

JUSTICE TO CHILDREN : AN APPRAISAL OF THE ADMINISTRATION

I Introduction

CHILDREN ARE the hope of parents and the future of the nation. According to Jesus Christ children are the inheritors of heaven.¹ And yet many of them, while growing up, become law breakers instead of law abiders. Now, the questions to be asked are : How does this transformation take place? What makes them juvenile delinquents? Is it their environment, upbringing, lack of education, poverty or society itself?

Juvenile delinquency is a universal phenomenon, not confined to a particular place or country. In 1980 alone there were 13,68,529 cognizable crimes committed by juveniles in India.² The main factor that differentiates a juvenile delinquent from an adult criminal is not the crime committed nor its nature but the age of the doer. A juvenile may be guilty of murder, rape, dacoity, or any of the other heinous crimes committed by an adult. Yet because of his age, he cannot be branded a criminal. He is to be tried under a special legislation, namely, the Children Act 1960. The Act was enacted specifically with the hope of bringing these estranged children back to the moral and legal path and to provide care, protection, maintenance, welfare, training, education and rehabilitation. Thus, the central idea of this legislation is welfare and not punishment. Unfortunately, this is only a myth and the truth is just frightening. Children are more often than not treated like criminals, maltreated, ill-treated and cruelly treated by the police. As a result a delinquent often comes out of the observation home/certified school a hardened criminal rather than a reformed individual.

II Definition of child

A child according to the Act means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years.³ A delinquent child is one who has been found to have committed an offence. A neglected child⁴ means a child who (a) is found begging; (b) is found without having any home, settled place, abode or any ostensible means of subsistence or is found destitute whether he is an orphan or not; (c) has a

1. "Suffer little children, and forbid them not to come up to me; for such is the kingdom of heaven" : St. Mathew 19 : 14.

2. See *Crime in India 1980*, table 4 at 9-10 (Bureau of Police Research and Development, Ministry of Home Affairs, Government of India). Of this total number of cognizable offences, Delhi alone had 37, 583 cases.

3. S. 2 (e).

4. S. 2 (1).

parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child; or (d) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any person who leads an immoral, drunken or depraved life.

There are two separate machineries under the Act to deal with children. The first is the Child Welfare Board to deal with neglected and uncontrollable children;⁵ and the second the children's court to deal specifically with the delinquent children.⁶ Though both the machineries are envisaged to be separate entities, their functions often overlap. The board and the court in Delhi are housed in the same premises at 1 Feroze Shah Kotla, behind Dr. Ambedkar Stadium.

This study deals exclusively with delinquent children.

III The field research

To assess the juvenile justice system, taking Delhi as a model, an empirical study was conducted by the author. Data was collected from 15 officials and 30 delinquents who were either found guilty by the children's court or were awaiting trial and housed in the observation home/certified school for boys. Officials included the two presiding magistrates of the children's court, probation officer-in-charge of the certified school, drawing and disbursing officer of the observation home for boys, superintendent of the observation/remand home for boys, lady advocate appointed to defend children at the court; public prosecutor at the court; deputy superintendent of the observation home for girls; two case workers, three women probation officers and one male probation officer.

The main objectives of the study were : (i) To find out the level of education, socio-economic and family background of the delinquents, (ii) to assess the role of the police in the juvenile justice system; (iii) to find out the major causes of deviant behaviour ; (iv) to assess the working of the children's court in Delhi; and (v) to suggest ways and means of improving the juvenile justice system.

(1) Data from delinquents

(i) *Socio-economic background*

All but one out of the total of 30 delinquents were boys. Age-wise they ranged from 11 to 16 years. Regarding the level of education, 17 of them were illiterate. Majority of the delinquents (20) were either working or learning some craft at the time they were apprehended by the police. Seven of them were idle and three were studying. Seventeen of the delinquents came from large families consisting of at least eight to ten

5. S. 5.

6. S. 6.

members each. Most of them belonged to poor families and their parents were illiterate. One child's father was a gazetted officer in the Central Government; another's was serving in the Central Reserve Police Force and one of his brothers was a post-graduate working as foreman in a reputed firm in Delhi. Three delinquents had no parents—they had only brothers and sisters with whom they had no contact. Two children had stepfathers; and one did not know if his parents were alive as he had left the home at an early age. Of the 30, 28 were Hindus, one Christian and one Muslim.

(ii) *Crime committed*

Twenty out of 30 delinquents were apprehended for theft—of gold, money, railway property, bicycle, *etc.* Three were apprehended for murder, three for pick-pocketing, two for rape and one each for dacoity and kidnapping. Only 10 out of the 30 admitted of having committed the offence they were charged with (see table I).

