

RESEARCH ARTICLE

Issues and problems faced by children in conflict with law during and after their detention

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Abstract: Children coming in conflict with the law is a problem that affects not only the children but also their families, communities and the society. In the decades of conflict in Kashmir, especially after the start of the insurgency in 1989, local people have witnessed killings, injuries, arrests and illegal detentions. In 2008, people took to peaceful mass protests, which resulted in three summers of massive agitations in 2008, 2010 and 2016. The main participants of these agitations were the youth. The young age of protestors, combined with the police efforts to control the agitation, led many children to come in conflict with the law. The main topic addressed by this research is the problems and issues faced by the children in conflict with the law in Kashmir during and after their detention. A detailed legal analysis of the relevant international and national legislations and covenants is done to ascertain the standards and norms relating to juvenile justice. The methodology employed was a survey using personal interviews with such juveniles, to provide a picture of the reality as experienced by those subjected. The findings reveal that the present juvenile justice system in Kashmir has failed to implement in full the international and local legislation, particularly due to the presence of harsh emergency laws like the Armed Forces Special Protection Act (AFSPA) and Public Safety Act (PSA). Juvenile offenders are treated as adult criminals and detained in police stations or sent to jails meant for adults. During the detention, juveniles were subjected to beatings and torture, and after the detention, they faced various problems like frequent visits to courts and police stations, loss of education, problems in getting passports, jobs and other things that require police verification.

Keywords: Kashmir; Juvenile Justice Act; Children in Conflict with Law; Convention on the Rights of the Children.

INTRODUCTION

Many unfavourable factors and unavoidable circumstances might compel the children to do such acts which are delinquent as well as in conflict with the law. 'Child in Conflict with Law' has been defined under Section 2 (13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 of India as, "A child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence". These behaviours range from out bursting of emotions, muggings, drug abuse, violent behaviour to more serious types of offences (India, Ministry of Women and Child Development, 2017). However, the Juvenile Justice System assumes that "a child offender is a product of an unfavourable environment and is entitled to a fresh chance to begin his life" (Agarwal & Kumar, 2016). It is accepted that a child offender should not be given punishment based on the kind of offence they have committed but, should be given an individual treatment that is reformative and is based on his /her actual need, psychological and social background.

Jammu and Kashmir, formerly a state of India, was bifurcated into two centrally controlled Union Territories on 05th August 2019, viz., Jammu and Kashmir, and Ladakh. Kashmir conflict is an internationally recognized issue. The decades of the conflict aided by cross border militancy, the presence of various emergency laws and the police efforts to control

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the mass agitations, have led many children to come in conflict with the law (Jammu Kashmir Coalition of Civil Society, 2018).

However, the juveniles of Kashmir are not treated like the juveniles in the rest of the country (Wani & Desai, 2018). There is an increase in the number of youths disrupting law and order, indulging in stone-pelting, as well as local boys joining militancy. For this growing trend, apart from the prevailing situation, the arrests and detentions of young boys and minors, keeping them in police stations and jails, imposing (Public Safety Act) PSA on them and subjecting them to torture and abuse, can be counted as major contributing factors (Wani & Desai, 2018). A vast majority of the respondents in the above-quoted survey, blame “excesses by security forces” as the top motivational factor for the local young boys to join militancy, though, previously most of the militants came from across the border.

There is ample proof that suggests that, with the right kind of prevention and rehabilitation most children adjust, reform, and return to the maturity of adulthood (National Research Council, 2013). But, most of the juvenile offenders of Kashmir are treated as normal criminals and are kept in police stations and jails. This makes these juveniles susceptible to various problems like torture, abuse, harassment, loss of education and livelihood. Such a treatment, instead of reforming a juvenile, makes their reintegration into the society more difficult and sometimes even leads to more anti-social behaviour. To control volatile situations, and maintain law and order, excesses by security forces is applied, especially by the local law enforcing agencies, abusing their powers under the PSA, which has driven many local boys to despair. Physically abused and mentally scarred, some of them have emerged as deviants, seeking recourse in violent revolt and uprisings (Wani & Desai, 2018). Therefore, knowing the problems and issues faced by such children is important for taking remedial measures. This would be a step towards understanding the youth of Kashmir better and help them develop into ideal citizens.

