
EXAMINATION OF SOCIAL INVESTIGATION OF PROBATION OFFICER IN CASES RELATING TO ALLEGED OFFENSES COMMITTED BY JUVENILES IN CONFLICT WITH LAW

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ABSTRACT

The researcher in this project discusses the importance of social investigation and the proper use of social investigation reports by the juvenile court, with special emphasis on the use of such reports by the judge on the issue of adjudication; their availability to the child, his parents, and counsel when used in disposition; and their accessibility to appellate courts, private social agencies, governmental agencies, and others. Alternatives that are rejected must be rejected too; the right legislative and legal strategy must be based on balancing the various interests. The social inquiry in delinquency cases should not begin until adjudication of participation is made; the report should be examined by the court solely as a tool in determining disposition. Concerning disclosure, the question is not whether it should be made, but rather how much of the report's contents should be shared. Suggested guidelines for disclosing the report to the child, his attorney, and appellate courts balance the juvenile's interest in the accuracy, relevance, and comprehensiveness of the information used to make a legal determination with the caseworker's desire to preserve the integrity of his relationship with the child and the confidentiality of the information disclosed to him in confidence.

INTRODUCTION

Since the ancient period, there has been a presumption that juveniles should be treated leniently because there is a school of thought that says– Young people often react in a serious, protracted, and aggressive manner that includes aggressive approaches.

In recent years, it has also been reported that the number of crimes committed by children aged 15-16 has grown dramatically. Early-life experiences, dominating masculinity, upbringing, economic chaos, lack of education, and so on are the general inclination or psychology underlying the commission of a crime or the causes of crime. Children between the ages of 6 and 10 are increasingly utilized as tools for carrying out unlawful or criminal actions, which is a source of shame. Because children's brains have a naive and manipulative nature, they may be enticed for a little cost.

With recent events in the worldwide community and the following appearance of juveniles' involvement in crime, Indian legislators are obligated to propose new, progressive, and stronger rules for the country's juvenile system. As a result, the Juvenile Justice Act of 1986, the Juvenile Justice Act of 2000, and most recently, the Juvenile Justice Act of 2015 were all approved by the Parliament.¹ Under this Act, the probation officer is required to submit a social investigation report to the Juvenile Justice Board.

A social investigation report (SIR) is a report on a child that contains thorough information on the child's circumstances, his or her situation on economic, social, psychosocial, and other pertinent elements, as well as recommendations. Everything a person does stems from a set of circumstances that drove him to do what he did. The main purpose of a social investigation report is to discover and comprehend the circumstances around the child in question, as well as what may have led to the alleged crime. Social Investigation Reports (SIR) come into the picture through "Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000," which addresses bail granting processes in a juvenile delinquency case. In judging juvenile matters, social investigation and reporting are still considered a *sine qua non*.

What is the purpose of creating a social investigation report?

A. A juvenile is not a criminal by birth. The inclination to commit a crime, on the other hand, is mostly present in them as a result of their upbringing, a lack of discipline, and a lack of

¹ Juvenile Delinquency Act 1986 was the first Indian legislation on juvenile offenders. Juvenile Justice Act was enacted in 2000 and amended in 2015. It is the present law of the law on juveniles in conflict with law

sufficient education. They break the law because of the unhealthy and negative socio-cultural environment, which causes them to become physically and psychologically unfit and prevents them from being responsible citizens of their nation. But, as Fredrick Douglas famously said, "It is easier to build strong children than to repair broken men." To promote balance and social equity in society, all young people in dispute with the law must be given a fair and equal opportunity to reform themselves. This is the primary goal of social investigation reports: to assist courts in understanding the circumstances under which the juvenile committed the crime before delivering any judgment that may not be in the child's favor and may potentially harm his future².

The Juvenile Justice Act was passed in the year 2000, and it was under Section 12 of the Act that the usage of social investigation reports began. The use of social investigation results by the court in resolution judgements and, on certain occasions, adjudicated proceedings is a distinct input that has emerged from such socio-legal unity.

Since the early days of courts determining juvenile matters, the use of SIR to determine the needs of each child has been envisaged as the foundation of a juvenile procedure. Because the youth are the greatest assets and torchbearers of their nation, legislators and judges are continually seeking measures to reform them and grasp their predicament. In a nation like India, where 25 per cent of the population is impoverished and one-fourth of the overall population lives in poverty³, and where roughly 3.5 million individuals belong to the age demographic 5-19 alone, it is easy to comprehend the surroundings under which they grow. If these people are not well-educated and are incarcerated for every crime, they commit without understanding the implications, our country's future might not be as bright as we expect.

The probation officer is asked by the Juvenile Justice Board to prepare the Social Investigation Report as soon as the Juvenile Justice Board becomes acquainted with the offence committed by a child⁴. The child may be held under the supervision of the PO as a condition of bail⁵.

