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THE REALITY OF JUVENILE DETENTION CENTRES IN INDIA

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INTRODUCTION

Adolescent conflict or immaturity increases teenagers—especially young men—more likely to be criminal, disorderly, or delinquent. When criminal inclination rises, the age at which a person's strength and passions peak still lacks the required control to reduce their combined influence. Since the future of a nation depends on its young, children should be treated with respect and given the best care available to help to protect this growing human resource. Born innocent, a child will grow into a person of great size and perfection with full physical, mental, moral, and spiritual ability given loving care and attention. But negative events, neglect of basic needs, bad company, and other maltreatment and temptations would destroy the child and most likely lead him to turn criminal.¹

Therefore, considering children to be a valuable resource, it is imperative that all endeavours be directed towards ensuring they have equitable access to developmental opportunities. This will enable them to mature into healthy, morally upright individuals who possess the necessary abilities and motivations demanded by society. Children, who are the nation's future, require unique safeguards due to their developmental stage, as well as their

¹ Justice V. R. Krishna Iyer, "Jurisprudence Of Juvenile Justice: A Preambular Perspective"-Souvenir of the International Conference on Shaping the Future of Law hosted by the Indian Law Institute," Delhi on 21-25 ,March, 1994.

physiological and psychological requirements. State governments have been granted enabling powers by the Constitution of India to enact special provisions for minors, as evidenced by Article 15.3 and Article 39 (e), in addition to the provisions outlined in the Directive Principles of State Policy. These provisions mandate that children in their formative years should not be subjected to mistreatment, and that they ought to be provided with the necessary resources and amenities to develop normally, in an environment characterised by liberty and respect. It is the moral and legal responsibility of society and the state to safeguard children and adolescents from exploitation and abandonment on both material and moral levels.²

The Indian government has enacted numerous laws to address the issues of neglected and delinquent juveniles. A public interest litigation had already been initiated against the maltreatment of children in a Kanpur prison, and the court had been issuing necessary orders in that regard, when journalist Sheela Barse submitted a petition demanding the release of 1400 children unlawfully incarcerated in jails across multiple states.³ The petitioner had spent approximately a year pursuing the release of the incarcerated children with various levels of the central government without success, despite the then-prime minister's assurance of personal intervention. Based on data provided by the Ministries of Home Affairs and Social Welfare, approximately 1400 minors below the age of sixteen were incarcerated in the prisons of eighteen states and three union territories. Regarding this, these ministries were powerless to intervene, as state governments possessed exclusive jurisdiction. The legislation governing minors at that era did not consistently forbid the confinement of young individuals in correctional

²S.P. Srivastava, "Juvenile Justice & Its Justice Delivery System", LULJ Vol 1, (1994).

³"Sheela Barse v. Union of India and others," writ petition Cri. No.1451 of 1985.

facilities. Nagaland lacked legislation pertaining to children.⁴ A number of the Children Acts, under extraordinary conditions, authorised the incarceration of juvenile delinquents. In regions lacking enforcement of the Children Act, delinquent juveniles were tried by regular criminal tribunals in accordance with general criminal law. They were subsequently incarcerated alongside adult offenders in the ordinary course of events.

DETENTION OF JUVENILES AND CHILDREN

The Juvenile Justice Act of 2000 (JJ Act) establishes distinct committal institutions in addition to ensuring separate trials for juveniles and non-juveniles. Primarily, observation homes, special homes, and children's homes are present. Observation homes and special homes are designated for juveniles who are in conflict with the law, whereas children's homes provide care and protection for children in need. One cannot understate the significance of the Juvenile Justice Act, 2000's division of the two groups of minors. Children in dispute with the law have been kept apart from those in need of care and protection in children's homes both during and even following the procedures. Not prisons, all of these facilities are correctional ones meant to help the youngster to be reformed. The child might not have before come across a setting of supervision, protection, rehabilitation, and treatment at these facilities; the lack of such environment could have perhaps led to his deviant behaviour.

In the case of *Sunil Kumar v. State, the Kerala*,⁵ High Court established that children cannot be convicted under the Children Act's framework. No potential for sentencing the minor exists. The purpose of enrolling the child in the special school is to prevent the imposition of any incarceration term. During the child's enrolment in the special school, it does not experience

⁴Ved Kumari, "The Juvenile Justice System in India, Oxford University Press," New Delhi, ed.1st, 2004 p. 267

⁵ 1983, Cr.LJ 99

any form of incarceration. There is no stigma associated with a conviction when the child is released from the school; rather, an earnest effort should be made in every circumstance to locate the parents of the child and convince them to return the child to their residence. In *Public Prosecutor, A.P. v. Shaik Valli*,⁶ the Andhra Pradesh High Court held the same opinion: the purpose of placing a child in a special home is to reclaim delinquent youths who have been or are at risk of being lost to society due to their environment, poor upbringing, or companionship, and to transform them into good citizens.

