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JUVENILE DELINQUENCY AND DRUG ABUSE: CAUSES, CONSEQUENCES AND LEGAL RESPONSES

~ *Dr Vaibhavee J Shrivastava*

Abstract

The problem of juvenile delinquency and drug abuse is one of the most intractable issues to face modern criminal justice systems, and is on the cusp of meeting four disciplines: criminology, adolescent psychology, public health, and child rights jurisprudence. This paper will examine the family, socioeconomic, psychological, and environmental factors that may put youth at risk for substance abuse and delinquent behaviour; it will also conduct a doctrinal review of the causal linkage problem by arguing that substance abuse causes delinquent behaviour in youth. It then compares and conceptually studies the response legal regimes under international treaties, namely the United Nations Convention on the Rights of the Child, Beijing Rules, and examines the multi-dimensional effects of this nexus on individuals, families, and society. The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Narcotic Drugs and Psychotropic Substances Act, 1985 are two pieces of Indian domestic legislation that are relevant to the Riyadh Guidelines. Juvenile justice in India has been shaped by a concept of reform and rehabilitation, as reviewed in this article. It also compares and contrasts the juvenile justice systems in the United Kingdom and the United States. In addition, the article compares and contrasts juvenile justice systems in the United Kingdom and the United States, and it examines court pronouncements that have impacted the reformatory and rehabilitative ethos of juvenile justice administration in India. It arrives at a conclusion that even if the statutory structure is centered on rehabilitation and not punishment, it is not helped by a lack of rehabilitative infrastructure, there is also a lack of coordination between the juvenile justice sector and the other sectors and sectors have not given proper attention to drug-

crime nexus but it recommends reforms in juvenile justice which will focus on early intervention, family-centred rehabilitation and provision of specialised rehabilitative services.

Keywords: *Juvenile delinquency; drug abuse; substance dependency; Juvenile Justice Act; NDPS Act; child rights; rehabilitation.*

1. Introduction

Adolescence is a developmental and at the same time a risky time of life – being high-risk for peer pressure and experimentation and confusing; and at the same time high-risk for development. In certain instances, when this is combined with exposure to narcotic and psychotropic drugs or alcohol, it is often expressed in actions that are deemed to be delinquent behaviour from behaviours such as petty theft and truancy to severe property or personal offenses.¹ Empirical criminology has long noted a feedback dynamic and often a self-reinforcing relationship between juvenile delinquency and drug use such that substance use leads to decreased behavioural control (and tolerance) and increased likelihood of engaging in delinquent behavior, and delinquent peer group relationships lead to increased access and normalisation of drug use.²

The management of this interface poses challenging issues for both policy and law. Simply punitive may risk turning what is almost always a symptom of underlying psycho-social difficulties into a crime, while only dealing with the welfare aspects of the victims or to society will risk minimizing the dysfunction and harm which is occurring.³ Laws and judicial decisions have as a result, been more intent on balancing the strengths of the reformatory philosophy of juvenile justice with the punitive aspects of narcotics control legislation across jurisdictions. This paper explores that balance as reflected in international documents and the Indian home laws and also places the analysis on the legal framework within a broader framework of establishing the causes and effect of the delinquency-drug abuse linkage.⁴

2. Conceptual Framework

¹ Constitution of India, 1950, arts. 15(3), 21 & 39(f).

² Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016 (India).

³ Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61 of 1985 (India), ss. 27 & 64A.

⁴ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012 (India).

A. Meaning of Juvenile Delinquency

Juvenile delinquency is defined as engaging in illegal activity by a younger person, also one who lacks the physical or age of majority, as established by family legal requirements. An individual who has not yet turned eighteen years old on the date of the offence is considered a "child in conflict with law" according to the Juvenile Justice (Care and Protection of Children) Act, 2015. This definition applies to children who have been accused or found guilty of an offence and are seeking protection under this Act.⁵ Delinquent conduct ranges from status offense which would not qualify as offence at adult level: for example, violation of the compulsory school attendance law, running away from home, to index offences that would bring the serious harm to another person or to property: for example, drunkenness, disorderly behavior or enticing a child to harm themselves. The dramatic reformatory rather than retributive angle of the modern juvenile justice system rests on a multi-causal angle of criminological theory in which delinquency is blamed on a complex array of factors at both the individual and social and structural levels.⁶

B. Meaning and Scope of Drug Abuse

Within the context of this paper, drug abuse refers to the repeated ingestion of narcotic drugs, psychotropic substances, or other substances with addictive properties, such as alcohol and inhalants, in ways other than prescribed that harm the user's physical and/or mental health or social functioning. The use of addictive substances is particularly concerning due to the adolescent brain, which is in the process of neural maturation, and its heightened sensitivity to the neurochemical impact of addictive substances, along with strong correlations between adolescent initiation status and adult chronic substance dependence.⁷ Substance use among adolescents has been a consistent trend in India, as reflected by the national household surveys, which have reported increased usage of cannabis, inhalants, sedatives and more recently synthetic drugs by young people in the country.