The social investigation report (SIR) is designed to be a detailed, individualized examination of a young person's social background, with suggestions suited to the individual's requirements and environment. Rule 19(8) of the Draft Model Rules, 2016 under the Juvenile Justice (Care

²JUVENILE JUSTICE AND ITS PROCEDURE IN INDIA <JUVENILE JUSTICE AND ITS PROCEDURE IN INDIA ARTICLE - LEGAL ARTICLES IN INDIA (LEGALSERVICESINDIA.COM)>LAST ACCESSED 3 APRIL, 2022.

³ Niti Aayog's First Multidimensional Poverty Index Report 2021.

⁴ Section 8, sub-section 3 clause (e) of The Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵ Section 12, sub-section 1 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

and Protection of Children) Act, 2015 states that the social investigation conducted by a social worker, Case Worker, or Child Welfare Officer of the institution or any non-governmental organization must be in consonance with Form 22⁶ and must include a detailed assessment of the child's family situation, as well as an explanation in writing of whether it will be in the child's best interests to restore him to his family.⁷

The judge can use the report to ascertain whether it is appropriate to keep a child in custody until the hearing. Other grounds in favour of the procedure include the fact that it sometimes eliminates the need for the child to appear in court, shields parents from monetary loss, and serves the child's and state's interests best in general⁸.

In 2011, an Iranian study⁹ was conducted to evaluate the influence that factors such as family situations, religion, economic conditions, the media, and physical and psychological features play on juvenile delinquency. As per the findings of the survey, while physical and psychological factors had an impact on juvenile delinquency, other components seemed to have no statistically significant impact. According to the study, a healthier home environment may help minimize juvenile delinquency, and individuals could better lead their children through better consultations. This is where the social investigation report steps in to assist the court in comprehending the child's life history. The SIR contains information about children who have run afoul of the law because of their upbringing, circumstances, and physical, economic, and social surroundings.

Ordinarily, the report is organized into three major sections. The first section contains information on the child's familial history as well as his or her relationships with parents, relatives, peers, and teachers. The second section contains information about the child's physical and mental health and problems, as well as his or her hobbies, habits, personality, and behavioural features. The third section is where the probation officer analyses the child's circumstances and connects them to the current act of delinquency, thereby establishing a

⁶ <form22.pdf (coochbehar.nic.in)>last accessed 3 April, 2022.

⁷ Rule 19 (8) of Draft Model Rules 2016 under Juvenile Justice Act 2015

⁸ Teitelbaum, L., 1967. *The Use of Social Reports in Juvenile Court Adjudications*. *J. Fam. L.*, 7, p.425.

⁹ A social work study on Juvenile Delinquency by *Mohammad Reza Iravani*.

<https://r.search.yahoo.com/_ylt=AwrXgzMuMuli3QUAeRHnHgX.;_ylu=Y29sbwMEcG9zAzcEdnRpZAMEc2VjA3Ny/RV=2/RE=1648992687/RO=10/RU=http%3a%2f%2fwww.growingscience.com%2fmail%2fVol2%2fmsl_2011_113.pdf/RK=2/RS=2haC86nYSLJNeOMB01OQjGGgoQ8->last accessed 3 April, 2022.

relationship between the two¹⁰.

In *Vishnu vs The State of Haryana*¹¹, the SIR recorded that the child's relations with his family, friends, teachers, and classmates were cordial. A matriculate, he came across as a normal child. He was neither a member of any gang nor involved in drug peddling. His criminal history was non-existent. The reason for the alleged offense was mentioned as "peer group influence"¹².

The current juvenile system in India was built on the assumption that juvenile criminals may be reformed and rehabilitated. It is reformatory in character since it is primarily focused on restoring and reforming, to the greatest extent possible, the dignity and well-being of people injured by the tragedy. Restorative justice principles are those that are fundamental to healthy, fair, and just relationships. This purpose is fulfilled by the creation of a social investigation report by the probation officer.

How far can the social investigation report of the Probation Officer be relied upon and do they have probative value or not?

A. According to juvenile law, a child implicated in a crime is not labelled an accused, but rather a child in conflict with the law (CCL). If the victim is under the age of 18, he or she is referred to as a child in need of care and protection. The arrest is referred to as apprehension, the trial is referred to as an inquiry, and the conviction is referred to as disposition. During the course of the investigation, the social investigation report is given greater weight than the facts in determining the level of punishment. The social investigation report considers family history, prior records, attitude toward religion and ethical code of the house, social and economic standing, a delinquent record of family members, living circumstances, and parent-child interaction.

Generally, a juvenile is brought before the Juvenile Justice Board (JJB) by the police or a special juvenile police unit (SJPU). The juvenile must appear before JJB within 24 hours of his or her arrest. The SJPU or police may seek the aid of a volunteer organization with the necessary expertise to compile a report summarizing the juvenile's social background and to

¹⁰ Rethinking Reliability of Social Investigation Reports in Cases of Juvenile Delinquency by *Sarah Azad, 1st Year, B.A., LL.B. (Hons.) student at NMIMS School of Law, Bangalore* <Rethinking Reliability of Social Investigation Reports in Cases of Juvenile Delinquency (crcnlu.org)>last accessed 3 April, 2022.

