Juvenile Justice: A Comparative Study of Laws in France and India

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ABSTRACT

Juvenile delinquents are those offenders including boys and girls who are usually under 18 years of age. A juvenile delinquent is a young person consistent, or habitually defiant. The comparative study of laws related to Juvenile delinquency in India and France help in inferring about what reforms should be introduced in Indian laws in order to make them at par with the current International Laws. France has a unique system of youth justice. Until the late 1600s, parents could have their children locked up without validation. For the next two hundred and fifty years, there was no tangible system of youth justice and no legislation to guide the handling of youth delinquents. French juvenile justice started to take figure in 1945 with the passage of the Order of 2/2/1945. In India, The Juvenile Justice Act, 1986 has been replaced by a new Act called ‘The Juvenile Justice (Care and Protection of Children) Act, 2000’. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child. The paper emphasis on comparative study of Juvenile delinquency laws in France and India.

Keywords
Juvenile, Rehabilitation, Tribunal, Custodial, Criminogenic

INTRODUCTION

Delinquency is a kind of deviation. When an individual deviates from the course of usual social life, his behaviour is called “delinquency”. When a juvenile, below an age specified under a statute exhibits behaviour which may prove to be hazardous to society and to him he may be called a ‘Juvenile delinquent’. Each nation has its own specific definition of the age range covered by the word ‘juvenile’.

Friedlander says, “Delinquency is a juvenile misconduct that might be dealt with under the law”.

The Second United Nations Congress on the Prevention of Crime and Treatment of Offenders (1960) states, “By juvenile delinquency should be understood the commission of an act which, if committed by an adult, would be considered a crime.”

In the past twenty-five years, laws concerning children have multiplied all over the world. These laws generally use the term “minor” instead of “child”; the Civil Code defines “minor” as “an individual of either sex who has not yet reach eighteen years of age.” The recent changes aim at developing a greater legal status for minors, to reflect their place in today’s society. The new legislation has also been geared towards the implementation of the fundamental rights and obligations enshrined in the 1989 UN Convention on the Rights of the Child. The government and Parliament of both India and France have tried to strike a balance between children’s rights, the protection of children, and the parents’ rights and duties.

Juvenile delinquents are those offenders including boys and girls who are usually under 18 years of age. A juvenile delinquent is a young person consistent, or habitually defiant. Acts of delinquency may include (1) running away from home without the consent of parents, (2) habitual absence beyond the control of parents, (3) spending time indolently beyond limits, (4) use of offensive languages, (5) wandering about rail-roads, streets, market places, (6) visiting gambling centers, (7) committing sexual offences, (8) shop-lifting, (9) theft etc. Juveniles may do such activities singly or through a team.

The comparative study of laws related to Juvenile delinquency in India and France will help in inferring about what reforms should be introduced in Indian laws in order to make them at par with the current International Laws. In this paper we will have a broad look of the laws and provisions regarding Juvenile offenders and Juvenile delinquency in India and France and a comparative study of the same.

LAWS AND STATUTES IN FRANCE REGARDING JUVENILE DELINQUENCY

Background

Before proceeding to the legal system of France, the vital point to identify with is that the French legal system has gradually evolved to consider juveniles as children to be protected. Legal proceedings also are founded on this basis, which is primarily modified to civil matters. Even for offences unswerving by juveniles in France the
juvenile court judge refers to the Order of 2 February 1945, thus giving precedence to educative measures rather than to penal ones. This is why a whole programme of alternatives to incarceration and actions aiming at educating juveniles to good moral principles has been developed during the last 50 years.