C. The Nexus Between Drug Abuse and Juvenile Delinquency

⁵ Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009 (India).

⁶ United Nations Convention on the Rights of the Child, 1989, 1577 U.N.T.S. 3, arts. 33 & 40.

⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33 (29 Nov. 1985).

The relationship between substance abuse and delinquency has been explained by three main theoretical approaches. The first, called the disinhibition or psycho-pharmacological model, suggests that chemical changes result from drug use at a level which makes it difficult to assess the situation and leads to a loss of behavioural restraint allowing the individual to perform the "illicit behavior that he/she normally would not execute. The second theory is the economic compulsive theory which accounts for delinquency as a rational and instrumental act, this theory is mainly applied to property crimes.⁸ The third, the systemic model, posits that delinquent behavior and drug use are embedded in the same subculture, which brings the adolescent into contact with both code of illicit drug use and his or her delinquent peers. The latter are not mutually exclusive and there is strong evidence from Indian empirical research of adolescents in juvenile homes that a significant number of child delinquents had a history of substance use, thus further supporting a bidirectional and canonizing relationship as opposed to a simple causal sequence.

3. Causes of Juvenile Delinquency and Drug Abuse

A. Family-Related Factors

The family is still the main source of socialisation and disruptions occurring within the family are one of the most consistent predictors of delinquency and substance abuse. Children whose families are disrupted, whose parents separate, are victims of domestic violence, parents who are substance abusing, or parents who use overly strict or lenient discipline have all been linked to an increased likelihood of delinquent behavior. At the time when adolescents are most likely to use substances and in proximity to delinquent peers, they are likely to be out of the sight of parents, the individuals who can most effectively guide and supervise them, especially when both parents work informal jobs.⁹

B. Peer Influence

Adolescents are more likely to respond affirmatively to "accepting peers," and being involved in delinquent and/or substance-using peer groups are among the strongest predictors of

⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112 (14 Dec. 1990).

⁹ Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, 520 U.N.T.S. 151.

drug initiation and delinquent behavior. Peer pressure does not necessarily just work from the outside in by forcing someone into using drugs and alcohol, it can also subtly work its way in by normalizing it as a sign of being regular, grown up or challenging the parents/institution.

C. Socio-Economic Factors

There are strong associations between poverty, among high crime density areas, joblessness, and juvenile delinquency. A desire or need for financial support may lead a juvenile to engage in income-generating delinquent behaviour (IGDB), such as becoming a drug courier, because navigating the juvenile justice system is typically easier than the regular criminal justice system.¹⁰ Economic deprivation may push minors toward IGDB (information about minors being overrepresented in this category relatively to others is due to the comparative ease with which minors travel on trips than are adults under conventional criminal law).

D. Psychological and Individual Factors

Factors that increase the likelihood of substance misuse and criminal action include psychological vulnerabilities including impulsivity, low self-esteem, ADD/ADHD, conduct disorder, and unresolved trauma from childhood experiences. A prevalent maladaptive coping mechanism for unmet psychological discomfort among adolescents, particularly in regions with inadequate access to mental health services, is drug use.

E. Educational Factors

The drop-outs, academic failures, corporal punishment, and lack of support in school create freedom from routine, and more free time are related to greater exposure to delinquent peer networks and the increase in exposure to substance use opportunities. However, having a structured vocational/extra-curricular activity is known to have a protective effect.¹¹

F. Media, Technology and Availability

Re-normalisation of substance use through digital media and drop in barriers to obtaining illegal substances through online channels and encrypted messaging platforms have also impacted

¹⁰ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, 1582 U.N.T.S. 95.

¹¹ Sheela Barse v. Union of India, (1986) 3 SCC 632.

adolescent use. Adolescent consumption has also been influenced by re-normalisation of the use of drugs in digital media and by the lessening of practical barriers to using an illegal substance via online platforms and encrypted messaging platforms. It has been flagged a number of times in India that drugs are available easily in both physical and digital form in close proximity to educational institutions.

4. Consequences of the Delinquency-Drug Abuse Nexus

A. Consequences for the Individual

This means that it can disrupt the individual's education and bring them into contact with the criminal justice system at a young age, which has additional, distinct negative consequences. it can increase the risk of chronic dependency in later life. it can compromise their cognitive and neurological function. it can expose them to communicable diseases through unsafe practices; and it can disrupt their education. Ongoing exposure to institutional environments also has been linked to increased risk for recidivism when rehabilitative interventions are lacking.¹²

B. Consequences for the Family

The emotional, social and financial repercussions are severe, such as the cost of treatment and legal proceedings, the loss of intimacy and relationships to the child as a result of outside parties and the social stigma which often arises around the family that supports a child against the law, which can in turn make it less likely that parents will seek early help.

