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Juvenile justice—an analytical study relating to offence factor in delinquency behaviour.

Dr. M. Sanjeeva Rao, Assistant Professor, Post-Graduate College of Law, Basheerbagh, Osmania University, Hyderabad – 500 001

Abstract. *One of the main reason why the Juvenile Justice System (JJS) does not intervene at the proper time is that the Indian legal system does not intervene at the proper time is that the Indian legal system does not widen the area of delinquency and, as such unless a juvenile commits an act of crime the JJS cannot intervene. Juvenile Justice Act, 1986 hereinafter called JJA , tagged the whole functioning of the JJS, by wholly keeping it dependent upon the Indian Penal Code and the Code of Criminal Procedure. Section. 2 (e) of JJA has defined juvenile delinquency as "a Juvenile who has been found to have committed an offence". The word 'offence' has been defined in Section. 2 (n) as "an offence punishable under any law for the time being in force".*

Keywords: *Juvenile Justice System, Law Enforcement, humanist, fundamental*

Introduction:

"*Life in many institutions is at best barren and futile, at worst unspeakably brutal and degrading. To be sure, offenders in such institutions are incapacitated for committing further crime while serving their sentences, but the conditions in which they live are the poorest possible preparation for their successful re-entry into society and often merely reinforce in them a pattern for manipulation and destructiveness*". — From U.S. Report of President's Commission on Law Enforcement and Administration of Justice, 1967.

Offence' is also defined in the Indian Penal Code.[1] This paper concentrates on the history of discriminatory treatment in various legal systems. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Mahatma Gandhi and Jawaharlal Nehru et al had always maintained that harsh sentences under rigorous conditions did not serve the humanising purpose of punishment. On the contrary, what is needed is to threat prisoners therapeutically so that they may be healed of their criminal deviances and become good citizens. There are several currents running through the waters of administration of criminal justice in these days and to quote a line from Justice R.C. Patnaik's judgment in *Saradhakar Sahee* v. *State of Orissa*[2], "Let not the wind of change pass us by without inspiring us". In common with the rest of the world the correctional services are increasing in the administration of criminal justice in India. In the near future the propriety as well as efficiency of correctional services may assume serious importance as it involves huge human and financial resources. The search for a better juvenile justice system continues as many different voices call for a wide variety of approaches. The media always focuses on the plight of the public, the victims of violent juvenile offender. But little is

written about the plight of the non-violent juvenile offenders – the children who need help from society more than the society needs protection from them. What happens to youthful offenders today is a result of the ways children were treated through the centuries.

The Indian system of juvenile justice came from the English method of treating children about the middle of the eighteenth century which has been stated briefly by Margaret O. Hyde[3] in the following words:

"*In criminal cases, an infant at the age of 14 may be capitally punished for any capital offence, but under the age of 7 he cannot. The period between 7 and 14 is subject to much uncertainty. For the infant shall generally speaking be judged prima facie innocent; yet if he could discern between good and evil at the time of offence committed, he may be convicted and receive judgment and execution of death though he hath not attained the years of puberty or discretion*".

Offence –Factor in Delinquency Behaviour: Justice Krishna Iyer states that, "*The criminal law breaks in its primary purpose of social protection when there is no general obedience to legal norms*". In a study of juvenile delinquency, be it social, economic or legal, the most intricate problem is: whom shall we call juvenile delinquents and at what stage! Often a child accused of a wrong, is called a juvenile delinquent. In the heading of Chapter. III of West Bengal Children Act, this very name is taken, though many of the sections like Sections. 22, 23, etc. only deal with juvenile accused. This shows the attitude of the society. Whenever a juvenile is tried, the general attitude is that the child has committed the act, especially when the parents themselves complain that the child is unmanageable. In about seventy percent of the cases filed in the Juvenile Court in Calcutta the children confess the guilt, or in other words, children are led to confess the guilt. The whole subject is, therefore, legally interesting to study. Obviously then, our first focus point is 'Juvenile Delinquency' in which we have *two factors*, namely, an 'offence factor' and an 'age factor'. Let us then turn for a definite locational-area determination.

