

# The Malediction of Juvenile Delinquency

Priyanka Nair<sup>1</sup>&Vishnup Rasad J<sup>2</sup>

## Abstract

‘Delinquency’ is the conduct that is out of accord with normal behaviour or social law. When these behavioural actions are harmful and beyond parental control, individuals below certain age are subject to legal action, this is called as juvenile delinquency. Since 18<sup>th</sup> Century, there has been a distinct amelioration movement towards the wellbeing of a child. The wordings and terms used in dealing with juvenile cases were different in comparison with crimes conducted by an adult. A juvenile is not arrested but ‘taken into custody’ and not sentenced but ‘committed’. Delinquent tendencies arise in some children even prior to their adolescence. During early childhood, it becomes difficult to differentiate the infractions of the behaviour and the problematic behaviour symptomizing the problem.

Major reasons behind juvenile misdemeanour include illiteracy among children and parent’s lack of awareness. In 2014, out of the total juveniles apprehended in various crimes, 10530 were illiterate and 15004 had only primary level education. These categories accounted for 52.9% of the total apprehended individuals. Unlike popular belief of homeless children committing more crimes, they added up to just 3.4% only. Children living with parents accounted for 80.2% of the total apprehended individuals. This paper discusses juvenile misbehaviour impact on the society at a macro-level and the condition of Indian Juvenile Justice System in comparison with developed countries of the world.

---

<sup>1</sup>Student, Kerala Law Academy, Trivandrum, Kerala.

<sup>2</sup>Student, Kerala Law Academy, Trivandrum, Kerala.

## **Introduction**

“When the students are occupied, they’re not juvenile delinquents. I believe that education is a capital investment.” - Arlen Specter, former United States Senator

The word delinquency is derived from the Latin term ‘delinquere’ which means to fail, offend or to commit wrongdoings. The term was in vague usage referring to someone who failed to perform their duties. William Coxson, in the 15<sup>th</sup> Century used the term to denote a person found guilty of an offence. However, the term ‘Juvenile Delinquency’ was used by the penologists to refer to a variety of disapproved behaviours of children and adolescent aged individuals. These behaviours included begging, vagrancy, loitering, pilferage, truancy etc. Punishment or admonition was administered to correct such juveniles in order to protect public interest.

The definition by Pennsylvanian Juvenile Court Act on juvenile delinquency is as follows:

“A delinquent child is one who violated any laws of the common wealth ordinance of the city, a child who by reasons of being way-ward or habitually disobedient uncontrolled by his parents, guardian, custodian or legal representative, a child who is habitually truant from school or home or child who habitually so departs himself to injury or endanger the moral or health of himself or others.”

The definition of Juvenile delinquency is ‘any act prohibited by law for children up to a prescribed age limit.’

According to Juvenile Justice Act, 1986 a delinquent juvenile is an individual who has been found to have committed an offence [Section 2(c)]. It further defines that ‘juvenile’ means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years.

According to New Mexico definition, a delinquent child is one ‘who, by habitually refusing to obey the reasonable and lawful commands of his parents or other persons of lawful authority, is deemed to be habitually uncontrolled, habitually disobedient or habitually wayward, or who habitually is a truant from home or school or who habitually so departs himself as to injure or endanger the morals, health or welfare of himself or other.’

Prior to their adolescent age, some children develop delinquent tendencies. Studies shows children who commit misdemeanours before the age of 10 years generally continue to do so into adulthood but those who start their delinquent behaviour after the age of 14 years are more likely to abandon their criminality. In early childhood it becomes difficult to differentiate between the infractions of the individual’s behaviour and the problematic behaviour symptomizing the

problem. Thus incidents of stealing from sibling's coin bank to running away from home, truancy from the school to low level of study achievement, masturbation, temper tantrums, smashing windows of house, etc. are such behaviours. The less the age of the child the more it is difficult to differentiate between two kinds of behaviour. When the child comes out to the world from his home, he forms friendships and is introduced to a new company. At this stage, it is hard to differentiate between the behaviour leading to gang or group formation and companion delinquency by the child when patterns become indistinct from behaviour and misconduct.

