

Transparency: A Myth Within The Juvenile Justice System?

Introduction:

It can well be agreed that transparency and accountability are the cornerstones of any public system. Many governmental systems are becoming increasingly more transparent, but multiple criminal entities remain firm in their belief that the public need not see the workings of their respective departments. And within this sphere, my focus lies on the Juvenile Justice System. Transparency is one of the most essential part of the justice system. Public scrutiny is very often an important prerequisite for challenging and changing harmful practices. The major problem is that the officials who have become accustomed to operating without accountability do not want to relinquish the power that comes from carrying on their duties without public scrutiny. The other issue is, to what extent do we protect juvenile delinquents on the pretext of immaturity, gullibility or sheer mistakes. This question arose in the heart of every Indian upon hearing about the Nirbhaya Case, which took place on 12th of December, 2012, in Delhi.

This paper is divided into two parts, dealing with two pressing issues with respect to the juvenile justice system in India, namely:

1. Treatment given to juvenile delinquents and the Juvenile Justice Act, 2000.
2. The rehabilitation process

The juveniles who are referred to the juvenile justice system are classified into two basic categories: offenders and non-offenders. Offenders are those who have broken the law, while non-offenders come to the attention of the system because they are socially handicapped, or uncontrollable, or because they have been victimised.¹ But in India, the stark difference between the two is sometimes lost. The delinquents are sometimes mixed with those in need of care and protection and as a result, neither gain any benefits from the system. Also, in an ideal system, the children who are sent to protection homes are sent there with the motive to be educated and taught the basic skills to lead an honest life. But that is what ought to happen

¹ Galan M Janeksela, International Review of Modern Sociology, Vol. 21, No. 1 (Spring 1991), pp. 1-19.

in a utopian world. In case of juvenile offences, the process is supposed to be such that the offenders are apprehended either by a probation officer or by a police officer and brought before the juvenile court within 24 hours. An apprehended child is detained for safe custody for a period of upto twenty four hours for his safety. As soon as it is possible, the child is brought before the Juvenile Justice Board. The Court then registers the case and appoints a Probation Officer who is to give an assessment report on a specified date on which the hearing would be fixed. Until then, the juvenile is either detained or released on bail. "Any delay on the part of any of the personnel involved, whether police, probation officer, medical officer, or mental health specialist, can mean postponement of disposition and unnecessary prolongation of the juvenile's remand stay".²

The Juvenile Justice (Care and Protection of Children) Act, 2000:

Herein after, the Juvenile Justice (Care and Protection of Children) Act will be referred to as the "Act". All children, irrespective of their age are affected by the decisions that the adult world takes for them. Hence the legislations enacted by the parliament are of utmost importance. In 2000, Parliament enacted the Act as it found it "expedient to reenact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, 1989 (*hereinafter* CRC), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments."³

In early July, the Supreme Court opined that implementation of the Juvenile Justice Act had been pathetic. Only three states and one union territory had implemented the Act in full. All children in need of protection or in conflict with the law come under the Act cover and the legislation too contains elaborately described mechanisms. But as child rights activists have been pointing out for some time now, the law looks good only on paper.⁴ Most states have their own Children's Act and hence, the ambit of the Act is not as wide as it ought to have been.

²Gokhale and Sohani, *Child in India*, (1979) Bombay: Samaiya Publishers, pp. 167.

³Opening statement of the Juvenile Justice Act, 2000.

⁴Economic and Political Weekly, Vol. 45, No. 32 (AUGUST 7-13, 2010), p. 8.

The first Act was implemented in 1986, and since then, the juvenile justice system in India has increased manifolds. Till the Act 2011, the age for punishment of heinous crimes was 18. But in June 2016, the new Rules were put up for deliberations in which there was a new provision that decreased the age for conviction for heinous crimes to 16.⁵ That brings us back to the main crux of several nationwide debates, is a child of 16 mature enough to bear the liability of his act? Section 15 of the Act 2015, lays down the the procedure for apprehending a child for heinous offences. This provision again provides for opaqueness in procedures by the various government bodies involved. The assessment spoken about above does not lay down provisions as to who will constitute the assessment committee. That leaves a large scope for arbitrary decisions which ultimately leads to scope for injustice towards the juveniles involved.