This study encompassed a sample of 25 children in conflict with the law. Since only children from Srinagar were interviewed, the results may not be generalized. But, if such research is done on a large scale, it can prove to be very beneficial for the juveniles as well as the entire society, for in children, lies the future of a society. Like all the cross-sectional studies, data in this study were also collected at a particular period. It does not help to determine the cause-and-effect relationship. As

this is a qualitative study, research quality is profoundly dependent on the individual skills of the researchers and can more easily be influenced by the researcher’s personal preferences and idiosyncrasies.

Objectives

1. The study is carried out to elicit the issues and problems faced by the children in conflict with the law.
2. Pave way for a more empirical and descriptive study on the topic.
3. Facilitate rehabilitation and reintegration of juveniles back into the society.
4. Provide stakeholders with an unbiased view of the actual juvenile justice system in the region.

Juveniles in conflict with law

At times, various situations and risk factors like abuse, addiction, home conditions, peer influence, the negative influence of movies and media, and conflictual situations may drag children towards embracing such behaviours that may harm them, and the society at large and may bring them in conflict with the law (Karakos, 2014). Sometimes adults also coerce children to indulge in criminal behaviour. Besides that, prejudice related to race, ethnicity or social and economic status may also bring a child into conflict with the law, even when no crime has been committed (Imam, 2019).

In present times, childhood and adolescence are perceived as being different from adulthood, particularly in terms of their biological, psychological, and social aspects (Kipke, 1999). Therefore, the justice system or laws governing them should be different too. This has been reiterated in the Articles 37 and 40 of the United Nations Convention on the Rights of the Child (1989), which states “Children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, considers their age and aims at their reintegration into a society. Also, placing children in conflict with the law in a closed facility should be a measure of last resort, to be avoided whenever possible.” The Convention also prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18. In such a scenario, what is needed is a separate or alternative justice system for children. Such a system, on one hand, must champion minimum intervention by law and minimum institutionalization, and, on the other, it must make sure that the rehabilitation

process is strong enough to prevent them from coming into conflict with the law again (McGoldrick, 1991). When a child comes in contact with the legal system, he or she is robbed of the opportunity of a safe and secure childhood. All forms of legal processes can be harmful to the child offender as it can label him/her as a criminal and haunt them throughout their life. Therefore, minimum intervention by law and minimum institutionalization only can ensure that the juveniles do not come in conflict with the law again.

UNICEF, that has been working for the past 75 years in 150 nations, to improve the life of children and their families, seeks, “to reduce incarceration while protecting children from violence, abuse and exploitation” UNICEF (2006). It further promotes rehabilitation that involves families and communities, as a safer, more appropriate, and effective approach than punitive measures. In this context, UNICEF strongly advocates, “diversion (directing children away from judicial proceedings and towards community solutions), restorative justice (promoting reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities), and alternatives to custodial sentencing (counselling, probation and community service)”.

THEORETICAL FRAMEWORK

To study a child’s behavioural influences, it is necessary to look not only at the child and his or her immediate environment but, also at the interaction with the larger environment. One such theory which focuses on the child’s environment is the “Ecological Systems Theory”. This theory looks at a child’s development against the background of a system of complex relationships that make up his or her environment. Interaction between factors in the child’s maturing biology, the immediate family, and the community environment, stimulates and drives the child’s development, with changes or conflict on any one level rippling through other levels. Thus, this theory helps to understand why a child comes in conflict with the law (Paquette & Ryan, 2001).

