

Juvenile Justice System at a Crossroads: Assessing the issues and challenges in the Juvenile Justice Scheme in India

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Abstract: *The Juvenile Justice System in India sits at an important historical juncture. There is mounting concern that the system has strayed from its mission of rehabilitation and reformation and has grossly failed in curbing delinquency among the youth. This has triggered a vocal campaign within the society and intelligentsia for large scale policy reforms. This article analyses the challenges faced by the Juvenile Justice System which is eroding its credibility and tries to find reasonable solutions for them. The article argues that the present Juvenile Justice system in India lacks dynamism and doesn't address prevalent reality with regard to aggravated criminal tendency depicted by the young. The author suggests that a complete change in the orientation of the system may not be the best solution for the issue.*

1. Prologue

Juvenile Justice is that branch of Criminal law which dilutes criminal culpability on the premise that a juvenile is incapable of having a malicious will. The concept of juvenile justice was derived from a belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional processes of criminal law². Every legal system of the world recognises that children and young persons are different from adults and should not be held accountable for their violations of the criminal law in the same manner as adults. However, it is still contestable as to the most appropriate way of dealing with young offenders, and there is much disputation about the most justifiable legal response. Though it is broadly acknowledged that children and young persons have special needs and they require distinct treatment from adults.

The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and developments in the field of prison reforms and juvenile justice.³ Various Acts have been passed since the mid-nineteenth century with regard to the necessity of special treatment and rehabilitation of young offenders. The Apprentice Act, 1850⁴

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² Ved Kumari., The juvenile justice system in India 1 (2 ed. 2010).

³ *Id.* at p.44

⁴ Under this Act both boys and girls were bound as apprentices if they were convicted of petty offences or if found destitute, by trying magistrate.

and The Reformatory Schools Act, 1876⁵ were the initial legislations that were passed for the welfare of juveniles. The Indian Jails Committee, 1919-1920⁶, emphasized separate treatment of children and youthful offenders for their reformation⁷ and the recommendations of the committee led to the enactment of Juvenile laws by different states.

The Government of India enacted The Children Act, 1960 for enforcement in the Union Territories. This Act enshrined the principle that children below a certain age limit should not be dealt with by criminal courts and sent to ordinary prisons. The basic scheme under the Act was to establish juvenile courts for young offenders. With the passing of this Children Act, 1960, other states in India passed their own Children Act⁸. However there were many states which had not established a single juvenile court and the children were being tried in ordinary criminal courts.

In *Sheela Barse v Union of India*⁹, the Supreme Court voiced its concern for a uniform law on this subject and gave its recommendations. In the view of these recommendations, The Juvenile Justice Act, 1986 was passed which aimed to lay down a uniform legal framework in the country by establishing juvenile welfare board and juvenile court. The Act established observation home, juvenile home for neglected juveniles and special homes for delinquent juveniles. The Act provided for a more specialized approach for investigation, prosecution, care, treatment and rehabilitation of the child. The Act classified children as neglected and delinquent with the intention of providing different structures to deal with them¹⁰.

The ratification of the Convention on the Rights of the Child, 1989 by India in 1992 and the changing social attitude towards criminality by children reflected in Supreme Court decisions like *Amrutlal Someshwar Joshi v State of Maharashtra*¹¹, *Ramdeo Chauhan v State of Assam*¹² and *Arnit Das v State of Bihar*¹³ led to the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2000. The Preamble of the Act states that it is an Act to consolidate the law relating to juveniles in conflict with law and the children in need of care and protection, by providing for proper care, protection and treatment by catering to their development need and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their rehabilitation through institutions established under the enactment. There are two distinct categories of children under this Act; “juvenile” for children in conflict with law and “child” for children in need of care and protection. A juvenile who has been found to have committed an offence is defined as a juvenile in conflict with law. The term

⁵ Under the Act Reformatory Institutions were established in some of the States for delinquent boys under 16 years of age in the Bombay province and under 15 years elsewhere. Under this Act no boy over 15 years was to be detained in such an institution.

⁶ S K Bhattacharya, Juvenile Justice System in India, 24 Journal of India Law Institute 608 (1981).

⁷ S. Srinivas Reddy, Juvenile Justice-Not A Child's Play, 156 Andhra Law Times 28 (2008).