¹¹ AIR 2021, CRR-233 of 2021 (O & M) Punjab & Haryana H.C.

¹² Consider 'social investigation report' in juvenile bail cases: HC by *Saurabh Malik, Tribune News Service*<Consider 'social investigation report' in juvenile bail cases: HC : The Tribune India>last accessed 3 April, 2022.

take custody of the juvenile awaiting production before the JJB. The investigation culminates with the SJPU or police presenting a police report or charge sheet¹³ before the JJB. The Probation Officer's report (PO), i.e., Social Investigation Report, is requested by the JJB on the charge sheet being submitted. The SIR is to be submitted within 15 days from the date of the first production of the juvenile before the board¹⁴. While preparing the SIR, the PO must meet with the juvenile and his parents or guardians, as well as visit the juvenile's home if required. The PO should include in the SIR information regarding the juvenile's background¹⁵ and if the parents or guardians are fit to be awarded custody of the juvenile, also what should be done to ensure the juvenile's proper rehabilitation.

During sentencing, the SIR is important; the JJB is required to read it before making any decisions about the juvenile's rehabilitation. A SIR may also be obtained from a recognized volunteer organization or through any other means, particularly if the juvenile is from a jurisdiction beyond the geographical authority of the JJB hearing the juvenile's case.

The juvenile justice system's goal is to reform and rehabilitate juveniles. It is crucial to strike the right balance between the juvenile's care and the control of his future behavior. The attention is solely on the juvenile and his unique circumstances. This necessitates focused attention on an individual juvenile and his current familial and social surroundings. As a result, the JJB's judgment and demand for a socio-legal approach are established on the 'principle of proportionality: " No matter the severity of the offense, the offender's circumstances and the environment in which the offense was committed should also be taken into consideration when determining how to respond to the case and the offender¹⁶." The juvenile's parental situation, social status, and other factors may be circumstances.

The court considers the social investigation report issued by a probation officer before making a decision. In any other situation, any other person who, in the opinion of the court, is competent to act as a PO in the unique circumstances of the case is appointed by the State Government or recognized as such by the State Government¹⁷. A probation officer's role within the juvenile justice system is twofold: to assist the JJB while making decisions or passing orders pertaining to the juvenile; and to be a friend to the juvenile, and to assist and guide him during

¹³ Section 173 of Code of Criminal Procedure, 1973.

¹⁴ Section 8(3)(e) of Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁵ Section 13(1)(ii) of Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁶ *Juvenile Justice and Juvenile Correction : Pride and Prudence*, M.S, Sabnis, Somaiya Publication Pvt. Ltd. (Bombay & New Delhi- 1996), pg. 86.

¹⁷ Section 13 of the Probation of Offenders Act, 1958.

the probation period so that he fulfils his promise not to re-offend during this period, and, ideally, ever again.

The report of the probation officer referred to in sub-section (2) of section (4) or sub-section (2) of section (6) of the Probation of Offenders Act, 1958 shall be treated as confidential.¹⁸ But it further adds that " the court may, if it sees fit, inform the offender of the report's main points and give him the chance to present any relevant evidence".

The PO reports to the JJB about the child and supervises the juveniles who have been returned to the community by the JJB. The JJB demands the PO's report both when hearing a bail application and also at the time of final disposal of the case. The JJB will decide what treatment plan should be devised for the juvenile's holistic rehabilitation relying on the PO's suggestions, recommendations, and reports. As a corollary, the PO's report has only advisory value; it is essential for the JJB to examine it before making any decision on the juvenile, and to plan its action suitably.

Under juvenile legislation, the PO has always figured prominently. When granting orders, the Juvenile Court had to take the Child Welfare Officer's (probation) advice into account¹⁹. The JJA 1986 also included "probation officer reports" as one of the circumstances to be considered when passing an order with regard to a juvenile²⁰. Furthermore, the PO was given the authority to audit institutions established under the JJA 1986 and submit inspection reports to the State government: Some believe that the Act of 2000 and 2015 tokenized the function of a PO in favor of due process and legal processes and that this shift in focus might lead to an increase in recidivism in the future as a result of little interaction with Probation Officers.

The Indian Juvenile Justice System is designed on three main assumptions: young offenders should not be tried in courts, but rather be corrected in all possible ways; they should not be punished by the courts, but should be given a chance to reform; and trials for kids in legal trouble ought to be based on non-penal treatment through communities based on social control organizations like Observation Homes and Special Homes.

The current juvenile system in India was developed on the premise that young offenders could be changed and rehabilitated rather than having their status as "criminals" confirmed by

¹⁸ Probation of Offenders Act 1958

¹⁹ Section 21 of Bombay Children's Act, 1948.

