



REHABILITATION AND SOCIAL REINTEGRATION OF CHILDREN IN NEED OF CARE AND PROTECTION: A COMPREHENSIVE ANALYSIS

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ABSTRACT- The challenge of juvenile delinquency has existed for as long as human society itself. Juvenile delinquency is a profoundly serious issue as it often leads to adult criminal behaviour. To address this problem, criminologists and penologists have consistently made efforts. Dealing with juveniles requires a delicate approach that differs from that applied to adult criminals. Therefore, it is imperative to provide proper care, treatment, and rehabilitation to help them assimilate into society and become law-abiding citizens. Since children represent the future of any nation, it is crucial to adopt a reformatory approach for juveniles and young offenders, rather than a punitive one. This research paper aims to analyse the rehabilitation and social reintegration of children who require care and protection, as well as the judicial perspective and court-initiated efforts in rehabilitating and reforming juvenile delinquents.

Keywords: Juvenile, Reformatory, Delinquency, Rehabilitation.

I. INTRODUCTION

Crime has been a persistent issue in society since the dawn of humanity. It is an inherent aspect of any society's existence. Young individuals, in particular, are more susceptible to criminal activities and behaviors. It's essential to understand that a child is not inherently a criminal; rather, their environment and upbringing significantly influence their development. A child who lacks care and affection during their formative years may not grow into a morally, psychologically, and ethically upright individual. When deprived of the love and support they should receive from their family or close ones, children often seek companionship elsewhere, which, in some cases, leads them to form associations with negative influences and engage in delinquent behaviour.

Definition of a Juvenile According to the law, a juvenile is defined as any individual below the age of 18.²

- In India, the law stipulates that a child under the age of 7 cannot be prosecuted under any law for committing a crime.
- Previous laws did not clearly distinguish between children in conflict with the law and children in need of care

and protection; both were simply referred to as juveniles.

- In the amended law (2015 Act), the terms 'children in conflict with the law' and 'children in need of care and protection' were introduced to make the distinction clear.

Meaning of a Child in Need of Care and Protection³

- Legal provisions regarding the meaning of a child in need of care and protection can be found in Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

- According to Section 2(d)⁴, a "child in need of care and protection" includes a child who:

i. Is found without a home, settled place, or abode, and lacks any apparent means of subsistence.

ii. Resides with an individual, whether a guardian or not, and that person:

- Has made threats to kill or harm the child, with a reasonable likelihood of carrying out the threat.

- Has harmed, abused, or neglected another child or children, with a reasonable likelihood of doing the same to the child in question.

iii. Is mentally or physically challenged, suffering from terminal or incurable diseases, and has no one to provide support or care.

iv. Has a parent or guardian who is unfit or incapable of exercising control over the child.

v. Children who do not have parents, and there is no one willing to take care of them, or whose parents have abandoned or surrendered them, or

vi. who are missing and considered runaway children, with their parents untraceable after reasonable efforts to find them.

vii. Children who are at risk of severe abuse, torture, or exploitation for purposes of sexual abuse or illegal activities.

viii. Children who are vulnerable and susceptible to involvement in drug abuse or trafficking.

ix. Children who are or are likely to be subjected to exploitation for unjust gains.

x. Children who are victims of armed conflicts, civil unrest, or natural disasters.

The Child Welfare Committees conduct a thorough inquiry and, when such children are presented by any police officer, special juvenile police unit, or designated police officer, they send children in need of care and protection to children's homes or shelter homes, as appropriate.⁵

It is crucial to establish a model within the juvenile justice system that prioritizes the well-being of the child and upholds their rights.⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, contains specific provisions for the care, protection, treatment, development, and rehabilitation of neglected or delinquent juveniles.⁷ This Act outlines a thoughtful and cautious strategy for the rehabilitation and social reintegration of

children residing in children's homes or shelter homes, which may involve processes such as adoption, foster care, sponsorship, or placement in an after-care organization.⁸

Due to urbanization and population growth, the issue of mistreated children has significantly escalated. To safeguard children from various social ills, the Indian Constitution includes several articles providing protection for children, including Article 15, Article 39 (e) and (f), Article 21, Article 21-A, Article 45, and Article 47. Moreover, India supports the United Nations General Assembly's Convention on the Rights of the Child, emphasizing the social integration of children who have suffered socio-economic injustices. To control and prevent

crime in society, it is imperative to establish adequate provisions for the rehabilitation and social reintegration of maltreated children.⁹

II. REVIEW OF LITERATURE

• *Dr. S.S. Srivastava's book, "Criminology, Penology & Victimology,"¹⁰* is a significant resource in the field. It provides comprehensive insights into criminology, penology, and victimology. The book offers a valuable examination of key concepts, principles, and developments in these areas, making it an essential reference for those studying or working in the fields of criminology and criminal justice.