France has a unique system of youth justice. Until the late 1600s, parents could have their children locked up without validation. For the next two hundred and fifty years, there was no tangible system of youth justice and no legislation to guide the handling of youth delinquents. French juvenile justice started to take figure in 1945 with the passage of the Order of 2/2/1945. The Order recognized “educative options” as the preferred action for youth offenders and called for the use of incarceration only when necessary. Educational measures stress training and treatment that is individualized to the needs of youths.2

Order of 2/2/1945
The Order established the Juvenile Court and the position of juvenile judge to watch over youth placements. While the Order encouraged judges to order supervisory and educative sanctions for youths, it enabled the Court to detain juveniles in the incident that their behavior (based on degree of repentance) and the situation of their crime (extent of violence) justify such a placement. Juvenile crime in France has increased over the last two decades. Statistics indicate that juvenile property crime and juvenile offenses against persons increased by 36 percent and 670 percent respectively between 1985 and 2007. As a result of the increase in youth crime, the political climate shifted from rehabilitation to incarceration and harsh sanctions for juvenile offenders. Juveniles age 16 to 18 who commit a repeat offense are now ineligible for sentence improvement and can receive the same sentence as an adult who commits a similar offense. In early 2012, there were 946 juveniles in French prisons.

Juvenile Justice Courts
The juvenile justice courts consist of the juvenile justice judge, the children’s tribunal, and the Cour d’assises des mineurs. The juvenile justice judge deals with contraventions and débits. He may only order educational measures. The children’s tribunal is comprised of one juvenile justice judge and two non-professional judges with an attention in the field of childhood and sociology. It has the same jurisdiction as the juvenile justice judge but, in addition, the tribunal deals with crimes perpetrated by minors under sixteen. It may decide to send the juvenile to a specialized institution or sentence him. The Cour d’assises des mineurs is comprised of three professional judges and nine jurors. It adjudicates the most serious offenses perpetrated by minors over sixteen.3

Penalties
Penalties, generally, are personalized to the age of the child. The Penal Code distinguishes five categories:

- Children under ten with discernment: the child may be found criminally responsible before a juvenile justice court. He/she cannot receive either a criminal penalty or an educational sanction. Educational sanctions are a new tool introduced in 2002. They fall between educational measures and criminal sanctions. The judge may only order an educational, protection, or assistance measure.
- Children from ten to thirteen: the judge may order the following educational sanctions: exclusion of the object used in the commission of the offense, ban on associating with the victim or the accomplices, forbidding going to the place where the offense took place, compensation of the victim, and mandatory civic education. In the event of non-compliance with these sanctions, the judge may order placement in an organization. The sanctions will appear on the child’s criminal record.
- Children from thirteen to sixteen: the criminal penalties incurred are half the ones stipulated for adult offenders. The juvenile justice court may combine criminal penalties with educational measures.
- Children from sixteen to eighteen: they may benefit from the same penalty reduction than children from thirteen to sixteen receive, but in their case, this reduction is optional.

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1 Blatier 1999
2 Castaignede and Pignoux 2010
Role of Juvenile Courts
The Order of 2/2/1945 gave Juvenile Courts two primary interventions for youth delinquents: custodial sentences and educational measures, which involve youth participation in academic or vocational activities. With the passage of the Law of 9/9/2002, the French government added an intermediary sanction between education measures and custodial sentences. Educational sanctions are available for youths age 10 to 18 and include reparation, participation in civic education, bans on associating with victims or accomplices, or bans on visiting the place of offense. Judges can also order interventions such as supervision, remise (return to custody of parents), fines, community service, electronic monitoring, and suspended sentences.

The Law of 9/9/2002 calls for the construction of youth detention centres, which hold up to 60 juveniles ages 13 to 18. However, the Law reinforces the use of imprisonment as an exceptional measure to be utilized only when necessary. If a juvenile is not acquiescent with an educational sanction, the magistrate has the authority place him or her in secure custody.