Difficulty in defining 'Juvenile Delinquency Area': A legal definition often falls too short mainly because while defining a term or a syntax a legal draftsman occasionally fails to take into stock various locational problems and confuses their interactive importance. In the definition of each term or word or syntax there is a hard core of thick meaning and a wide circumference of gradually fading out conceptual coverage, known as extended meaning. The etymological meaning of the word 'Juvenile' is 'a young person', a person having or retaining the characteristics of youth, and the meaning of the word, 'delinquency' is 'failure in or omission of duty, a fault : a crime'. The meaning of the syntax, therefore, is 'young person's committing the crime'. But leaving aside the phenomenological importance about the locational problems that this definition fails to convey, this definition cannot satisfy the condition of attempting to quantify the definitional coverage. It is rightly pointed out by Kratcoski Couple[4] that 'broadly considered, juvenile delinquency could mean any type of beaviour by those socially defined as juvenile (non-adult) that violates the norm (standard of proper behaviour) set

by the controlling group". In the narrower sense, on the other hand, it means "any action by someone designated as a juvenile that would make such a young person subject to action by the Juvenile Court".

Prof. Walter C. Reckless[5] of the Ohio State University, has brought out the triangular locational problem of defining delinquency. He said: "Criminal and delinquent behaviour has been located in society as a social problem. It has also been located in a behavioural perspective, in answer to the question as to what types of behaviour become delinquency and crime. There remains one other basic location, namely, the location of crime delinquency in a system of law and the location of law in a system of social values and norms". To be more precise, these three locational problems are:

→. Delinquency as a social problem;

→. Delinquency as a behavioural problem; and

→. Delinquency as a legal problem.

Prof. Reckless has analysed these locational problems in three distinct stages, *viz.*, legal definition of crime and delinquency, delinquent behaviour as a social problem and causative behaviour *vis-à-vis* normative behaviour. In the chain of relevance 'legal definition' is not to have the final say. He has very rightly observed: "... behaviour as an observable phenomenon is central. It is the focus of concern and it is the target for outlawing, that is, for legal definitions or for coverage by criminal law and sanctions".

Two approaches of definition: There are, thus two distinct approaches of defining the syntax of 'juvenile delinquency'. One is purely legalistic approach aiming to restrict quantification of the problem by putting specific qualification and, the other, a social approach to aid to a symptom and diagnostic study. In connection with the former approach the finding of the U.N. Congress on the prevention of Crime and treatment of offenders held in 1960 is very prominent. The Congress recommends:

→. That the meaning of the term juvenile delinquency should be restricted, as far as practicable, to the violation of the criminal law; and

→. That even for protection specific offences which would penalize small irregularities or maladjusted behaviour of minors but for which adults would not be prosecuted, should not be created.

Indian definition given in the Children Act, 1960[6] of 'juvenile delinquency' is, 'a child who has been found to have committed an offence'. Such restrictive and denotative meaning shuns many 'behaviour' that may not be criminal in itself but that may lead to criminalistic actions in future. This attitude of restrictive meaning is primarily a positivist attitude and is too much legalistic. Whereas a sociologist always attempts to widen the coverage of the meaning by taking into account all imports of social development accepting the growing area of this social development and social value as the major premise and law as the normative MINOR, a lawyer, on the other hand, is of opinion to start with a positive legal prescription as his MAJOR PREMISE thereby restricting the coverage of the import of the definition. A statutory definition of this nature may exclude many types of questionable activities from the field of juvenile delinquency which may ultimately mean an avoidance

of study of symptoms and diagnostics. Truly speaking, this is a dynamic concept of phenomenological development worthy of constant pursuit in the light of the normative value structure of the changing society. The law, by way of consequential development must catch up the pitch instead of itself prescribing the determinative boundary.

