



Research Article

Child in Conflict with Law in India: Changing Concerns and Constraints

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ABSTRACT



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The irrefutable presumption that a child is innocent and incapable of committing any crime is refuted when that child commits a crime. These individuals are referred to as juveniles because they are not yet deemed mature enough to be held accountable for their actions in committing a crime. This article examines the various aspects of juvenile delinquency in India, with a particular emphasis on the state of Uttar Pradesh. The study examines the laws, organizations, and social and economic elements that influence the development of juvenile justice in this heavily populated and diversified state. The research endeavours to illuminate the effectiveness of juvenile justice policies and procedures by employing a blend of legal analysis, empirical research, and case studies. The research utilizes a broad interdisciplinary approach to examine the underlying causes, prevalent patterns, and socio-economic factors that contribute to juvenile delinquency. The study seeks to reveal the distinct contextual elements that impact rates of adolescent delinquency. Furthermore, it examines the efficacy of current rehabilitation and intervention programs, doing a thorough evaluation of their influence on the rehabilitation of juvenile offenders. The paper aims to provide significant insights to the academic discussion and policy formulation about juvenile justice in India. In the fast-changing contemporary landscape, it is necessary to periodically update the rules pertaining to juvenile justice and the imperative of safeguarding and nurturing them. Although the 2021 Amendment law has been officially published in the gazette, it is still pending enforcement by the central authority. In theory, the process of identifying answers and making necessary changes to the law is one aspect. However, the crucial point that remains is the timing and the level of effectiveness at which these changes will be put into practice and considered successful.

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1. Introduction

It is an indisputable assumption that a child, due to their innocence and lack of capability, cannot commit any crime (Puzzanchera et al, 2022). When a someone engages in criminal behavior, the severity of the crime is indicative of the underlying circumstances that influenced their decision to commit the offense. Each country's justice system mandates the rehabilitation of these children through various corrective measures provided by both government and non-governmental organizations, in the form of childcare facilities such as Shelter Homes, Observation Homes, Special Homes, and other similar safe havens (Menon, 2018). These individuals are referred to as juveniles because they are not yet deemed mature enough to be held accountable for their actions in committing a crime. Despite implementing several safety protocols, minors frequently experience mistreatment, exploitation, malnutrition, and unsanitary conditions in what are commonly referred to as childcare facilities. Consequently, the escape of these young offenders from these facilities contributes to an increase in

juvenile delinquency (Kumar, 2018, Baba, 2007). Shri Virendra Kumar, the Minister of State of Women and Child Development in the Indian Government, stated in the Lok Sabha that observation houses are receiving 200 complaints from absconded juveniles. These examples suggest that the Childcare facilities have been unsuccessful in their goal of changing juvenile delinquents into rehabilitated adults. Typically, a juvenile who commits a crime is placed in childcare facilities until they are freed, as determined by the court's specified time of confinement. The Supreme Court, in the case of Sheela Barse vs. Secretary, Children's Aid Society, and others, ruled that it is not permissible to detain children in observation houses for prolonged periods (Sheela Barse v. Children's Aid Society & Maharashtra, 1987). Furthermore, the court emphasized the importance of providing these children with meaningful activities and occupation throughout their stay. Hence, this essay examines the condition of Juveniles in an observation home and explores the strategies taken to rehabilitate them (Jaiswal, 2005).

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2. Obstacles in Juvenile Rehabilitation: Practical Challenges and Legal Responses

The Juvenile Justice Act was enacted in 1986. According to the Juvenile Justice Act of 1986, a delinquent juvenile is described as someone who has committed a crime that is against the law of the land. Therefore, a kid who is labelled as a delinquent juvenile is taken to a facility where they are provided with lodging, food, and other essential needs such as education and training in practical skills to assist them secure employment. They are also given support to reintegrate into society through placement in specialized families (Vigneswari, 2015). According to Section 10 of the 1986 Act on Juvenile Justice, the special homes created under this Act have the purpose of rehabilitating juvenile offenders. Nevertheless, a juvenile criminal should only be placed in specialized rehabilitation facilities when no other appropriate alternative is available.