• *Ahmad Siddique, S.M. Afzal Qadri's "Criminology, Penology, and Victimology"¹¹* provides a valuable exploration of the topic of children in need of care and protection. The book delves into the legal aspects, challenges, and practical considerations within the realm of child welfare and protection. It offers insights into the complex issues surrounding vulnerable children and highlights the importance of a comprehensive understanding of their rights and well-being. This resource serves as an informative guide for academics, practitioners, and policymakers engaged in ensuring the welfare of children in need of care and protection.

• *Prof. (Dr.) N.V. Paranjape* in his book¹² provides a comprehensive exploration of the topic of children in need of care and protection. This authoritative resource delves into the legal, criminological, and victimological aspects of child welfare. It discusses the Juvenile Justice (Care and Protection of Children) Act and its implications for children in vulnerable situations. With a wealth of information and analysis, this book serves as an invaluable guide for understanding and addressing the complex issues surrounding the care and protection of children.

• *The Juvenile Justice (Care and Protection of Children) Act 2015*, a significant legal framework in India, addresses the rights and rehabilitation of juveniles in conflict with the law. This legislation aims to strike a balance between child protection and

accountability for juvenile offenders. It incorporates restorative justice principles and emphasizes rehabilitation over punitive measures. The Act has been studied extensively in the context of its impact on juvenile offenders' rights, recidivism rates, and the overall effectiveness of rehabilitation programs. Scholars have analysed its provisions to ensure compliance with international standards for juvenile justice.

III. Evolution and Development of the Juvenile Justice System in India

The growth and evolution of the juvenile justice system in India can be traced back to its historical

development, which began in 1773 and continues to the present day.¹³

Before 1773: Prior to 1773, the concept of juvenile justice in India was not well developed. Guardians were entrusted with the responsibility of supervising and caring for children, and personal laws were invoked to address civil and criminal actions involving children. However, the primary responsibility for looking after and controlling children rested with their parents.

From 1773-1850: During the period from 1773 to 1850, the dominance of the East India Company was prominent. What began as a trading company evolved into a governing body. Western countries were undergoing reformation during this period, and India was influenced by these changes. Due to British abuse, many people were pushed to remote areas, leading to the impoverishment and delinquency of children. In response to this, the first orphanage, known as the "Ragged School," was established in Calcutta in 1843.

From 1850-1919: The period from 1850 to 1919 witnessed significant changes in Indian society due to industrialization and population growth. These changes led to the emergence of a new class of delinquent and neglected children, requiring appropriate interventions. Several important laws were enacted during this period, including the Indian Penal Code of 1860, the Apprentices Act of 1850, the Criminal Procedure Code of 1851, and the Reformatory Act of 1876 and 1897.

- The Apprentices Act of 1850 covered children aged 10 to 18 who committed relatively minor offenses. Convicted children were required to work as apprentices for businessmen to complete their sentences.¹⁴
- The Indian Penal Code of 1860 exempted children below the age of seven from criminal liability. Children aged seven to twelve could be held accountable based on their maturity and understanding of their actions.
- Separate trials were arranged for individuals below fifteen years of age under the Code of Criminal Procedure, 1851, and these individuals were placed in reformation centers instead of jails.
- The Reformatory Schools Act of 1876 shifted India's penal policy from punishment to reformation, leading to the establishment of reformatory schools for youthful offenders.¹⁵ This act mandated that boys under fifteen years of age be kept in reformatory schools until they reached eighteen.

From 1919-1950: During this phase, India was moving toward independence, resulting in changes to the juvenile justice system. The Indian Jail Committee recommended the establishment of a Special Children's Act to create separate courts for juveniles. Provincial governments passed their laws for juveniles, such as the Madras Children Act of 1920. After gaining independence in 1947, the Indian Constitution incorporated specific articles 15(3), 23¹⁶, 39 (e) and (f) and 45 of the Constitution addressing children's rights and protection.¹⁷

Post-1950: Efforts from both government and non-governmental organizations focused on developing the juvenile justice system in India. The Children's Act of 1960 was enacted to address the growing issue of delinquent children following partition. The Code of Criminal Procedure in India in 1973 included provisions favorable to juveniles. In 1986, the Indian government passed the Juvenile Justice Act, aiming to provide care,

protection, treatment, and rehabilitation for abandoned and delinquent juveniles. The Act established Juvenile Courts and Juvenile Welfare Boards. Recognizing the need for changes due to the Act's ineffective implementation, amendments were proposed, leading to the Juvenile Justice Act of 2000. However, many states lacked essential infrastructure, such as Juvenile Welfare Boards, Juvenile Courts, Observation Homes, Juvenile Homes, Special Homes, and After-Care Programs.