⁸ *Supra* note 6

⁹ 1986 SCR (3) 443.

¹⁰ Ved Kumari, Juvenile Justice Act-A Plea for Review, 1 Indian Journal of Criminology & Criminalistics 17 (1996).

¹¹ (1994) 6 SCC 488.

¹² (2000) 7 SCC 455

¹³ (2000) 5 SCC 488

juvenile in conflict with law has been used for removing the stigma attached with the word delinquent and make the law more child friendly. The Act prescribes a uniform age of 18 years for boys and girls to be treated as a juvenile. The Act vouches for the creation of Juvenile justice boards to deal with juveniles in conflict with law and Child Welfare Committee to handle child in need of care and protection. It further mandates for creation of Observation Homes and Special Homes for reception and rehabilitation of juveniles.

The Act categorically declares that a juvenile in conflict with law will be dealt with under this law and not under the normal criminal justice system.¹⁴ It further provides that a juvenile in conflict with law may be released after advice or admonition or released under the care of a parent/guardian/fit person, with or without supervision, or placed with a fit institution.¹⁵

The Juvenile Justice Act, 2000 has been criticized on the ground that it has failed in curbing crimes committed by juveniles. Over the years the society has witnessed flagrant rise in the number of crimes committed by juveniles but the Act has not been able to act as an effective deterrent against juvenile delinquency. A considerable section of the society believes that the Act should be more punitive at least with regard to heinous crimes committed by juveniles. The rationale behind this thinking being that fear of strict punishment would deter juveniles from committing such crimes and would ensure safety of the society.

The Constitutionality of the Juvenile Justice Act, 2000 was challenged before the Supreme Court in *Salil Bali v. Union of India*¹⁶ and *Subramaniam Swamy and Others v. Raju Through Member, Juvenile Justice Board and Another*¹⁷ and a direction was sought declaring the impugned Act as unconstitutional and void to the extent¹⁸ that it puts a blanket ban on the power of the criminal courts to try a juvenile offender for offences committed under Indian Penal Code 1860. On both the occasions the apex court refused to read down the provisions of the statute, the court observed:

*There is no ambiguity, much less any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them. A class of persons is sought to be created who are treated differently. This is being done to further/effectuate the views of the international community which India has shared by being a signatory to the several conventions and treaties already referred to.*¹⁹

¹⁴ Section 10

¹⁵ Section 15

¹⁶ (2013) 7 SCC 705

¹⁷ (2014) 8 SCC 390

¹⁸ Sections 1(4), 2(k), 2(l) and 7 of the Act

¹⁹ *Supra* note 17 at 60

The judicial pronouncement on this issue has triggered a widespread debate *vis-a-vis* balancing the rights of the juveniles and society. The Parliament succumbing to societal pressure has made significant amendments in this direction and The Juvenile Justice (Care and Protection of Children) Bill, 2015 proposes major shift in our Juvenile Justice policy. The Bill permits juveniles between the ages of 16-18 years to be tried as adults for heinous offences. Further, any child between the ages 16-18 years, who commits a serious offence, may be tried as an adult only if he is apprehended after the age of 21 years. The Bill categorizes offences committed by juveniles as: (i) heinous offences (those with minimum punishment of seven years of imprisonment under IPC or any other law), (ii) serious offences (three to seven years of imprisonment), and (iii) petty offences (below three years of imprisonment).²⁰

2. Issues and Challenges in the Juvenile Justice Scheme

The Juvenile Justice Act, 2000 is no doubt a progressive and proactive legislation, its dynamism however, is questionable, inasmuch as various issues have emerged which have overshadowed its impact and implementation. The fact that people below 18 years (constituting 35% of our total population²¹) are depicting increasing criminal tendencies²² indicates that our Juvenile Justice model is not effective and is not able to sufficiently balance the protection of suffering of the public and rehabilitation of young offenders. This necessitates a thorough assessment of the juvenile justice system in order to not only curb juvenile delinquency and further the social integration of the young offender but also to shield the society from criminal tendencies depicted by the young.