TABLE I

On the question of admitting commission of offence the delinquents were charged with—fully, partly, not at all

<i>Sl. no.</i>	<i>Frequency</i>	<i>Response</i>	<i>Percentage</i>
1.	10	Fully	33.33
2.	1	Partly	3.34
3.	19	Not at all	63.33
<i>Total</i>	30		100

Nineteen of the delinquents replied that they were falsely implicated by the police or by their own neighbours who were their enemies. Only one—the rape accused—partly admitted his offence. It is noteworthy that the children accused of serious offences like murder, rape, kidnapping and dacoity, except one murder accused, replied that they were falsely implicated by the police and the real culprits got away by bribing policemen. The ten who admitted the offence were all charged with theft of either money or gold.

(iii) *Police and delinquents*

According to section 18 (2) of the Act, when a delinquent, having been arrested, is not released on bail by the officer incharge of the police station, such officer shall cause him to be kept in an observation home or a place

of safety in the prescribed manner, but *not in a police station or jail*,⁷ until he can be brought before the children's court. In flagrant violation of this section some of the children were kept in police lockup for as long a period as nine days before they were produced in the children's court. Only two children replied that they were produced before the children's court the next day.

TABLE II

On the question of treatment given to the delinquents by police—cruel, not very cruel, indifferent, friendly

<i>Sl. no.</i>	<i>Frequency</i>	<i>Response</i>	<i>Percentage</i>
1.	21	Cruel	70
2.	6	Not so cruel	20
3.	2	Indifferent	6.67
4.	1	Friendly	3.33
<i>Total</i>	30		100

Twenty two out of the 30 interviewed replied that the treatment meted out to them by the police was cruel. Most of them said they were beaten severely by the police. In cases where they did not admit of the offence, the children were beaten up till they confessed the offence. In one case the child accused got serious injuries—a swollen rib and a broken hand. Punishment consisted of beating with hand, *lathi* (a heavy stick), belt, *etc.* What is evident from this is the police personnel are by and large cruel towards the child delinquents, a fact corroborated by the officials themselves.⁸ The two who replied that policemen were indifferent had this to say—they admitted the offence at the first instance itself. The only way to escape the ire of the police seems to be to admit the offence charged with, whether one has actually committed it or not. The child who replied that the policemen were friendly and did not beat him thought the reasons for it could have been that they produced only a part of the stolen property in the court and he was asked to say—the booty was only that much!

(iv) *Life so far led*

More than half of the delinquents replied that the life they were leading before their arrest was honest. According to them they were

7. Emphasis added.

8. See *infra*, part 2.

apprehended by the police and charged with the offences on some false pretext and they were sent to the remand home only because they could not afford to bribe the police. Three of them were so bitter towards the police that they pledged to take revenge against the police for falsely implicating them in cases and extorting confession by third degree measures despite their leading an honest life. Two confessed that they were victims of circumstances. They attributed their commission of the offence to the lack of guidance. The rest admitted that the life they were leading was not desirable. However, none of them expressed any regrets.

(v) *Acceptance and rehabilitation*

Regarding their acceptance back at home, 17 of the 30 replied that they would be accepted in their families as before and their being involved in criminal charges would not make any difference. As proof of their statement they said that their parents and brothers/sisters often visited them and also gave them certain things to eat. Many of them asserted that their family members were also convinced of their innocence and of their being falsely implicated in cases. When one's own people knew that one was innocent, where was the question of non-acceptance, they asked. Six children had no families to go back to either because they had no parents or because they were not in contact with any of their brothers or sisters. They were on their own before they were apprehended and they wanted to continue to be so after they were released from the observation/remand home. Four children were not sure of their being accepted without reservation in their families. They felt that they were a stigma on their families. All the same, they all wanted to return home and convince them that they would lead an honest life. Three of the children were sure that they would have no place in their families and as such they had no plans of going back home after release. Their parents and brothers/sisters were not contacting them at all. In these circumstances there was no point in going back home, they felt. They would rather be on their own.

(2) **Data from the officers/authorities**

(i) *Major causes of deviant behaviour*

The most important reason of deviant behaviour of children given by each of the 15 respondents was poverty. The other contributing factors were bad association/society, lack of parental control, slum environment, absence of parents/mother, illiteracy, too much strictness at home, too many children in the family, idleness, lack of discipline; neglect by parents; lack of moral education and broken homes. No doubt, these factors contribute largely to juvenile delinquency, yet, as agreed by all the respondents, poverty seems to be the villain of the piece. Therefore, unless and until poverty is minimised/eliminated, there is going to be a rising trend in the deviant behaviour of children. Theft was the major

crime committed by them. Needless to say, poor economic condition was one of the main reasons for it.

