



JUVENILE JUSTICE IN TRANSITION: AN INITIATIVE FOR SOCIAL ACCOUNTABILITY

Dr. Naseem Ahmad Khan

Sr. Assistant Professor, Department of Social Work, Aligarh Muslim University, Aligarh.

Introduction

Human rights are those rights which are essential to live as human beings' basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal. As part of the framework of human rights law, all human rights are indivisible, interrelated and interdependent. Understanding this framework is important to promoting, protecting and realizing children's rights. Despite significant efforts to improve rights of the child, vulnerable and marginalized children are being forgotten. Children who are victims of abuse, exploitation and discrimination, and suffer exclusion from education, healthcare and other vital services, are being largely overlooked by international development efforts that could dramatically improve their lives and prospects.

Children who lack protection are often invisible. Millions of children are invisible to the world because their plight is hidden, under-reported, or openly neglected. Children who are most likely to become invisible have no formal identity, grow up without the loving care of parents or family, are pressed too early into adult responsibilities, and exploited for profit. The world cannot afford to let children slip from view. By allowing children to disappear from view and failing to reach and protect them, societies condemn children to more neglect and abuse, with lasting consequences for their well-being and for the development of their communities and countries. Children need a protective environment to shield them from harm. All levels of society, from families and governments to teachers and the media have a part to play individually and collectively to prevent abuse and to ensure that children are not made invisible or forgotten. Children deserve to live in safety and with dignity. Abuse and exploitation are an affront to every child's dignity and an intolerable violation of their rights. Protecting children is essential to their physical and emotional health, their general well-being, and their ability to develop to their fullest potential. It is therefore essential to the human and economic development of nations.

Concept of juvenile justice

According to the United Nations Convention on the Rights of the Child, "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society", UNCRC, Article 40.1.

The term "juvenile justice" refers to legislation, norms and standards, procedures, mechanisms and provision, institutions and bodies specifically applicable to juvenile offenders. For the purpose of this, however, juvenile justice is understood to not just cover the treatment of children in conflict with the law. It also includes efforts to address the root causes of offending behaviour and implement measures to prevent such behaviour. There are three major strands of work under this broad definition, all of which are features of 'restorative justice':

-) **Prevention** - in order to ensure that boys and girls do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system,
-) **Diversion** - to ensure that at all possible stages girls and boys are diverted away from the formal justice system and into community-based and restorative processes that address effectively the causes of their behaviours and identify strategies at the community level to effectively prevent re-offending; and
-) **Protection** - of children who are already in conflict with the law from human rights violations, focusing on their development in order to deter them from re-offending and to promote their rehabilitation and smooth their reintegration back into society.

Juvenile Justice System

Government responses to children in conflict with the law almost always involve dealing with the child through a formal justice system. Where this system contains a degree of specialisation for children it is frequently known as a juvenile justice system. This system may function within the context of the adult criminal justice system or may operate largely outside of the judicial system through committees, commissions or administrative panels.

In countries that do not have a specialised juvenile justice system, children in conflict with the law are dealt with in largely the same way as adults. Both adult criminal justice systems and juvenile justice systems frequently use deprivation of liberty as the primary sentencing option. Both may also fail to consider the needs and best interests of the child and to address the



root causes of conflict with the law. Due to their specific needs and circumstances, children and adolescents should always be treated outside the regular adult criminal system.

Fundamental principles of a juvenile justice system

-) **Children need to be treated with humanity:** The Convention on the Rights of the Child (CRC) clearly forbids torture, capital punishment and life imprisonment without the possibility of release for all persons below 18 years, while limiting the use of deprivation of liberty as a measure of last resort – when all other alternative solutions do not seem possible or adequate. In those cases when it is required, it should only be administered for the shortest period possible.
-) **The system shall be child-centred:** A child-centred system recognizes the child as subject to fundamental rights and freedoms and ensures that all actions concerning the child are to be guided by his/her best interests.
-) **Specialization and multidisciplinary approach:** A juvenile justice system shall aim to encourage specialization in child justice practice and the development of a distinct and unique system of criminal justice that treats children in a manner appropriate to their age and level of maturity and which develops institutions and systems designed to achieve that goal. What this refers to is not a single juvenile justice system, but multiple, inter-connected systems. The police, the prosecutors, the courts, the lawyers, the social workers and probation officers, the jails and prisons, the juvenile officers, and the rehabilitation, prevention, and diversion programmes are each systems in their own right. Each one is a relatively autonomous bureaucratic unit within the government, with its own objectives, performance standards and command structure, and each system is in competition with all the others for its share of the national budget. Thus, the approach has to involve all the actors from the outset and lay special emphasis on cooperation and coordination between the relevant agencies.

