

REHABILITATION VS PUNISHMENT: THE FUTURE OF JUVENILE JUSTICE IN INDIA

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Abstract

The long-running argument between rehabilitation and punishment has been difficult for the juvenile justice system to resolve recently. While punishment in juvenile justice investigates the foundations of the theory in retributive justice and deterrence, rehabilitation programs seek to address the underlying causes of delinquent behaviour. After evaluating how well rehabilitation programs work to lower recidivism rates and promote favourable outcomes for youth offenders, this paper further examines the difficulties in carrying out these initiatives, such as the lack of resources and the necessity of interagency cooperation. Prioritizing the rehabilitation and welfare of juvenile offenders, a balanced approach to juvenile justice is required that incorporates elements of both punishment and rehabilitation. The rehabilitation model has become more well-known in recent years as societies have come to understand the shortcomings of punitive methods and the need for more compassionate, practical, and long-term approaches to dealing with crime and criminal behaviour. Rehabilitation helps the child in overcoming the trauma and addiction through counselling, therapy and education which prevents the child from repeating the same offences. It can bring a long term transformation in a child to reintegrate into the society. A major turning point in this was the Nirbhaya case which led to the debate across India that whether the juvenile should not be treated leniently for a heinous crime done by them and the age alone should not be the factor to determine the degree of punishment to a juvenile. One of the major changes introduced was the juvenile justice (care and protection of children) Act 2015 which shifted the focus towards accountability focused approach.

The study critically analyses the challenges faced in the rehabilitative approach over punitive measures and whether such approach is better for the society. The research emphasis on the legislative reform which introduced the provisions that juvenile between the age of 16 to 18 years should be tried as adults for heinous crimes done by them. The study studies statutory provisions, court rulings, and legal principles using a doctrinal and analytical technique. The paper argues that the societal demand for punitive approach risk the transformation of a juvenile into a better person and reintegrate into the society.

Keywords - Crime, Child Rights, Counselling, Criminal Justice System, Development, Juvenile Justice (Care and Protection of Children) Act 2015, Juvenile justice, Juveniles in Conflict with Law, Legal System, Nirbhaya Case, Punishment, Punitive Measures, Rehabilitation, Recidivism, Youth offender.

Introduction

There is a famous Latin maxim “Salus populi suprema lex esto,” which means “The welfare of the people shall be the supreme law.” The welfare of the people stands as the highest law.

Juvenile justice prioritizes the well-being and safety of the young offenders. This maxim emphasizes our collective responsibility to ensure the well-being of all members of society, including those who made mistakes in their youth. It advocates for a legal system that

strikes a balance between compassion and accountability, working to uphold the rights of victims as well as the possibility of rehabilitation and development for young offenders.

The word juvenile has been defined under section 2(k) of Juvenile (Care and Protection Act) 2000⁹⁹¹, which means a child who has not attained the age of eighteen. The major concern in the detention of a child in conflict with the law is to make him/her understand and repent for the crime committed.⁹⁹²

The Constitution of India treats children as a distinct category requiring special protection. That child offenders should be treated differently from adults was the recommendation of the Indian Jail Committee Report 1919-1920. Consequently, Children Acts were enacted to deal with child offenders, which through the years underwent amendments and replacements. The prevailing legislation dealing with children alleged to have committed or found to have committed an offense is the Juvenile Justice (Care and Protection of Children) Act, 2015 (the JJ Act, 2015).³

The legal system and procedures designed to deal with young people who are involved in criminal activity or who require care and protection are referred to as juvenile justice. Since children and adolescents differ from adults in terms of their developmental stages, this system differs from the adult criminal justice system, it prioritizes rehabilitation over retaliation. More protective measures have been implemented over time because of reforms that have emphasized the value of education, career training, and psychological support in the rehabilitation of young offenders.

Research Methodology

This study takes a mixed-methods approach, combining qualitative and quantitative

methods to investigate the relative efficacy of rehabilitation vs punishment in the juvenile justice system. The research will include case studies of punitive and rehabilitative programs, statistical analysis of juvenile crime data from official sources like the National Crime Records Bureau (NCRB), and a thorough review of the literature. It will also include a detailed examination of instances of juveniles subjected to punishment and rehabilitation, with an emphasis on outcomes like recidivism rates, educational attainment, and social reintegration.