Although these facilities are absolutely important for the strategy to reduce young crime, their importance in the rehabilitation and treatment of children and young people should not be undervalued. Justice J.S. Verma recently pointed out the following recommendation: “Juvenile homes across the nation, including child homes and observation homes, are not being managed in a manner that adheres to the principles outlined in the Juvenile justice Act.” More deeply and profoundly state and civil society must engage to ensure that the Child Welfare Committee, Juvenile Justice Board, infrastructure facilities in a home, quality of food, counseling, and psychotherapy necessary to eradicate the fears of abuse and deprivation in early childhood, mainstream the child into society, and educate him or her to the fullest extent are established. The primary responsibility of the State, which is deficient in this regard. It is disheartening to learn that a significant number of these children have been coerced into beggary and confined labour, in contravention of Article 23 of the Constitution of India. To stimulate our economy, India should not permit inexpensive child labour to serve as an incentive for foreign investment.⁷

⁶ 1971, Cr.LJ 1229 at 1231

⁷“Report of the Justice J.S. Verma Committee on Amendments to Criminal Law, Part II Recommendation 13, p 419. The committee submitted its report on January 23, 2013.”

In practice, the educational, vocational, psychiatric, and social case work services offered by observation and certified homes are either non-existent or significantly inadequate, whereas the care, recreation, and protection services are merely acceptable. Furthermore, the child is deprived of sibling and natural parent-child relationships, which are vital for the development of a socialised personality and facilitate his reintegration into society following his discharge. Moreover, this deprivation causes the child to lose contact with his family. Therefore, institutionalisation for a juvenile is tantamount to confinement in a penitentiary.⁸

An empirical study revealed that every young person was living in a small apartment. For security purposes, they are driven to spend the whole day on its grounds. They absolutely cannot leave the property. Even leaving the compound of the grounds is quite forbidden. Their dislike of this rude home observing environment stemmed from Most established governments acknowledge a single domicile only for a designated number of districts or the whole state. Notwithstanding the claims about the non-punitive approach of the juvenile justice system, there were clear signs of penal influence. These punitive undercurrents were clearly visible in the change of institutions from open to limited.⁹

The children residing in such institutions were essentially isolated from any external interactions. The penal approach was more evident in the construction of special residences featuring barred windows and entrances and tall walls. The Delhi Girls' Observation Home is adjacent to the Central Jail and embodies

⁸ Usha Razdan, "Apex Court towards Humanizing the Administration of Juvenile Justice," JILI 1991, Vol. 33, pp 374-375.

⁹"Empirical study was conducted in observation home (girls), Barabanki, UP, observation home (boys) Lucknow, UP in the year 2010 and observation home (boys)," Lalitpur, UP, observation home (boys) Gorakhpur, UP in the year 2014.

all of its characteristic traits. Children are confined within a designated area of the structure.¹⁰

OBSERVATION AND CORRECTION HOMES

An observation home may be established in the districts by any state government or a partnership with a non-governmental organisation. Its purpose is to provide housing for juveniles who have been involved in legal proceedings or are in conflict with the law, as defined by the Juvenile Justice Act. In order to designate child care facilities as temporary rehabilitation centres for juveniles in conflict with the law, the state government may deem any such facility suitable for this purpose and certify it as such. The provision of all essential resources by the government to the correctional facility is imperative for the effective operation of the facility and the social rehabilitation of the inmates. When a juvenile is admitted to the correction home without facing charges, they are received in the reception area for the purpose of counselling and conducting preliminary inquiries. Additionally, the juvenile is categorised according to age group (seven to twelve years, twelve to sixteen years, and sixteen to eighteen years) so that the court may assess the juvenile's mental and physical condition as well as the severity of the crime committed.