French police are usually the first point of a youth’s contact with the legal system, but Juvenile Courts retain the authority to order custody. Police cannot hold a juvenile in custody without consent from the prosecutor’s office. Juvenile Courts can order custodial sentences but legislation puts limits on youth imprisonment to ensure that custody is reserved for serious offenders who are not responsive to alternative orders. Judges can typically order custodial sentences only for juveniles over the age of 16. Juveniles age 13 to 16 cannot serve a custodial sentence unless the potential sentence is at least five years and they have served a previous educational measure, educational sanction, or custodial sentence. A recent law allows judges to incarcerate any juvenile without a criminal history who commits an offense punishable by seven or more years. Juvenile Courts use custodial sentences primarily for the highest risk offenders. Judges order custody for approximately 95 percent of youths convicted of a serious offense. The duration of custody cannot be longer than half the length of sentence that an adult faces for committing the same crime. Juvenile Courts have reduced the average duration of custodial sentences to minimize youth custody.

Rehabilitation
There are various inhabited youth facilities in France, some of which are more rehabilitative than others. Educational action centres and social children’s homes offer long-term placements, academic and vocational support, and help transitioning out of custody. Secure education centres and closed educational centres house juveniles serving suspended and conditional release sentences. A problem with the latter placements is that such facilities are often distant and separate youths from their families.

A study analyzed judicial sentences in four Juvenile Courts and found that the Courts ordered custody in 16 percent of cases, observational methods and probation in 64 percent, compensation orders in nine percent, care placement in five percent, and return to family in five percent. Courts ordered custodial sentences for 55 percent of repeat offenders. France has a variety of prevention programs that seek to identify at-risk youth and address their criminogenic needs, but the French youth justice system does not use evidence-based programs nor do they have a system for evaluating the effectiveness of youth treatment programs.

France has also recently adopted restorative measures to expand diversionary options which includes a program called school monitoring helping juvenile dropouts.

LAWS AND STATUTES IN INDIA REGARDING JUVENILE DELINQUENCY

Background
Though there were a number of laws in ancient and medieval society guiding the actions and behavior of people of India, none of these laws had any specific references to juvenile delinquents or neglected children. The Apprentices Act, 1850 was the first legislation dealing with children in conflict with law, providing for binding over of children under the age of 15 years found to have committed petty offences as apprentices. Under the Act of 1986, Section 2(a) defined the term juvenile as a “boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years” but later on the parliament enacted Juvenile Justice Act, 2000 (herein after ‘JJ Act’) and the age bar was raised to 18 years for both girl and boy. Consequently, the Reformatory Schools Act, 1897 provided that children up to the age of 15 years sentenced to imprisonment may be sent to penitentiary cell. Juvenile Justice Act, 1986 was enacted by the parliament in order to provide care, protection, behavior, development and rehabilitation of neglected or delinquent juveniles and for the arbitration of certain matters relating to, and disposition of, delinquent juveniles as a uniform system of juvenile justice mechanism throughout our country.

The JJ Act, 2000 lays down that juvenile in clash with law may be kept in an observation home while children in need of care and protection need to be kept in a children

4 Castaignede and Pignoux 2010
5 Wyvekens 2006
home during the pendency of proceedings before the competent authority. This provision is in contradistinction with the earlier Acts which provided for keeping all children in an observation home during the pendency of their proceedings, presuming children to be innocent till proved guilty. The maximum detention could be imposed on a juvenile is for 3 years remand to Special Home irrespective of the gravity of offence committed by him and JJ Act, 2000 immunes the child who is less than 18 Years of age at the time of the commission of the alleged offence and from trial through Criminal Court or any punishment under Criminal Law in view of Section 17 of the Juvenile Act. The Juvenile Justice Act, 2000 is the primary law for children in need of care and protection.

Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice Act, 1986 has been replaced\(^8\) by a new Act called ‘The Juvenile Justice (Care and Protection of Children) Act, 2000’. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child.