²⁰ Section 33(d) of Juvenile Justice Act, 1986.

incarceration. The Punjab and Haryana High Court in the case of, *Vishwas Bhandari vs The State Of Punjab* has reaffirmed that a juvenile's bail plea under Section 12 of the JJ Act must be granted after considering the child's Social Investigation Report.

In the matter of *Mumtaz Ahmed Nasir Khan Vs. The State of Maharashtra and ors*²¹, the court laid down a notable thought on Juvenile Justice Act noting "Merely on the premise that the offense is heinous and that it lends to the societal volatility or indignation, we are bracing for juvenile recidivism. Unless there are exceptional circumstances, such as grave moral turpitude and an unrepentant propensity for the crime, it is best to avoid using retributive measures against juveniles. Any juvenile who is convicted will simply be a lifelong prison inmate; however, if he is rehabilitated, he may redeem himself and contribute significantly to society. If a child's fate isn't predetermined by their own destructive behavior, they should not be condemned. A single incident that does not demonstrate wickedness, human depravity, mental perversity, or moral decay might not be sufficient in this case. More than just retribution, just deserts are.

The thoroughness and expertise with which a probation officer conducts this duty have a substantial impact on the judge's judgment. It's something that also takes a lot of time and commitment. It entails multiple arraignments, numerous interviews, and meetings, the review of countless records, and the compilation of court-ordered analytical reports. As a result, the court places a high weight on the probation officers' social investigation reports because of their probative significance.

What are the challenges with the application of social investigation reports?

A. The judge reviews the predisposition report, which has been written by a probation officer, prior to rendering any decision. The predisposition report is a presentence investigation that takes into account the juvenile's social background. The nature of the offense, the delinquent record, school record, family background, psychiatric examination, and the probation officer's opinion of the juvenile's amenability to treatment are all provided to the judge in the report.

Considerations such as gang affiliation or premeditation might be included in the report, as well as mitigating and aggravating factors. The quantity of material and breadth of such reports vary widely, as one might expect. Finally, the probation officer offers an opinion on the outcome and treatment plan. Until the juvenile is declared delinquent, the judge is not permitted

²¹ AIR 2019 (4) Bom CR (Cri) 261 (Bombay).

to examine the social investigation report or know the probation officer's recommendation in most states²².

The heated debate this topic has inspired can be attributed to a variety of factors. The question of the proper exploitation of such discoveries exemplifies the friction between those who consider the juvenile court as merely an authoritarian juridical institution and others who see it as a liberal societal kind of organization. Second, the document poses unusual issues since it is both an approved legal record and a medical systematic evaluation. The problem of privacy and transparency is a concern²³. Third, the document frequently contains information that might be a substantial source of bias for the child and his family. The interests of other institutions, such as governmental agencies and private clinics, in exploiting such data and the juvenile court's interests in safeguarding the child's confidentiality may conflict. The material supplied in a social investigation report to the court cannot be believed on its whole since it is tainted by the prejudices and subjective interpretations of those involved in disseminating information about the child.

Evidence that has not been subjected to the legal requirements set out by evidentiary safeguards should not be used to determine delinquency. The majority of the juvenile's social history is based on information acquired from neighbours who may have an unfriendly or unfavourable attitude toward the child and who are more likely to make biased and misleading comments than testify in court under oath. Furthermore, the report may appear to contain mistakes, prejudice, hasty evaluation, and rank hearsay due to the enormous caseload and little time for the complete study²⁴.

Mr Tabuchi (Japan) delivered a paper²⁵ on several issues encountered throughout the sociological inquiry process. He began by describing how to conduct a social investigation, emphasizing that there are three types of investigations: reference, interview, and observation. In terms of the method of reference, he emphasized the importance of receiving information from school authorities but noted that some school authorities are hesitant to provide relevant

²² <Juvenile Court in Criminal Justice - IResearchNet>last accessed 3 April, 2022.

²³ Columbia Law Review, 1958. *Employment of Social Investigation Reports in Criminal and Juvenile Proceedings*. 58(5), p.702.

²⁴ Xiong, Y.A.N.G., 2008. *On the System of Social Investigation in Juvenile Proceedings* [J].In Legal Forum (Vol. 1).

²⁵ *Some Problems on the Process of Social Investigation by Mr. Isao Tabuchi (Japan)*.

information because it could be used against the juvenile or the juvenile could seek revenge on the school authorities.

He also emphasized the importance of gathering information about the juvenile's previous delinquent behaviour, including (a) the process from the start of delinquency, (b) his behaviour after delinquency, (c) the characteristics of his delinquent behaviour, and (d) the characteristics of the delinquent group to which he belongs. Mr Tabuchi believes that evaluating the findings of a sociological study is critical since each employee has his or her own unique perspective and style of thinking. He believed that when presenting his report to the court, the investigating officer should contain not only his conclusion but also the method of his evaluation. Furthermore, we must investigate the function of the report in determining whether or not the reports are reliable.