An uncomplicated implemented plan at home cannot easily result in the rapid recovery of a young person. In order to rehabilitate a young criminal, it is necessary to provide a vigilant and comprehensive childcare facility to ensure their protection and remove them from harmful detention environments. It is important to address the child's many uncertainties and hesitations in a professional manner to ensure that they do not hinder their ability to reintegrate into society and achieve the goal of being an exemplary citizen.

2.1 Challenges and Strategies in Implementation

Even though the aftercare institutions put lots of effort into the resettlement and rehabilitation of delinquent juveniles, they still face numerous issues on practical grounds. Such issues are as follows:

- Unavailability of finances.
- Scarcity in opportunities for employment.
- Indifference and non-responsive attitude of juvenile delinquents towards numerous efforts of rehabilitation.
- Lack of awareness in society about the existence of aftercare programme.
- Lack of family cooperation in the aftercare programme
- Inadequate trade lessons.
- Present Market jobs non-trade oriented what is being taught.
- Massive workload on the aftercare employee.
- Scarcity in job opportunities provided by Government initiatives to these trained juveniles when they leave such aftercare homes.
- The non-changing attitude of the society towards these juvenile delinquents after their release.

Due to these factors, the 1986 Act failed to fulfill the legislative intent of the draftsman. Such Global and governmental policies added more pressure on the Indian government, which at last caused an uproar and created a demand for such children's rights in 1989. It steered the path for enactment of the year 2000 Act, Juvenile Justice (Care and Protection).

Following this Act, it created a basic lawful bodywork in Indian society for young outlaws. It created a Juvenile Justice system that dealt with a new structure for treating and protecting special delinquents and their rehabilitation more effectively than before.

The 2000 Act dealt with different types of juveniles, such as follows:

1. Abandoned or orphan child: - These are those children who don't have any of their parents living or have been abandoned by them. The act also includes those children who have left their homes, are on the run, and have relocated there from unknown locations.
2. Such young are in dire exigency of care and protection of some form against the evils of society.
3. Those who are in "conflict with law."

The said Act, removed the word "Juvenile Delinquent" and instead inserted "Juvenile in conflict with law" together with added noteworthy provisions which specifically dealt "Juvenile in conflict with law". Here in this article, it may be referred as "juvenile who conflicts law" in other words.

In the case of Sampurna Behura vs Union of India (2018), the issue of determining the age of a juvenile was raised in the court of law. It was upheld by the court that medical evidence alone is not the sole criterion for age determination, and it was advised that a social investigation report should also be taken into account. (Sampurna Behura vs Union of India, 2018)

3. CONSTITUTION OF BOARD OF JUVENILE JUSTICE

Notably, Act of 2000 asked for the constitution of the Juvenile Justice Board, which had the power to deal with Juveniles in conflict with the law, further superseding the courts of Juvenile that existed.

3.1 OBSERVATION HOMES

The Act of 2000 gave certain leverage to the government of a state to constitute and further maintain a monitoring home for the juvenile who conflicts with law. They can do it either by themselves or by entering into an agreement with organizations that perform voluntarily. They entertain those juveniles who are there temporarily due to the pending enquiry (Surong & Lyngdoh, 2020).

3.2 SPECIAL HOMES

The 2000 Act further mentioned the establishment of homes of a special nature to entertain juveniles in conflict with the law. Such special homes can be constituted in every district or one, denoting a group of districts. **"Jail or Police Lock-up" is not a place for Child: states SC**

The Supreme Court emphasized a basic but essential part of juvenile justice in the case Rajoo vs State of Madhya Pradesh, 2021, that detention of a child for whatsoever cause in jail or police lock-up is not to be done and pinpointed the vital need for a separate home for such juvenile who conflicts with law (Rajoo vs State of Madhya Pradesh, 2021).