The Pressing Issue Of Police Abuse:

The most daunting issue with respect to lack of transparency and accountability in the juvenile justice system is the way the police handle the juvenile delinquents, most often, being the reason for them to turn into hardened criminals. The JJ Act, 2000, does not provide for direct accountability of the police anywhere in the Act. United States, police are frequently faulted as a weak link in the juvenile justice system. This criticism focuses on the misuse or abuse of discretion by individual officers, which ultimately leads to a substantial number of children coming into contact with the system who should not otherwise be there.⁶

The same criticism applies in India, where police are funnelling children into a system that is already overworked and under-resourced. Further, they are doing so in a system where false arrests and physical abuse by the police have become a common feature of a child's interaction with law enforcement officials. This creates within the mind of the child, a hatred towards the police, and further leads to a sheer disrespect towards the Law. The police possess a large degree of discretion with respect to juvenile offenders. But they often don't utilise that discretion fairly. The compassion that should be shown in some cases, isn't shown

⁵Section 15, Juvenile Justice (Care and Protection of Children) Act, 2015.

⁶Larry J. Siegel, Brandon C Welsh & Joseph J. Senna, Juvenile Delinquency: Theory, Practice and Law, (9th ed. 2006).

and as a result, children who don't deserve to be in the system get thrown into it. That does more harm than good, as there is always a high chance that these children, who did not have any criminal intention, gather so much hatred towards the system that they become criminals as a result.

False arrests are a common occurrence. When false cases are brought before the JJB, there are no actions against those who fabricate them. For instance, in May 2007 in Bangalore, a boy was released on bail, only to be brought back on a new charge the next day. The staff within the Observation Home conducted an inquiry, while the juvenile spent one month in the Home. The case was deemed false, and he was released, but no action was taken against the police.⁷“As soon as a juvenile in conflict with the law is apprehended by the police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated police officer who shall immediately report the matter to a member of the Board.”⁸ The police, under section 13 of the JJ Act are also under an obligation to inform the parents of such a child of the crime he is apprehended for. But these are procedures that are just in text.⁹ Thus, the juvenile justice system itself has little intrinsic leverage with which to shape the practices of police officers' interactions with juveniles.

Suggestions To Bring Transparency:

One almost reflexive response to police abuses is a move to limit police discretion. For example, in response to abuses perpetrated by police, many groups in the U.S. have advocated for limited police discretion in order to reduce the number of juveniles who are apprehended for minor incidents and to ensure that certain racial or socioeconomic groups are not disproportionately targeted by law enforcement officials.¹⁰

This limit can only be put in effect by increasing the paperwork that a police official will have to undergo every time a juvenile delinquent is apprehended for a non serious offence,

⁷ Erika Rickard; Jason M. Szanyi, Bringing Justice to India's Children: Three Reforms to Bridge Practices with Promises in India's Juvenile Justice System, 14 U.C. Davis J. Juv. L. & Pol'y 107 (2010).

⁸ Ministry of Women and Child Development, Government of India, “Building a Protective Environment for Children.” (Published in 2006).

⁹ Supra at 7.

¹⁰ William J. Flynn & Brian McDonough, Police Work With Juveniles: Discretion, Model Programs, and School Police Resource Officers, in JUVENILE JUSTICE SOURCEBOOK: PAST, PRESENT, AND FUTURE 200 (Albert R. Roberts, ed. 2004).

that is to say, the official must maintain his own record of his interaction with the child and maintain his own personal file for such cases.

Other suggestions are that the police should undergo special training with respect to dealing with juveniles and it should be made a mandatory part in the initial training process.

Designating special officers with respect to juvenile justice cases would be ideal but owing to the population of India, that would not be a feasible alternative.

How Much Is Too Much?

