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Title of Ph.D. Thesis : Juvenile Crime Prevention and The Role of the Indian Juvenile Justice System: From Institutionalization to Diversion and Restorative Justice

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Abstract

The increased and unnecessary use of secure detention exposes troubled young people to an environment that more closely resembles adult prisons and jails than the kinds of community and family-based interventions proven to be most effective. Fairly viewed, pretrial or post trial detention of a juvenile gives rise to injuries comparable to those associated with the imprisonment of an adult. Detained youth, who are awaiting their inquiry, or sometimes waiting for their placement in another facility or community-based program, can spend anywhere from a few days to a few months in locked custody.

The instrument of institutionalization is meant for application only in those cases where it is needed as a measure of “last resort”. And if it is used in each and every case of juvenile offender whether it is effective or not and without understanding the individualized needs of each child, it will not only be resource-intensive but also lead to negation of the object of the Juvenile Justice Act, 2015.

The scope of the study is restricted to the problem of children who come in conflict with law and analyses the problem both from the theoretical as well as the empirical perspective. In this endeavour, the study has attempted to analyse the legal jurisprudence vis-à-vis juvenile justice system which explores the theories, international practices and the challenges faced at the global level. Further, it analyses the issues which are being faced in the implementation of laws relating to juvenile justice and explored the problem of over-institutionalization in India.

The study explores the alternative mechanisms which will protect the children, who come in contact with the Juvenile Justice System, from the rigors of its proceedings and rattrap confinement of juvenile homes without the negation of the core principles of juvenile justice jurisprudence.

The study elaborately deals with the interaction of children, society and Juvenile justice. It elaborates the legal status of children in light of the theoretical models

and due process protections which are necessary in order to safeguard the rights of the CICL. Further, the study has analysed the interaction of the CICL with the Indian juvenile justice system. In order to study the problem of institutionalization through quantitative data, the study outlines the data from the field study which was conducted in N.C.T. of Delhi.

The study firmly articulates that the crime is a violation of an existing norm and the offender has to take responsibility by actively participating in seeking a solution for the harm he has done. This activity should aim at restoration or compensation for the harm done to the victim as a respectful recognition of her or his position. Successful restorative justice results in reconciliation not only with the offender but also with society and in reintegration of the offender in society.

This study concludes that the improvement of the juvenile justice system is a gradual process, which requires intensive and continual follow-up as well as long-term commitment rather than a series of 'ad hoc' exercises and 'knee-jerk' responses. The administration of juvenile justice is more a reflection of the social and political will of the state than of the universal interests of CICL. When the administration of justice is dictated by political laws instead of scientific laws, the societies typically end up with a legal system that is consistent with the conflict model. Political laws are based on political power and have no stability, whereas scientific laws are based on common law principles and reflect consensus. Therefore, the more juvenile justice systems move away from scientific laws, the more thinly protected the rights of children and young offenders will be.

The study suggests that there is a need to overcome the common perception that institutionalisation is a positive intervention, and that it is necessary to remove children from "undesirable environments" in order to promote their rehabilitation. Renaming these institutions "homes" or "development centres" does not change the fundamental fact that children spend their formative years growing up in closed prison-like centres deprived of their liberty and separated from their families and community. So there is need to move away from "wholesale approach" to a kind of "retail or individualized approach" in cases of child offenders as it will lead us to focus our resources on the "child-rearing" instead of the "child-saving" mechanisms.