

REHABILITATION AND RE-INTEGRATION OF JUVENILE OFFENDERS IN SRI LANKA

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Rehabilitation of Juvenile offenders in correctional institutions and re-integration to the society are two inter-connected controversial issues, which continue to pay grave concern in Sri Lanka. Increasing the rate of juvenile delinquency and its reconvicted and recidivism rates clearly demonstrate the failure of existing policies and methods in both rehabilitation and re-integration processes of present juvenile justice system. Both Rehabilitation programmes and re-integration techniques for juvenile offenders should be based on a “special rehabilitation policy” which particularly focuses on their special needs. If not, it would be rather difficult to control the reconvicted/recidivism rates. It will also create unnecessary social problems in the country. Further, a special attention should be given to identify the causes of juvenile delinquency. Therefore, it is high time to re-evaluate existing policies and methods with regard to the rehabilitation of juvenile delinquents and re-integrate them to the society. This paper describes and evaluates, the reasons for juvenile delinquency in Sri Lanka, the problems that juvenile offenders face when they are kept in correctional institutions such as certificate schools, detention centers, the failure of the existing system and needs of juvenile delinquents.

INTRODUCTION

Sri Lanka is a developing country in the South Asian region where one third of the population are in childhood and adolescence. Sri Lanka also faces the problem of juvenile delinquency. There is a tendency of juveniles involved in antisocial activities, considerably during the last two-three decades. Juveniles, both under the guardianship and the custody of parents and those who were neglected, involve in antisocial behavior which the relevant authorities should pay their serious attention. Sri Lanka adopts a separate judicial process to try juvenile delinquency cases and also adopts distinct methods of punishments which focus on their rehabilitation and

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reintegration into the society as law abiding persons. However, the existing correctional methods, especially the institutional rehabilitation methods, were not successfully reached due to various problems and weaknesses. This research attempts to find the root causes for these problems and weaknesses and to bring about possible remedies/recommendations to overcome those problems. Further, this study deals with offences committed by the Sri Lankan juveniles, the risk factors which cause to aggravate the problem of juvenile delinquency, the special needs of juveniles, and the applicable laws relating to juvenile justice in Sri Lanka. In this paper the author attempts to address the issue under three main parts with several sub headings. In first the author focuses on juvenile delinquency with a brief discussion of Sri Lankan Law relating to the subject. The second part summarizes the reasons for the juvenile delinquency in Sri Lanka which includes some of the findings of the field research. Thirdly, the rehabilitation and reintegration of the juvenile delinquents are discussed with its drawbacks. Finally, the author attempts to suggest possible recommendations to improve the existing rehabilitation system for the juvenile offenders in Sri Lanka which any countries can adopt according the shape of their necessity and the system.

I. JUVENILE DELINQUENCY

A. *General Meanings of Juvenile and Delinquency*

Generally, the term delinquency refers to a large variety of disapproved or, antisocial behavior of children and adolescents, which the society does not approve of, and, for which the punishment or corrective measures are justified in the public interest.¹ The particular term has an extensive meaning which includes violent, hostile, and disobedient behavior of children and their attitude to unresponsiveness towards the society.² Certain other acts such as vagrancy, truancy, obscenity, begging, gambling, loitering stealing, and drinking also include within the term of delinquency. Therefore, it is clear that a wide variety of acts and behavior included within the term delinquency are otherwise non criminal in nature (not prohibited by exiting criminal law) and are freely tolerated if done by adults.³ The next question is who is a juvenile? A juvenile in common dialect could be

¹ ASHOK KUMAR JAIN, *CRIMINOLOGY, PENOLOGY AND VICTIMOLOGY*, (Ascent Publications 1995).

² SRIVASTAVA SURENDRA SAHAI, *CRIMINOLOGY & CRIMINAL ADMINISTRATION* (Central Law Agency 1996).

³ Professor Alan W. Leschied, *Effective Correctional Treatment*, UNFAEI, 118th Course (July 2001).

defined as a child or young person. In other words, according to the general meaning, juvenile is a child or an adolescent between childhood and man/womanhood.⁴ Therefore, juvenile delinquency means a special category of offences created for children and adolescent persons.