The scheme of social value-approach has, on the other hand, a touch of uncertainty. No system can work in an uncertainty. The list and the relative preference vary from group to group, nay, from person to person. Many of such values are often so ambiguous, so indefinite and uncertain that no progress can be made in the study with these value-structure. Socrates has identified some symptoms of delinquency and defiance as early as 2,400 years ago, many of which are still insisted upon by middle class aged group. "These are", as Socrates puts it, "Children now love luxury, they have bad manners, contempt for authority, they show disrespect for elders, and love chatters in place of exercise. Children no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs, and tyrannise over their teachers". Mr. S.M. Diaz has given a workable list of symptoms in a modern child. "Flagrant disobedience, truancy, cruelty to animals, disobedience, possession of new articles not purchased, unexplained cuts and bruises, unaccounted for late hours, untidy appearance, stranger friend not brought at home, clandestine possession of weapons, evidence of alcohol and drugs, etc.", are in his list. But perhaps the best list is tabulated by Kratcoski Couple[7] from the relevant and concerned American Federal and State Laws. These are:

→. Skipping school;

→. Making anonymous telephone calls;

→. Gambling for money;

→. Staying out past the set curfew hour;

→. Running away from home;

→. Purchasing and drinking wine, beer or liquor;

→. Buying, using or selling illicit drugs;

→. Spotting fire to buildings or other property to damage it;

→. Driving a car without a licence or permit;

→. Driving too fast or recklessly;

→. Using threat of force to get something from someone else;

→. Drug racing;

→. Taking or driving a person's car without permission;

→. Taking any item from the store without paying for it;

→. Carrying a dangerous weapon;

→. Taking part in a gang fight;

→. Having a fist fight with another person;

→. Using or accepting something that another has taken without permission;

→. Deliberately damaging or destroying another's property;

→. Trespassing on the property of another;

→. Sending a false fire alarm;

→. Defying parent's authority.

→. Deliberately disobeying parents;

→. Having sexual relations with a person of the opposite sex;

→. Having homosexual relations;

→. Breaking into or entering forcibly a residence or place of business.

Regard being had to the social system in India, a list of projected delinquency area based on present social value-structure may be hopefully guessed, just as a primary visualization. It may be remembered that such a list of delinquency acts cannot be identically enforced with equal emphasis and preference throughout the country. An example may make it clear. Whereas 67% of the boys and girls of the age group of 14-15 years who are school-going students in Urban schools believe that smoking by a school-going boy is delinquency, only 34% of their counterparts in rural schools believe in the same manner. Sex-wise the percentage rate also varies. Such variations have many regional and even family reasons. However, the list shall include:

→. Smoking;

→. Skipping schools;

→. Wanton falsehood to cover up misdeeds;

→. Running away from home;

→. Skipping schools to watch cinema;

→. Lifting (bi-cycle/cycle parts, etc.);

→. Drug and alcoholism;

→. Petty theft;

→. Using threat;

→. Extraction and forceful collection of donation;

→. Defying parental authority;

→. Trespassing;

→. Using force and extraction;

→. Homosexual relations;

→. Sexual offence.

A Few Sample Survey For Determining Social Value Perceptions: A sample survey of 100 urban and rural school-going Class. X boys and girls of the age group of 14-15 years gave the following opinion (Table. 1). There is wide difference of opinion amongst boys and girls. The reason may be that girls are more conservative than the boys. There may be lot of other social and situational reasons. A few examples may be revealing . Figures in Table. 2 will show an act as 'Offence' enumerated on the basis of 50 school-going boys and girls. In a country like India vast majority of children are left uncared for a dingy bustee area, station compound and extended rural areas. Enumerating their standard of values is a very difficult task. A sample survey has been made in the Burdwan Station Compound. On the spot census for consecutive *three* days revealed that 160 to 180 boys live in the Station Compound. No interrogation was possible of boys or girls of 14-15 years age group. 37 boys of the age group of 10-12 and 12 girls of the same age group were interrogated on various days. Their level of understanding is shown in Table. 3. It is suffice to note here that there may be various reasons for value discrimination.

Table. 1 Acts to be offence or not.

Offence		Urban			Rural	
	Offence	Not Offence	Don't Know	Offence	Not Offence	Don't Know
Smoking	67	13	20	34	31	35
Skipping School	87	4	9	83	7	10
Cinema-going	29	53	8	44	42	14
Falsehood	28	12	60	32	17	59
Lifting	97	--	3	93	3	4
Theft	100	--	--	99	--	1
Donation collection by threat of force.	39	11	50	68	6	26
Disobeying Teachers.	66	13	21	78	14	8
Homosex	73	--	27	51	--	49
Sexual offence	100	--	--	93	--	7
Trespass.	67	14	19	78	2	20

Table. 2: Acts to be Offence.