It was also debated whether the social inquiry method should include social environment modification. Mr Tabuchi believes that some form of therapeutic intervention is required throughout the social inquiry.

According to The Probation of Offender Act of 1958, the probation officer must report to the court the offender's character and personality, his living circumstances, his problems and needs, his interpersonal relationships, factors that underpin his specific offences, and any other matters that the probation officer believes should be taken into account by the court before making the probation order. This clearly demonstrates how the pre-sentence investigation report is used to build a treatment plan. For a conscientious judge to make the best use of the probation officer's social investigation report, he must have comprehensive, accurate, reliable, and private information on which to base his decision at the time of giving any order. A judge's guess as to whether the juvenile should be moved to a special home or placed on probation with or without monitoring is about as futile as expecting a doctor to prescribe medicine without first learning about the patient's illness.

Although the regulation that safeguards the confidentiality of information in social investigation reports is commendable, it can only be favoured in its restricted application. Because the report may be used in the juvenile's case, it is in the juvenile's best interests to be fully informed about it and to have the opportunity to cross-examine the probation officer on its contents, just as he would with any other piece of evidence produced in court²⁶. To give

²⁶ *The Legal Framework of Probation in India* by S.P. Srivastava, p.265<doc.pdf (tiss.edu)>last accessed 3 April, 2022.

these reports the appropriate level of seriousness, it should be stated explicitly that these reports (assuming they are not superficial in type and substance) should become a required record in court proceedings. When the topic of making a judgement comes, it is our experience that the probation officer's report gets shelved into the background.

The majority of the time, the court's decision is based on the legal interpretation of the regulations rather than their social consequences. This is a significant flaw in the plan that may easily be addressed by allowing the probation officer to make specific and desirable suggestions for the case in each report that they submit. The final authority to partially or completely accept or reject these recommendations may still be retained as a privilege to the conditions for the specified period as a safeguard to this enhanced power of probation officers. Accepting work of probation cannot be called an encroachment or usurpation of judicial functions by probation officers. Instead, they will feel more significant and possibly more duty-conscious as a result of this.

True, there are insufficient probation officers, and their caseloads are excessive. However, these are simple administrative obstacles that are easy to address. The argument that the probation officer may not be totally objective and impartial in conducting the investigation and producing the social investigation report is preposterous and absurd since the same rationale may be used to argue that judges may not be completely objective and fair.

Similarly, the concern that the probation officer might write the report without visiting the offender's parents, relatives, neighbours, and acquaintances highlights flaws in the probation officer selection process rather than the veracity of the social investigation report. As a result, establishing a system for mandatory social investigations and asking probation officers about probation or commitment is both required and desired, and should be viewed as an ideal measure²⁷.

Rather than being tightly prescribed, a good pre-sentence report should be in broad terms. It should include clear information on the offender's attitude, sentiments, and possibility for change, as well as objective data about the offender's background, past record, marital status, and career history, among other things. If this isn't done, it'll be far too simple for a form of legalistic social determinism to dictate the court's decision. Hence, using social investigation

²⁷ <[PDF Notes] 506 words essay on Social Investigation (engineeringinterviewquestions.com)>last accessed 3 April, 2022.

reports requires the application of mind and expertise²⁸ as remarked by Bens. Meeker, the Chief U.S. Probation Officer and Director Federal Probation Training Center, U.S.A.

LITERATURE REVIEW

1. 2nd edition of Robert Agnew's *Juvenile Delinquency: Causes and Control*. Los Angeles: Roxbury, 2005. 555 p.: *Juvenile Delinquency: Causes and Control* is a thorough text that examines the causes of a major social problem in modern American culture, as well as the answers to it. The book is divided into sections based on several subjects. To begin with, it is intended to be shorter and more concentrated than other juvenile delinquency texts. The text is not compact in its totality, with more than 500 pages, however many of the topic areas are handled in a short manner. The use of a more synthetic approach to juvenile delinquency research is a second priority. In 1992, Robert Agnew proposed the general strain theory, sometimes known as GST. The theory recognizes that people in society are subjected to a variety of stressors. Certain persons are more likely to choose to commit a crime depending on the sort of stress they are exposed to. This book gave me a better understanding of why a probation officer should bother to create a social investigation report in the first place.

2. *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law* by Maharukh Adenwalla, Mumbai, 2006. 121 p²⁹.: Throughout the study effort, this book has been a godsend. This handbook, published by the CHILDLINE India Foundation (CIF), is easy to grasp and represents a better understanding of the laws, allowing them to employ all of the provisions for the best benefit of the child. Furthermore, the guidebook will assist them in bolstering the enforcement process and eliciting greater accountability from all affected parties. The handbook is structured into three sections: the first has 16 chapters, the second contains all of the essential judgments, and the third section comprises case studies. It discusses the responsibilities of probation officers as well as the significance of a social investigation report in matters of juvenile delinquency. The language is simple to read and understand with just a little legal terminology expertise.