Another theory is the ‘Social Disorganization Theory,’ which explains the environmental perspectives of crime. The disorganization or anomic condition results in the disruption or instability in the social structure. It weakens the social structures and institutions indicating a lack of social control. However, the difference in crime rates in urban and rural areas may be related to a more general theory of *gemeinschaft* and *gesellschaft*. The concept, originally propounded by Tönnies in 1957 explains the nature of the difference in two different

social milieus (Tönnies & Loomis, 2002). It is based on the idea of community and society. *Gemeinschaft* denotes communal life typified by the rural peasant population who are guided by the ‘natural will.’ Here the relationship is based on strong interpersonal and face to face relationship. Traditional social rules and values have a strong influence on the life of the members of these societies. On the other hand, the *gesellschaft* represents a society guided by ‘rational will’. Cosmopolitan industrial societies are examples of such social formation. Here traditional values and bonds are weak. As a result of that, the control over the behaviour of individual members in such societies is also weakened. This may explain why the breach of law is more frequent among children in urban societies in comparison to rural societies.

Another important theory regarding the crime is the ‘Rational Choice Theory.’ It is contrary to the ‘Social Disorganization Theory’ and stresses that the causes of crime lay within the individual offender, rather than in their external environment. The theory emphasises that offenders are motivated by rational self-interest, and the importance of a free will and personal responsibility is stressed. It states that people weigh the pros and cons of committing a crime, and offend when the former outweighs the latter. However, the theory fails to take into cognizance, the influence a young person’s peers can have on them and the fact that some youths may be less able to accurately foresee the consequences of their actions than others. So, it can be said that the males of age between 16 and 18, means early adulthood, are more likely to commit a breach of law or show delinquent behaviour than the other ages. So, it might be due to the motivation by rational self-interest to the existing social contexts or phenomena not by the external environment. From the view of this theory, it can be observed that when the children cannot achieve their goal or it becomes impossible to reach the goal, they commit an offence (Matza & Shoemaker, 1985).

REVIEW OF LITERATURE

Juvenile delinquency is such a social problem that affects not only the children in conflict with the law but also their families, communities, and society. Talking about the factors that lead children to come in conflict with the law, Sharma *et al.* (2009) state that childhood incidents and experiences are significant in the development of criminality; on the other hand, it does not mean criminals expose their criminality early in life. Besides, many other individual factors play a vital role in a youngster’s delinquent behaviour, which includes personality traits like submissiveness, defiance, hostility, impulsiveness, feeling of insecurity, fear, lack of self-control and

emotional conflicts, and situational factors like family, companions, movies, school environment and work environment. Whereas, Marlina *et al.* (2018) stress on the family factors, environmental factors/friendship, economic conditions, the level of education and use of alcohol/drugs, as the factors that cause children to be involved in committing a crime.

However, Nath & Bandyopadhyay (2016) argue that there is a relationship between the social organization and the breach of law by children. They further state that Children in Conflict with Law cannot be treated as a homogenous category as a wide variation is found between elderly children and younger children about the nature of the offence, keeping in mind that a child becomes delinquent due to various interdependent factors, sometimes beyond his control. These causative factors must be reduced and eliminated so that children are not involved in committing a crime. Furthermore, protection from the state and the attention of parents, adults and the environment in society greatly help children to return to being children in accordance with the condition and development (Marlina *et al.*, 2018).

Fagan (2004) advocates that the justice system for juveniles should be based on 'Restorative Justice', a theory that relies on reconciliation rather than punishment, reliant on the idea that a well-functioning society operates with a balance of rights and responsibilities. According to him, when an incident occurs which upsets that balance, methods must be found to restore it, so that members of the community, the victim, and the offender, can come to terms with the incident and carry on with their lives. For this to happen, the offender must accept responsibility for his or her behaviour and the harm it has caused to the victim, while the victim must be prepared to negotiate and accept restitution or compensation for the offender's wrongdoing. In essence, 'Restorative Justice' aims to 'put right the wrong,' based on the idea that all people are connected, that crime is a violation of relationships, and that such violations create obligations.