While I am very sympathetic towards the plight of the juveniles in our justice system, a pressing issue is when to stop. At what point does innocence end and malice begin? The Indian Penal Code, under sections 82, and 83 have specified in the broadest way, the establishment of innocence in a child. Section 82 talks about presumption of innocence of a child under seven years of age. While Section 83 talks about act of a child above seven but below twelve of immature understanding. Within these age limits, the maxim of *doli incapax* applies. At such a tender age, it can be proved that the child did not realise the gravity of an act. But the grey area starts mostly from the time the child has hit puberty. In today's day and age, when awareness is high and young children of impressionable age, of as young as 7-8 year olds know what is sexual intercourse, they have boyfriends and girlfriends. The youngest father in India is as young as 12 years old¹¹. Thus the exceptions provided under the Indian Penal Code are no longer applicable to the children of this generation. A 13 year old who has committed rape, a crime that needs full intention and maturity of the mind to commit, should be protected from the system and given a clean slate once he turns 18 years of age?

Thus my next question looms on the topic of sealing of files and trying of such juveniles by the Juvenile Justice Board. As per the reports of the National Crime Records Bureau (NCRB) entitled "Crime in India 2011" and "Crime in India 2012," the percentage of crimes committed by juveniles as compared to total crimes has not significantly increased from

¹¹ Available at <https://www.Indiatimes.com/nes/india/12-year-old-booked-for-impregnating-a-17-year-old-becomes-the-youngest-father-in-india-274042.html>. Accessed on 28th July, 2018.

2001-2012.¹² According to the NCRB statistics, India is not in the throes of a general crime wave by juveniles. However, the NCRB statistics relating to violent crimes by juveniles against women are very troubling. “Crime in India 2011” suggests the number of rapes committed by juveniles has more than doubled over the past decade from 399 rapes in 2001 to 858 rapes in 2010. “Crime in India 2012” records that the total number of rapes committed by juveniles more than doubled from 485 in 2002 to 1149 in 2011.¹³

As the data suggests, between 2011 and 2012 alone, there was a massive increase in instances of rape by juveniles by nearly 300, which is almost as much as the increase in such cases over the entire previous decade. This increase alone goes to show what a pressing issue this has started to become.

This issue and the seriousness of treating certain juveniles as adults came in the wake of the “Nirbhaya Case”, where the person who inserted a rod inside that innocent woman and pulled her intestines out, brutalised her the most, cleaned up his act and then made tea, went on to show that he had the mental element, or mens rea required to commit the crime of such a heinous nature. Yet, owing to his age, he was put in a read home for 3 months and then was let out again, a threat to the entire society.

The amendment that was made to section 15 of the JJ act after the Nirbhaya case, where based on the circumstances of the case, a child between the age of 16-18 can be tried as an adult depending on the heinousness of the crime is still not sufficient. The purpose of the JJ Act was to incorporate into domestic law India’s obligations under international law as a signatory of the U.N. Convention on the Rights of the Child of 1989, the U.N. Standard Minimum Rules for Administration of Juvenile Justice (1985) (known as the “Beijing Rules”) and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990). The basic principle that underlies all these conventions is that a child is unable to make a decision on his own and is unable to form mens rea of any kind. They still have the chance to be rehabilitated. The maximum sentence that a Juvenile gets under the JJ Act is 3 years in a remand home.

¹² Available at: <https://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>, Accessed on: 25th July 2018.

¹³ Id.

With the increase in violent crimes committed by juveniles, there is an urgent need to change our approach towards the laws pertaining to the same. Several other countries such as the U.S. and the U.K., which are both signatories to the U.N. Convention, have also faced an increase in violent crimes by juveniles but, unlike India, they have taken action to amend their laws.

Approach Followed In US:

Due to the increase in violent crimes committed by juveniles in the 1990s, U.S. States have adopted a “get tough” approach in response. In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court. A certification hearing takes place and an adult court prosecutor is required to convince the adult court that the case should be transferred.¹⁴ The juvenile is entitled to an attorney at the hearing and to present any evidence which mitigates against the transfer. For example¹⁵, in Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. California’s Proposition 21 which was passed in 2000 allows prosecutors to automatically try juveniles who commit felonies as adults. Under Michigan’s Juvenile Waiver Law passed in 1997, juveniles can automatically be tried as adults.