To bridge the gap between rhetoric and reality and align with the Convention on the Rights of the Child, the Juvenile Justice (Care and Protection of Children) Act of 2000 was enacted. Subsequently, it was replaced by the Juvenile Justice (Care and Protection of Children) Act of 2015, which aimed to provide consistent age provisions for boys and girls, as well as measures like adoption, foster care, and non-institutional alternatives involving community participation. In 2021, the Juvenile Justice (Care and Protection of Children) Act, 2015, underwent further amendments, known as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

IV. Rehabilitation and Social Re-Integration Process

Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (referred to as JJ Act, 2015) outlines the provisions for the rehabilitation and social re-integration process for children in need of care and protection or in conflict with the law.¹⁸

The process of rehabilitation and social reintegration is initiated based on the child's individual care plan. The preferred approach is family-based care, which may include restoration to the family with or without supervision, sponsorship, adoption, or foster care. In cases where a child in conflict with the law is not released on bail, observation homes serve as suitable places to initiate the rehabilitation and social integration process.¹⁹ Regardless of where the child is placed, rehabilitation and social integration efforts commence. If a child cannot be placed with a family for any reason, they may be placed in an institution established under this Act for such children.²⁰ Financial assistance is provided to children in conflict with the law and those in need of care and protection when they leave special homes or places of safety upon reaching eighteen years of age to help them reintegrate into society.²¹

Open Shelter²²: State governments, either independently or through voluntary or non-governmental organizations, establish and maintain open shelters as required by the JJ Act, 2015. Open shelters are registered under the Act and serve as community-based facilities for children in need of housing assistance.²³ However, such assistance is offered for a limited time to protect children from abuse or help them transition away from street life.²⁴ Open shelters are

responsible for providing monthly information about the children receiving their services to the District Child Protection Care Unit and the Committee.²⁵

Foster Care²⁶: Children in need of care and protection may be placed in foster care, including group foster care, on the orders of the Committee. This placement occurs in families that are not the child's biological or adoptive parents or in unrelated families recognized by the State Government as suitable for this purpose, for varying periods.²⁷ Foster families are selected based on their qualifications, intentions, competence, and prior

experience in caring for children. State governments provide monthly funding through the District Child Protection Unit, considering the number of children.²⁸ Foster families are responsible for ensuring the child's education, health, and nutrition.²⁹

Sponsorship³⁰: State governments undertake individual sponsorship, group sponsorship, or community sponsorship programs.³¹ These programs provide medical, nutritional, educational, and supplementary support to families, children's homes, and special homes.³²

After-Care Institutions³³: When a child reaches eighteen years of age and leaves a child care institution, they may receive financial assistance to aid in their reintegration into society.³⁴

Observation Homes³⁵: Juveniles requiring protection for a brief period during the inquiry or trial stage are placed in observation homes. These homes are established by State governments, either directly or through voluntary or non-governmental organizations, in every district or group of districts. Section 41 of the JJ Act, 2015 mandates the registration of these observation homes. While an inquiry is pending under the Act, observation homes provide interim relief, protection, care, and rehabilitation to children in conflict with the law.³⁶ State governments can enact regulations to manage and monitor observation homes, establish standards, and define various services for the rehabilitation and social integration of such children.³⁷

Special Homes³⁸: State governments may establish and maintain special homes in each district or group of districts to rehabilitate children in conflict with the law or those who have committed offenses under orders of the Juvenile Justice Board.³⁹

Adoption⁴⁰: Adoption is conducted to ensure the right to a family for orphaned, abandoned, or surrendered children, following the provisions of the Act. The Act permits the adoption of a child from a relative by another relative, regardless of religion, in accordance with the Act and adoption regulations. All inter-country adoptions must comply with the terms of the Act and the authority's adoption rules.

These provisions have been put in place by the Government of India to facilitate the rehabilitation and social reintegration of children in conflict with the law and those in need of care and protection. However, due to inadequate implementation, satisfactory results have not been achieved.

V. The Role of the Judiciary in Juvenile Rehabilitation Matters

The judiciary plays a crucial and significant role in handling cases involving juveniles. The court's decisions reflect its stance on the reformation and rehabilitation of children. While laws are enacted by the legislature, the judiciary identifies any loopholes and addresses them through its decisions, often introducing new perspectives when the legislature falls short. In the context of juvenile delinquency and their rehabilitation, the judiciary has made significant contributions by resolving various issues through its rulings.