### **Causes of juvenile delinquency**

The legal maturity age according to the Indian Majority Act, 1875 has been fixed to completion of 18 years and not before. According to the Indian Penal Code, any act committed by a child below the age of seven is not an offence. Juvenile delinquency arises due to numerous situations and living conditions. The factors can be categorized. Some reasons include broken homes where children do not get enough love, warmth, affection or security, bad living conditions, lack of recreational activities in homes and neighbourhood, poverty or neglect by parents, working in areas which are congenial to delinquency or undesirable companionship in school or neighbourhood.

Juvenile delinquency is now becoming a global issue and the following factors are involved:

#### **Uncongenial Household**

In some cases, the main factor behind children's misconduct results from uncongenial atmosphere at home. The behaviour of the parents with the child and the parent's behavioural patterns affects the moulding of child psychology from the start. They tend to learn and copy actions from adults or relatives if not looked after. The way the child is nursed is very important throughout his life and not only during the beginning of growth. The families where parents observe virtuous path, the children also tend to become virtuous. The families where the parents indulge in undesirable activities such as use of filthy language, quarrelsome behaviour, drug or alcohol addiction, smoking, gambling, unfair businesses, corrupt work practices creates undesirable impact on the child's mind.

#### **Associational Impact**

When the child starts to move outside his family, he comes in contact with various types and classes of people whose behaviour might affect the child positively or negatively. A child tends to adapt the culture of the group in which he is associated. If he falls in bad company, his

behaviour changes accordingly. If the parents are negligent in keeping discipline with their children, the child may suffer irreparably the whole period of their life. They may develop delinquency which further results in criminality as age matures.

Adolescence time period is when a child forms or joins a gang that attracts his vibes. They get dominated by the gang behaviour and once protection and shelter is provided, he believes in loyalty towards the group during all circumstances without correction and can be the starting point of degeneration of his future life.

### **Adolescence Volatility**

The biological, psychological and sociological factors are important in adolescent behaviour. Puberty or physical immaturity is an important factor. The intolerance against restrictions starts to appear at this age. The child in this age begins to maintain his own identity, fashion sense, dress code, language, food and play. The problems of adolescence are less fluid in the societies because the elders always have their eyes on their children during the transition period i.e. age of adolescence.

The problems become severe when they are not corrected or bad behaviour growth is not chaste. The push and pulls of this age in various directions are responsible for delinquency.

### **Sex Indulgence**

The people who have had sexual experience in their childhood become more tempted to discover more or have severe trauma effects. Homosexuality or heterosexuality becomes dangerous at this stage.

They tend to vagrant behaviour, demand more sexual experiences from the opposite sex. Their craving for sex leads them to do undesirable things. The boys' tries to impress other girls through attraction, richness and wealth; often not finding proper sources to depict the same. There is seen a trend in recent behaviours that resorting to life of crime and theft were in order for higher living standards.

### **Poverty**

Poverty has always been a cause of juvenile delinquency. When children see others enjoying their life with more comfort and better living standards, the discontentment and desire to possess the same standard gives birth to delinquent thoughts. Theft and gambling are generally seen as the starting points. Sometimes, poverty is so acute in the family that the bare minimum requirements are difficult to be achieved through the income of the parents. The children in such

situations develop the tendency to steal things which may further develop into grave criminal activity.

### **Irresistible Impulse**

During the childhood, the impulse is generally not subject to easy self-control. A child may behave in very irresponsible way. He does not understand to avoid the matters of petty issues and therefore he may quarrel on trivial things.

### **Lack of Education**

Educational absence is a contemporary issue which encompasses within itself the capacity to increase the number of juvenile delinquents. In the year 2009, out of the total juvenile apprehended, 80% were illiterate or had education only up to primary level.

The major reason is that many parents are negligent towards the education and having a child for most who belong to lower society and financial strata is just another helping hand for the income of the family. This occurs even after schemes of free education by Government to children below that age of 14 years, which includes their mid-day meal. There has always been a tendency for middle and upper class families to promote higher studies while the lower class tends to fall behind.