The state government will set unique homes in every region for the aim of rehabilitating young people in delinquency. Any institution—except from the family of the young person in dispute with the law—that admits the indicated young person has to get state accreditation as a special home. In line with the JJ Act, the State Government oversees the running of these unique establishments including culinary standards and quality, rehabilitation and reintegration of young people. Ignoring these requirements could lead to the government revoke the grant or certification status. The responsibility of classifying young

¹⁰Ved Kumari, "The Juvenile Justice System in India," Oxford University Press, New Delhi, ed.1st , 2004 p. 267.

people based on the kind of offense they have committed and their age group will come under state government control.¹¹

BAIL OF JUVENILE

The accused's release on bond is critical due to the repercussions that accompany pretrial detention. Even though the accused is presumed innocent until culpability is proven beyond a reasonable doubt, he would be subjected to the psychological and physical deprivations of life in prison if his release on bond is denied. The incarcerated defendant is hindered from making a meaningful contribution to the preparation of his defence.¹² Moreover, his detention often imposes a significant financial burden on his family members, who are blameless. Bhagwati J. made the following observation in *Hussainara Khatoon (IV) v. Home Secretary*¹³: “It is not uncommon to find that under trial prisoners who are produced before the magistrates are unaware of their right to obtain release on bail and on account of their poverty, they are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the magistrate on that behalf This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme, but so far, these cries do not seem to have evoked any response.

When it comes to dealing with juveniles who are in conflict with the law, compassion, understanding, and intention are required. Section 12 of the JJ Act of 2000 permits the release of delinquents on bond, even in the case of non-bailable offences. However, it seems that the provision of parole, even for bailable offences, is contingent on the assurance that the child will not be exposed to moral hazards and will remain isolated from alleged

¹¹N.R. Madhav Menon, “Criminal Justice: Radical Reforms Needed”, *The Statesman*, October 9, 2000.

¹² *Moti Ram v. State of M.P.*, 1978 4 SCC 47.

¹³ 1980 1 SCC 98.

criminals. The aforementioned legal position is strengthened by the Supreme Court's ruling in the case of *Gopi Nath Ghosh v. The State of West Bengal*¹⁴. Juvenile offenders who are apprehended are required to appear before a juvenile court; in the absence of a juvenile court in the jurisdiction, the authority to adjudicate juvenile matters will remain with the court of sessions. In most cases, regardless of the alleged nature of the offence, such a juvenile delinquent is entitled to bail. However, this is not the case when reasonable grounds exist to believe that their release would expose them to moral danger, induce them to commit further offences, or impede the pursuit of justice.¹⁵ A total of 39,822 juveniles were apprehended in the country; of these, 14.9% (5,927) were released after receiving advice or admonition; 18.3% (7,290) were placed under the guardianship of parents or guardians; 5.5% (2,183) were sent to institutions; 24.3% (9,677) were placed in special homes; 3.6% (1,452) were fined; and 6.5% (2,572) were either released or their cases were otherwise resolved.¹⁶

The Juvenile Justice Act, 2000 was enacted in India in December 2000 with the purpose of safeguarding and protecting the welfare and interests of children. In *Ravi-ul-Islam v. State*¹⁷, the Delhi High Court granted parole to a juvenile on the grounds of the JJ Act. In a similar vein, the Rajasthan High Court ruled in *Mitha Lal v. State of Rajasthan*¹⁸ that regardless of the seriousness of the juvenile's offence, he should be released on parole if his release would not expose him to known criminals. The case in *Anil Kumar v. State of U.P.*¹⁹ was similarly adjudicated by the Allahabad High Court. The juvenile's interests are inviolable, and any judicial body or government

¹⁴ AIR 1984 SC 237.

¹⁵ Ibid. p 238.

¹⁶ NCRB Report, Crime in India, 2012, Juvenile Delinquency, Chapter 10, p. 136.

¹⁷ 2007 Cr.LJ, p.612.

¹⁸ 2007 Cr.LJ, p.179.

¹⁹ 2007 Cr.LJ, p. 200.

that disregards them is, in fact, failing to uphold humanism, the foundation of natural justice. It is the responsibility of the judiciary to administrate justice in accordance with the laws passed by the legislature. Alternatively stated, the courts are obligated to implement the letter of the law. Consequently, in order to effectively implement the legislative intent and accomplish the intended purpose and aim of the JJ Act, it is imperative to comprehend the language of the statute in its accurate and genuine interpretation. It is imperative to bestow accurate definitions on the vocabulary and expressions employed in the language in order to determine its true meaning. In dealing with juvenile matters brought before it for justice, the judiciary must, whenever the circumstances so require, take into account both the declaratory and constructive approaches, regardless of which approach is more appropriate. Judiciary, civil society, and intergovernmental institutions must collaborate in a concerted effort to advance initiatives that draw attention to issues pertaining to juveniles.