Offence	Boys		Girls	
	Urban	Rural	Urban	Rural
Smoking	25	42	13	21
Skipping School	48	39	41	42
Cinema-going	7	22	14	30
Donation collected by force	8	31	28	40
Disobeying Teachers	23	43	31	47
Homosex (perhaps all have not properly understood the item) Sex offence.	50	50	44	49

Table. 3: Acts and the Value Perception.

Offence		Boys			Girls	
	Offence	No	No idea	Offence	No	No idea
Smoking	2	33	2	--	12	--
Cinema-going	--	17	20	--	11	1
Forcible Donation Collection	7	24	6	--	12	--
Lifting	16	5	16	9	2	1
Running away from home	27	2	8	11	--	1
Gang-fight.	8	26	3	6	2	4
Gambling	5	19	13	3	6	3
Homosex	2	9	26	2	--	10
Rice smuggling	6	29	2	1	8	3
Liquoring	11	10	16	2	6	4

Discrimination as a Yardstick in Legal Treatment: The discriminatory legal treatment of the children and young persons are primarily based upon two philosophies, *viz.*,

→. Immaturity, mental incapacity and incapability for which they are unable to understand the complicacy of criminal actions and as such, they may be victim of circumstances. The law must allow the young persons to grow matured and protect their interest.

→. Criminalistic actions are primarily due to social and psycho-physical reasons. Naturally, criminals are social victims. There may be brought back to the main track of the social life with minor or major adjustments. If that is so, both prevention and treatment must start as early as possible. Juvenile Delinquents, therefore, must get a separate treatment.

The first thought that children and young persons are both mentally and physically immature, incapable and incapacitated, is an age-old thinking process though for obvious reasons the legal development has not been caused in the same manner everywhere.

History of Discriminatory Treatment in Various Legal Systems: The classical Hindu Law is a pointer in this regard. Though we do not find much about the subject in Vedic literature but various Smritis have taken up the issue at various stages. It is very difficult to trace the subject in some historically chronological order because we are not absolutely certain about dating of various Smrities. Naturally, our tracing the

history has to be based upon the rough dating of these Smrities. Classical exponents though were unanimous on one issue that children should be given a special treatment since they are incapable in understanding things, yet they were not unanimous in the exposition of the law on the issue. The prescription ranges from complete exoneration to inflicting corrective punishment. Sankha[8] prescribed complete exoneration up to the age of five; Kautilya[9] up to the age of 12 for female and 16 for male; Narada[10] up to the age of 16 and Mahavarata[11] up to the age of 14. On the other hand, Manu[12] prescribed corrective corporal punishment to juvenile and child offender. One very interesting thing to note is that no distinction was made between child-offender and a juvenile offender during this time for the purpose of punishment on criminal actions. Mahavarata prescribed complete exoneration up to 14 and that was followed with some age variations in different parts of India. Narada[13], Yajnavalkya[14], Brihaspati[15] and Matsya Purana[16] however mentioned boys as up to 8 as '*sisu*', like an embryo and 'Bala' or poganda thereafter up to 16. That indirectly indicates the possibility of presence of 'double standard'.

The Constitution of Theodosius[17] is an example of the contemporary classical Romano-Greek thought on the issue. According to him a child was considered as '*infans*' up to the age of seven years presumably having no '*intellectus*' and above the age of seven a child would be '*pubertati proximus*'. Liability for theft used only to arise had the child been '*proximus pubertati*'. Buckland and McNair[18] opined that "…in Roman law, in which an action on delicti is essentially an action for a penalty in respect of a wrong done, it is clear that no such action will lie if the child is so young that it is not possible to attribute to him a culpable state of mind, and it is probable that the age, or degree of development, might vary with different wrongs". Roman Law, on the issue, being rationally posed acted as the pace-setter of the widely followed common law.