### **Common law system and Juvenile Delinquency**

In United Kingdom, the problem of juvenile delinquency is dealt separately from the common English Justice Administration. Therefore the penal reformists adopted a different procedure for handling juvenile offenders. In England, ragged school is known as ‘Ragged Industrial School Movement’. Ragged school means any school used for the gratuitous education of children and young persons of poorest classes without any pecuniary benefit being derived from it. This institution started during the last quarter of nineteenth century. Ms. Mary Carpenter established this school on the basis of legislation enacted for the purpose. This enactment was the result of her persistent efforts. The first school started in 1847 in Bristol and then in Aberdeen. Subsequently in 1879, the British Parliament passed the Summary Jurisdiction Act. This Act provided that a child below the age of seven (subsequently raised to eight) is incapable of committing a crime (*doliincapax*) and therefore cannot be convicted. This Act empowered Magistrates to recommend individualized treatment of juveniles for their reformation. Similar enactments have been passed in other countries.

The international congress on prevention of crime and treatment offenders held in Paris in 1895 had stressed the need of granting discretionary powers to court in dealing with case involving juvenile offenders. As a consequence of this observation, Probation Offenders Act, 1907 was enacted in England. This Act empowered courts to grant release of juvenile in appropriate cases. In the following year of 1908, the Children Act was enacted in England. Under the provisions of this Act independent juvenile courts were established for the first time. These courts differed from ordinary courts.

The procedures of Juvenile Courts were less formal and less formidable. The main duty assigned to this court was to take proper care and protection of the children or young offenders. In 1933, the Children and Young Offenders Act was passed. This Act provided for the summary trials of juveniles. The origins of juvenile courts were started from the appointment of state agents in 1869 in U.S.A. The duty of 'State Agents' was to take protective care of juvenile individuals. In course of time, the function of State Agent was transferred to probation officers. At present there are juvenile courts in every state in U.S.A. The working of these courts is simple and informal. Before trial the probation officer is heard by the court. If there is a violation of any condition of probation, the offender is sent to a certified school or to children homes by the order of the court.

### **Juvenile justice system in India**

The following are the provisions in the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 to deal with juvenile delinquents:

1. As per Section 82 of the Indian Penal Code, 1860, a child below the age of seven years is not capable of committing an offence (doliincapax).
2. As per Section 83 of the Indian Penal Code, 1860, nothing is an offence which is done by a child above the age of seven years and under the age of twelve years who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct (immature intellect).
3. Section 360 of The Code of Criminal Procedure, 1973, when any person who is below the age of 21 years convicted of an offence, is not punishable with death or life imprisonment and if no previous conviction is proved, the court gives regard to age, character and antecedents may order release on probation not exceeding three years on entering into a bond with or without sureties.

4. Section 27 of The Code of Criminal Procedure, 1973, provides that if a person below sixteen years of age commits an offence other than the one punishable with death or life imprisonment may be treated leniently.

With the enactment of Juvenile Justice Act, 1986 the provisions of Section 27 of the Code of Criminal Procedure became obsolete. The Act of 1986 was repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 and thereafter the Juvenile Justice (Care and Protection of Children) Act, 2016 ( 2 of 2016), repealed the Act of 2000.

In comparison with western countries, juvenile delinquency is not a bewildering problem in India. This may be due to the comparatively better parental care and family affiliation provided in the Indian society. However, luxuries and wealth of western civilization have caught attention of modern youth in India. As a result of this, the crimes among juveniles have increased considerably. India seeks to tackle the problem of juvenile delinquency on the basis of the following principles:

1. Therapeutic approach rather than punitive measures should be taken in case of the juvenile delinquents.
2. The juvenile delinquents should be reformed rather than punished.
3. They should be excluded from the jurisdiction of ordinary courts.