3. *Children and Crime in India: Causes, Narratives and Interventions* by Saju Parackal & Rita Panicker: In this book, the chapter "The Juvenile Justice System: A Pathway for the Restoration of Children in Conflict with the Law," the Juvenile Justice Board (JJB), detention center staff,

²⁸ Meeker, Ben S., 'Probation as a Sentence', *The Canadian Journal of Corrections*, Vol. 9, No. 4, October, 1967, p. 293.

²⁹ <be36918a7103c5d1de75ce3eee1c6912.pdf (saranalayam.org)>last accessed 3 April, 2022.

and police officers are used to examine how India's current juvenile justice act (JJA) is being implemented. Even for the most serious juvenile offenders, the theory argued that jail is not the most suitable or successful choice. Evidence shows that providing children with community-based supervision and after-care programs can help them make good adjustments in their life. The necessity of the social investigation report being scrutinized by the courts before rendering a judgment is reiterated. The chapter finishes by noting that the JJB framework should incorporate diversion, community services, victim-offender mediation, family conferences, and group therapy to make it more reformatory and restorative.

INDIAN PERSPECTIVE

Protection, restoration, and rehabilitation are all purposes of juvenile justice systems across the world³⁰. These systems, however, have diverse meanings and techniques based on the facilities, goal, targeted age, and time spent in justice delivery³¹. In 1974, when the rising prevalence of juvenile delinquency became a problem in India, the government passed a National Policy Resolution. This resolution established standards and goals for organizing deviant-behaviour-related programmes for youngsters³².

A "child" is defined as a person who has not reached the age of 18 and is not mature enough to grasp what is right and wrong. Most nations' criminal laws have followed the 'doli incapax' idea in the contemporary period. The notion of 'Doli Incapax³³,' which enunciates the criminal culpability of the juvenile, is one of the most essential principles of Criminal Jurisprudence. When this idea is applied and construed in the context of Indian law, the outcome is that no juvenile under the age of seven should be tried for committing a crime³⁴.

The theory of 'Doli Incapax' refers to an individual's inability to commit a crime. It is based on article 40 (3) (a) of the United Nations Convention on the Rights of the Child, which provides that every nation shall specify the minimum age at which children should be excused from

³⁰ Franklin E. Zimring, *American Juvenile Justice*, Oxford University Press, (2018).

³¹ *Functioning of Juvenile Justice Systems in India, US and UK: Explained By Maram Deepika*, a second-year BBA.LLB student from Symbiosis law school, Hyderabad. < Functioning of Juvenile Justice Systems in India, US and UK: Explained - Academike (lawctopus.com)>last accessed 3 April, 2022.

³² National Policy Resolution (1974).

³³ Section 82 of IPC states that a child below the age of seven years is *doli incapax*.

³⁴ *An Analytical Study of Juvenile Justice System in India by Anmol Singh Khanuja and Purti Vyas* <Juvenile Justice System and Laws in India - A Detailed study (ipleaders.in)>last accessed 3 April, 2022.

criminal culpability due to their incapacity to comprehend the nature and consequences of the crime.³⁵

The Directive Principles of State Policies in Article 39(f) of the Indian Constitution also states that the state should 'direct its policy towards ensuring that children and youth are protected against exploitation and moral and material abandonment³⁶. In addition, in 1986, the Indian state passed the Juvenile Justice Act. In India, the Act established a consistent juvenile justice system. There were sixty-three parts and seven chapters in the Act³⁷. The core aspects of the Juvenile Justice Act are the concepts of *parens patriae* and *mens rea*. Juvenile Justice (Care and Protection of Children) was established in 2000 following the 1986 Act. The primary goal of this Act was to provide measures for care and protection. Later, the Juvenile Justice (Care and Protection of Children) Act of 2015 was enacted to replace the Act.

According to Indian law, a "social investigation report" is a document that contains specific information about a child's circumstances, as well as their position with regard to economic, social, psychological, and other pertinent factors and recommendations.³⁸ The probation officer shall submit the report within fifteen days of the juvenile being presented to the Juvenile Justice Board for the first time. The intent of collecting a social investigation report and comprehending the circumstances behind the crime is to provide an equal opportunity for the juvenile to rehabilitate.

INTERNATIONAL PERSPECTIVE

United States of America

The first juvenile justice system in the United States was founded in 1899 in Cook County, Illinois, using a rehabilitative approach³⁹. Youth commit crimes, according to the original juvenile justice system, because they are immature and impulsive. Instead of treating offenders as criminals, the juvenile justice system in the United States focused on their rehabilitation. The framework agreed that these teenagers may be transformed into decent citizens.

