

Juvenile Delinquency : Society – Role, Perception and Response

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**At the course on Juvenile Delinquency
Vertical Interaction Course For IPS Officers 2001-2002**

***Organised by* : Law School, Banaras Hindu University, Varanasi**

Juvenile Delinquency : Society – Role, Perception and Response

1. A Situational Analysis of Children who Enter the Juvenile Justice System:

- Children are born as Children, not Delinquents or Destitutes.
- Trends concerning Situation of Children in India.
- Children and Institutions in the Juvenile Justice System.

Children are born as children, not as delinquents or destitutes. However, children's situations and circumstances may increase a child's vulnerability to neglect, abandonment and delinquency. Hence, in understanding why children come in touch with the Juvenile Justice system it is necessary to analyse the broader factors which affect children's lives. Thus, this section reports trends concerning the situation of children and families in India¹ as well as figures regarding the number of children and institutions that form part of the Juvenile Justice Systems².

- 400 million children in India
- 3 million children under the age of 5 die every year
- 53% of this same age-group are malnourished
- 36.7% of India's population suffer from human poverty
- In 1996 an estimated 100 million people were living in urban slums
- 37 million children are living in urban poverty
- Estimated 420,00 street children
- Increasing economic hardship with increase in consumer prices

1 UNICEF's (1998) Rights and Opportunities : These *Situation of Children and Women in India*

2 Figures from "Crime in India" (1996)

- Different groups of children living in especially difficult circumstance.

An estimated 400 million children live in India, making up more than one third of the countries 1 billion population. In spite of growing economy social benefits for children have lagged behind. Close to 3 million children under the age of five die every year, depriving them of their most basic right to life. 53% of this same age-group are malnourished, and only 64% of children (majority boys) in India reach grade 5 of primary school.

According to the Human Poverty Index 36.7% of India's population suffer from human poverty, living in circumstances which are characterised by social inferiority, powerlessness, physical weakness, vulnerability, humiliation, isolation and seasonal deprivation.

With ongoing patterns of rural to urban migration an increasing percentage of India's children are found in urban areas. Rapid urbanisation has brought with it rapid growth in urban slums. In 1996 an estimated 100 million people were said to be living in urban slums.

Of the 37 million children who are living in urban poverty a substantial proportion of them are living in informal (illegal settlements or other temporary situations which include living along railway lines *nullahs* (drainage canals) and on the pavements itself. Products of family instability, violence or economic circumstances of the family, children get pushed out of a family structure and are forced to survive alone with adult guardianship.

All these children are subjected to economic and social problems, including coping with significant increases in the cost of living. According to the World

Bank there was a 37.7% increase in consumer prices from 1990-1994³. It is been noted that as an increasing number of child face severe economic hardship, more children are becoming involved in unhealthy occupations, such as ragpicking and are increasingly vulnerable to criminal activity and prostitution.⁴

In a world where they lack adult care and protection, the lifestyles of these children become characterised by a struggle for survival. In seeking out a living to meet their basic needs, they are vulnerable to harassment, assault abuse and exploitation. Their difficulties are further compounded by prevailing negative attitudes held towards them, which result in further discrimination and a general lack of support from the general public.

Alongside street and working children there are other groups of children in our country facing especially difficult circumstances. These children include: children involved in prostitution and children of sex workers; children who have been sexually or physically abused; children with a substance abuse problem; children affected by HIV; children with disabilities; and refugee children. The presence and difficulties faced by all of these groups of children are compound by the circumstances of poverty.

As per the Annual Report of the Ministry of Social Justice and Empowerment for the year 1998-99, there were only 271 Juvenile Welfare Boards and 189 Juvenile Courts in the Country. Furthermore, in terms of Institutional infrastructure despite the fact that 280 observation homes, 251 juvenile homes, 36 special homes, and 46 after-care organisations were reported to be functioning all over the country under the Act, facilities for care training, rehabilitation, treatment and development were yet to be uniformly available.

³ The World Bank. *Trends in Developing Economics* 1995. (Washington D.C.) p.246

⁴ Human Rights Watch (1996) Police Abuse and Killings of Street Children in India

Furthermore, the children coming into contact with the limited system may not be the children for whom it was most designed. In reality due to the nature of street children's visibility, their lack of power, and prevailing negative attitudes towards them, street and working children are frequently brought into the Juvenile System without due reason, whilst the needs of other groups of neglected children remain ignored. The arbitrary nature of detention of street children in observation homes has been documented in varied studies of street children in Bangalore, Bombay and Delhi.⁵ In Bangalore, 11% of the children were sent to a remand home without a reason. Furthermore, the Bombay study reported that 87.2% of children were sent to remand homes on 'petty cases'. Therefore, whilst there are 24,000 children living under Government care, the likelihood is that a fair proportion of these children have been inappropriately placed there.

Whilst the Act is supposed to have separate procedures for responding to 'neglected' and 'delinquent' juveniles, the borders between the two groups become merged, as the inadequacies and discrimination in the system result in children generally being inappropriately dealt with as criminals.