The other salient features of this enactment are: (i) it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children (ii) the Act directs that the cases related to juveniles should be completed within a period of four months (iii) it has been made compulsory to set up a Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for a District or a group of Districts. (iv) special emphasis has been given for rehabilitation and social re-integration of the children and the alternatives provided for this are adoption, foster care, sponsorship and after-care. The new Act allows for adoption of a child within the purview of this Act by any community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child.

Programmes under the Juvenile Justice Act

The programme for Juvenile Justice endeavors to provide for full coverage of services envisaged under the Juvenile Justice Act so as to ensure that no child under any situation is lodged in prison; to bring about qualitative improvement in the juvenile justice services and to promote voluntary action for the prevention of juvenile social maladjustment and rehabilitation of socially maladjusted juveniles. The Juvenile IPC crimes in 2001 rose significantly by 78.1 percent as compared to the data of earlier years.

Under the Programme for Juvenile Justice, the Government of India provides assistance to the State Government for establishment and maintenance of Observation Homes, Juvenile Homes, Special Homes and after-care institutions for children in conflict with law and children in need of care and protection.

The cost of maintenance of the inmates of the Observation Homes is borne by the State Government and Central Government on a 50:50 sharing basis under a Centrally Sponsored Plan Scheme. The number of inmates in these Observation/Special Homes during the year has been varying between 110-120.

As per the provisions of the Juvenile Justice Act (Care and Protection of Children Act) 2000 (amended in 2006) State governments are required to establish a Child Welfare Committee or two in ever district. Each Child Welfare Committee should consist of a chairperson and four members. The chairperson should be a person well versed in child welfare issues and at least one member of the board should be a woman. The Child Welfare Committee has the same powers as a Metropolitan Magistrate or a Judicial Magistrate of the first class. A child can be brought before the committee (or a member of the committee if necessary) by a police officer, any public servant, CHILDLINE personnel, any social worker or public spirited citizen, or by the child himself/herself.

Role of Child Welfare Committee

The Child Welfare Committee usually sends the child to a children’s home while the inquiry into the case is conducted for the protection of the child. The Child Welfare Committee meets and interviews the child to learn his/her background information and also understand the problem the child is facing. The probation officer (P.O) in charge of the case must also submit regular reports of the child. The purpose of the Child Welfare Committee is to determine the best interest of the child and find the child a safe home and environment either with his/her original parents or adoptive parents, foster care or in an institution. A final order must be given within four months of the admission of the child before the Child Welfare Committee. The Child Welfare Committee also has powers to hold people accountable for the child such as in the case of child labour, the employers are fined or made to give bonds to the children. Child Welfare Committee also has the power to transfer the child to a different Child Welfare Committee closer to the child’s home or in the

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\(^9\) Criminal Justice India Series Vol. 20, 2005
CONCLUSION

While analyzing the statutes of both the nations, it may be inferred that the emphasis is given on rehabilitation and reformation. Yet, the legal system of France, at some place seems to be stricter and emphasizing on reformation as well as punishment while in case of India, the same is reform-oriented only. It has also been observed that in case of France, the penalties are pronounced on the basis of various age slabs while in India, it is apparently generalized. As a general rule, children in France enjoy all the rights and liberties enshrined in the 1989 UN Convention on the Rights of the Child. The state plays an important role in the social welfare and protection of children, along with local authorities. The ombudsman for children and several governmental and non-governmental organizations and associations closely monitor the children’s welfare. They regularly identify problem areas and make recommendations to the President of the Republic or to the government for improving the legislation in force. In India, there is a need for reviewing and updating the laws regarding juvenile delinquency. In France, Parliament presently is debating a draft law on minor and adult repeat offenders. If passed, the law would set automatic minimum sentences for repeat offenders (minors and adults) higher than the minimum penalties already set forth for each offense. In both the nations, the courts, however, emphasis is given on rehabilitation guarantees. Rehabilitation guarantees are guarantees that the offender gives to show that he will be able to be part of society again. Thus, we see that in some cases France seems to be much ahead of India while in others, the Indian Laws are more justified.

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