C. Consequences for Society

In the societal level, the nexus fuels higher rates of property and violent crime, as well as the limitations on the capacities of the juvenile justice and public health systems and perpetuates inter-generational cycles of poverty and criminality in the absence of rehabilitative intervention. Minors' involvement in organised narcotics trafficking also harms the purpose of the deterrence of narcotics provision—the order to punish offenders for their involvement—the peak from which

¹² Sampurna Behura v. Union of India, (2018) 4 SCC 433.

traffickers seek to protect themselves against the more stringent penalties available for adult users due to the relative leniency of the juvenile justice process.¹³

D. Consequences for the Criminal Justice System

Observation houses, special homes and Juvenile Justice Boards strain the nexus significantly, being underresourced compared to special counselling, de-addiction and vocational rehabilitation, as the reformatory model of juvenile justice assumes. If there is no infrastructure in place, the rehabilitation guaranteed in the statute law may, in effect, be a period of residence spent in jail without rehabilitation.

5. Legal Responses

A. International Legal Framework

Article 33 of the 1989 UN Convention on the Rights of the Child (to which India is a party) requests that states take precautions to prevent children from being involved in the illegal production or trafficking of narcotics and psychotropic substances; Article 40 of the same convention states that any juvenile accused of a criminal offence must be treated in a way that promotes the child's dignity and worth while also encouraging their reintegration into society. United Nations documents outlining a philosophy of rehabilitation and prevention, the Beijing Rules (1985) and the Riyadh Guidelines (1990) highlight the need of avoiding the formal legal system and looking out for the child's best interests wherever feasible.¹⁴ Two major international treaties that would make drug trafficking a crime are the Single Convention on Narcotic Drugs (SCN), 1961 (as amended), and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UNCAT), 1988. The SCN and UNCAT allow for alternatives to punishment and conviction, such as treatment and rehabilitation for addicts.

B. Indian Legal Framework

Article 15(3) of the Indian Constitution grants the state the power to provide for a child's special development, Article 21 guarantees the right to life and personal liberty, which includes

¹³ Salil Bali v. Union of India, (2013) 7 SCC 705.

¹⁴ Dr. Subramanian Swamy v. Raju, (2014) 8 SCC 390.

the right to personal liberty and development, and Article 39(f) of the Directive Principles states that the state must guarantee that children are protected from exploitation and given opportunities for healthy development.

The main laws in India that are used while dealing with juveniles who are in trouble with the law are the Juvenile Justice (Care and Protection of Children) Act, 2015 and the model regulations that were established under this act. Juvenile Justice Boards and Child Welfare Committees are established by the Act to handle cases involving children who are in trouble with the law or who require protection. The emphasis of these committees is on providing "care," "protection and development of a child," and "treatment and social re-integration" rather than punishment. The Juvenile Justice Act of 2015 differed significantly from its predecessor, the Juvenile Justice Act of 2000, in a number of important respects, including the following: the ability to try a juvenile offender as a "adult" for crimes committed when they are between the ages of 16 and 18, the Juvenile Justice Board's responsibility to conduct an initial evaluation of the juvenile offender's mental and physical capacity, and the juvenile's age-appropriate behaviour in relation to the crime and its circumstances. This revision has been the subject of heated controversy among Act stakeholders, who see it as a radical change from the Act's original reformist ethos and hence a very contentious provision. Those who support it argue that it is a proportional reaction to involvement of older adolescents in heinous offences.¹⁵

In India, the main law concerning drug regulation is the Narcotics Drugs and Psychotropic Substances Act, 1985, sometimes known as the NDPS Act. The Act's various sections demonstrate a hegemonic and rehabilitative perspective on the addict as user rather than trafficker. For example, Section 27 addresses the use of psychotropic substances and narcotics, and Section 64A grants immunity from prosecution to an addict who willingly seeks treatment to overcome their addiction. According to Section 1(4) of the Juvenile Justice Act, which is also influenced by judicial interpretations, a child who is in conflict with the law must be processed only through the Special procedure of the NDPS 2015 Act of the State Legislature (unless there is a provision in that act that is more advantageous to the child), and this applies in cases where both the old and new laws are relevant. This harmonisation is crucial in that any punitive architecture as a result of narcotics

¹⁵ Juvenile Justice and Delinquency Prevention Act, 1974, 42 U.S.C. § 5601 (U.S.).

legislation is not allowed to prevail over the protective architecture that the child user or the child exploited as a courier might find in the laws of juvenile justice.