Whilst official statistics on juvenile crime may be taken as indicators regarding trends in juvenile delinquency, such figures have to be treated carefully, due to common practice of non-reporting of crimes, in addition to the practice of 'false arrests'. Crime records do not accurately reflect the state of crime in India, nor do they give an accurate picture of the number of people detained by the police, or the reason for their detainment.

⁵ Nandana Reddy, *Street Children of Bangalore : A Situational Analysis* (NOIDA 1992); D'Lima and Gosalia, *Street Children of Bombay; A Situational Analysis*; and Rita Panicker and Parveen Nangia ; *Working and Street Children of Delhi* (NOIDA) 1992.

However, according to 'Crime in India; 1996 figures there has been a declining trend of juvenile offences as a percentage of total Indian Penal Code (IPC) crimes since 1988. In 1996 a total of 19,098 children were apprehended (arrested and sent to court). Of whom 26.3% were girls. Of the total juveniles apprehended 23.5% were disposed of after advice or admonition, 12% were placed under the care of parents or guardians, 4.2% (795 children) were sent to 'fit institutions', 8.5% (1623 children) were sent to special homes. 4.6% were dealt with by fine, and 7.9% were either acquitted or otherwise disposed of.

In the "Crime in India" report it was acknowledged that poor economic set-up were the main attributes for delinquent behaviour of juveniles. Of the total juveniles who were involved in various crimes 80% were either illiterate (8195) or had education up to primary level (7080).

2. Factors which Push Children into the Juvenile Justice System

Why do Such children Enter the System?

Deprivation, destitution and neglect are significant factors in the causation of juvenile delinquency

Factors contributing to the increasing vulnerability of juveniles to crime include:

- ◆ Changes in population structure
- ◆ Diminishing role of the family
- ◆ Erosion in social values
- ◆ Weakening of informal social controls

- ◆ An unbalanced socio-economic development
- ◆ Stark deprivation in the midst of affluence

Children further express the significance of:

- ◆ Poverty
- ◆ Their vulnerability due their young age
- ◆ Gender
- ◆ Nature of child work.
- ◆ Prevailing atmosphere of violence

Research in the area of juvenile delinquency has shown that the problem of juveniles drifting away from socially accepted norms is directly influenced by a variety of situational compulsions on them. Deprivation, destitution and neglect are significant factors in the causation of juvenile delinquency.

In a paper by Dr. Hira Singh the former Director of the National Institute of Social Defence it was acknowledged that : *'Children devoid of an equitable sharing of socio-cultural and economic opportunities for growth and development are highly prone to various kinds of abuse and exploitation and to the eventual induction into a socially deviant life-style.'* Moreover, *'Changes in the population structure, diminishing role of the family, erosion in social value and weakening of informal social controls are among the other factors contributing to this growing phenomenon. An unbalanced socio-economic development, characterised by a stark deprivation in the midst of affluence, is mainly responsible for an increasing vulnerability of juveniles to crime.'*⁶

⁶ Dr. Hira Singh, Former Director of NISD *'Current Issues in Juvenile Justice Administration'*

Children's words re-inforce such analysis. In seeking children's perspectives on the subject of criminal behaviour, they have generally commend that *'poverty and young age are the causes of humiliation that lead children to indulge in crime'*. Others have added that factors of gender, and the nature of child work increase children's vulnerability to crime. Furthermore, the *'influence of the surrounding also aggravates the problem of violence'*.

3. Families affected by Collective Violence and Neglect of Childhood

The liberal process of development has led to commodification of relationships, environmental degradation and increased poverty which have resulted in enlarged social prejudices and conflict with reference to religions, castes, tribes, and regions. The outcome is frequent incidents of collective violence, involving the masses, across class and age. Even children, especially teenagers, are instigated into active involvement in the armed conflicts.

Communal riots have increased exponentially in recent years. While there were only 60 communal incidents in 1981, 525 incidents claimed 328 lives in 1985. In three years between 1986 and 1988, there were 2,086 communal riots in India in which 1024 were killed and 12,352 were injured. The number of riots in 1986 was 764 (killing 418 persons), 711 in 1987 (killing 383 persons) and 611 in 1988 (killing 223 persons) (Singh, 1993). Since the Ram Janmabhoomi-Babri Masjid issue and subsequent riots and bomb blasts in Mumbai, atrocities on minority religions have got systematised, with the rise of fundamentalism in religions.

India also has had several agitation on separatist issues related to ethnic and regional identities and conflicts over resource allocations, namely, the movements for independent Khalistan, the movements for a separate state of Gorkhaland, a separate Jharkhand state, and the Uttarkhand agitation and so on. Regional as well

as inter-country conflicts have led to collective violence related to terrorism within the country, especially in Jammu and Kashmir and Tamil Nadu.

The reservation policies for scheduled castes and tribes have often led to major student agitation. In 1990, over 200 young men and women attempted suicide in protest of a proposal for an extension of these policies recommended by the Mandal Commission Report.