4. Juvenile Justice: From Controversy to Legislative Overhaul

The incident of 16 December 2012 created a wave of outrage among the masses, where Nirbhaya was brutally gang raped in the capital of India, Delhi. Amidst the questions and debates taking place among the whole nation, one of the questions was regarding one of the accused, who was precisely six months away from reaching the age of majority, i.e., 18 years. The question arose whether such an accused was also considered a "Juvenile in conflict with law" who had taken part in such a heinous crime and had played an active part in the incident. (Agarwal, 2018) The masses were now questioning the juvenile law prevalent in the country, and as the matter grabbed global attention, it created a huge ruckus and forced India's legislation

to implement new juvenile laws (Bonnie, 2013). Between these controversial situations and facing protests from various Children's Rights Organizations, the 2015 Act came into existence.

The 2015 Act replaced the 2000 Act, and so did the position of Juveniles who conflict with the law. Juvenile who conflicts with the law ranges from the age group of 16 years to 18 years are now to be tried as adults in case they are involved in any form of heinous offence. They no longer enjoy the status of a juvenile, the reason being the mental state of such a child is no more innocent, which reflects in the nature of an offence he took part in. The said 2015 Act came into force on 15th of Jan 2016.

An Act to consolidate and amend the laws pertaining to children who are suspected of being in violation of the law and who are in need of care and protection; to meet these needs by providing enough care, protection, development, treatment, and social reintegration; to adopt a child-friendly approach in the adjudication and disposal of cases in the best interests of the children; and to facilitate the rehabilitation of these children through the processes, institutions, and bodies established under this Act, as well as for matters related thereto or incidental thereto.

However, the introduction of a "Judicial waiver system" was criticized in the 2015 Juvenile Justice Bill. This Bill mentioned the treatment of juveniles being tried as adults as per the Adult criminal justice system depending on various circumstances. This Act was a well-found fault for endorsing a blurred Age determination system poorly drafted. Justice Madan Bhimrao. Lokurr, Chairman of the Supreme Court Committee of Juvenile Justice, said that judgment in comparable cases needs to be evidence-based. Just because the person happens to be 17 years old or nearly 18 years old commits a heinous crime and therefore must get the death penalty, it cannot be like that. He also said that it is not that for every murder for every rape, the only penalty is the death penalty. I mean, we are not savages in this country. The Juvenile Justice Act 2015 primarily deals with the establishment of childcare homes such as open shelters, observation homes, safe and secure places, and various specialized adoption agencies. So, as long as a Juvenile stays in these observation homes, he loses each of his rights day by day, and the Indian judiciary has always directed that child should not be made to stay in the observation homes for too long (Juvenile Justice (Care and Protection of Children) Act, 2015).

In *Vikram Deo Singh Tomar vs State of Bihar*, it was held that the 'care homes' which are maintained by the state at the minimum render the basic ambience providing the Inmates their fundamental right to live with human dignity as a citizen. Thus, in reference to the situation, a higher level of involvement is needed to create an effective proof-supported reestablishment initiative (*Vikram Deo Singh Tomar vs State of Bihar*, 1988).

4.1 Challenges in Observation Homes:

The observation homes are established to provide care & protection, re-integration, rehabilitation, and restoration of Juveniles in conflict with law and children in need of care and protection (Bonnie, 2013).

The Juvenile Justice (Care and Protection) Act 2015 emphasizes the significance of rehabilitation measures and social consolidation. However, while in the phase of implementation, it takes a dissimilar effect as it is given theoretically. The set-up homes that were meant to deliver care and protection to the juveniles and help them thrive for their reformation have become a den of frustration. Varied case histories show that the inmates living in these homes, apart from living in such situations, are often put through ill-

treatment, abuse by way of taking advantage, oppression, and sexual assault.

4.2 DISCARDED FAMILY SITUATION

There are various factors that play a vital role in shaping a child's being and in the absence of these factors, it may create psychological issues in the development of the child. Such factors are as follows:

1. Absence of any family ties.
2. Deprivation of affection of parents.
3. Lack in sense of security.
4. Separation of parents in case of divorce or matrimonial issues.
5. Ignorance on part of parents to impart sufficient parental guidance.