A programme for Juvenile Justice in India-Beginning the Restorative Justice

The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down the primary law for not only the care and protection of the children but also for the adjudication and disposition of matters relating to children in conflict with law. For the implementation of the Act, the Ministry is implementing a plan Scheme called, Programme for Juvenile Justice. The objectives of the Programme for Juvenile Justice are:

1. To extend help to State Governments to bear the cost of infrastructure and services development under the Juvenile Justice Act in order to ensure that in no circumstances the child in conflict with law is lodged in a regular prison.
2. To ensure minimum quality standards in the juvenile justice services.
3. To provide adequate services for prevention of social mal-adjustment and rehabilitation of socially mal-adjusted juveniles.
4. Ensure participation of community and other organizations into the care and protection of children in conflict with law who are perhaps more vulnerable than other groups of children.

Judicial system for the juvenile and children are somewhat different. As a matter of fact, children lack maturity, they are in formative years, and can be reformed easily. So capital punishment or life imprisonment, committed to prison in default of payment of fine or in default of furnishing security cannot be awarded to them. Although the act constituting offences prescribed for the adults and the juvenile are the same, there is great deal of difference as regard to the jurisdiction of the courts and procedure to be followed. The accused juvenile is not to be tried by ordinary criminal courts. Juvenile justice board deals them. These boards are to function in accordance with the special procedure laid down in the act.

Why Restorative Justice ?

In its investigations between 1994 and 1998, Human Rights Watch documented fundamental challenges for juvenile justice systems worldwide. Far too often children were locked up, sometimes with adults, sometimes for very minor offenses or no offense at all. Many countries failed to use more effective and less costly alternatives to incarceration, such as day treatment, release to parents with restrictions on activities, or shelter care in small group homes. Further, in the 1990s at least six countries were known to have executed persons who were juveniles at the time of their offenses, in violation of international standards.

In countries as varied as Brazil, Bulgaria, Guatemala, India, Kenya, and Rwanda, Human Rights Watch found that state authorities failed to provide juveniles with fair hearings and arbitrarily and unlawfully deprived children of their liberty. Many of these cases involved street children who were ostensibly brought before the courts for their own protection. In Kenya, for example, Human Rights Watch's 1996 investigation found that street children were committed for years to juvenile correctional institutions after they were found "in need of protection or discipline" in summary proceedings with no legal representation. In Bulgaria, Human Rights Watch discovered in 1996 that over 85 percent of the boys held at one penal institution were in some form of pretrial detention; although Bulgaria's Code of Criminal Procedure placed a two-month limit



on pretrial investigation, the prosecutor's office could renew the time period by ordering "further investigation," with no limit on the number of renewals.

Conditions of Confinement

Prompted by Human Rights Watch's 1996 report, *Modern Capital of Human Rights?: Abuses in the State of Georgia*, the U.S. Department of Justice (DOJ) concluded a year-long investigation of the state's juvenile detention facilities in February 1998. The DOJ identified a "pattern of egregious conditions" that violated children's rights, including overcrowded and unsafe conditions, physical abuse by staff and excessive use of disciplinary measures, and inadequate educational, medical, and mental health services. Its investigators also found that three-quarters of the children in detention were nonviolent offenders, sometimes held for offenses such as painting graffiti, making harassing telephone calls, or disobeying a parent's rules. These children were incarcerated in jail-like facilities, where they were shackled to cell furniture for being too noisy, were physically or sexually abused by other detainees or staff, and stripped naked and shackled to a toilet for showing signs of suicidal behavior.

The Execution of Juveniles

Despite the unequivocal international condemnation of the use of the death penalty for juvenile offenders, six countries—Iran, Nigeria, Pakistan, Saudi Arabia, the United States, and Yemen—were known to have executed juvenile offenders in the 1990s. The imposition of the death penalty on persons who were under eighteen years of age at the time of their offense violated the provisions of several international and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, the Beijing Rules, and the American Convention on Human Rights.

The United States led the list with nine executions between 1990 and 1998, fully one-half of the known worldwide total for the period. Two such executions took place in 1998 in the state of Texas, following a five-year period during which there had been no executions of juvenile offenders in the United States. The third execution in 1998, was Virginia's first since the state reinstated the death penalty in 1976. More than seventy juvenile offenders were on death row in the United States as of July 1, 1998.

Elsewhere in the world during 1998, Iran and Nigeria's courts imposed death sentences in proceedings that were not fair and public or otherwise did not comply with the minimum guarantees of Article 14 of the ICCPR. Although precise figures were unavailable, it was believed that many children were included among those sentenced to death. As an example of proceedings conducted without adequate due process protections, Nigeria's special tribunals for armed robbery offenses provided for relaxed rules of evidence, were usually conducted without defense lawyers, and permitted no appeals. In addition, Nigerian police were implicated in summary executions of alleged criminals, including juveniles.

Why is a 'restorative justice' approach to juvenile justice more effective than 'retributive justice'?