Evolution of juvenile justice

The way society views and handles young offenders has changed throughout the juvenile justice system's dynamic evolution. A key concern was whether individuals between the ages of 16 and 18, who can understand the consequences of their actions, should continue to receive the same treatment as younger children.⁹⁹³ In the past, societies would punish young people severely for their misdeeds, treating them much more like adults. The British established formal legal systems with provisions for the handling of juvenile offenders during their colonial rule. Unfortunately, to meet the needs of juvenile offenders, these early systems frequently lacked specialized protocols and services. The need for specific laws to address juvenile delinquency became increasingly apparent after India attained independence in 1947. India started reforming its juvenile justice system after gaining independence in 1947. To handle the cases of juvenile offenders independently from those of adults, the Children Act of 1960 established Children's Courts. The Act promoted treating juvenile offenders in special homes rather than in jails, placing a strong emphasis on their welfare and rehabilitation.

Providing a framework for dealing with juvenile offenders, the Juvenile Justice Act of 1986 was established which replaced the Children Act of 1960. It placed more emphasis on rehabilitation

⁹⁹¹ Juvenile Justice (Care and Protection of Children) Act, § 2(k), No. 56, Acts of Parliament, 2000 (India).

⁹⁹² Blog ipleaders, <https://blog.ipleaders.in/rehabilitation-of-juveniles/> (last visited Jun. 8, 2024). ³ Maharukh Adenwalla and Gayatri Virmani, *Mandatory Minimum Sentence for a Child in Conflict with Law: Contrary to the Spirit of Juvenile Justice*, see online (Jun. 13, 2024, 9:10),

⁹⁹³ Government of India, *Justice Verma Committee Report*, 2013.

and reintegration into society than punishment. Unfortunately, there were several obstacles to the 1986 Act's implementation, such as poor infrastructure, scarce resources, and a lack of cooperation among stakeholders. The Juvenile Justice (Care and Protection of Children) Act, which was introduced in 2000, brought about additional reforms and brought Indian laws into compliance with international standards. The Act addressed the specific needs of juveniles by classifying them into two distinct groups: "juveniles in conflict with the law" and "children in need of care and protection." The Act established Child Welfare Committees to ensure care and protection for children who needed it.

To improve the protection of children's rights, reinforce the juvenile justice system, and bring India's juvenile justice system into compliance with international conventions and standards, the Juvenile Justice Act underwent subsequent amendments in 2006 and 2015. Particularly, the 2015 amendments brought about several significant modifications, such as the creation of specialized juvenile police units, the availability of adoption for children in need of care and protection, and the ban on trying and sentencing juvenile offenders as adults.

The Nirbhaya event in the Delhi gang rape case led to a punitive approach to juvenile justice. The main role of the juvenile justice system in India is to correct juveniles through education and non-penal treatment through social control agencies like observation homes, special homes, and schools.⁹⁹⁴

Difference between juvenile and child

When we talk about juveniles, we usually mean young people under a legal age limit. This age is usually set at 18, though it may differ based on the state or nation's legal system.

A "child" is a young person who is not yet an adult, in general. It includes newborns, toddlers, kids, and teenagers.

Review of Literature

What is punishment?

The act of imposing a penalty or consequence on a person for breaking a law or committing an offense is known as punishment. As juvenile justice focuses more on rehabilitation and reintegration than on retaliation, punishment in this system differs significantly from that of the adult criminal justice system. Given their developmental stage, this approach acknowledges that juveniles have a greater potential for growth and reform. In juvenile justice, punishments include reprimands, community service, counselling, probation, and, in some cases, institutionalization.

According to the Act, the maximum sentence for juvenile offenders is three years, and this sentence applies to both serious and minor offenses. In the instance of an adult perpetrator, the highest penalty that may be imposed is 7 years in jail, life in prison, or the death sentence.⁹⁹⁵

What is rehabilitation?