CRIMINAL JUSTICE (REFORMATIVE OR PUNITIVE) AND JUVENILE (REHABILITATION/ SHELTER HOME/ OBSERVATION HOME)

Juvenile justice refers to the legal structure that governs the administration of punishment for minors and adolescents within the jurisdiction of the Indian legal system. This system affords protection to juvenile delinquency or wrongdoing in addition to special treatment for adolescents. Juvenile delinquency refers to the commission of criminal acts or improper behaviour by an individual who is younger than 18 years of age. At this time, the escalating incidence of juvenile delinquency has sparked a nationwide discourse regarding the necessity of amending the age determination criteria outlined in the JJ Act. Age determination is a critical component in assessing the alleged juvenile's level of maturity.

Moreover, the escalating incidence of criminal activities has prompted inquiries into the appropriateness of treating juveniles

as adult offenders. The JJ Act is the appropriate response to this inquiry. In accordance with the definition of a “child in conflict with the law,” juvenile offenders charged under subsection 13 of section 2 of the JJ Act should be remanded to a rehabilitation centre or child care facility until they reach the age of 21, at which point they may be transferred to a correctional facility. Therefore, it can be definitively stated that the current JJ Act considers the age determination factor when determining whether the accused's trial falls within the jurisdiction of the Juvenile Justice Act.

The JJ Act establishes a maximum penalty period of three years that may be imposed on juvenile offenders, and this provision remains applicable even to the most egregious offences. In cases involving adult offenders, the penalty escalates to seven years in prison, life in prison, or the death penalty. However, this Act emphasises juvenile reformation rather than merely punishment. Adolescents who fail to reformate are relegated to vocational programmes, rehabilitation centres, or institutions operated by non-governmental organisations (NGOs).²⁰

Nevertheless, the author thought that, given the present situation, harsh penalties should be developed regardless of age since they fit the situation. The age determination element prevents the criminal from avoiding punishment even in cases of a grave offense like rape. Other teenagers and young offenders are changing their mindset in line with the JJ Act. Under the banner of reformation, they are looking at this JJ Act's current age determining clause as a means of escape from penalty. Moreover, it influences the social behaviour of modern young people negatively. This reformative law gives young people a chance to use it for illegal behaviour free from fear of heavy penalties. Therefore, even if the reformation idea is good, it is not relevant to every young criminal.

²⁰ Ved Kumari “Current Issues in Juvenile Justice in India” 41, J I L I (1999).

Furthermore, the author contends that the JJ Act should include clauses allowing more fair approaches of adjudication for the victims even if it is meant to carry reformatory measures for criminals. Stated another, the reformatory law of the JJ Act is only focused on criminals and was not developed with the victim in mind.

Following the young law system, the Indian court finds that offenders should be housed in correctional facilities for reformation and rehabilitation instead of being labelled “criminals.” Still, it is hard to say for sure they won't show any kind of antisocial behaviour going forward. In this case, the author wants to underline that instead of penalizing, reformation is now the focus of attention. It is evident that punishing offenders is a more efficient kind of punishment than both reformation and incarceration; so, young people will come to terms with the transgression they have done, which could finally help to lower the prevalence of young crimes.

Separate housing arrangements should be made for juveniles and the impoverished and destitute. Furthermore, their design should not resemble that of prisons. The Board should conduct unannounced visits to facilities that house special needs, juveniles, and observations. The researcher proposes that senior citizens or residents of senior living facilities be engaged in the care and nurturing of these children. It is imperative that children residing in special residences attend school until they reach the age of 14. It is imperative that juveniles be furnished with optimal and fundamental amenities, as well as alternative opportunities such as boarding institutions. It is recommended that they enrol in courses on moral science and civics. Additionally, they should be permitted to take vacations during their examination periods so that they may resume their academic pursuits once they are discharged from the observation homes. Additionally, it is advisable that they enrol in the personality development courses. The provision of sponsorships to esteemed institutions for the education of juveniles is

recommended. It is advisable to arrange games, athletics, and other physical programmes specifically designed to foster social connections between the juveniles and other children in the community.²¹ Additionally, programmes commemorating auspicious occasions may be orchestrated for children residing in correctional facilities and observation homes, thereby fostering the preservation of their cultural affiliations. Section 41 may be applied to the administration of the adoption system in order to prevent conflicts. Under the JJ Act, the researcher of this thesis argues that the property right of the adopted child should be incorporated into the adoption law.

CONCLUSION AND SUGGESTIONS

The Indian Constitution's Criminal System includes the JJ System. The JJ system's protective stance and normal criminal case processing methods are constantly at odds when dealing with juvenile offences.

