

Juvenile Justice System in India – Opinions & Reality

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Juvenile delinquency or the Juvenile Justice System (JJ System) in India can be traced back to a differential legal process which goes back to the Reformatory School Act 1876, wherein the deviant youth or child could be reformed or brought to book. Like most of the modern justice systems in India, which originate from the Anglo-Saxon or western legal traditions, the JJ system is also borrowed. In fact, the very expression ‘juvenile’ which means a child offender is alien to this country or to the Indian languages which still translate this word as young boy and girl, in hindi ‘Kishor’ or ‘Kishori’, ‘Balak’ or ‘Balika’. Perhaps, it is in fitness of this Indian tradition that the highly progressive law in India, ‘the Juvenile Justice (Care & Protection of Children) Act, 2000’ covers two categories of children i.e. ‘children in need of care & protection’ and ‘juveniles in conflict with law’.

The issues relating to juveniles i.e. child offenders are being widely, albeit emotionally, debated across the country today and, suddenly, the child offender has become the most dangerous and suspected person in the popular imagination. The overwhelming majority of people, even the literate and highly educated amongst them, are equating the JJ system with the Criminal Justice System (CJS) to deal with the juvenile delinquents who are viewed as a threat for the society. It is being completely forgotten that between the child and the law there can be multiple relationships. For a civilized society and considering the provisions of India’s constitution, child-friendly laws, policies and traditions and also our international commitments towards the UN Convention on the Rights of the Child, the first requirement of the law should be to protect and reform the child and not to punish.

A child interfaces with the law either as a victim of crime, of abuse and exploitation or under adversarial circumstances. A child victim has to be given a special treatment like the one already provided under the Commissions for Protection of Child Rights Act, 2009 which constitutes the Children’s Courts. Under the JJ Act, 2000, all categories of ‘Children in Need of Care & Protection’ should be looked after by broadly fulfilling their basic needs and rights for survival, protection, development and participation. Such children, who are estimated to be 30-35 million in the country, could be found without home, family and settled life, street and working children, endangered for variety of reasons, mentally or physically challenged, abused, trafficked, in drugs, crimes and conflict situations etc. Most appropriately, the Indian law-makers appreciated such needs and made the provisions, primarily under the JJ system.

Perhaps, the civil society of India, even today, is not averse to giving all support, love and affection, even legal protection to the children in need, as mentioned above. However, the current crisis of faith in the law originates from the treatment being given to the juvenile delinquent or the ‘juvenile in conflict with law [sec. 2(1) of JJ Act, 2000]’, which describes such a child ‘who is alleged to have committed an offence and has not completed

18 year of age as on the date of commission of such an offence'. In the wake of the December-16, 2012 Delhi gang-rape case, suddenly, some uninformed quarters including the media, described a juvenile - one of the six accused persons as the most 'brutal' amongst them, and created an extremely adverse public opinion that was highly surcharged towards the rape victim who appropriately became the symbol of the nationwide demands for change in law. Although, the highly-appreciated Justice J. S. Verma Committee, the government and the Supreme Court of India did not favour any such legal change against the interest of the child/juvenile, the intense debates are still unabated.

In this background, it is really required for the common man to understand the legal processes which are prevalent today, broadly described as the Juvenile Justice System as provided under the JJ Act. As mentioned, the JJ Act had evolved for nearly 150 years in India to culminate into the national level Children's Act 1960, which was subjected to major changes under the Juvenile Justice Act 1986 and finally re-enacted to become the JJ (Care & Protection of Children) Act 2000/2006. This comprehensive Act creates a complete system of law and justice which practically substitutes the Criminal Justice System and the apparatus to cater to different categories of children and to serve their best interest. The Juvenile Justice Board, equal to a Criminal Court and served by a Judge and two social workers, undertakes the Inquiry and proceedings to pass one of the seven orders, called 'dispositions' – the last one (Sec. 15(g) & 16 of JJ Act) providing for detention of three years to juvenile, which may go upto 21 years of age.

The law provides for other sub-systems and stakeholders, like Child Welfare Committee (CWC), Special Juvenile Police Unit (SJPU), Juvenile/Child Welfare Police Officer, Child Protection Unit, Child Helpline, Juvenile's & Children's Homes & Shelters. This alternative legal system provides an integrated and complementary mechanism with a presumption and strong belief that a child in need and juvenile in conflict could be the same person, as is the case with the juvenile offender in the said horrendous gang-rape. As a child, this boy had to leave his extremely impoverished home at the age of 10 and he kept drifting as a street and working child struggling and earning for survival until the fateful evening when the real 'brutal' gang-leader who owed him Rs.8000, took him away for the ghastly crime which converted him into one of country's most hated villains. Wrongly or rightly, the law intervened and protected him which might give a chance to him, i.e. available to many young adult offenders as well under the Criminal Procedure Code (sec.360) and the Probation of Offenders Act 1958.

On behalf of Prayas, a national level organization operating in nine States/UTs of India directly serving 40-50000 deprived and exploited children, youth and women, the Hon'ble Supreme Court was intervened alongside the government and a verdict came to maintain the age of child/juvenile as 18 years and, so far, the law remains unchanged. Before we plunge to bring about any major changes in this law we must know that the Indian children are among the least criminal and aggressive when compared to their counterparts globally. The much talked-about American children committed 129456 crimes in 2011 as against 33887 crimes committed by the Indian children, which is less than 2% of the overall crimes while the children account for 42% of India's extremely deprived and poor population afflicted by endless conflicts and crises.