Frequently, the children who are sent to these observation or special homes come from such discarded family situations, which had created a bad influence on the child, and in the stress of the poorer economic situation, the child ends up committing different forms of crimes and become a juvenile in conflict with the law.

So, even if they change their mindset while living in observation homes, they still are immature and vulnerable to falling into bad peer groups, crime syndicates, etc. So, the whole objective of rehabilitation of the child for his better and brighter future gets infringed.

4.3 ASSAULT AND SEXUAL ABUSES

Usually, the juvenile in conflict with the law are street children, and such children are often being tortured in the form of severe beating with lathes, fists, and kicking; this has become a common police treatment for street children. Numerous case histories as well as complaints have shown the fact that when a juvenile in conflict with law is brought in observation or special homes by police authorities is being beaten up and later by the present other in-mates.

Medical report of 29 out of 34 inmates of short stay home for minor girls in Muzaffarnagar (Bihar), which came under the lens following allegations of "mass sexual abuse," has suggested sexual exploitation. Police said the report of eight girls is awaited, and two did not undergo medical examination because they were ill. Police said four shelter homes run by the NGOs have been closed since a case alleging sexual exploitation was lodged, and ten people were arrested under Indian Penal Code 1860 and POSCO Act. (IPC, 1860)

The further cases of twenty-four girls being rescued from Uttar Pradesh home, Deoria; A mere ten-year aged girl child fled from the place seeking assistance from a nearby women cell rendering all the suffering of her fellow mates living in that home with her. In accordance with the soulful plight of the young, the Uttar Pradesh Government, quick on its feet, rescued twenty-four girls from an illegal shelter home (Menon, 2018). Out of the total number of forty-two, thirty-four tested positive for an abuse of a sexual nature. Explicit sexual horror stories were put forward in the statement of how poorly they were mistreated and were used as mere ragged dolls.

4.4 EXPLOITATION AND VIOLENCE

One of the factors that should be taken into serious consideration is the type and age group of inmates who are being kept in these observation homes. In accordance with the 2015 Act, the alleged juveniles who have committed offences serious in nature are also being kept along with the junior

inmates during the enquiry period, however, it may affect the mindset of the juveniles of the lower age group.

The National Commission for Protection of Child Rights received an allegation of physical abuse in a Juvenile observation in Meerut (Uttar Pradesh). The allegation was made by a 17-year-old boy who was among 43 inmates who escaped from the home. He alleged that mass escape was exhorted by multiple repeated instances of physical and sexual abuse of juveniles by senior inmates living in the observation home.

As per Juvenile Justice (Care and Protection of Children) Rules, 2007, the 'Superintendent' or 'Caretaker' is that person who is subjected to the responsibility of supervising the overall juvenile care and has the burden of making important decisions in any emergency situations and in case of his absence due to any reason than the responsibility shifts to his junior to take care of the institution who has to stay in the absence of his superior. The Superintendent is also responsible for providing numerous necessities to these juveniles in conflict with the law, such as food, clothing, and medicines during their temporary stay.

4.5 SANITATION CONDITIONS

Understaffed and overcrowded juvenile homes are hell holes rather than reform centers as these observation or special homes practice a bare minimum hygiene routine, due to which the juveniles living in these homes often face health issues, and it has thus become a major cause for concern. As the juveniles are provided with a bare minimum hygienic environment, insufficient nutrients and less living space make them easy prey for several infectious and transmissible ailments.

Usually, the galleries and lavatories are infected with cockroaches and lice because of the lack of cleanliness by guards. As a result, the majority of children end up getting infectious diseases of one form or another, such as skin issues, herpes, zoster, and sexually transmitted diseases. Even though the situation is so pathetic, these homes do not have enough required medicine supply or manpower to transmit the affected juveniles to government-owned hospitals (Puzzanchera et al, 2022).

In accordance with a recent study, the food that is being supplied to these homes by various governmental institutions barely contains any nutritional value, and it is often in inadequate proportions. All this makes the hygiene level in these homes very low.