³⁵ Article 40 (3) (A) of UN Convention on rights of the child

³⁶ *SK. Bhattacharyya, Juvenile Justice System in India*, Indian Law Institute, vol. 23, 4, (1981).

³⁷ *Ved Kumari, Current Issues in Juvenile Justice in India*, Journal of the Indian Law Institute, vol. 41, no. 3/4, (1999).

³⁸ Section 2(1)(xvii) of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

³⁹ *Manmeet Singh, "Juvenile Delinquency: A Comparative Study Between India, U.K and USA"*, Law Audience Journal, vol. 1 issue 2, (2018).

Adolescent courts usually focused on the minor's long-term advantages, with the state operating as *parens patriae*, or "parent of the nation." The dearth of custom and adaptability in the early adolescent equity framework was lauded, and there were little procedural safeguards for minors. Special regulations and procedures for dealing with minors under the age of sixteen were created by the Illinois Juvenile Court Act of 1899. This was the most modern Act that governed the juvenile justice system.

In comparison to other countries, the functioning of Juvenile Courts in the United States of America is significantly less difficult and easier. In the process of offender trial, the courts of the United States of America use an informal approach. At the initial stage, the police officer in charge of the case has the complete choice over whether to hold the juvenile offender in child care, release him immediately, scold him, or do both. In the second stage, police officers must call the Juvenile Courts to inform them of the case and to give over control of the situation to them.

The United Nations encourages the creation of specialized institutions for dealing with youngsters who have run afoul of the law. When the first children's courts were established in the United States in the 1930s, they were hailed as progressive institutions that served the child's best interests. Despite the fact that informality was lauded as a special virtue in the 1960s, serious worries regarding due process and the protection of adolescents' legal rights surfaced. The following creation of formal juvenile courts took place in the context of a continuous ethos of youth rehabilitation, with a shift away from juvenile imprisonment in the 1970s, particularly in Massachusetts and California.

The United States was not a signatory to the United Nations Convention on the Rights of the Child when it went into effect in 1990 since 22 states allowed death punishment for criminals who committed their crimes as minors. Between 1990 and 2005, 19 juvenile criminals were executed in the United States. Despite the fact that this number represents a small proportion of the overall number of people sentenced to death in the United States during that time, the practise was highly condemned by foreign agencies and organizations⁴⁰. Although a historic judgement by the United States Supreme Court⁴¹ prohibited the execution of young criminals

⁴⁰ Streib VL. *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-December 31, 2004*. National Criminal Justice Reference Service, 2005.

⁴¹ *Roper v Simmons*, 543 U.S. 112 (2005).

in the United States, a limited number of nations throughout the globe continue to practice it, sometimes due to religious legislation.

However, it would be a mistake to believe that welfare systems are always superior to the juvenile justice system, because welfare arrangements may be just as repressive in terms of denying adolescents their liberty. They may be devoid of due process, protections for getting credible evidence from minors, testing methods, and mechanisms for scrutiny or appeal after disposition.

Preliminary research has resulted in the development of a conceptual framework for the delivery of mindfulness-based interventions (MBI) to jailed substance-abusing juveniles, with qualitative findings indicating that this is a potentially practical and effective intervention⁴². Although there is little research on the effectiveness of MBI in juvenile offenders, qualitative feedback has revealed a good response to this type of intervention, with juvenile participants reporting increased subjective well-being⁴³.

United Kingdom⁴⁴

The state does not dismiss the case of young offenders but instead attempts to balance their interests with those of public order, guaranteeing that they will become law-abiding citizens in the future. In most circumstances, the strategy used for juvenile justice administration in the United Kingdom is a distinct legislative framework with separate courts. If juvenile offenders convicted of stealing were placed in the same prison system as older, more experienced criminals, they would most certainly be influenced by the older convicts and return to crime with renewed enthusiasm.

The Children's Charter was adopted in 1889, a statutory document that protected children from cruelty in public life and allowed the state to intervene in home life when it was harsh. While the Children's Charter contained provisions for the protection of children, the question of dealing with juvenile criminals, as well as related concerns such as whether special courts should be established to try them, has yet to be resolved. As a result, until 1908, the public

⁴² *Himmelstein S, Saul S, Garcia-Romeu A, Pinedo D. Mindfulness training as an intervention for substance user incarcerated adolescents: a pilot grounded theory study. Subst Use Misuse* 2014; 49: 560–70.

⁴³ *Himmelstein S, Hastings A, Shapiro S, Heery M. A qualitative investigation of the experience of a mindfulness-based intervention with incarcerated adolescents. Child Adolesc Ment Health* 2012; 17: 231–7

⁴⁴ *An Analysis of Juvenile Justice System and Laws in the UK By Devanjali Banerjee <An Analysis of Juvenile Justice System and Laws in the UK (legalbites.in)>last accessed 3 April, 2022.*

policy position on delinquency and juvenile criminals was still fledgling. The Children Act of 1908 was enacted at this time.