In common law of 12th and 13th Century, there was no distinction between adult and child offender. In the 13th and 14th Century, the Chancery Court emerged as a tool for saving children from the severest penalties of the criminal laws. The Court operated under the doctrine of '*Parens patriae*' which was applied to mean that the king acting through his representative, the Chancellor of the Court, could depart from the due process of law and as benevolent parent not only exempt children from the penalties set for various criminal offences but also take control over children who had not committed such offences but were involved in such matters as vagrancy, idleness, incorrigibility or association with undesirable persons. This was the beginning of the sociological responsibility of the state towards the children. But still the original stiff attitude continued for many. Brill[19] has very clearly identified with the evolution of the common law system on the issue which at present seems to be the close to the Roman law system. According to him, "At common law…children under the age of seven years are conclusively presumed to be '*doli incapax*' or incapable of entertaining a criminal intent, but the presumption is not conclusive as in the case of children under the age of seven. It may be rebutted by showing in the

particular case that the accused was of sufficient intelligence to distinguish between right and wrong". "Children over fourteen years of age, ... are in substantially the same position with regard to criminal responsibility as an adult. A child who has reached this age, is presumed to be '*doli capax*' and therefore, responsible, unless he shows as he may, that he was not of sufficient capacity".[20] In fact, the common law as enunciated in *Morgan* v *Thorne*[21] has considerably evolved during the nineteenth century till it reached to maturity through different court decisions[22] and has come up to the above situation of '—7', '—14' and '14+' which is almost uniformly followed throughout the common law countries till being replaced by recent amendments in some countries.

Behavioural Perspective Of Delinquency And Crime: Delinquency, according to Gabriel de Trade, is essentially a phenomenological development. Such a study of delinquency is basically concerned with the sociological analysis of normative variance and localization of socio-physical reasons for such normative deviation. In fact, the physical aspect of diagnostic approach has again gained momentum on account of recent experience of biological research. Added with it is the hitherto unknown or comparatively less pursued vide area of human psychology. Walter C. Reckless[23] has given a '*Behavioural Perspective of Delinquency and Crime, with projected percentage estimates of occurrence*'. It has to be remembered that the above study has been made in American condition and naturally the same may not be applicable in Indian condition. No serious study has been made in our country in this regard. Keeping these facts in our mind, we may use the fruits of this study in the theoretical exposition of our problem, specially while treating these delinquent children.

Conclusion: The child has been a subject matter of legislation in various laws – both penal and social. The Indian Penal Code, the Code of Criminal Procedure and various other laws prescribe a differential approach to children owing to their physical and mental limitations. A survey of laws which have a bearing on the rights and privileges of children, reveals a four-fold classification. These classifications can broadly be stated to cover, firstly, the special aspects in the matter of culpability for crimes committed by children in relation to others. This matter is essentially dealt with by the Indian Penal Code. Secondly, there is a converse situation, viz., where crimes are committed against children by others. In such cases the liability is determined in accordance with the general principles of liability governed by the criminal law. The Indian Penal Code and other social legislations cover the above aspect. Thirdly, there are laws seeking implementation of social policy with the aid of criminal sanctions. This category consists of laws which through the underpinnings of criminal sanctions, lend penal character to the commissions and omissions under the law with an avowed purpose of achieving a social policy in relation to the protection of children against the social hazards of immoral trafficking, beggary, child marriage and the like. Fourthly, there is a variation in procedure to determine the criminality of children, and also there are statutory provisions prescribing a different mode of custodial arrangement than what may be necessary for adults.

The crimes committed by children are mitigantly treated under the

Indian Penal Code as it specially declares that 'nothing is an offence which is done by a child under seven years of age'.[24]

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[12]. Manu: Manusamhita Ch. IX, Sloka 230. Stribalomattabridhhanam daridranancha roginam Sifabidalarajja dairbiddannripatirdaan. See also, Ch. IX, Sloka 283.
[13]. *Supra*, n. 7, Ch. iV, Sloka 85.
[14]. *Yajnavalkya Smriti* Ch. II, Sloka 213-214. Angiras quoted by Mitakshara stated that an old man over eighty, a boy below 16, women and persons suffering from diseases are to be given half '*prayachitta*' and Sankha quoted by Mitakshara stated that a child less than five commits no crime nor sin by any act and is not to suffer any punishment nor to undergo a *prayaschitta*.
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