



## JUVENILE JUSTICE: PUNITIVE OR REFORMATIVE

**AUTHOR** – HIBA IRFAN KHAN, STUDENT AT FACULTY OF LAW, ALIGARH MUSLIM UNIVERSITY

**Best Citation** – HIBA IRFAN KHAN, JUVENILE JUSTICE: PUNITIVE OR REFORMATIVE, *ILE LEGAL REVIEW (ILE LR)*, 1 (1) of 2023, Pg. 33-36, APIS – 3920 – 0042 | ISBN – 978-81-964391-3-2.

### ABSTRACT

*It has been a topic of intense debate and scrutiny among critics that whether the juvenile justice system should adopt a punitive or a reformatory approach. One group suggests to treat the juvenile offenders as adult by emphasizing retribution. On the other hand, rehabilitation and reformatory ideas have been proposed. This article critically examines the two contrasting perspectives, assessing the development of the juvenile justice system, including the recent amendment in the laws. Since, a child is deemed to be an asset of the nation, this article highlights the individualized assessment and intervention plans, tailored to the unique circumstances and needs of each juvenile offender with the focus on the importance of balance between punishment, rehabilitation, and societal protection by using evidence-based practices and multidisciplinary approach. This article contributes to the ongoing discourse in the juvenile justice system, acknowledges the complexity in the juvenile delinquency and addresses the underlying factors contributing to it. By promoting a system that prioritizes rehabilitation by ensuring accountability, society can efficiently support the development as well as the well-being of the juvenile offenders, leading to a safer and just nation.*

**Key words:** Juvenile, Punitive approach, Reformatory approach, Parens Patriae, Juvenile Justice (Care and Protection of Children) Act 2015

### I. INTRODUCTION

Crime is a multidimensional problem which is so complex in nature that it affects not only the offender but leads to uneasiness among the masses at large and is on increase throughout the world. Juvenile delinquency is a negative behavior of children which might result in crime and legal actions. Crime has been an area of concern and its definition does not differentiate the wrongdoers based on their age groups, i.e., the adult or the juvenile. The commission of a criminal act does not make distinction between the two but the procedure of trial does. Crime itself is same in both the cases, but juveniles enjoy special constitutional rights than adults, protected under Article 15(3) of the Indian Constitution, that are taken into consideration while adjudicating. Etymologically, juvenile is a person, possessing the characteristics of a child, fails to observe the norms of the society. The age at which a person is deemed an adult

matter in different countries' youth justice system. The causes behind juvenile crimes are vast and are covered under contemporary issues. The laws, reformatory in nature is made to help those juveniles to reconnect with the society and put their best in the development of the nation, but what happens in some cases is the misuse of this liberty and juveniles because of their age factor sometimes take advantage of it which ultimately creates the position of injustice which is not at all acceptable. Therefore, it becomes the duty of the legislature to make more justifiable laws so that a balanced system could be created regarding the juvenile justice system.

### II. UNDERSTANDING JUVENILE JUSTICE

#### A. Meaning of Juvenile

For understanding the juvenile justice system, it is important to investigate the fuller meaning of 'juvenile' in the context of law. Since, the juvenile justice system interchangeably uses the words

under: juvenile and minor but they have different implications and context. A minor is a person who is below the age of majority and remove responsibilities or accountability juvenile on the other hand refers to a young criminal not attaining the age of maturity. Although, both the terms somewhat mean the same thing, the former implies a young and the naive whereas juvenile is either immature or a young criminal. In the view of juvenile justice system of India juvenile is a person below the age of 18 who has committed a crime but a minor is not necessarily involved in criminal activities.

### **B. Causes of increase in juvenile delinquency**

The increase in the number of crimes committed by the young children is a complex and need multifaceted approach to address the issue. There are multiple reasons behind the juvenile delinquency starting from the peer pressure, family disputes, lack of education, unavailability of resources and economic disparities. Apart from the social causes, the advancement of technology has also played a role of fuel to the fire in the case of children. Kids of young age have the access of internet which facilitates them to use social media. The young minds try to imitate whatever they find cool on the social media platforms. The irresponsible and busy schedules of the parents in today's competitive world is also a crazy factor of the same.

### **C. Legal Framework**

The legal framework of the juvenile justice system of India has developed over time. It ensures to protection of the rights of the children and providing them with appropriate care and protection. It aims to provide with the legal provisions the welfare all the children by promoting the rehabilitation and reformation ideas in the legislation rather than the punishment. The juvenile justice system in India has gone under several changes which are discussed in the next section of the article.

### **III. EVOLUTION OF LAWS OVER TIME**

The evolution of Indian juvenile justice system has been influenced by the national as well as the international laws developed over the time. There is a drastic change in the nature of laws, governing juveniles in the nation. Post-independence laws did not make any kind of distinction between an adult or a juvenile offender. On the other hand, post-independence era witnessed more liberal as well as reformatory laws enshrined in the Indian constitution in the form of fundamental rights and directive principles of state policy. Children's Act of 1960 focused on the development of the young offenders by ensuring their welfare and education. Superpowers have always made a crucial impact on the laws of the colonial countries whether in the field of exploitation or advancement. The same happened in the development of the legislations of juvenile justice system, America has adopted minimum rules of administration in juvenile justice in Beijing rules, which were later followed by Indian legislature in the form of Juvenile Justice Act of 1986. In the following years, with the enactment of Juvenile Justice Act of 2000, an attempt to follow the guidelines outlined in the United Nations Convention, concerning the rehabilitation of minors.