Section 39 of the juvenile justice Act provides for rehabilitation and reintegration of juvenile into the society. The juvenile justice board, child welfare committee, special homes, observation homes and place of safety are established to help juvenile in rehabilitation. Rehabilitating someone from a physical, mental, or behavioral illness and assisting them in reintegrating into society is a complex process. It includes a variety of treatments, interventions, and support services intended

to deal with the root causes of problems, encourage recovery, and enable constructive change. Within the framework of criminal justice, rehabilitation is concerned with helping criminals eliminate their criminal behavior, dealing with the issues that led them to commit

⁹⁹⁴ Legal vidhya, [https://legalvidhya.com/history-of-juvenilejustice/#:~:text=The%20history%20of%20juvenile%20justice,education%2C%20mentoring%2C%20and%20training,\(last visited Jun. 8, 2024\).](https://legalvidhya.com/history-of-juvenilejustice/#:~:text=The%20history%20of%20juvenile%20justice,education%2C%20mentoring%2C%20and%20training,(last visited Jun. 8, 2024).)

⁹⁹⁵ Blog ipleaders, [https://blog.ipleaders.in/juvenile-crimes-india/#:~:text=According%20to%20the%20Act%2C%20the,prison%2C%20or%20the%20death%20sentence \(last visited Jun. 13, 2024\)](https://blog.ipleaders.in/juvenile-crimes-india/#:~:text=According%20to%20the%20Act%2C%20the,prison%2C%20or%20the%20death%20sentence (last visited Jun. 13, 2024))

crimes, and encouraging their successful reintegration back into society. This could entail a variety of tactics like life skills development, education, counseling, and substance abuse treatment along with vocational training. The primary motto of rehabilitation is to make the child understand the grievous nature of the crime and prepare him to get back into the society by teaching them skills, job ability, mental health improvement, prevent from substance abuse and counselling. While juveniles are held accountable and kept in juvenile homes for public safety, the primary aim is to rehabilitate them. The process of rehabilitation includes psychological assessment, therapeutic guidance, skill development and vocational training. The juvenile justice (care and protection of child) Act 2015 provides for rehabilitation as soon as the child is transferred to juvenile care homes. The principal aim of these homes is to make juvenile adapt into the society.

It acknowledges that everyone can change and grow, regardless of their circumstances or past offenses. Rehabilitation offers opportunities for personal growth, support, and guidance to enable people to overcome hardship, reach their full potential, and make positive contributions to society. It rejects the idea that the only way to address criminal behavior is through punitive measures and instead works to give the person back their sense of agency, purpose, and self-worth. Rehabilitation helps people accept accountability for their actions, face their past mistakes, and work towards a more positive and productive future through treatments that are caring and encouraging.

Provisions Related to Juvenile Justice

Section 15 of the Juvenile Justice (care and protection of children) Act 2015⁹⁹⁶

When a heinous crime is committed by a juvenile aged between 16 to 18 years, a preliminary assessment shall be done by the

help of experienced psychologists regarding the mental and

physical capacity to commit a crime, the circumstances in which he committed the offence and the consequences of the crime

Section 19 of the Juvenile Justice (care and protection of children) Act 2015⁹⁹⁷

After the assessment of the juvenile, the children's court will decide whether the child will need a trial as an adult under the criminal procedure code or the child does not need trial as an adult.

Section 21 of the Juvenile Justice (care and protection of children) Act 2015⁹⁹⁸

Even when the juvenile is tried as an adult, the act strictly prohibits the punishment of death penalty and life imprisonment.

Section 82 of the Indian Penal Code, 1860

Act of a child under 7 years of age⁹⁹⁹– According to this section, a child cannot be prosecuted for any crime if they are younger than seven years old.

Section 83 of the Indian Penal Code, 1860

Act of a child above seven and under twelve of immature understanding¹⁰⁰⁰– This provision extends the *doli incapax* (incapable of crime) principle to children between the ages of seven and twelve. Unless proven otherwise, it is assumed that children in this age range are incapable of committing crimes.

Section 27 of the Criminal Procedure Code, 1973¹⁰⁰¹

This provision applies to people who are under 16 when they appear in court or are brought before the court. According to this section, minors may be tried by the Chief Judicial Magistrate's Court or any other court that has been given authority by the Children Act of 1960

⁹⁹⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15 (India).

⁹⁹⁷ Juvenile Justice (Care and Protection of Children) Act, 2015, § 19 (India).

⁹⁹⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, § 21 (India).

⁹⁹⁹ Indian Penal Code, 1860, § 82, No. 45, Acts of Parliament, 1860 (India).