5. OBSERVATION HOME AND REHABILITATING MEASURES

The principal aim is to offer protection as well as treatment of juveniles in conflict with the law, keeping in view their developmental needs. There are numerous initiatives that can be taken into consideration by the government of the state to act in accordance with achieving the objectives.

5.1 OBSERVATION and ASSESSMENT

The Juvenile Justice Care and Protection Act 2015 gave powers to the Juvenile Justice Board to inspect the facilities provided to the juvenile who conflicts with law on a monthly basis and simultaneously offer suggestions to improve the type of facilities provided to such shelters or institutions. These suggestions are given to the district level Child Protection Unit and the State Government.

Since 2015, the Women and Child Minister has written to every member of parliament in the Loksabha and Rajyasabha three times, asking them to "take out some time and visit" these types of shelters for women and children in their respective

constituencies on a regular basis to assess the quality of care and living conditions offered to the residents (GOI, 2020-21).

The statement was made by The Women and Child Minister after the incident of Muzaffarpur and Deoria shelter homes. Following this the U.P. Chief Minister demanded an inspection report to be submitted to him in not more than twelve hours by all working District Magistrates throughout the state. But this is not enough; making regular inspection of these observation/shelter homes is mandatory.

5.2 SAFETY and SPECIAL HOMES

One of the most efficacious ways of rehabilitating the juvenile in conflict with the law is to split up the special or observation homes they live in into two or simply by the addition of an extra care facility. Doing this may benefit in preserving the innocence of the juvenile in conflict with the law who has been sent there for the first time or on a temporary basis during the pendency of an ongoing trial and help in separating any other such juvenile in conflict with the law who is more violent in nature or is a repeated offender. This may help in keeping them away from bad influence.

5.3 REQUIREMENT OF MORE OFFICERS AND COUNSELORS

To deal with a juvenile in conflict with the law in a better way, the Observation Homes/ Special Facilities should be provided with more Probationary Officers as well as Counselors. Thus, under this Act, the process of follow-up is being specifically administered to a Probationary Officer for better results.

It becomes the duty of a Probationary Officer to include activities that help in improving the correctional behavior of a juvenile in conflict with the law, giving consultation to the parents and family members of such child, counseling the child himself, and explaining the provisions of rehabilitative services (Menon, 2018).

However, sadly, the practical implication of these follow-up activities is next to nothing, making those first-time juveniles into repeat offenders. For the betterment of these juveniles in conflict with the law, it is necessary that even after the juvenile is released, a proper track should be kept. Such follow-up teams should consist of volunteering personnel, social welfare group workers, students from different colleges, and NGOs who devote time to visit these children once a week at their residences or localities, schools as well as workplaces, if any. Sometimes, for rehabilitation, showing a friendly hand helps them in the long run. Volunteers should try to inspire them towards their area of interest and develop a sense of belongingness and positivity towards life.

5.4 FREQUENT INTERACTIVE SESSIONS

Parents and guardians, along with the juvenile in conflict with the law, should seek counselling from Probation Officers about the development of the juveniles. Thus, there is a need for regular interactive sessions, and should be made mandatory.

In such discussion sessions, the parents or guardians should be asked about their current family situation as well as any health condition the child is facing (Baba, 2007). Furthermore, information in relation to the interests and dislikes of the juvenile from an early age should be viewed as the kind of friend circle the child is being exposed to. It is also relevant to ask about the cause of involvement of the juvenile in the offence and his take on his actions. Asking him about his real requirements and finally trying his best to assure him that he is loved and cared for and has a lot of importance, as a sense of worthiness

and belongingness, reforms the carefree attitude. After attaining the above-mentioned information and analyzing the main reason behind the commission of the offence, it should become easy for the Probation Office. Thus, rehabilitation and reformatory sessions must be made in accordance with the juvenile in conflict with the law.