Goldson (2001) suggests participation in education, training, and employment as a key protective factor in preventing offending and re-offending behaviour. This comprises of developmental interventions, which are measures that seek to provide an increased range of personal education and resources that can support new possibilities for action, namely, greater self-esteem

and understanding, changes in attitudes, personal and social skills, and education and training for work. The philosophy underpinning this category is mainly rehabilitation.

However, currently the juvenile justice system is more punitive and retributive than restorative and rehabilitative, which is much in contrast with the purpose of a juvenile justice system. The juvenile justice system is suffering from many gaps such as, the non-existence of a national action plan for juvenile justice, diversionary and alternative sentencing provisions, delinquency prevention, and reintegration program of the child. Most of the children who come in conflict with the law end up deprived of their basic rights, especially the basic ten rights, namely, the right to be informed, right to be treated with dignity, right to express views and concerns, right to be protected from discrimination, right to assistance, right to privacy, right to be protected from justice process hardships, right to safety and security, right to reparation and right to special preventive measures for those who are vulnerable to repeat victimization and offending (Xavier & Arjunan, 2016).

LEGAL ANALYSIS

A child in conflict with law needs legal protection, that guarantees the rights and obligations of children, in the form of customary law, civil law, criminal law, criminal procedure law and other regulations concerning children (Marlina *et al.*, 2018). This protection in the form of the criminal justice system is regulated by several international and national conventions, which are:

1. Universal Declaration of Human Rights.
2. International Convention on Civil and Political Rights.
3. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
4. Convention on the Rights of the Child.
5. The Beijing Rules.
6. United Nation Guidelines for the Preventive of Juvenile Delinquency (The Riyadh Guidelines).
7. The Juvenile Justice (Care and Protection of Children) Act, 2015.

The child-centric ones among them are discussed below.

The United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985:

Also known as the 'Beijing Rules,' provide standards for the administration of 'Child Justice' in a comprehensive manner. These Rules were adopted by the United Nations in 1985 in Beijing, China (United Nations, 1985).

1. Rule 2 defines "juvenile" as a child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from the one meted out to an adult.
2. Rule 4 urges States not to fix the age of 'criminal responsibility' at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity.
3. Rule 5 provides that, the juvenile justice system should emphasise on the well-being of the juvenile, ensuring that any reaction to juvenile offenders is in proportion to the circumstances of both the offender and the offence.
4. Rule 7.1 provides for the rights of the juveniles qua the basic procedural safeguards such as the presumption of innocence; the right to be notified of the charges; the right to remain silent; the right to counsel; the right to the presence of a parent or guardian; the right to confront and cross-examine witnesses; and right to appeal to a higher authority at all stages of the proceedings.
5. Rule 8 provides for the protection of privacy.
6. Rule 13.1 holds that, detention pending the trial should be used only as a measure of last resort and for the shortest possible period of time.
7. Rule 17.2 directs that; capital punishment should not be imposed for any crime committed by the juveniles.

The United Nations Convention on the Rights of the Child, 1989:

Some of the important rights enumerated by this convention regarding a 'child' can be listed as below (Detrick, 199).

1. Article 1 (Age): Everyone under 18 years of age is a juvenile and has all the rights in this Convention.
2. Article 2 (Applicability): The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.

3. Article 3 (Role of Organisations): All organizations concerned with children should work towards what is best for each child.
4. Article 4 (Role of Government): Governments should make these rights available to children.
5. Article 6 (Survival & Development): Every child has the right to life. Governments must do all they can to ensure that children survive and grow-up healthy.
6. Article 28 (Right to Education): Every child has the right to education. Primary education must be free. Secondary education must be available to every child. Schools must respect children's human dignity. Wealthy countries must help poor countries to achieve this.
7. Article 34 (Sexual Exploitation): Governments must protect children from sexual abuse and exploitation.
8. Article 36 (Other Forms of Exploitation): Governments must protect children from all other forms of exploitation that might harm them.
9. Article 37 (Detention): No child shall be tortured or suffer other cruel treatment or punishment. A child shall only, if ever be arrested, or put in prison it should be as a matter of last resort and for the shortest possible time. Children must not be put in prison with adults and they must be able to keep in contact with their family.
10. Article 40 (Juvenile Justice): A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to seek help of a lawyer and, fair trial that takes account of their age or situation. The privacy of a child must be respected at all times.
11. Article 41 (Local Law) If the laws of a particular country protect children better than the articles of the Convention, then those laws should override the Convention.