¹⁰⁰⁰ Indian Penal Code, 1860, § 83, No. 45, Acts of Parliament, 1860 (India).

¹⁰⁰¹ Criminal Procedure Code, 1973, § 27, No. 2, Acts of Parliament, 1973 (India).

or other applicable laws. This is to make sure that juvenile cases are tried in specialized courts that can offer the right

kind of support and care, rather than in ordinary courts. This section excludes offenses punishable by death or life in prison. Such serious offenses committed by juveniles would be handled by various legal provisions, which frequently involved the Juvenile Justice Board under the Juvenile Justice Act.

Status of juvenile crime in India

The National Crime Records Bureau (NCRB) has released its most recent report, which claims that juvenile crime in India has shown complex trends and patterns that are essential to understanding the circumstances of juvenile offenses. Juvenile crime rates have fluctuated slightly over time, with juveniles accounting for 1.2% of all reported crimes in 2022. According to the data, most juvenile offenders are between the ages of 16 and 18, which is in line with global trends that indicate older teenagers are more likely to commit crimes. Although there has been a noticeable rise in the number of crimes committed by girls, boys continue to make up most juvenile offenders, indicating the need to address gender-specific factors in juvenile delinquency

In a recent incident on 19 May 2024 in the city of Pune, a Porsche car allegedly driven by a 17-year-old minor under the influence of alcohol struck and killed two motorists. The incident and its aftermath garnered significant national attention. The grant of bail to the alleged Juvenile (minor) on the same day of the incident under the Juvenile Justice Act (JJA) by the Juvenile Justice Board (JJB) with a direction to write a 300-word essay led to widespread criticism, with the demands of cancellation of bail, along with several other demands. Although the JJB subsequently revoked the bail, the incident has highlighted significant issues

regarding juvenile delinquency or offenses by juveniles.¹⁰⁰²

From 2013 to 2023, the total number of crimes committed by juveniles has shown both increases and decreases. Here is a summary of the annual data:

2013: 31,725

- **2014:** 33,526
- **2015:** 32,723
- **2016:** 35,849
- **2017:** 31,591
- **2018:** 31,591
- **2019:** 32,638
- **2020:** 29,768
- **2021:** 28,036
- **2022:** 30,822
- **2023:** 29,125

The types of crimes committed by juveniles can be broadly categorized into:

- **Property Crimes:** 55-60%
- **Violent Crimes (Assault, Homicide):** 15-20%
- **Drug-Related Offenses:** 5-10%
- **Others (including Cybercrimes):** 10-15%

Effectiveness of Rehabilitation vs Punishment

The current state of crime in India highlights the need for a fair system of justice, especially for young offenders. The National Crime Records Bureau (NCRB) states that juvenile crime although makes up a small percentage of total crime, is a significant one.

Effectiveness of Rehabilitation

The goal of rehabilitation is to help young people who have committed crimes by addressing the root causes of their actions and

¹⁰⁰² Factly, <https://factly.in/data-ncrb-data-indicates-that-crimes-committed-by-juveniles-down-30-between-2013-2022/#:~:text=Data%20from%20the%20NCRB's%20CI,Madhy%20Pradesh%20top%20the%20charts.> (last visited Jun. 12, 2024)

helping with their reintegration back into society. This strategy uses therapy interventions, education, counseling, and job training to help young people acquire the knowledge and values needed to live law-abiding lives.

Addressing root cause- The goal of rehabilitation programs is to address the psychological and socioeconomic elements that lead to juvenile delinquency. Juveniles who receive education and vocational training are better prepared for gainful employment and are less likely to re-offend out of need for money.

- **Psychological support-** Many young criminals have psychological problems because of abuse, neglect, or trauma. Juveniles who receive counseling and therapy are less likely to act aggressively or criminally by processing their experiences and learning healthy coping techniques.

- **Family and Community Involvement-** The community and family are frequently involved in successful rehabilitation. Programs involving families in the healing process can enhance the home environment and give young people a support network. Communitybased initiatives help young people successfully integrate into society by fostering a sense of responsibility and belonging.

- **Recidivism Rates-** Research has demonstrated that rehabilitation can dramatically lower juvenile recidivism rates. Juveniles are less likely to turn to criminal activity when they get the help, they need to overcome obstacles and acquire new skills.