B. Applicable National Laws Relating to Juvenile Delinquency

There are several legislative enactments which currently deal with the law relating to juvenile delinquency. The Children and Young Persons Ordinance (CYPO) No. 48 of 1939 (as amended) continues to function as the basic law dealing with the administration of juvenile justice. This legislation also provides provisions for the establishment of the juvenile court in the country. Youthful Offenders (Training Schools) Ordinance No. 28 of 1939, Probation of Offenders Ordinance No. 42 of 1944, Penal Code Act No. 2 of 1882, Code of Criminal Procedure Act No. 15 of 1979 and Prison Ordinance No. 16 of 1877 also contain some special legal provisions applicable to juvenile offenders. In Sri Lanka the minimum age of criminal responsibility is 8 years.⁵ A person under 8 years is considered incapable of possessing “*mens rea*” which is one of the main elements required to constitute a crime under criminal law in Sri Lanka. Those who are over 8 years but less than 12 years are not punished unless they have attained sufficient maturity.⁶ Death sentence is not imposed on the person who is under the age of 18 years.⁷

Next, it is pertinent to discuss the definition of juvenile under the Sri Lankan legal point of view. According to the Children and Young Persons Ordinance, child means a person under the age of 14 years and young person means a person who has attained the age of 14 years but under the age of 16 years.⁸ Young persons who are between the ages of 16-18 are not considered as juveniles under this ordinance. However, according to the children’s charter of Sri Lanka, child means any person under the age of 18. Therefore, it is clear that there is an incompatibility or confusion in Sri Lankan Law as to the definition of a child.

⁴ N.V. PARANGAPE, *CRIMINOLOGY AND PENOLOGY* (Central Law Publications 2005).

⁵ Section 75 of the Penal Code.

⁶ Section 76 of the Penal Code.

⁷ Section 53 of the Penal Code and Section 288 of the Code of Criminal Procedure Act.

⁸ Section 88.

C. *Delinquency Under Sri Lankan Law*

Juvenile delinquency ranges from petty offences such as begging, vagrancy, sale of tobacco, prostitution, petty stealing, selling and possessing of excisable articles/narcotic drugs, force, criminal force, assault and simple hurt, to serious crimes such as robbery, grievous hurt, murder and offence against State including terrorism. If a juvenile who violates the Penal Code (as the main written legislation describes the crimes and punishments) or any other written law which also prescribes crime and punishment, he/she should be punished under that respective law. It is also important to state that the Children and Young Persons Ordinance also recognizes some behaviours (which are not offensive if it is committed by an adult) as criminal offences when those activities are done either by a child or a young person.

According to the statistics, 90% of the male juvenile delinquents were alleged to commit stealing and other petty offences during the period of 2005-2009 except the North and the East of the country. 90% of female juvenile delinquents were alleged to commit prostitution, vagrancy or run away from home during the same period. However, in the last 30 years, in the North and the East parts of the country, persons below 18 years were recruited as soldiers and they have become the direct participants of war. They were used in the war front by the Liberation Tigers of Tamil Eelam (LTTE) group. Child soldiers recruited by the LTTE group were to become institutionalized after 1990 and has now become a great problem in designing special rehabilitation programmes for them. Out of the estimated fighting force of LTTE, 20-40% was children.⁹ Therefore, the country needs to introduce special programmes for these child combatants to rehabilitate and reintegrate them into the society as law abiding citizens.

II. CAUSES OF JUVENILE DELINQUENCY

Though it is difficult to prioritize the causes of juvenile delinquency according to its contribution to the problem, this research found some causes that more or less contribute to aggravate the problem of juvenile delinquency. Those are as follows:

Disintegration of the family¹⁰ and laxity in parental control over children is one of the main reasons that increase juvenile delinquency. In the

⁹ 2009 UNISEF Report.

¹⁰ In Sri Lanka 85-90% of juveniles are living with parents and only 15-10% were homeless and are street children. Further *see* SWARNA WIJETHUNGE, A STUDY OF CHILDREN'S HOMES TO INVESTIGATE THE NEEDS OF CHILDREN IN INSTITUTIONAL SETTINGS (Redd Barna 1991).

year 2010, 50% of the delinquents who were sent to the correctional institutions, had the bitter experience of separation or divorce of parents. This is a 11 percent increase from 1991-2010.¹¹ Increase in divorce and mutual separation rates, domestic violence against wives at home, abusive behavior of parents especially fathers using filthy words and quarrelsomeness, drug and alcohol addiction, smoking and gambling of fathers, may derive children to seek satisfaction from outside where they may end up with antisocial activities. This situation is common in the urban areas of the country.