A notable feature of Indian law on juvenile delinquency is that of a clear definition. Juvenile Justice Act, 2000 provides for separate procedure for dealing with juveniles in conflict with law. The courts in India do not have jurisdiction in relation to juvenile delinquents. A juvenile who commits an offence is dealt with by juvenile justice board through special procedures. The Children Act, 1960 was passed after the United Nations Declaration of Right of the Child in 1959. The above Act and the UN Declaration were made use of for the passage of Juvenile Justice Act, 1986. Further this act was repealed by the Juvenile Justice Act of 2000. This Act has a special feature. It does not address a child as a juvenile delinquent instead he is called “Juvenile in conflict with law”. The purpose of the change is to avoid the stigma associated in future with the child. The juvenile in conflict with law is handled by the Juvenile Justice Board. The board considers whether delinquency is within the age of 18 years. The relevant date for determining the age is the date of commission of the offence and not the date on which he is brought before the Board.

In *DeokiNandan v. State of Uttar Pradesh*,<sup>3</sup> Supreme Court held that the entry in the school register as to the date of birth is admissible in evidence to show whether the accused is a juvenile or not. In *Sunil &Anr.v. State*,<sup>4</sup> the Madhya Pradesh High Court held that the ossification (the normal process by which bone is formed) test is no conclusive proof of the age of a juvenile individual. In *Dhruvendra Singh v. State of Rajasthan*,<sup>5</sup> the Supreme Court observed that for the purpose of application of Juvenile Justice Act, the court should not depend on the medical report or physical build of the accused for determination of the age but should take into consideration the date of birth as recorded in the school register or any other available evidence. In *Krishna Bhagawan v. State of Bihar*,<sup>6</sup> the full Bench of the High Court observed that the determination of the age of the juvenile for the purpose of his trial under the Juvenile Justice Act, the relevant date is the date on which the offence was committed but the Supreme Court in *Arnit Das v. State of Bihar*,<sup>7</sup> overruled its earlier decision and held that the crucial date to decide the issue as to whether a person is a juvenile is the date when he or she is brought before the competent authority and not the date of commission of the offence.

The Juvenile Justice (Care and Protection of Children) Act, 2015 replaced the existing juvenile delinquency law so that the juveniles in conflict with law in the age group of 16-18 years can be tried as adults. The act came into force from 15<sup>th</sup> January 2016. The Act allows a Juvenile Justice Board which include psychologists and sociologists, to decide whether a juvenile criminal is in the age group of 16-18 should be tried as adults or not. It introduces “Judicial Waiver System” which allows treatment of juveniles, in certain conditions, in the adult criminal justice system and to punish them as adults.

The Act introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in the previous Act. The Act also seeks to make the adoption process of orphaned, abandoned and surrendered children more streamlined. The Act also introduced foster care in India. Families will sign up for foster care and abandoned, orphaned children, or those in conflict with the law will be sent to them. Such families will be monitored and shall receive financial aid from the State. The Act made the registration of all Child Care Institutions mandatory with punishment in case of non-

---

<sup>3</sup>AIR 1959 All 10.

<sup>4</sup>2001 Cri.LJ 1862; 2001 (2) MPHT 102.

<sup>5</sup>2001 (3) WLN 380.

<sup>6</sup>AIR 1989 Pat 217; 1991 (39) BLJR 321; 1991 Cri.LJ 1283.

<sup>7</sup>(2000) 5 SCC 488.

compliance. The Act also gave statutory status to the Central Adoption Resource Authority (CARA) to enable it to perform its functions more effectively.

### **Merits of juveniles (16 - 18 years) being tried as Adults**

1. Giving the lighter punishment or dealing with leniency with an adolescent who has committed an extreme and severe crime just on the basis of age is not practicable acceptable. The adolescent who has committed the crime must have intention just like an adult and considering age as the only factor is unacceptable. Also, giving lighter punishment can send the wrong message that adolescents can get away with certain things, even to the extent of committing murder.
2. No matter the age, individuals are supposed to bear responsibility for their actions and be made to understand and lament the consequences of their bad decisions.
3. If teenagers are not directed towards correct and incorrect behaviour, when they transit into adulthood, they have higher tendency to commit more crimes and become a criminal. In a study, it was found out that 65% of adults who have committed heinous crimes have committed offences of such nature during their adolescent years.
4. Adolescents who are aware that they will be punished for crimes will most likely not commit them. They can be discouraged more from attempting any criminal activity when they find out how similar aged members were punished.