The 1907 Probation Act legally-established probation as a mechanism for imposing punishment as part of the criminal justice system, although in a less severe form. Prior to the 1960s, probation was commonly used to deal with juvenile and young adult criminals. Probationers would be compelled to remain in a boy's club away from harmful influences, with a probationary officer visiting to check that the probationer's needs were being addressed and that the rules of probation were being followed.

Following extensive debate over the function of juvenile courts and delinquency in the country, the Children and Young Persons Act of 1933 was established.⁴⁵ Shortly after the 1908 Act was passed, William Joyson-Hicks, the then Home Secretary, convened a commission chaired by Sir Thomas Molony to investigate the handling of minor offenders or juvenile offenders. The Molony Committee's findings affected the passing of the 1933 Act, declaring that "the major purpose of the juvenile court should be the welfare of the child or young person."

Probation as a measure of punishment for juvenile offenders was also advocated in the Molony committee report. This was due to the fact that it placed the juvenile criminal under the supervision and care of a law-abiding adult who may be a positive influence on him.

The juvenile justice system in Scotland is built on a policy of rehabilitating accused minors. In England and Wales, police have the right to handle juvenile dispositions with discretion⁴⁶. The Criminal Responsibility (Scotland) Act 2019 is the legislation that is adopted in Scotland.

When the juvenile is taken into custody by the police, the juvenile and his/her parents are interrogated to determine if the latter should be submitted to the Children's Panel. When a minor offence is committed by a juvenile, they are placed under police monitoring. The matter is closed with police monitoring and there is no further recommendation to the juvenile court system⁴⁷.

When a minor is charged with a crime, they must appear in front of a youth court. In 1908, youth courts were formed as a distinct entity from the adult criminal justice system. If the case cannot be resolved immediately, the young person may be released on bond or remanded in

⁴⁵ Children and Young Persons Act 1933

⁴⁶ Reforming Juvenile Justice: A Developmental Approach, NAP, 2001.

⁴⁷ Gus Martin, *Juvenile Justice: Process and Systems*, SAGE Publications, 354 (2005).

detention. Youth courts are less formal than adult magistrates' courts, and they aim to decrease the stress of an adversarial system by communicating with the young person's family. They are private or in-camera courts, rather than open courts, and are not open to the public.

Under UK law⁴⁸, If a matter is brought to court, it is usually heard in the youth courts. These courts deal with children ranging in age from 10 to 17. When the accused reaches the age of seventeen, he or she will be brought before an adult court. There are several exceptions, such as when a juvenile is tried alongside an adult in an adult court. In certain circumstances, both the juvenile and the adult are charged with the same crime. Instead of punishment, the focus of any juvenile sentencing should be on prevention and rehabilitation. Warnings, penalties, and monitoring orders are commonly issued by courts.

The child may be sentenced to probation, but incarceration in a juvenile detention centre is also a possibility. Courts must consider reports from schools, social workers, and any other agencies engaged in the case before deciding on a sentence. Without the express consent of the trial judge, the press is not allowed to identify a youngster in court. They are not allowed to reveal the youngster's address or school, or any other information that may lead to his or her identification. Pictures are not permitted to be shown.

CONCLUSION

In light of the aforementioned propositions, it may be inferred that, although combating juvenile delinquency is a pressing requirement, so is appropriate administration of the instruments and procedures in place in the juvenile justice system. The social investigation report is one such instrument. While social investigation reports play an important role in considering bail appeals, they do have some flaws that we can't ignore.

In circumstances other than legal matters, vigilance should be used to prevent giving information to persons or institutions that are not devoted to the child's protection. Although no law can completely preclude the risk of mismanagement, formal behaviour that could lead to child vilification can be effectively spared by enacting specific and irrefutable regulations that take into account the genuine preferences of people and departments responsible for children's welfare. It must be ensured that certain papers or data are not made public or used for purposes other than those for which they were obtained. As social investigation reports are

⁴⁸*A guide to the UK's juvenile justice system* by Frank Beswick <A guide to the UK's juvenile justice system (over-blog.com)>last accessed 3 April, 2022.

susceptible to subjective findings, they should be used judiciously or only when absolutely necessary, rather than being cited in every case of juvenile misbehaviour. A well-thought-out juvenile justice system, with all of its processes aligned with legal objectives, would propel us ahead in the field of child rights.

The reasons for conducting a social inquiry upon presenting a petition is based on sociological considerations and for the court to study the findings before adjudication is based on sociological considerations rather than law safeguarding individual rights. The main idea is that the information in the social report helps the judge have a better understanding of the juvenile's general personality and specialized needs—information that may not be readily apparent during the hearing. Therefore, the statement "the main aim of a social investigation report is that the information in the report contributes significantly to the judge's understanding of the juvenile's general personality and special requirements: is true.

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