More than 50% of the foreign income in Sri Lanka is based on women migrant workers. According to the Sri Lankan culture, in a motherless home environment, many children could get easily involved in antisocial behavior. This is also common in urban areas of the country.

The rapid changing patterns in modern living also make it difficult for children and adolescents to adjust themselves to new ways of life. Temptation for modern luxuries of life prompts youngsters to resort to wrongful acts to satisfy their needs. This may prompt them to commit crimes. The children and young persons belonging to low and middle classes and urban and semi-urban areas involve in antisocial activities/petty crimes due to this reason.

The associational impact is another factor which causes juvenile delinquency. As a part of growing up, children start to move outside their family and come in contact with various classes of persons of all ages and both genders. This may lead them to bad association and fall prey to the various circles where most of the time it is difficult to come out of. Further, this association brings them in contact with antisocial elements. Finally, they end up with delinquency activities. This is also common in urban areas.

Modern technology also makes them involve in antisocial activities (e.g. internet facility and mobile phones which they tempt to misuse.) Similarly, present day movies (CDs, DVDs) are dominated by the theme of sex and violence. The teenagers are lured into experiencing what they see in the movies and finally they involve in delinquencies. Again this is common in urban areas.

Failure in the school life/truancy is another reason for juvenile delinquency in the country. Some children may not be mentally prepared to go to school and learn what they are being taught. They go to school to avoid their parents' blaming. Therefore, they leave the classes and loiter in

¹¹ The year 2010 statistics based on my field research and compared it with statistics in the year 1991 from the study done by Swarna Wijethunge, *see id.*

shopping complexes or theaters or other places where they are drawn into the world of delinquency without knowing that their doings are prohibited by law.

Poverty is also a cause of delinquency and most of the delinquents belong to the lower economic class. Parents fail to provide necessities of life draws their children into delinquency in a quest for earning money by whatever means. However, middle class juveniles may become delinquents due to their inability to satisfy parents' expectations, lack of self-discipline or due to bad association. As stated previously, juvenile delinquency is present in the higher economic class too. In rich families, parents are busy, cold and distant which drives their children to be manipulative. They engage in delinquency activities for the sake of fun and excitement or sometimes to get away from their isolated feelings.

Cultural conflicts among the various ethnicities in the country also contributes to the increase of the rate of juvenile delinquency. During the last 30 years, the LTTE group recruited children and young persons as soldiers. Juveniles in the North and the East were drastically involved in terrorist activities and in the war front as child combatants.

Biological factors such as early physiological maturity, low intelligence and irresistible impulses also account for delinquent behavior among juveniles in Sri Lanka.

Besides the aforesaid causes, illiteracy, child labour, squalor and disobedience can also be considered as the other contributing factors aggravating juvenile delinquency.¹²

III. REHABILITATION

A. *The Existing Rehabilitation System for Juvenile Delinquents*

In the latter half of the 20th century, Sri Lanka recognized that stiff/harsh/corporal punishments are not necessarily the required response towards juvenile delinquency but rehabilitation should be the main aim of punishment of juvenile offenders. It also recognized that adults are responsible for the care, protection, rehabilitation of delinquents. During the same period, some empirical researches completed in other countries found that corporal punishments do not reduce the juvenile delinquency rate or such punishments do not contribute to decrease the reconvicted and

¹² A study done by Save the Nation in 1994, under the title of "A Study into the Reasons for Admission to Residential Care in Sri Lanka", 1994, Save the Nation.

recidivism rate in juvenile delinquency.¹³ Some researches suggested that community based corrections are more effective than the institutional based corrections to meet the best interest of juveniles and to reduce the reconvicted and recidivism rate of juvenile delinquency.¹⁴ Therefore, it is clear that juvenile delinquents should be treated specially and differently from adult offenders.¹⁵