-) Criminal justice systems in many countries are 'retributive' - i.e. they are concerned with 'retribution' and punishing the offender, concentrating more on the crime itself than on the people involved. However, this is often not in the best interests of the victim, the offender, or society in general.
-) A much better system is that of 'restorative justice'. This approach focuses on 'restoring' damaged relationships (between victim, offender and community) to the way they were before a crime was committed - to 'make things right as much as possible.' It promotes solutions to repair damage, reconcile parties involved, restore community harmony and reassure those involved.
-) Restorative justice applies to people of all ages but it is especially important in relation to young offenders as it provides the option of having a lasting impact on their emotional and moral development which is positive, rather than negative: it can stop the process of a young offender turning into an adult offender.
-) In practice, restorative justice involves:

Prevention of children coming into conflict with the law;

- **Diversion** of offenders away from the formal criminal justice system: e.g. victim-offender mediation, family group conferencing, referral to an NGO or other community or social programme, including substance abuse programmes, family reunification, community service, police warnings, behaviour contracts, conditional or unconditional release;
- **Alternatives to detention**: e.g. care, guidance and supervision orders; probation; community service orders; financial penalties, compensations and restitution; intermediate treatment and other treatment orders; orders to participate in group counselling and other similar activities; orders concerning foster care, living communities or other educational settings;



- **Detention only as a last resort**, for the shortest time possible;

Access to legal assistance
No capital or corporal punishment
Public awareness
Rehabilitation

Conclusion

All children have the same rights. All rights are interconnected and of equal importance. It is easier to mould a child than to mend a man and that the child of today is the citizen of tomorrow. It is, therefore essential that the criminal traits in youngsters be timely curbed, so that they do not turn in to habitual offenders in their forthcoming life. It is with this view in end that the problem of juvenile delinquency is presently being handled in India with grate significance. The Convention on the Rights of the Child, also, brings together the children's human rights articulated in other international instruments. The Convention thus articulates the rights more completely and provides a set of guiding principles that fundamentally shapes the way in which we view children. At the end, it is very essential to say that this era is reformatory era and restorative justice is the need of today's juvenile justice. Restorative justice only is able to protect the human rights of children those being law conflict.

References

1. Bajpai, G S 1997. *Victim in the Criminal Justice Process: Perspectives on Police and Judiciary*, New Delhi: Uppal Publications .
2. Bazemore, G., and Umbreit, M. 1994. *Balanced and Restorative Justice*. Program Summary. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
3. Bazemore, G., and Walgrave, L. 1997. *Restoring Juvenile Justice*. Monsey, NY: Criminal Justice Press.
4. Bazemore, G., Pranis, K., and Umbreit, M. 1997. *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Center for Restorative Justice & Mediation. St. Paul, MN: University of Minnesota.
5. Butts, Jeffrey A & Buck, Janeen: Sudden popularity of teen courts. (Judges Journal, Vol 41, No 1, Winter, 2002, p 29) (SCJL).
6. Chattoraj, B N: Towards effective administration of juvenile justice in India. (Indian Journal of Criminology, Vol 18, May- Dec 1997, p 1-18) (ILJ).
7. Choudhary, D P: Promoting co-ordination with in the implementation of juvenile justice act: Problems and remedies. (Criminal Law Journal, Vol 110, Part 1256, August 2004, p J225) (SCJL).
8. Bazemore, Gordon & Schiff, Mara (2001). *Restorative Justice: Repairing Harm and Transforming Communities*. Anderson Publishing Company, ISBN 1-58360-506-1.
9. Belgrave, John 1996 *Restorative Justice- A Discussion Paper* , New Zealand: Ministry of Justice .
10. Klein, A. 1996. *Alternative Sentencing: A Practitioner's Guide*. Cincinnati, OH: Anderson Publishing Company
11. Schneider, A.L. 1985. *Guide to Juvenile Restitution*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
12. Umbreit, M.S. 1994. *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Monsey, NY: Criminal Justice Press.
13. Van Ness, D.W., and Strong, K. 1997. *Restoring Justice*. Cincinnati, OH: Anderson Publishing.
14. Zehr H (1995) *Rethinking Criminal Justice: Restorative Justice*, Presentation to the Legal Research Foundation Conference May 1995. (Audio Cassette) Auckland Recording Service, Auckland .
15. Zehr, H. 1985. *Retributive Justice, Restorative Justice*. Elkhart, IN: Mennonite Central Committee, U.S., Office of Criminal Justice.
16. Balakrishna, P: Juvenile Justice Act 1986 certain ambiguities in implementation – a critical study. (Criminal Law Journal, Vol 104, Part 1187, Nov 1998, p J174) (SCJL).
17. Ballav das, Hrudaya: Changing concept to rights of child & juvenile justice. (Human Rights Year Book, 2009, p 141) (NHRC).
18. Bedi, M S: Coordination among juvenile justice functionaries. (Vol 16, Jan- Jun 1995, p 8-14) (ILJ).
19. Bhikari Charan Rout: Justice of juveniles: An analysis. (Crimes, Vol 1, Part 2, Feb 2002, p J355) (SCJL).
20. Burrow, John: Reverse waiver and the effects of legal, statutory and secondary legal factors on sentencing outcomes for juvenile offenders. (Crime & Delinquency, Vol 54, No. 1, Jan 2008, p 34) (NHRC).