The Supreme Court of India has emphasized that rehabilitation cannot be achieved through cruelty and stigma. It recognizes that even a criminal is a human being with emotions, regardless of the committed offense.⁴¹

In the case of **Sanat Kumar Sinha v. State of Bihar**⁴², the Bihar High Court expressed shock at the deplorable

conditions in which juveniles were languishing in jails for extended periods. The court issued an order mandating that juvenile trials be completed within one year, and in some cases, prosecution should be terminated. Additionally, the court recommended placing juveniles in schools with the government covering the expenses.

In the case of **Krishna Bhagwan v. State of Bihar**⁴³, the court recognized that children under the age of sixteen and females under the age of eighteen often had underdeveloped minds due to their immaturity. As a result, the court suggested that these children be treated as a distinct group. It highlighted that many children lacking proper care, love, and guidance from guardians often got involved in negative aspects of society. The court proposed that the legislature could introduce special treatment programs aimed at reforming these children and helping them lead normal lives in society.

In **Gaurav Jain v. Union of India**⁴⁴, the Supreme Court addressed the possibility of establishing separate schools and hostels for the children of sex workers. The court emphasized that it was the responsibility of the state, as well as volunteer non-governmental organizations and individuals, to rescue these children from prostitution and provide them with rehabilitation opportunities, including education, self-employment, and financial assistance. The court also stressed the importance of marriage and family acceptance in rebuilding the self-respect and self-confidence of these children. A committee was established to investigate and report on the situation of children born to sex workers.

In **Sheela Barse v. Union of India**⁴⁵, the Supreme Court emphasized the need for comprehensive legislation, referred to as the Children Act, which should include mandatory provisions for the social, economic, and psychological rehabilitation of children who are either offenders or are abandoned, destitute, or lost. The court highlighted that having legislation alone was insufficient; it was crucial to ensure vigorous implementation of such laws. The court emphasized that rehabilitation forms the backbone of juvenile justice.

In the case of **Daljit Singh v. State of Punjab**⁴⁶, the Punjab and Haryana High Court ruled that Section 18 of the Juvenile Justice Act, 1986 stipulates that when a person accused of a non-bailable offense appears to be a juvenile and is arrested and brought before the court, that person must be released on bail, regardless of the provisions of the Code of Criminal Procedure or any other prevailing law.

This demonstrates that the judicial approach towards juveniles is primarily focused on reforming them and providing rehabilitation, ultimately restoring them to their original position before committing the crime.

VI. CONCLUSIONS AND SUGGESTIONS:

- Handling juvenile issues requires utmost care and an organized procedure that takes into account various factors like natural, emotional, household, educational, financial, and even political conditions in which a child is raised.
- Addressing the issue of corruption and restoring moral values can significantly reduce delinquent attitudes and criminal behaviours.
- Children must be protected from exploitation in all forms, including child labour, malnutrition, sexual abuse,

physical abuse, mental abuse, and neglect. Guardians, teachers, and the state all share the responsibility for ensuring the well-being of children.

- To transform juveniles into responsible citizens, society should provide provisions such as free admission to schools, prohibition of child labour, ensuring good health, and providing adequate nutrition.
- The government should fulfil its constitutional mandate to benefit the children of India, and government and non-governmental organizations should collaborate to address juvenile issues.
- Adoption is an excellent way to rehabilitate juveniles, and its popularity is increasing in India. Society should take the responsibility of adopting children to provide them with a healthy environment for development.

Furthermore, it is crucial to allocate adequate funds to correctional institutions through sponsorships. With the necessary funding, these institutions can provide improved facilities for juveniles in correction homes, ensuring they have sufficient money, clothing, food, stationery, and other essential items. The effectiveness of the Juvenile Justice Act should be enhanced, and it must be diligently enforced. Instead of proposing a new law for juveniles, we believe that the existing Act is sufficient for addressing juvenile issues. Additionally, under Section 47(1) of the JJ Act, 2015, the State Government's obligation to establish Observation Homes should be made mandatory by substituting the word "may" with "shall." It has come to our attention that after-care homes are not operating efficiently, particularly in terms of providing counselling services. The primary role of after-care homes should include counselling, but they are currently not meeting modern requirements. Issues such as inadequate employee salaries, insufficient operational funds, and inadequate training for counselling staff hinder their functionality.

Therefore, State Governments should strive to provide ample funding to after-care homes to enable them to carry out their functions with enthusiasm and effectiveness. Rehabilitation and reintegration have become complex tasks due to the large number of children in need of care and protection. However, the JJ Act 2015 has recognized and categorized these children based on their societal placement. The laws pertaining to juveniles are comprehensive, but the challenge lies in the approach of individuals directly involved with these children. The term "Home" typically invokes a sense of psychological and heartfelt affection, which seems to be missing in correctional homes. We must delve into the reasons behind why children are still neglected in our society and address these pressing questions.

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