(ii) *Treatment of police*

Regarding the behaviour of the police towards delinquent children, seven out of the 15 responded that it was cruel. According to four, it all depended on case to case. In some cases they were cruel and in some not so cruel. One thought that the behaviour was sympathetic, and three felt that the behaviour was always indifferent. There was nobody to say that the police was friendly !

TABLE III

On the question of attitude and behaviour of police towards the delinquents when apprehended by them—cruel, not so cruel, sympathetic, indifferent, friendly.

<i>Sl. no.</i>	<i>Response</i>	<i>Frequency</i>	<i>Percentage</i>
1.	Cruel	7	46.67
2.	Not so cruel	4	26.67
3.	Sympathetic	1	6.66
4.	Indifferent	3	20
5.	Friendly	nil	nil
Total		15	100

(iii) *Separate accommodation*

The question that evoked uniform answer from all the respondents was concerning the necessity of providing separate accommodation to delinquents and non-delinquents at the remand/observation home. It was in the affirmative. However, as it is, there is no separate accommodation and all are put together and treated alike. In fact it was noticed that some delinquents were assuming the role of *dadas* (leaders in a bad sense). Even children in the certified school are freely mixing up with non-delinquents. Only their sleeping accommodation is separate. There is, therefore, an urgent need to segregate non-delinquents from delinquents and delinquents in the observation home awaiting trial from those undergoing correctional treatment in the certified school. If non-delinquents are in close association with delinquents there is every possibility of their becoming delinquents after they leave the institution. Taking into consideration the corrupting influence coupled with the impressionable age the children are in, a complete segregation is a desideratum.

(iv) *Working of children's court*

Regarding the query on the working of children's court, opinions varied. Three respondents replied that they could not say anything as they were not much aware of its working. According to four, judicial magistrates presiding over the court should have a lot of patience and knowledge of child psychology. Also, they should be genuinely interested in the welfare of children brought before them. They should be mature and experienced people and not fresh recruits. One opined that there should be an independent investigating authority directly under the control of the court or the directorate of social welfare. According to him the police should never be asked to investigate and report a case. Where police investigation takes place, criminality is presumed. That is against the letter and spirit of the Act. Also, the police is often found prejudiced against delinquents. If there is an independent investigating agency, it would be easier to establish the guilt/innocence as children would not be overawed and would come out with the truth.

Another suggestion was that in a case having more than one accused—say a child and an adult—facing trial in the children's court and criminal court respectively, evidence concluded in the respective courts should not affect the merit of the respective cases. In other words, both the courts should follow their own procedure, interpret evidence and arrive at the conclusion—acquittal or conviction—independently. There was also a suggestion for the strict implementation of the rule that police should not attend the proceedings of the children's court in uniform. As it is, this rule is kept more in its breach than observance.

A third opinion was that the *challans* (charge-sheets) by the police should be sent to the children's court within a month's time to enable the court to dispose of the cases at the earliest. According to another official, the working of the court is quite formal and the disposal of cases is very slow. More attention should be paid to reformation rather than establishing guilt. If need be, there should be day to day hearings till a case is disposed of.

According to the lady presiding magistrate, executive magistrates could also be appointed to preside over the court rather than appointing part-time judicial magistrates. She did not find much legal technicalities involved in cases decided by the court !

(v) *Facilities in institutions*

Five of the respondents felt that the facilities given to children were enough for their rehabilitation. Ten thought otherwise. According to them there should be more job oriented training programmes. Children should be allowed to learn a craft in which they have an interest rather than asking them to learn this or that. One said that there was misuse of the funds allotted to children homes and corruption was rampant. Children

were not properly fed and clothed, he observed. Even during severe winter days they were brought to the court without even a pair of *chappals* (slippers) on their feet. Warm clothes provided to them were not enough and also were of sub-standard quality. This view was also endorsed by the presiding lady magistrate of the court.

It is important to note that five of the officials fully agreed and four just agreed with the view that a delinquent child comes out of the correctional institution as a hardened criminal rather than a reformed individual. Of the rest, three were not so sure about it ; two disagreed and one disagreed strongly.