Thus, Supreme Court Judge Madan B Lokur said that the JJ Act is complex and needs further debate. Justice Lokur said “Sentencing is a very complicated affair in the adult criminal justice system in deciding whether a person has to be sentenced to death or given life imprisonment or the quantum of years as punishment. It has been made more complicated under the new Juvenile Justice Act. As also stated by Justice Lokur the provision of assessment of whether a child should be tried as an adult. It is necessary to be discussed thoroughly and threadbare since it will have long-term implications.”“If we put a child who does not deserve to be sent to the adult criminal justice system, he will be in great trouble,”²²

The Supreme Court and Bombay High Court JJ committee held a discussion session on juvenile rehabilitation and restoration.

²¹ Ved Kumari, Quagmire of Age Issues Under the Juvenile Justice Act: From Inclusion to Exclusion, JILI, Vol. 51, April-June 2009.

²² <https://indianexpress.com/article/india/india-news-india/amended-jj-act-complicated-needs-discussion-sc-judge-m-b-lokur/>

Other guests were Maharashtra Ministry for Women and Child Development and UNICEF. The newest JJ Act change last year replaced the prior legislation requiring obligatory trial of under-18 offenders. However, the new legislation requires mental and physical evaluations for minors under 18 and over 16 years old committing heinous crimes. This provision allows the Board to punish the juvenile with reassessment after turning 21 years old or to the observation home for reformation or monitoring. Reassessment after turning 21 years old, may result in jail, thus it should be done by an experienced psychologist or social worker. Due to the paucity of rural expertise, several campaigners have complained.²³

The Act was enacted in the last Parliament session, but the rule book may take three to four months to write. The regulations will include several women and child development ministry ideas. The juvenile rehabilitation progress since the first regional consultation in Delhi last year was assessed. Maharashtra effectively developed district-level child welfare committees and JJ Boards. Child-friendly proceedings, infrastructure repair, and juvenile case reduction are still needed. As the JJ Act has not addressed child abuse and delinquency, its provisions do not fully help children. State inequalities and irritants also impact national Act uniformity. The Act established organisations for juvenile custodial investigations, adjudication, trial, and therapy. However, failure to do so may hinder the Act's effectiveness. The modified legislation may be ineffectual due to a lack of on-field teaching programmes and training for root-level officials and funding constraints in rural institutions.

Most Indian government agencies are special and observation houses. Even if the law says otherwise, children in dispute with

²³ Shrinivas Gupta, "Rights of the Child: International Recognition and Protection", Mahila Vidhi Bharti, Research Quaterly Law Journal, Vidhi Bharti Parishad, Delhi, Oct.-Dec. 1996

the law and children under care and protection are often placed together.

Most exceptional Indian houses have decaying infrastructure. Poor hygiene is evident here. Basic bathroom and cleaning facilities are poor. Subpar food and clothes are supplied. Most special or observation houses have 12–20 youngsters per room. Overcrowding makes tiny spaces seem crowded. The crowded confines and lack of privacy produce aggravation and frustration since someone is constantly nearby to cause trouble. In overcrowded areas, petty disputes can become violent. Special Indian dwellings require quick renovations. Counselling must be required. Staff must be frequently trained since they are often overworked and stressed. Fund misappropriation also occurs. Regular inspection and monitoring are needed. The juvenile justice system aims to improve children's lives, education, and social integration. This goal will not be realised without sufficient actions to improve education, counselling and therapeutic treatments, health and hygiene, vocational training, and extracurricular activities. We must critically evaluate our behaviours and ask: is our system encouraging children to become the version of themselves we don't want them to be? The lack of infrastructure and skilled workers has compromised the legislation's principal goal. As the Child Welfare Committees and JJ Board are not fully active, many cases have piled up, delaying justice for victims and innocent accused. Juvenile criminality has increased due to improper law enforcement.²⁴

The way authorities treat young cases helps to explain the increase in young crime. When handling youngsters, the police have shown quite naive knowledge of the Act's procedures. This Act aims to reunite minor criminals with their families and reform them. It so requires a thorough network of post-offense therapy and rehabilitation. Still, the JJ Act does not have any

²⁴B.B. Pandey, "Rethinking Juvenile Justice: Arnit Das Style", (2000) 6 SCC (Jour) 1.

preventative clauses. Rising without a solution is juvenile crime.

The JJ Act has to be followed with public surveillance and professional and law enforcement focus if we are to properly lower delinquency. UN approved policies and their application for juveniles deprived of liberty, 1990. Talk about young legal clauses and if they call for changes. Review young needs and wants often. Police agents and young probationary programs should be reformatory rather than only punitive. The JJ System that we use now stresses rehabilitation above punishment. The JJ System guarantees procedures are handled among parents of children and members of boards. Unlike adult courts, they preserve private case reports and records.