The conflict between Section 7A and Rule 12

The first issue that needs consideration is the conflict between Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007 and Section 7A of Juvenile Justice (Care & Protection) Act, 2000. Rule 12 in its literal reading and interpretation, is capable of producing unjust results as it curtails the ambit and scope of section 7A of the Act, which is not permissible in eyes of law. Section 7A which deals with the procedure to be followed for the purpose of determination of age clearly requires a proper inquiry to be conducted, if so required by taking necessary

²⁰Prsindia.org, PRS Legislative Research (2015),

<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.prsindia.org%2Fuploads%2Fmedia%2FJuvenile%2520Justice%2FLegislative%2520Brief%2520Juvenile%2520Justice%2520Bill.pdf> (last visited Aug 3, 2015).

²¹Censusindia.gov.in, Census of India: Provisional Population Totals India: Paper1: Census 2011 (2015), http://censusindia.gov.in/2011-prov-results/prov_results_paper1_india.html (last visited Aug 3, 2015).

²²Indiastat.com, Crime Head-wise Number of Juvenile Delinquency IPC Cases in India (1995, 1998 to 2013) (2015), <http://www.indiastat.com/table/crimeandlaw/6/juveniledelinquency19712013/476305/209017/data.aspx> (last visited Aug 3, 2015).

evidence. On the other hand, Rule 12 lays down a step by step procedure to be followed to determine age of a person to be declared juvenile or not.

Clause (a) of sub-rule (3) of Rule 12, in its literal reading contemplates that the Juvenile Justice Board may seek the matriculation or equivalent certificate as an evidence to determine the age, and in absence of the same the Board may seek for birth certificate from the school first attended and in absence of the same the Board may seek for a birth certificate from a corporation or a municipal authority or a panchayat. Sub-clause (b) of sub-rule (3) reads that “*only in absence of any*” of either of the three certificates as referred in clause (a), the medical opinion from a duly constituted medical board can be sought for.

In other words the magistrate cannot seek medical opinion if any of these certificates are produced, in spite of the fact that in his opinion the certificates are not a reliable piece of evidence nor can he exercise his discretion to call upon the person concerned to furnish better piece of evidence to substantiate his/ her claim of juvenility.

The provisions as they stand would militate with the interest of justice, with object of the Juvenile Justice Act and with mandatory requirement of Section 7A of the Act, which specifically requires that the “*Magistrate shall make an inquiry and shall take such evidence*”.

The importance of resolving this conundrum lies in the fact it may not be safe to give a very literal interpretation to language of this rule in cases where the person claiming juvenility is a border line case as far age is concerned and is alleged to have been involved in a crime of very heinous nature and when the allegation made against such person is of very grave nature.

Similar sanctions for different offences

It is pertinent to note that orders that can be passed against a juvenile are not by means of punishment but for the purpose of his reformation and rehabilitation within the folds of the society. The Juvenile Justice Act has adopted one size fits all kind of sentencing scheme, wherein the board has recourse to same set of sentencing options regardless of the crime committed by the juvenile. Therefore, regardless of the quality of criminal conduct of the juvenile he is subjected to same set of reformatory procedures which are general in nature. The need rather is to understand the cause that triggers criminality in an individual and devise a specialized treatment for him. For this to take shape a clear conception of various theories need to be made which explains existence of criminal tendencies in an individual. A case in point is the **Attachment Theory** in relation to juvenile sex offenders. According to this theory a prominent reason behind sexual offences by juveniles is poor bonding with parents, peer group and society²³. The theory proposes that poor child-parent bond is a major reason behind sexual

²³ Kenneth K. Goodrow & Mee-Gaik Lim, Attachment Theory Applied to Juvenile Sex Offending, 27 Journal of Offender Rehabilitation 149-165 (1998).

offences by juvenile, which can be due to dispute between parents or neglect of the child during his adolescent phase. Therefore, a juvenile sexual offender needs a specialized treatment and not a general order that is made under Section 15 of the Act, otherwise there will be problem of repeat offenders and the society will continue to suffer.

Another theory is the **Social learning theory** which emphasizes the importance of the density of rewards/costs for antisocial behavior versus the rewards/costs for pro social behavior. Offending behavior is more likely among individuals who perceive greater rewards for delinquency than individuals who perceive greater rewards for pro social activities. An individual's learning history and cognitive factors, as well as potential sources of rewards/costs in the immediate situation, influence the rewards and costs anticipated from offending behaviour. Learning history includes previous experiences of rewards and costs for antisocial behaviour *viz-a-viz* rewards and costs for pro-social activities. Observation of the rewards and costs received by other individuals for antisocial behaviours and pro-social activities also forms part of this learning history. Cognitive factors, such as antisocial attitudes and mechanisms of moral disengagement, are related to learning history and these are hypothesized to facilitate criminal behaviour.²⁴ Therefore a juvenile offender accused of anti social behaviour would need better values and belief in pro-social values.