Though they do not address drug usage directly, the Right of Children to Free and Compulsory Education Act of 2009 and the Protection of Children from Sexual Offences Act of 2012 form a larger legislative framework for protecting children and eliminating systemic causes that contribute to girls' and boys' involvement in delinquent behaviour, including school dropout.

C. Judicial Response

Over the course of its rulings, India's highest court has articulated the country's founding document and the principles that should guide the reform of juvenile justice systems. Taking this into account, the Court upheld the State's obligation to ensure children are detained in a humane manner and mandated the establishment of sufficient remand and observation home facilities. In the case of *Sampurna Behura v. Union of India*, the Supreme Court examined the deficiencies in the Juvenile Justice Act's rehabilitative infrastructure as well as other systemic implementation issues pertaining to children's care and protection. In the case of *Salil Bali v. Union of India*, the Supreme Court deposed an age reduction motion following the public disclosure of a serious sexual violence case involving a minor. The court upheld the constitutional age of sixteen as the minimum age for a juvenile, reasoning that the age of eighteen is difficult to remove, and it ensured a uniform application of the reformatory Juvenile justice philosophy in accordance with the constitutional mandates of Article 15(3) and Article 39(f)(2).¹⁶ The Court upheld the provisions in the guidelines that allowed some juveniles to be tried as adults in *Dr. Subramanian Swamy v. Raju*, which had previously been considered for constitutionality. However, the Court did remind of the need of preliminary assessment provisions that apply to any determination of trial as adults, among other detailed safeguards. Together, these decisions reflect a clear philosophy by the judiciary to rehabilitate the individual who committed the offense, while upholding the principle of accountability exercised through corresponding measures for offenses of "heinous nature."

D. Comparative Perspective

In response to federal policy goals including the deinstitutionalisation of status offenders, the separation of juvenile and adult detainees, and the reduction of disproportionate minority

¹⁶ Crime and Disorder Act 1998, c. 37 (U.K.).

contact, several states have implemented juvenile drug court systems that combine judicial supervision with mandatory drug treatment instead of the more conventional juvenile adjudication. A multi-agency approach to managing juvenile offenders, including those with substance abuse issues, was established in the United Kingdom through the Crime and Disorder Act, 1998. This model is comparable to, and sometimes identical to, that which is federally envisioned by Indian law, although it is not always fully implemented in practice.¹⁷

6. Critical Analysis

Despite the fact, in principle, that the architectural framework is directed towards rehabilitation, a number of gaps have been identified in its implementation. One of the first problems observed is that observatories and special homes are routinely inadequately staffed with counsellors and de-addiction experts and the custodial period that might be expected to happen according to the Juvenile Justice Act, is not followed by any therapeutic action for the kids with a substance dependency problem. Second, the legislation envisions a multi-agency approach, but in practice, there is a lack of uniformity in the way states' Juvenile Justice Boards (JJB), Child Welfare Committees (CWC), de-addiction centers, and educational authorities collaborate. Third, single use of the NDPS Act under Section 64A for an addict wishing to undergo voluntary treatment is not utilised to its full potential because there is low awareness among children and guardians.¹⁸ Fourth, after-care services, which play a critical role in preventing substance abuse and association with delinquent youth post release, are poorly funded in most States. The justification for an exception to the doctrine of juvenile justice in general for certain offenders (normative or otherwise) inevitably causes tension between that doctrine and a more general doctrine that expects juvenile systems to focus solely on rehabilitation, and the interaction between cases involving substance abuse and the doctrine needs more empirical study than appears to have been done yet.

7. Conclusion

¹⁷ Ministry of Social Justice and Empowerment, Government of India, *Magnitude of Substance Use in India 2019* (2019).

¹⁸ National Crime Records Bureau, Government of India, *Crime in India: Statistics on Juveniles* (Annual Report).

The relationship between adolescent delinquencies and drug use is not one-way, not an accidental phenomenon, but is a mutually reinforcing process with familial and socio-economic, psychological and structural vulnerabilities that are all to the detriment of both. Domestic and international legal responses have included various programs that aim to rehabilitate children while taking a child rights stance, such as the Narcotic Drugs and Psychotropic Substances Act of 1985 and the Juvenile Justice (Care and Protection of Children) Act of 2015 in India. But the promise of the scheme has not yet been lived up to, largely due to the lack in this model of adequate rehabilitative facilities and inter-agency liaison, not so much a lack of ambition in the text of the optional legislation itself. Any real, long term institutional commitment to a justice system whose principles accord with the rehabilitative model cannot, in particular, be achieved by what goes on in court or on statute books.

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