Approach Followed In UK:

Similarly, in the U.K., persons under 18 are tried by a “Youth Court” which is a special type of magistrate’s court for those aged 10-18 years. The Youth Court can issue community sentences, behavioural programmes, reparation orders, youth detention and rehabilitation programmes which last three years. However, for serious crimes like murder or rape, the case starts in Youth Court but is transferred to a Crown Court which is the same as a Sessions Court. The Crown Court can sentence the child for offences of murder committed when the

¹⁴ Melissa Cashdollar; Joy Park; Anthony Plaid; Alison L. Stankus, *Advocating for a Shift in Perspective: An Assessment of the Indian Juvenile Justice System Utilizing the United Nations Measurement of Juvenile Justice Indicators*, 27 *Child. Legal Rts. J.* 1(2007).

¹⁵Id.

offender was a youth as well as for “grave crimes” including sexual assault and sentence the child to “indeterminate detention for public protection.”¹⁶

Thus this brings me to my main contention which is that should a juvenile who has committed a heinous crime be given a clean slate upon attaining majority, irrespective of the nature of the crime? My answer to that is no. Taking responsibility is what the child should be taught, and thus, those children who can commit offences like rape do not deserve a clean slate because they do not fall within the essence of the legislations, which is protection of innocence. It is based on the maxim ‘doli incapax’.

The laws with respect to juvenile delinquents who have committed heinous crimes need to be made more stringent as the need for this is very high. Unfortunately, the current system serves neither the purpose of rehabilitation nor deterrence against future crime. As reported by *India Today*¹⁷, there are 815 remand homes in India with a capacity of 35,000. However, there are 1.7 million juvenile accused in India. Remand homes in India are not conducive to the reform and rehabilitation of juveniles as envisioned by the principles enshrined in international law. While rehabilitation is certainly an important legal and societal objective, this interest surely has to be balanced with creating a legal deterrent to protect women and girls from the increasing incidence of rapes by juveniles. Particularly in view of the significant increase in rapes committed by juveniles since the JJ Act was passed, India should consider amendment of the Act once again to transfer certain violent crimes such as murder and rape committed by juveniles, not restricting to the current law which limits the age from 16 and above. This needs to be broadened to include juveniles who have attained puberty to be tried as adults in the rarest of rare cases, depending upon the age, as well as the circumstances of the case. Rape cases must be dealt with in the utmost stringent manner.

Conclusion:

Thus in conclusion, there are two hinderances to having a transparent and efficient criminal justice system, especially with respect to the Juvenile Justice system. The first being the arbitrary power that the police have been given and the lack of accountability within the

¹⁶ Gauri Pillai; Shrikrishna Upadhyay, Juvenile Maturity and Heinous Crimes: A Re-Look at Juvenile Justice Policy in India, 10 NUJS L. Rev. 49 (2017).

¹⁷ Available at: <https://indiatoday.in/magazine/cover-story/story/20130121-delhi-remand-home-a-hell-home-for-juvenile-boys-761398-1999-11-30>. Accessed on 28th July, 2018.

Police for apprehension of juvenile delinquents, and the second is the clause of 'doli incapax' that the entire Act is based on. The age restrictions should also be reduced as children in the current age are far more mature and the increasing incidence of rapes committed by children as young as 13 years of age is truly disturbing.

In a country as vast as India, administration of justice becomes a very difficult task. But that is not the excuse that one can use to justify not doing their jobs. The psychological aspect of the issue regarding juvenile delinquents must also be taken into account, but giving a 15 year old who committed rape a clean slate and just sending him to a remand home for 3 months is not sufficient. The current laws are neither deterrent, reformatory nor punitive in nature. The need of the hour is stricter laws and stricter implementation of those laws.