The principle of *Doli incapax* states that a child does not have capacity to form criminal intention as he is not as mature as an adult, does not possess cognitive skills and rational thinking, hence, unable to understand the possible consequences of his acts and cannot be made liable for the acts which are illegal in nature. Due to the mentioned reason, we might see the reformatory attitude in the juvenile justice system, but, after the Nirbhaya case (Delhi rape and murder case) 2012, the position of the laws changed due to the increase number of children involving in heinous crimes and a punitive approach was required to be adopted for dealing with the situation. Then enacted Juvenile Justice (Care and Protection of Children) Act of 2015. This law adopted the



principle of *parens patriae* and supported institutionalized care and protection of the children in conflict with the law. Recently, in 2021, The Juvenile Justice (Care and Protection of Children) Amendment Bill was passed in Lok Sabha which seeks to amend the act of 2015 and aims to add provisions like protection and adoption the juvenile offenders by instructing the federal system to make sure the proper functioning in detailed manner.

#### IV. PUNITIVE APPROACH

Preventive theory has always been prevalent over the years. The nature of punitive theory in juvenile justice system is to deter the commission of crime in the future by punishing the young offenders or eliminating them from the society in order to make sure the stability in the society. It is focused on the betterment of the society and not concerned with the welfare or the development of the juvenile. It is a traditional approach with narrower view and absence of analytical analysis of juvenile rights. It is somewhere important to consider the preventive ideas so that the liberty could not be misused.

#### V. REFORMATIVE APPROACH

The theme of reformatory theory in juvenile justice system revolves around the welfare of the young offender. The mental faculties of a young child are not developed and they are not rational in general that's why they involve in the activity which they find attractive. Reformatory theory is a humanistic approach that helps to shape the mind of the juvenile before reaching certain level of maturity and understanding. It includes the practices which are beneficial for the long run. It works on making them a better person without leaving psychological and social scars. Over the past years, reformatory ideas have brought a positive change in the juvenile justice system such as reducing detention, improving conditions of confinement, utilizing evidence based program that reduces recidivism, improving mental health services, etc.

#### VI. COMPARITIVE ANALYSIS

Among the four theories of punishment in the law that are deterrent theory, punitive theory, preventative theory, reformatory theory, only so punitive and reformatory theories are of the concern of this article. Punitive theory in the view of juvenile system refers to as philosophy which means to deter the juvenile crimes. It is based on the principle that the strict punishment can deter the young individuals from committing the crime or indulging in the criminal activities which are harmful for the society as well As for their own benefit. Whereas on the other hand reformatory theory primarily aims to reform and rehabilitate juvenile offenders to help them to become a law-abiding citizen it is based on the idea that the sole concept of punishment should be to help the offender changing their behavior to become a productive member of the society. Reformatory theory basically works on the shaping of the minds of the individual so that they can gain a certain level of maturity and understanding of their acts. Therefore, critics since now number of the conflicting opinion regarding the both theories but development over the time in the laws related to the juvenile justice system clearly witnesses that the Indian legislation is moving towards a more balanced concept that can help the young offenders as well as society in combination.

#### VII. CONCLUSION

Since the juvenile justice system is specially designed to handle the cases involving the young offenders, you have committed crime. The system is totally based on the principle that the young people who have committed crime should be treated differently from adults as their mental capacity and the reasoning power is not as same as an adult and they are still at the stage of developing their mental chambers. Though, both the theories of punishment are meant to protect the children and the society from the evils that are gaining attention in the present time. When the punitive theory talks about the punishment and retribution the reformatory approach focuses on the



rehabilitation of the society. As the time passes reformatory theory or approach has been gaining popularity because it has shown some effective results than the punitive approach which is narrower in nature. Reformatory theory is emphasizing on the education, counseling and other form of helps that are required for becoming a productive member of the society. Juvenile justice system is no doubt an integral part of our society and it is formed to help the young people who have mistaken. To conclude with, in my opinion the pace of the Indian legislation towards the retribution theory is praiseworthy and showing positive results towards the development of the young minds and it should be continued in the future.

#### REFERENCES

- 1) History of juvenile justice system in India, Lawyered, <https://www.lawyered.in/legal-disrupt/articles/history-juvenile-justice-system-india/>, ( last accessed on 15<sup>th</sup> June 2023- 10:15 p.m.)
- 2) Editorial team, Evolution of Juvenile Justice System in Modern India, Prime Legal, <https://primelegal.in/2022/11/19/evolution-of-juvenile-justice-system-in-modern-world/> ( Last Accessed on 13<sup>th</sup> June, 2023 – 12: 30 p.m.)
- 3) Aiswarya Chandran, Rehabilitation in the juvenile justice system, Symbiosis Law School Hyderabad, <https://blog.sls.edu.in/2022/07/07/rehabilitation-in-the-juvenile-justice-system/> ( Last Accessed on 12<sup>th</sup> June, 2023–2:00 p.m.)
- 4) Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1
- 5) National Academy Press, Reforming Juvenile justice: A Developmental Approach(2013) Pg. 241.
- 6) Ivrita Gogua, Juvenile delinquency-Causes, prevention, and ways of Rehabilitation,<https://www.penalreform.org/blog/juvenile-delinquency-causes-prevention-and-the-ways-of/> ( Last Accessed on 12<sup>th</sup> June, 2023- 4:00 p.m.)