Sri Lanka has both the institutional and the community based corrections in the correctional process of juvenile delinquency which interconnect in the proceedings of juvenile offenders. The convicted children and young persons cannot be committed to prisons.¹⁶ They should be sent either to remand homes¹⁷, approved¹⁸ or certified schools.¹⁹ Therefore, in Sri Lanka there are three types of correctional institutions²⁰ established under the Children and Young Persons Officer (CYPO) to rehabilitate children and young persons during the period of punishment. These institutions are administered by the Department of Probation and Child Care and the correction programmes are conducted by the Provincial Department of Probation and Child Care Service. An offender under the age of 16 could be sent to a remand home for a period of not exceeding one month. If a person who is under 18 years commits an offence, the prescribed punishment against the offence is death sentence, the court then should order that person to be detained in a remand home until the pleasure of the President is made known. If the juvenile commits any other indictable offence, the court should order that person to be detained in a remand home until the pleasure of the Minister is met. The young persons maybe sent to a certified or approved school for the maximum period of three years. Mental

¹³ Andrews D.A. et al., *Does Correctional treatment Work? A Clinically Relevant and Psychologically Informed Meta- analysis*, 28 CRIMINOLOGY, 1990, at 369.

¹⁴ Mark W. Lippy & David B. Wilson, *Effective Intervention for Juvenile Offenders*, in SERIOUS AND VIOLENT JUVENILE OFFENDERS, RISK FACTORS AND SUCCESSFUL INTERVENTIONS, (Rolf Loeber & David P. eds., Farrington Sage Publication 1998).

¹⁵ BOHM ROBERT M. & HALEY KEITH N., *INTRODUCTION TO CRIMINAL JUSTICE*, (Mc GrawHill Humanities Social Publication 2002).

¹⁶ Children and Young persons Ordinance, section 23.

¹⁷ *Id.* section 24. Special places established by the order of Minister under section 48. In Sri Lanka there are 09 Registered Remand Homes for holding juvenile delinquents.

¹⁸ *Id.* section 26. Approved school means a school approved by the Minister under section 50. These institutions are registered voluntary institutions run by the Catholic Church with State assistant. In Sri Lanka there is only one approved school.

¹⁹ *Id.* section 26. Certified school means a school established under section 51. These are 5 Certified Schools established under CYPO to detain the delinquents.

²⁰ 01 Approved School, 05 certified Schools and 09 Remand Homes and 200 private residences as accommodation where necessary care and protection may be provided for the juvenile delinquents.

development of the children and young persons, moulding towards good qualities, turning them into law abiding persons and improving their skills are the main aims of the institutional rehabilitation activities. However, young persons may also be committed to prison only if the court certifies that they are unruly or disobedient and cannot be detained in a remand home or a certified school.²¹

The male inmates are trained in vocational training programmes such as carpentry, masonry, electrical and mechanical work and female inmates are trained in home science and handicraft in these institutions. However, it is hard to find correctional programmes such as individual counseling, cognitive behavioral therapy, or formal education.

Community based correctional methods such as probation and supervision under suitable persons are also available to rehabilitate the juvenile offenders. When a child or a young person commits an offence, the court may release the offender on probation under Probation of Offenders Ordinance taking into consideration the nature of the offence, the character of the offender, antecedents, family environment, mental and physical condition of the juvenile delinquent.²² The probation service should be performed by the probation officer of the probation unit in the respective judicial zone. He also should provide the relevant information about the delinquent to the court. The supervision activities are conducted by a court order. Juvenile offenders committed to the probation service are supervised for three years and children on a court order are supervised for 1 or 2 years and for a maximum period of 3 years. During this period the officer's role is as follows:

to improve the juvenile offender's behavior through counseling, maintaining individual profiles of each juvenile offender, if the offender is schooling, make the necessary arrangements to continue the schooling and take follow up action and supervision on him/her, if the offender is not schooling and interested in another vocational career, admit him to a Professional Training Institute and have him trained and provide the necessities to continue the training.

B. Reintegration

It is true that the life in the correctional institution is different to that of the home environment. Conceptually, reintegration is very much important for the delinquents to overcome the various social and psychological problems

²¹ *Supra* note 17, section 25.

²² *Id.* section 4(a).

that they will be faced after their release from these institutions. In some countries there are several after care service programmes that are conducted for ex juvenile offenders to facilitate them to reintegrate to the society as law abiding citizens. In those countries after care service programmes are an integral part of the rehabilitation process of the juvenile justice.

The former and the present Magistrates in the Juvenile Court of Sri Lanka also have the view that reintegrating delinquents into society is an important aspect of the rehabilitation where the Ministry should take the initiatives to establish and institutionalize such programmes into the juvenile justice system. According to them, although the delinquents have committed offences or they have been accused for involving in anti-social activities, these children must be absorbed into the mainstream and the present system of institutional correction is wholly inadequate in achieving this aim.