### **De-merits of juveniles (16 – 18 years) being tried as Adults**

1. Adult prisons are places where juveniles can be easily abused and harmed. They can also be exposed to more crime, gang culture and drug usage (which are common in adult correctional facilities), becoming even more hardened criminals.
2. Young offenders could take it as a message that they have no future and no hope of becoming something else other than a criminal. This is damaging to their mind-set and to their families.
3. Parents should teach their children right and wrong and should shoulder some responsibility for the actions of their kids. By sending adolescents to jail, parents are let off the hook.
4. Juvenile courts can recommend counselling, house arrest, curfews, and other forms of punishment rather than giving a jail sentence. In adult courts judges have fewer choices, and sometimes the only option is prison.

## **Treatment of young offenders**

The treatment approach of young offenders could be grouped into two categories: individual method of treatment and group method of treatment. In general psychologists, psychiatrists, sociologists and social workers mainly rely on individual methods of treatment. The sociologists concentrate on social engineering, social structure that leads to delinquency, the cause and effect of criminality. A psychologist treats the individual emphasizing on his interpersonal dynamics.

The following therapies are generally applied:

### **Psychotherapy**

If the relationship between the child and parent or guardian is not satisfactory, then his emotional development may be diminished and destructive. His behaviour may gradually turn anti-social. The therapist treats the person with great understanding towards the situation, reasons for delinquency in an atmosphere of love without fear of being rejected or punished. There is a free exchange of views between them which facilitates solution of conflict in the client provided behaviour adaptation.

### **Reality Therapy**

When a person is unable to fulfil their desires, one may react in an irresponsible manner. The reality therapy delinks the present from the past and the individual is guided to act in a responsible way. Unlike, psychotherapy, the main concern is not the past of the delinquent but with his present behaviour. The child is treated and expected to obey rules and his past is insignificant.

If not dutiful, they are not rejected. Thus it is different from previous therapy; in psychotherapy a person cannot change his present behaviour unless he ties his present behaviour with the past events. Reality therapy disconnects the events of past and concentrates in the present. It can be practised on people from different sectors of life - a police officer, a counsellor, social worker, teacher, family member or friend as there is no extensive testing.

### **Behaviour Therapy**

This means bringing change in behaviour of the delinquent individual by positive or negative reinforcements. In active reinforcements an individual increases positive behaviour. Hence, aspects of positive reinforcements have to be determined and found to be successful. The negative reinforcements, also known as unpleasant reinforcements reduce and eliminate negative behaviour.

### **Milieu or Environment Therapy**

This therapy is helpful to those children who became behaviourally deviants as a reaction to unfavourable conditions of life. There is an attempt to provide a pleasant atmosphere in which he can satisfactorily adjust himself and facilitate meaningful changes.

### **Individual Counselling**

In individual counselling, the client is re-educated to understand his immediate situation for solving his problem. There is no attempt to make fundamental changes in the personality of the client. There are child guidance clinics to fulfil this type of purposes.

### **Conclusion**

Out of total number of juveniles apprehended, 10,530 were found to be illiterate and 15,004 had only primary level education. These categories accounted for 52.9% of the total juveniles apprehended during the year 2014. A major reason for juvenile delinquency is illiteracy among children. Although government provides free education below the age of 14 years, they should bring new systems to ensure this facility is used by members of the society. The responsibility also lies with the parents to make sure that their kids are attending school regularly and not befriending unwanted companionships. Schools should regularly conduct workshops enlightening children on the consequences of crime and guide them to recognize right and wrong.

Parents should have active participation in the upbringing of a child and also be vigilant towards any criminal tendency or juvenile delinquent behaviour. A counselling and therapy session greatly helps a traumatised child and their behaviour. As the saying “A tree with strong roots can handle storms”. Once children are taught and counselled at the very beginning of their behavioural problems, the lessons tend to stay with them for lifetime. More importantly, love a child. Loving a child doesn't mean giving in to all their whims, but to love them with sincerity and care and mould better life for themselves and citizen of the future.