5.5 UTILIZATION OF FUNDS

The *Integrated Child Protection Scheme (ICPS)* is a central funded plan of actions regulated by the Government of India. The foremost purpose this scheme adheres to is regarding the line of action to bring enhancement in the well-being of the young in different situations and to reduce vulnerabilities in situations that led to exploitation, abandonment, and estrangement of the young from their families. This scheme is meant to improve the conditions of juvenile observation homes across the country. There is a need to check the implementation of this scheme. For women and girls across the country, there are 1000 government-run childcare institutions and shelter homes. While the Government center provides 60% of the funds for the center and the remaining 40%, the State Government Department concerned (child welfare or women's welfare) has to utilize. In addition to this, there are shelters entirely funded by the State Government. The Deoria and Muzaffarpur shelters, for example, are sponsored by the U.P. & Bihar Government respectively.

However, most of these homes are not properly financed. Many of the shelter homes do not receive funds from the state in the last two years.

So, one way is to publish the entire workings of these schemes monthly through Newspaper. As a result, the common mass will be able to act as a watchdog for the proper execution of these schemes.

6. Amendment Bill, 2021

The need for the amendment of the Act of 2015 was felt after a report, "National Commission on Protection of Child Rights Report 2018-2019," was published on "Role of Independent Commissions on Juvenile Justice Programmes in India and Closed Institutions". This statutory body was established under the "Commission for Protection of Child Rights Act 2005". This report slapped the Act of 2015 through its findings that not a single childcare institution is found within the country that works in accordance with the provisions of the existing Act in full hundred percent compliance. While fifteen percent were unable to comply with the standard rules and regulations, around twenty-nine percent faced major management issues.

The overall monitoring, which should have been kept in childcare institutions, is lacking, which has caused numerous discrepancies in management, resulting in the unwanted suffering of the juvenile. There is a massive loophole that has been neglected in receiving a license to run such an establishment.

The amendment bill explained more about "serious offences" by juvenile, which was not properly explained in the Act of 2015. The "Amendment of Section 86(2)" of the Act of 2015 "convert few serious offences from cognizable to non-cognizable". This has been challenged by the "Delhi Commission for Protection of Child Rights" before the highest court of the nation. The distinction was made as to juveniles who have committed heinous crimes and where such juveniles are to be tried in accordance with the adult system.

The National Commission for Protection of Child Rights has estimated that there are about 15-20 lakh street children in the country in the case of Re: Contagion of COVID-19 Virus in

Children Protection Homes. One of the groups most susceptible to crimes is street children. Over 25 percent of the nearly 40,000 children who are taken each year end up missing, according to the National Human Rights Commission. According to research by Dr. Anupam Kaushik, an associate professor of political science, titled "Rights of Children: A Case Study of Child Beggars at Public Places in India," over 44,000 children nationwide fall victim to the grasp of criminal gangs each year (Kaushik, 2014). On the one hand, thousands of kids are kidnapped and forced to work as prostitutes, traffickers, smugglers, sellers of illicit goods, and other criminal activities. However, the revision has made it less strong for the law to deal with serious crimes against minors.

7. CONCLUSION

Today's youngsters are the future of the globe as they will eventually become the adults of tomorrow. While children may make several errors, it would be unjust to categorize them as hardened criminals due to their limited understanding of the consequences of their actions. They frequently attempt to justify their behaviours internally, but they struggle to comprehend the repercussions of their behaviour. Therefore, the initial step that must be taken is the comprehensive restructuring and restoration of specialized or monitoring facilities, which are crucial for this procedure. These residences or facilities should function as educational centres for the purpose of mentoring and transforming unruly youths into responsible individuals. In a country like India, it is typical to see a widespread and intense anger among the general people. However, it is important for us to remain objective and not let this anger influence our decision-making. Rapid implementation of these restorative and reformatory measures is crucial to enhance the current framework for addressing juvenile offenders. It is crucial to acknowledge that these children are individuals who have been removed from unstable households that posed a threat to their well-being. It is advisable to refrain from categorizing or labelling them as juvenile offenders or teenagers involved in legal proceedings.

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