IV. ISSUES IN THE EXISTING CORRECTIONAL SYSTEM

There is confusion in Sri Lankan law as to the definition of a child where different laws define the term child differently which leads to an incompatibility with the UN treaties such as Convention on Child Right and International Non Treaty Guidelines (Riyadh Guidelines) and Principles (Beijing Rules). This could be identified as the main problem in the juvenile justice system in Sri Lanka. The punishments imposed by the Juvenile Court take the form of punitive not as a therapeutic approach. As a result, most of the offenders are sent to these centers as the first option. Although the number of the admissions of the juvenile offenders has rapidly increased, the capacity of the institutional correctional system has not extended in shape at the same rate. Due to this reason numerous practical problems had been created with regard to the institutional rehabilitation programmes in Sri Lanka. They are, lack and bad conditions of institutes, overcrowding of these centres, difficulties in providing proper care and protection to the inmate delinquents, violation of child rights including torture and ill-treatment, difficulties in providing the required standards of privacy and health, inadequacy of separation of inmates in accordance with the international standards, difficulties in conducting the treatment programmes in a proper manner, the existing rehabilitation methods do not adequately meet the needs of the inmates, financial constrains of running good rehabilitation programmes, children are not accepted by their guardians after rehabilitation and lack of sufficient, efficient and trained staff.

However, it is significant to note that the community based correction programmes also have problems. The unpleasant family environment and poverty, lack of efficient and trained staff, limited public participation and inadequate attention from the court towards this method are some of them.

CONCLUSION

The children of today are the leaders of tomorrow. As adults, it is our responsibility to nurture them, protect them from social evils and provide a safe and peaceful environment for them to grow. Whether they are victims of crimes or delinquents, protection of their future is our responsibility. Therefore, protecting, caring for and rehabilitating the juvenile delinquents are of utmost importance in the juvenile justice system.

The effective function of both the correctional institutions and the community based corrections are also important. Due to the above discussed policy and implementation problems of the rehabilitation of the juvenile delinquents, the reduction of the reconvicted and recidivism rate of juvenile delinquency was not achieved in a successful manner. Therefore, it is high time that Sri Lanka brought about remedial measures to the existing system for the best interest of the child.

The Sri Lankan legislature must clear the most controversial legal issue; the uncertainty of the definition of the term “child” in the written national laws in the country. Since Sri Lanka is a Member State to the Convention on Rights of the Child (CRC), thereby legally bound to implement the provisions declared in the convention into domestic law, the (proposed) new definition should be aligned with the definition of child in CRC. Equally, as a matter sentencing policy, the Sri Lankan courts should refrain from implementing punitive justice concept into the legal system and should consider the Institutional Correction as the last resort whilst putting more emphasis on Community Based Corrections in the infliction of punishments on juvenile delinquents. In this regard, clear and proper criteria should be adopted when selecting the most appropriate mode of treatment. The factors relating to the offence such as the nature and the gravity of the particular offence, the factors relating to the offender such as the age, sex, character, antecedents and other relevant factors such as the environment should be taken into consideration in designing the criteria in determining the most appropriate treatment method.

Additionally, the existing Institutional Correction system should be strengthened with a new form of rehabilitation which focuses more on

improving the education, social, mental and physical health of the juvenile offenders based on their special needs.

Introducing some remedial steps to overcome the practical obstacles is another significant aspect which should be looked into by the relevant authorities. Continuous assessment mechanism over both correctional systems may assist to identify the merits and demerits of both systems which make decision making easier to bring about concrete solutions to develop both systems. Such assessment should include an investigative process of the risks, needs, merits and demerits of each system covering the areas of family of the delinquent, offending behavior, history of the child and the family, living arrangements, child-parental relationship, education of the offender, neighborhood, health, attitudes, life style, motivation for behavioral change and especial needs of children such as love, care, protection and understanding of the child. Introducing proper training to the staff involved in correctional systems, increasing the public participation of the juvenile justice system and volunteering in community based treatment programmes are important in this regard.

No correctional system can be effective unless opportunities exist for the after-care of these delinquents. Therefore, an institutionalized proper after-care service for the juvenile delinquents is needed to achieve the main goals of the juvenile correction: rehabilitation and reintegration of the juvenile delinquents into the society and finally the best interest of the child.