The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990:

Also known as the 'Riyadh Guidelines,' adopted in 1990, these guidelines stress on a need for a multi-disciplinary approach and proper recruitment and training of personnel who work with children. They should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural

Rights; the International Covenant on Civil and Political Rights; the Declaration of the Rights of the Child; and the Convention on the Rights of the Child; and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons (Cappelaere & Verhellen, 1996). These Guidelines aim at the following:

1. Spreading awareness qua the fact that predominant opinion of experts- labelling a young individual as 'deviant,' 'pre-delinquent' or 'delinquent,' often contributes to the development of a consistent pattern of undesirable behaviour in them.
2. Creation of opportunities- in particular, educational opportunities- to meet the varying needs of young individuals and to serve as a supportive framework for safeguarding the personal development of all young individuals, particularly those who are demonstrably endangered (or are at social risk) and are in need of special care and protection.
3. Spreading social awareness qua the fact that youthful behaviour or conduct in nonconformity with, overall social values and norms is often part of the maturation and growth process, and most likely the same tends to disappear spontaneously with transition to adulthood.
4. Spreading awareness qua the fact that successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect to and in promotion of their personality from early childhood.
5. Member States must ensure that there are necessary legislative safeguards to protect children and other young individuals from drug abuse, sexual exploitation, other abuses and exploitation.
6. Dissemination of scientific information to professional community and to the public at large about the sort of behaviour or situation which is indicative of- physical or psychological victimization, harm, and abuse, as well as exploitation of young individuals.
7. Governments qua the Member States must monitor the mass media generally, and television and film media in particular. Television and film media should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation unfavourably as well as to avoid demeaning and degrading presentations, especially of children, women, and interpersonal relations and to promote egalitarian principles and roles.

8. Governments qua the Member States must ensure that- no child or young individual be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

The Juvenile Justice (Care and Protection of Children) Act, 2015

India is a party to the UN Convention on the Rights of the Child, 1989. India has not only signed the treaty but has also ratified it, in the year 1992; prior to this, the juvenile justice system in India was governed by the Juvenile Justice Act, 1986. Once a treaty is ratified, a nation becomes duty bound to enact statutes in consonance with the treaty obligations. In pursuance of the treaty obligations qua the 1989 Treaty, India enacted the Juvenile Justice (Care and Protection of Children) Act, 2000, setting the minimum age for trying of juveniles as adults at 18 years of age. In the backdrop of the Nirbhaya Gangrape case in which one of the accused was a minor, India, in 2015, amended the 2000 Act and enacted a new Juvenile Justice Act, The Juvenile Justice (Care and Protection of Children) Act, 2015.

The Juvenile Justice (Care and Protection of Children) Act, 2015 adopted by Government of India takes a comprehensive approach towards protecting the rights of the children by providing for, "proper care, protection, development, treatment and social reintegration of children in difficult circumstances by adopting a child - friendly approach" (Franke & Chasin, 1995). The Juvenile Justice Act, 2015 has categorised offences committed by children into three categories as listed below:

1. Heinous offences are defined under Section 2 (33) as "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more;
2. Petty offences are defined under Section 2 (45) as "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;
3. Serious offences are defined under Section 2 (54) as "serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force is imprisonment between three to seven years;

With the passage of the Juvenile Justice Act, 2015, “the possibility of children between the ages of 16 and 18 years being tried as adults for heinous offences has arisen. This means that a separate set of reform and rehabilitation measures will have to be taken for such children. The other main points of the Juvenile Justice Act, 2015 are:

1. When a child alleged to conflict with law is apprehended by the police, he/she will be placed under the charge of the special juvenile police or the designated child welfare officer, who shall produce the child before the Juvenile Justice Board.
2. An inquiry may satisfy a Board that child, irrespective of age has committed a petty offence, or a serious offence or a child below the age of 16 has committed a heinous offence. In such a case, it may:
 - Allow the child to go home after advice or admonition.
 - Direct the child to participate in group counselling and similar activities.
 - Order the child to perform community service.
 - Order the child, or parents of the child, to pay a fine.
 - Release the child on probation of good conduct.
 - Direct the child to a special home for a period not exceeding three years.
3. In case of a heinous offence by a child above the age of 16, the Board may say that there is a need for a trial of the child as an adult. No child in conflict with the law shall receive a death or life imprisonment sentence without the possibility of release.

Under these international and national instruments, children should be treated by the justice system in a manner consistent with their rights, their inherent dignity as human beings and which considers their needs and targets their reform. The administration of juvenile justice should be directed towards their rehabilitation and reintegration into society and not their punishment (Marlina *et al.*, 2018).

Juvenile justice in Kashmir

The Juvenile Justice System (2015) assumes that “a child offender is a product of unfavourable environment and is entitled to a fresh chance to begin his life that is

why reform and rehabilitation and not punishment is its guiding principle”. The Juvenile Justice (Care and Protection of Children) Act, 2015 of India, applicable to the whole of India, also provides that, “children in conflict with law and children in need of care and protection are to be catered for their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation” (Agarwal & Kumar, 2016).

When it comes to the juveniles in Kashmir, the scenario regarding the implementation of the Juvenile Laws is completely different (Amnesty International, 2011). Leaving aside the various national and international Juvenile laws, the provisions of the Kashmir’s own “Juvenile Justice Act” are hardly ever applied here. Most of the juveniles are tried as normal criminals, are detained in police stations, and even sent to jails for interrogation. In Kashmir, most child offenders are apprehended or arrested for disrupting ‘Law and Order,’ with many minors even been charged with attempt to murder and rioting after being caught during stone-pelting and slapped with PSA, an Act that permits the detention of individuals for up to two years at a time without affording them a trial (Amnesty International, 2011).

The Jammu Kashmir Juvenile Justice Act 1997 was amended in 2013 and the amended rules laid out, the formation of Juvenile Justice Boards in each district of Jammu and Kashmir headed by a magistrate. The purpose of these Juvenile Justice Boards is to protect the rights of children in conflict with the law, but the state government has not only failed at setting up juvenile boards, through its callous attitude towards the protection of the child, they have also shown that it cares little about children in conflict with the law. The state government has also failed to sanction child protection officers and establishing special homes for juveniles in conflict with the law in each district. Kashmir valley has only one Juvenile home in Harwan area of Srinagar. Those of the few juveniles who are not detained in police stations or jails are sent to this lone juvenile home only after a lengthy process of proving themselves as minors in the high court of the state.

Using the Right to Information Act, the JKCCS (Jammu & Kashmir Coalition of Civil Society) in 2018, worked to compile details of at least 5597 people, out of 8000 to 20,000, who was allegedly detained under PSA, between 1990 and 2013; reportedly, several hundred of these were children, whose age was deliberately recorded

as above 18 in police documentation. A senior High Court lawyer, advocate Shafkat Hussain, who has represented numerous detainees, feels that “the detention of minor children has a severe impact on their psychological health,” and that there are many cases in which minors have been repeatedly arrested and are considered habitual offenders (JKCCS, 2018).

According to a news report in one of the leading English daily of Kashmir, ‘Kashmir Reader’, “the lone observation home at Harwan received nearly 1,626 kids between September 23, 2011, and November 14, 2018, on the orders of Chief Judicial Magistrates and Juvenile Justice Boards, of which more than 55 percent i.e., 896 children, were accused of being stone-pelters” (Manzur ul Hassan, 2018). The above and the many other newspaper reports prove that in Kashmir, most of the children in conflict with the law are associated with disrupting law and order, and stone-pelting. Although being a very disturbing trend, this situation has a lot to do with the disputed history of Kashmir.