(vi) *Preventive measures for minimising delinquency*

One respondent suggested that children, who after investigation are found guilty by the children court and labelled as juvenile delinquents, be given job oriented training according to their aptitude during their stay at the institution. This will minimise to a large extent the incidence of habitual delinquency, he said. Another suggested job oriented courses and reservation in government services and training at institutes like industrial training institutes. Another felt that the state should take the entire responsibility of educating up to a certain age or standard all children in the country. In his view, lack of education and idleness were the major contributing factors of juvenile delinquency. If education is made compulsory up to a certain standard, delinquency would automatically come down. Together with compulsory education children should also be given job oriented training, keeping in view their aptitude and intelligence. The children laws should be enforced strictly. Persons with broad outlook and having human values should be appointed to deal with children.

A third view was that children should be given psychological treatment rather than resorting to punitive legal measures. Society should take the responsibility for children who are out of the control of their parents. There may be an independent agency to look after their rehabilitation. After their release from a correctional institution they may be given rehabilitation grant and also a suitable place to implement their self-employment scheme. As suggested by an official, more parental attention better guidance in schools, and removal of poverty were the other methods to check delinquency.

A view was expressed that family environment should be congenial for the child. If parents themselves are not good, it will be very difficult to make children behave properly. Need of imparting moral education was stressed by almost all the respondents.

IV Suggestions

(i) The Children Act, being essentially a welfare measure, should have nothing to do with the police. Police is a coercive force. Welfare and

police are, therefore, poles apart. Wherever the police is involved, there is callousness, highhandedness, use of force, cruelty and corruption. Police, therefore, should be dissociated from the implementation of the Act as far as possible. If children at a young age are treated cruelly by the police, which more often than not they do, it will leave a definite scar on their mind. The fact that three of the delinquents thought to take revenge against the police for the cruel treatment they got, means that police personnel by their cruel behaviour made them hardened criminals rather than reformed individuals.

(ii) If at all the police has to be involved in the implementation of the Act, it is of utmost importance that a special squad of policemen, specially trained in child psychology, men known for their sympathetic and considerate nature, be employed to deal with children. What the child delinquent needs is understanding, sympathy and counselling, not cruel treatment, corporal punishment and third degree measures. While the Act lays stress on reformatory and rehabilitative measures and treatment, what we find is cruelty and exploitation being perpetrated on children by the police. Often a girl, apprehended by the police, is kept somewhere and raped before she is produced before the children's court or welfare board. The poor girl is too fear stricken to protest. These kinds of incidents are a slur on the law enforcement agency. If a girl is to be apprehended, it should be done only by women police officers above the rank of a sub-inspector. This would further ensure that girls in police custody are not exploited. As it is, the lower the ladder the greater the possibility of corruption.

(iii) In more than 60 per cent of the cases children are acquitted by the court for the prosecution's failure to establish the case. This may mean that in such cases they are falsely implicated while the real culprits manage to get away by bribing the police. If criminal investigation is done by police personnel they are always found to be prejudiced against the delinquent. Therefore, the investigation should be entrusted to an agency under direct control of the children's court or the department of social welfare. This will ensure that the innocent are not falsely implicated for their inability to bribe the police.

(iv) The provisions of the Act should be strictly implemented. The police should in no case keep a child in police lock-up for days together and extort confession by third degree measures. Such erring police officials should be strictly dealt with.

(v) The presence of police officials in uniform in the court should be strictly forbidden.

(vi) The practice of appointing part-time judicial magistrates to preside over the court should be discontinued. A new cadre of judicial magistrates, trained in social welfare and child psychology to preside over the court on a full-time basis, should be created. Unless this is done they would not feel any commitment to the task they are entrusted with. The casual

manner in which the lady magistrate suggested that this work could be done by administrative magistrates shows the lack of commitment and sense of belonging. Also there has to be in-service training programmes arranged, say, after every three years or so. This will ensure proper orientation.

(vii) Delinquents and non-delinquents should be separately accommodated and not be allowed to mix freely because of the corrupting influences.

(viii) Together with job oriented training, delinquents should be imparted some moral education by religious people, say the Catholic nuns. They would be only too willing to do this service.

V Conclusion

As the study shows no children are born delinquents. They are made to be so. They become delinquents not by choice but by force of circumstances. Their vulnerability and dependence—their main weaknesses—are exploited by anti-social elements for personal gains. It is the responsibility of the society to ensure that these things do not happen and if they do happen to see that children are properly rehabilitated. Though the Children Act 1960 is a legislation in the right direction, the association of police personnel in its implementation waters down its efficacy to a large extent. A plea is, therefore, made here to divorce police personnel from the implementation of the Act for the achievement of its laudable objectives.

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