another vaccine which is helpful in prevention of COVID 19 outbreak.

In India, it has taken a shape of human right crisis with a deep impact on children and their rights. Several news channels has reported serious violation of child rights during the pandemic with a steep rise in child sexual abuse and other exploitative practices such as trafficking, forced labour etc and it’s reason is COVID-19 pandemic.

Rehabilitation of juvenile offenders in correctional institutions and re-integration to the society are two interconnected issues which pay grave concern. Increasing rate of juvenile delinquency clearly shows the failure of existing policies and methods of rehabilitation and social re-integration of present Juvenile Justice System. For the purpose of rehabilitation and social re-integration juvenile offenders are kept in different institutions established and run by the state government. There is a lack of ideal facilities in these institution which may result in poor health and immunity system. Since this disease spreads through the air, via small droplets and sometimes in aerosols, as an infected person breathes, coughs, sneezes, talks etc and the child care institutions do not have ideal arrangements regarding it’s infrastructure and other facilities, so there is a chance that this disease may spread in these institutions very rapidly.

Kanpur Shelter Home Case

In this case a total 57 girl inmates of a Government Shelter Home in Kanpur were brought from different districts of U.P. on the directions of the CWC under the POSCO Act, had been tested positive for COVID-19 positive, out of which 5 girls were found to be pregnant. The District Magistrate Kanpur clarified that the girls were already pregnant at the time they were brought to the Rajkiya Balika Grah in Swarup Nagar, Kanpur. Poonam Kapoor, State Women Commission Member, said that many girls were brought to the shelter home under the POSCO Act. They were minors, 16-17 years of age, so, they were kept in that shelter home. In relation to the pregnancy cases, Ms. Kapoor dismissed the possibility of any lapses and said that she inspected the Shelter Home every month and men are prohibited from going in shelter home. The investigation of the case has not been concluded. There is a chance that many shocking material may come out because several politicians, officers, NGO’s etc are involved in this dirty game.

In Re Contagion of COVID-19 Virus in Children Protection Home

The Supreme Court listed this petition suo moto because of the COVID 19 pandemic which is sweeping in the country. There are children who need care and protection are kept in or
children in conflict with law who are kept in various types of homes. There are also children who are kept in foster care and kinship care. In these circumstances, it was felt that the interest of these children should be looked into. For the protection of the interest of children, which fall within the ambit of the JJ Act, 2015, the Supreme court issued certain directions which must be followed by the child protection homes.

Restoration of Children from Child Care Institutions to their families due to COVID

The Supreme Court issued notice to National Commission for Protection of Child Rights (NCPCR) during the course of the suo moto case on conditions of children protection homes across the country in wake of the country in wake of the COVID19 pandemic.

A bench headed by Justice L. Nageshwar Rao heard the submission of Amicus Curiae and noted that a letter had been issued by the NCPCR which recommended for the restoration of children lodged in children protection homes in eight states back to their families. The NCPCR issued letters to the district authorities, setting off a process to restore children lodged in child care institutions back to their families after a review by the child welfare committees. Many civil societies called the withdrawal of the letter and have stated that it is against the principles and spirits of the Juvenile Justice (Care and Protection of Children) Act, 2015.

A Division Bench comprising of L. Nageshwar Rao, J., and Deepak Gupta took cognizance of conditions of Children Protection Homes across the country in wake of COVID 19 pandemic. Certain directions have been issued to State Government and various authorities to protect them.

Required Approaches and Activities

1) The Government should develop ideal infrastructure and make proper arrangements for the protection and safety of inmates.
2) Make the environment of the child care institutions so favourable for the inmates that they could not feel absence of their parents and run carrier oriented programmes regularly.
3) Shield the inmates of child care institutions effectively from sexual abuse, rape, exploitation, trafficking like offences.
4) Fix the liability and make sure that the trial of the accused of the offence committed against the juvenile, be concluded as soon as possible.
5) Grow social assurance strategies and projects to make the society awake to accept the juvenile when they come back to their home.
6) Aware the parents of delinquent juveniles and their neighbours to provide them favourable environment to grow and develop the qualities of a civilized and responsible citizen.
7) Assure access to COVID19 tests, clinical consideration, psychological support and emotional well being.
8) Assure access to clean water, fresh air, clean latrines, spacious rooms to make sure social distancing.

References

1. It is an ongoing pandemic of coronavirus disease 2019 (COVID 19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
4. Sec. 82 & 83 of I.P.C., 1860.
5. Phase of growth and development between childhood and adulthood. WHO defines Adolescent as a person between ages 10 and 19.
7. Sec. 2(33) of the JJ Act, 2015.
8. “The Rule of Law” was popularized in the 19th century by British Jurist A. V. Dicey.
10. Sec. 4 of the JJ Act, 2015.
15. Amicus Curiae is friend of the court. He is someone who is not a party to a case but assists the court by offering information, expertise or insights.