Sentencing discretion (Juvenile Blended Sentencing Scheme)

Section 15 of the Juvenile Justice Act enlists the orders (Sentence) that can be passed against a juvenile against whom the board is satisfied on inquiry that the juvenile has committed an offence. These orders can range from admonition, group counselling, community service, fine or an order directing juvenile to be sent to a special home for a period of three years. The import of this provision being that under no circumstance, a juvenile should be sent to normal prison. The rationale for this being that prison life will bring bad influence on these young offenders.

However, the ascending graph of heinous crimes, being committed by the juveniles has some were eroded the legitimacy of Section 15 of the Act. If there is a juvenile accused of committing aggravated form of offence and in the opinion of the judge he is beyond rehabilitation under the juvenile system, it is absolutely futile to deal with him under section 15 of the Act. The board must have the discretion to send the juvenile to prison for an extended period of time.

One approach that can be adopted in these situations is a phenomenon known as blended sentencing. Blended sentencing is a generic term used to describe state laws that allow

²⁴ Bruce Watt, Kevin Howells & Paul Delfabbro, *Juvenile Recidivism: Criminal Propensity, Social Control and Social Learning Theories*, 11 *Psychiatry, Psychology and Law* 141-153 (2004).

delinquent offenders typically serious, violent, and/ or chronic offenders to be sentenced by either a juvenile or adult court judge to juvenile and adult sanctions.²⁵

Juvenile blended sentencing scheme gives juvenile court's judges the power to sentence a juvenile to a traditional juvenile type sentence, but if the juvenile fails the programme, the judge has the option of sending the juvenile to a normal criminal court. In United States this scheme is implemented through the Serious and Violent Offender Act (SVOA). The SVOA is considered a form of juvenile blended sentencing. Under the SVOA, juvenile court judges in the state under study have the authority to sentence a delinquent offender to a term of incarceration that exceeds the state's maximum age of juvenile correctional jurisdiction by imposing an additional adult sentence. As with many blended sentencing schemes, courts have the authority to suspend the adult portion of the blended sentence. The SVOA was passed in the late 1980s and was one of the first blended sentencing laws in the United States. It allows juvenile court judges to sentence certain serious and violent juvenile offenders up to a 40-year blended sentence for capital murder offenses and certain first-degree felonies, up to a 20-year sentence for certain second-degree felonies, and up to a 10-year blended sentence for certain third-degree felonies. To be eligible for prosecution under this statute, juvenile offenders must be between the ages of 10 to 16 and have committed one or more of 22 specific serious and violent offenses as outlined in the statute. Once eligible under age and offense criteria, the decision to prosecute a delinquent under this statute, as opposed to processing in regular juvenile court or pursuing adult court waiver, rests with the county prosecutor.²⁶

The Juvenile blended sentencing scheme can be a viable option to reform serious, violent and chronic offenders who cannot be reformed within the traditional limits of juvenile justice system.

Doctrine of waiver

There has been a discernible trend cross-nationally in recent years towards transfer, waiving the special procedural and disposal protection give to child offenders. This process is often referred to as "waiver" or "bind-over." This process has been led by the USA, under the neo-correctionist heading of increasing young people's accountability for their crimes and protecting the public.²⁷ Under this process, young person accused of crime are transferred to ordinary criminal courts and are dealt with accordingly. The factors which are taken into consideration before waiver is exercised are advanced age, severity of crime, criminal history of juvenile and whether previous efforts at treatment have been successful. A judge's decision to remand a case to adult courts

²⁵ Patrick Griffin, Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform 4 (2008).

²⁶ C. R. Trulson et al., A Problem of Fit: Extreme Delinquents, Blended Sentencing, and the Determinants of Continued Adult Sanctions, 22 Criminal Justice Policy Review 263-284 (2010).