The most obvious effects of violence are the physical effects : deaths and injuries. Santosh Singh's (1991) study of 342 families of the victims of terrorists living in the sub-division of Tarn Taran of district Amristar shows that children are the most innocent victims of terrorism. Besides losing their parents, they are being continuously shifted from one relative to another. In those cases where they have gone permanently to live with the maternal grandparents, the uncles and aunts do not accept them as they fear that the property rights of their children may be superseded by them. A number of such children reported maltreatment, whenever their grandparents were absent. The uncles and aunts would prefer to send them to institutions, making the children feel more insecure.

Looting and burning of houses and shops are often common means of ventilating anger during armed conflicts. There is substantial loss of property and income, leading to forced migration. Generally, schools are closed down and child's education is affected. There is a high dropout rate and irregular attendance in schools, even after the communal riots between Hindus and Muslims in Mumbai during 1984 showed that though the riots had stopped by June 1984, the schools did not have even one child on their rolls as late as December 1994 (Narayan, 1991).

Any crisis has adverse effects on children's psyche. Common feelings associated with crisis are anxiety, fear, insecurity, anger and grief. The traumatic experiences lead to nervous breakdown during and after a crisis, leading to a stunted personality. Many of these effects on children may last a long time (Narayan, 1994). Subsequent to the Mumbai riots, there was an increase in the number of intakes at child guidance clinics and psychiatric wards of hospitals in Bombay. Mental impact of violence also includes development of hostility, prejudices, stereotypes and biases, which when formed in childhood, last for life time.

4. Restorative Justice :

It is clear that today, juvenile justice system in most of the world are overextended and under-conceptualised at a time when their jurisdiction is ironically ebbing. The balance between community and government responsibility is greatly tilted toward the latter.

When the role of the justice system is not defined in concert with the community's role, justice and social service programmes are likely to overextend their reach and contribute to the isolation rather than reintegration of people in trouble. Unfortunately, juvenile justice and social service systems operate from those who end up in the programmes of social service systems and often find it difficult, as McKnight suggests, to transition back to the mainstream of conventional socialisation networks (e.g. in school, work, etc.).

Hence the very structures we have created to manage (not solve) the youth crime problem, despite our best efforts and intentions, may themselves be one part of the problem.

There is, however, an important role for government, and specifically juvenile justice and youth serving agencies, in response to the growing youth socialisation crisis. But this function is best accomplished through a community-building agenda, which might seek to recreate new, indigenous social control and support structures. It is least effectively accomplished when juvenile justice systems, on a case by case basis, assume responsibility for socialisation processes that can only be meaningfully carried out in communities by caring adults who spend time with young people, not because they are paid to do so, but because they share a commitment to the idea that youth development is a community responsibility. Further expansion of the court's jurisdiction through early intervention to simply identify "at centralised assessment of truancy centers) therefore seems counter productive. Building and expanding an advocacy and leadership role for juvenile justice professionals in promoting community responses that strengthen neighborhood social control, however, could be an effective focus for juvenile court reform.

The juvenile court has been pushed to respond to increased "demand" that it solve problems it cannot solve, and has overreached in a way that has rendered it increasingly less effective. Paradoxically, a court designed with regard for the principles of restorative and community justice would assume less responsibility for tasks best accomplished by others, while at the same time adopting a broader mandate and vision. The court could seek, for example, to cede much greater decisionmaking power to the community in determining the nature of sanctioning responses to youth crime once guilt has been admitted or determined. The future court would thus be more free to focus primary attention on legal and advocacy functions including: adjudicating, fact-finding, ensuring that the rights of offenders (and victims) are protected, and providing an important enforcement and back-up role in dispositional obligations. In addition, Braithwaite and Parker (1998) suggest that in a restorative juvenile justice system, the court should

maintain a review and oversight role to protect against possible “tyranny of the community” and unfairness to offenders and victims, if and when these emerge in the informal setting of community sanctioning conferences.

Central to the Restorative Justice is the balanced approach; providing opportunities for victims, communities and offenders with a stake in an incident to contribute to the justice process. Family Group Conferences or Community Conferences bring together all those involved with a trained Mediator-enabling offenders to learn how they have harmed victims and communities, to take personal responsibility for their behaviour and to actively work to repair the harm they have caused by being given the opportunity to do a positive act. The outcome – usually an apology or an act of reparation is reached through mutual agreement of the participants. International evidence demonstrates that by involving communities, greater public safety is achieved and stronger communities develop (*Bonta et al, 1998*).

Not only does Restorative Justice offer specific outcomes for victims, offenders and communities who participate, it also promotes a greater understanding of crime and the most effective response to criminal behaviour. Restorative Justice does not preclude the punishment of offenders but it does not have punishment as its main focus. It is concerned with needs and responsibilities and represents an inclusive approach to crime control which is distinctive from the traditional adversarial and exclusionary methods of handling young offenders.

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July 2001*