Effectiveness of Punishment

In the juvenile justice system, sanctions consist of warnings, fines, probation, and, in extreme situations, institutionalization. The three main purposes of punishment are to protect society, exact revenge, and deter crime. However, the efficacy of punitive measures in reducing juvenile crime is debatable.

- **Deterrence-** For some young people, the possibility of punishment is a deterrent to

criminal activity. Because of their immaturity and impulsivity, juveniles are often less effective at deterring behavior than adults. This can result in them making poor decisions even though they may have consequences.

Accountability and retribution- By ensuring that minors are held responsible for their actions, punishment gives victims and society a sense of justice. Punitive measures alone, however, may not be sufficient to stop future offenses because they do not address the root causes of delinquent behavior.

- **Short-term solutions-** Juvenile crimes can be immediately addressed with punitive measures like fines or being imprisoned. However, these actions frequently fall short of bringing about long-term behavioral change in the absence of corresponding rehabilitative efforts.

- **Potential for negative outcomes-** Juveniles who are institutionalized may suffer from exposure to harmful influences and reinforcement of criminal behavior. Severe punishments have the potential to negatively impact young people, which will make it harder for them to reintegrate into society and raise the risk of recidivism.

Challenges in balancing Rehabilitation and Punishment in juvenile justice

The juvenile justice system faces many challenges in striking a balance between punishment and rehabilitation.

1. **Philosophical and Ideological Conflicts-** While punishment focuses on retribution, deterrence, and societal protection, rehabilitation focuses on reforming the juvenile and addressing the underlying causes of delinquency. It can be difficult to strike a balance between these competing goals because they frequently call for different strategies and resources. Retributive justice is frequently highly demanded by the public, particularly in situations involving serious crimes. This demand may hurt judicial and

policy decisions, possibly at the expense of restorative measures.

2. **Legal and Policy Framework-** Keeping a balanced approach can be difficult when there are discrepancies in the laws and policies about juvenile justice. For rehabilitation and punishment to be properly balanced, there must be clear, consistent guidelines. Judicial discretion is crucial, but it can also result in inconsistent sentencing and the use of restorative measures. It is essential to make sure judges are knowledgeable about and trained in juvenile justice principles.

3. **Social and Cultural Factors-** Effective rehabilitation requires addressing these underlying socioeconomic problems but doing so can be challenging because of systemic injustices and an absence of social support networks. Acceptance and execution of rehabilitative programs can be influenced by cultural perspectives on crime and punishment. There might be opposition to non-punitive measures for young offenders in some cultures.

4. **Resource Constraints-** Major funding for community services, education, vocational training, and counseling is necessary for successful rehabilitation programs. Limited funding and resources could hinder the implementation and sustainability of such programs. Sufficient facilities are required for both punishment and rehabilitation. A lot of juvenile justice systems don't have the necessary infrastructure, especially in developing nations, to support comprehensive rehabilitation programs in addition to detention centers.

Conclusion

In juvenile justice, the corresponding merits of rehabilitation and punishment must be considered considering the immediate and long-term consequences. Rehabilitation helps young people acquire the abilities as well as assistance required for a life of law-abiding by and law addressing the underlying causes of juvenile delinquency and providing a more

long-lasting solution. On the other hand, punishment can worsen the problems that can lead to criminal behavior and is ineffective in producing long-term behavioral change, despite being effective in guaranteeing accountability and providing instant deterrence.

Given the current state of juvenile crime in India, where psychological problems and socioeconomic factors significantly contribute to delinquency, a rehabilitative approach is more likely to be successful. Juveniles can be assisted in overcoming obstacles and reintegrating into society through programs that emphasize education, career training, counseling, and family involvement. Although the juvenile justice system needs punishment, especially to ensure accountability, it also needs strong rehabilitative measures to effectively address the complex issues surrounding juvenile delinquency.

In conclusion, the currently available data indicates that, although both punishment and rehabilitation have a place in the juvenile justice system, placing more emphasis on rehabilitation may be more successful in lowering recidivism and enhancing the long-term well-being of juvenile offenders. India can more effectively address the underlying causes of juvenile crime and promote a safer, more equitable society by concentrating on reform and support.