²⁷ Neal Hazel, Cross national comparison of youth justice 35 (1 ed. 2008), http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf (last visited Aug 3, 2015).

requires a determination that the youth is no longer amenable to the treatment offered in the juvenile system.²⁸ This trend has also found its way into more welfare-oriented systems such as Netherlands, Belgium, Canada, and Japan.

In the American juvenile system there are generally three statutory waiver mechanisms employed by state legislatures: judicial, legislative, and prosecutorial.²⁹ Judicial waiver gives the authority to the juvenile court judge to make the transfer decision. Typically, the statute will provide a list of several factors to aid the judge in making this determination. Legislative waiver exists where the state legislature has chosen to statutorily exclude certain offenders and offenses from the jurisdiction of juvenile court. Under this type of statute, the minor will be tried in adult criminal court after the prosecutor files charges that meet the statutory requirements. Lastly, prosecutorial waiver statutes place the decision in the hands of the prosecutor to choose where the juvenile will be tried. This is typically achieved with concurrent jurisdiction of both the juvenile and adult criminal courts over various offenses allowing the prosecutor to file directly in adult criminal court at his or her discretion.³⁰

The Judicial waiver is widely considered as the most rationalistic option wherein the judge applies his judicial wisdom and experience for ascertaining 'amenability to treatment' before ordering the waiver. In *Kent V. United States*³¹ the Supreme Court of United States articulated several factors it felt pertinent to the transfer decision as guidance. Now commonly known as the "Kent factors," they include:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment....
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court....
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other

²⁸ *Ibid.*

²⁹ David L Hudson & Alan Marzilli, *Juvenile Justice* 31 (2010).

³⁰ Rebecca House, *Seen But Not Heard: Using Judicial Waiver to Save the Juvenile Justice System and Our Kids*, 45 *The University of Toledo Law Review* 149-180 (2013).

³¹ (383 U.S. 541, 86 S.Ct. 1045 [1966]).

jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.*'

The Indian Juvenile justice system though doesn't incorporate such exceptions, however, the increase in number of crimes being committed by the juveniles, makes a strong case for having such a provision. The Juvenile Justice (Care and Protection of Children) Bill, 2015 has in fact proposed a similar scheme under Section 15 and 19. This is proposed to be done in case of heinous crime committed by a juvenile above 16 years of age. The power has been given to the juvenile justice board which shall conduct a preliminary assessment with regard to mental and physical capacity of a juvenile to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. The Board after preliminary assessment under section 15 may pass an order that there is a need for trial of the said child as an adult, and the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.³² After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973.³³

Juvenile Victims

The Juvenile Justice Act is predominantly concerned with the juvenile in conflict with law and child in need of care and protection. The Act doles out numerous beneficial provisions for young offenders but is silent with regard to juvenile victims. One of the basic principles of this Act is that young offenders, because of their tender age should not be subject to the rigours of our normal criminal law and procedures. This preferential treatment is absolutely justified but what is bewildering is that, if the victim is also a juvenile then remedy (compensation) to him is available in the normal criminal procedure only (Section 357A of CrPC). If the law intends to shield a *juvenile in conflict with law* by enacting a beneficial legislation then it should also have remedial provisions for a juvenile victim in that very enactment.

Juvenile Justice Models

The Juvenile Justice systems across the world are rooted either in the ***Welfare model*** or the ***Justice model***. The welfare philosophy is modeled on the belief that young people are more vulnerable than adults and more amenable to rehabilitation. The laws and policies are therefore

³² Sec 18(3)

³³ Sec 19(1)

framed in a manner that young offenders are rehabilitated and put under supervisory control, if need be.³⁴

On the other hand, the fundamental idea behind justice model is that human beings are able to control their actions and therefore can decide whether to offend or not. If they decide to offend, they must assume responsibility for their offence and should be penalized after proving their guilt. The justice model is therefore more oriented towards accountability and punishment rather than welfare.

However, with the increasing crime rate, systems based on these two models are facing severe criticism. In countries with welfare model, there are opinions that there is a need to get tough with young offenders and a more punitive approach is needed to shield the society and hold the young offenders accountable. The countries with justice modeled juvenile system are criticized on the premise that intense punishment does not deter juvenile offenders from reoffending and is often not appropriate for rehabilitating and integrating the young person.

Thus, it is evident that the panacea for dealing juvenile delinquency does not exist and the search for a perfect model lingers on. However, there are other models such as the Crime-Control model, Diversion model and the Mediation and Restorative justice model which needs to be explored in order to effectively address juvenile delinquency.

Restorative Justice Process, involve victims and their offenders in face-to-face meetings and it is these participants (along with their respective communities of care) who determine how best to deal with the offence. Only three practices—mediation, conferencing and circles currently fully meet these requirements. Mediation generally involves a neutral third party (usually a trained community volunteer or social work specialist) mediating a dialogue between the victim and the offender who talk about how the crime has affected them, share information and develop a mutually satisfactory written restitution agreement and follow-up plan. In the case of juvenile offenders, the parents are also usually present. Generally also, only the amount of restitution is determined in mediation; the case is not disposed of. Restitution agreements may be enforceable by the courts and the courts indirectly influence the process by retaining jurisdiction over the offender.³⁵

Conferencing is a process in which any group of individuals connected and affected by some past action come together to discuss any issues that have arisen. It also directly includes those community members most affected by the offence, personalises the consequences of the misbehaviour, and allows for the harm suffered to be expressed in much personalised terms with little guidance from the facilitator. Thus, facilitators generally encourage participants to speak for themselves and are trained to stay out of the interaction while guarding the process.³⁶

³⁴ Kumari, *supra* note 1

³⁵ Allison Morris & Gabrielle M Maxwell, *Restorative Justice for Juveniles* 53 (2001).

³⁶ *Id.* at 56.

A sentencing circle is a community directed process, in partnership with the criminal justice system, for developing consensus on an appropriate sentencing plan which addresses the concerns of all interested parties. Sentencing circles use traditional circle ritual and structure to create a respectful space in which all interested community members the victim, the victim's supporters, the offender, the offender's supporters, the judge, the prosecutor, the defence counsel, the police and court workers can speak from the heart in a shared search for understanding of the event and to identify the steps necessary to assist in healing all affected parties and prevent future occurrences. Sentencing circles not only involve all the players found in a traditional court, but are often held in a courtroom.³⁷

Another model is Diversion from Youth Justice System, which was a result of new orthodoxy thinking grounded in the belief that offending, is a normal part of adolescence and concerns that formal contact with the Youth Justice System could have stigmatising, labelling harmful and criminogenic effects on young people.³⁸ Therefore, young offenders or first time juvenile offenders or juvenile offenders accused of petty crimes are diverted from the traditional juvenile justice systems in order to shield them from the vices of such system. The key aims of this model are:

1. To divert young people out of the formal processes of the youth justice system;
2. To reduce the number of first time entrants entering the YJS;
3. To treat young people as children first, offenders second;
4. To provide programmes to tackle the underlying causes of offending behaviour through the promotion of positive and pro-social behaviour.

Epilogue

There is no doubt that the Juvenile Justice System in India is at cross roads, carefully assessing various choices to reform the system. There is a strong voice within the society which is vouching for strict laws in order to curb delinquency, however, there is even stronger voice which still believes that reformation, rehabilitation and care is the best way of addressing the problem. An interesting thing that a cross national comparison of juvenile justice model reveals that the issues and challenges that our juvenile justice system is facing as of today was also faced in other countries and they responded in a variety of manner. Though these interventions didn't brought expected results but it did act as a catalyst for further reform. The repercussions of these interventions have been a very dynamic, multi-dimensional and complex juvenile justice system in these countries which are not only community oriented but also offer specialized treatment and solutions. On the other hand the approach of our Juvenile Justice system is very singular,

³⁷ *Id.* at 60.

³⁸ Kevin Haines et al., *The Swansea Bureau: A model of diversion from the Youth Justice System*, 41 *International Journal of Law, Crime and Justice* 167-187 (2013).

being, to shield a juvenile from criminal process and sentence. Though we have institutions for reforming and rehabilitating juveniles but they are far from effective and the only objective that this system vouches for is to shield the juvenile offenders from the ordinary criminal process. Unfortunately this state of affairs is now rapidly producing repeat offenders and habitual criminals, thereby triggering a debate to completely overhaul the system. However, the solution doesn't lie in a knee-jerk kind of reaction whereby we completely change the orientation of our juvenile justice system. The orientation has been towards care, protection, reformation, rehabilitation and there is a need to strengthen these virtues by creating better institutions, sensitising state machinery and involving community in this effort.