History

The dispute over Kashmir started with the partition of Indian sub-continent in 1947. At the time of partition, the rulers of the Princely States were given a choice to freely accede to either India or Pakistan, or to remain independent (Taylor, 1999). The Maharaja of the Princely State of Jammu and Kashmir, Hari Singh, contemplated Independence. But Hari Singh was obliged to accede to India in October 1947, in the face of the “tribal invasion” of the state from Pakistan’s North West Frontier Province (Taylor, 1999). Pakistan contested the Maharaja’s accession to India and termed it as one based on “fraud and violence” and hence, not bona fide (Taylor, 1999). However, in 1948, United Nations became closely involved with the Kashmir issue. This was followed by a series of UN resolutions, which among many other things called for a plebiscite in Kashmir to determine its political future.

Post 1947, political consciousness as well as the demand for plebiscite remained alive among the people of Kashmir. However, a major transformation took place here in the year 1989, with the start of insurgency, which changed the entire political landscape of Kashmir.

In 1990, the government was dismissed and President’s rule was imposed under Governor Jagmohan. All this led to further protests and demonstrations. To eliminate the extremism in Jammu & Kashmir, Jagmohan adopted coercive means to force Kashmiris into submission. On the name of combating Pakistan sponsored terrorism,

the Indian security forces gravely inflicted injuries to the Kashmiri people under his rule and made matters worse (Noorani, 1992).

Under the harsh special Acts like Armed Forces Special Powers Act (AFSPA) and Jammu and Kashmir Disturbed Areas Act (JKDAA) and PSA, the Indian army and other State forces carried out large number of summary executions, custodial killings, torture, disappearances, and arbitrary detentions (Human Rights Watch, 1996; 2006). Several militia groups fighting in Kashmir too have reportedly committed grave human rights abuses through murdering civilians by claiming that they were collaborators or informers of the security forces (Human Rights Watch, 2006).

In 2008 another political transformation took place here, when people choose the path of peaceful mass protests, resulting in three summers of massive agitations in the year 2008, 2010 and 2016, wherein people in thousands defied curfew and harsh restrictions to come out on the streets almost daily and protested. The main participants of these agitations were the unarmed youth (few of whom, sometimes resort to the stone-pelting, in certain areas). These three uprisings led to hundreds of deaths, especially of youth and children, besides resulting in curfews, hartals, agitations, economic and communication blockades, etc. The young age of protestors, combined with the police efforts to control the agitation, led many children to come in conflict with law.

The children in Jammu and Kashmir are living in one of the most militarized zones, with the presence of thousands of troopers, militants, mercenaries and other non-state actors, making them one of the worst affected groups in the ongoing conflict in Jammu and Kashmir. Conflict affects them in two ways, on one hand they suffer as victims, and on the other hand they come in conflict with law, due to the prevailing conditions around them.

The violation of child right in Jammu and Kashmir also happens due to the absence and non-functionality of any Juvenile Justice Boards, as mandated under The Jammu Kashmir Juvenile Justice Act 2013. All children in conflict with law and especially minors arrested under PSA are tried in normal courts and are jailed with other detainees and criminals. The detention often leaves these children scarred – mentally and emotionally (Amnesty International, 2011).

The continued violation of child rights in Jammu and Kashmir, especially of juveniles in conflict with the law, is a glaring indication that guarantees and protections

afforded under UN Convention for Child Rights (CRC), to which India is a signatory, are not available to the children of Jammu and Kashmir. The children in Jammu and Kashmir are at the mercy of law enforcing agencies and can be arbitrarily booked, charged with serious crimes, and sentenced for long periods of detention (JKCCS, 2018).

Amnesty scheme for first-time offenders

In 2017, the Chief Minister of the state, Mrs. Mehbooba Mufti, launched the centre's amnesty scheme for the first-time offenders of stone pelting, an initiative that saw dropping of charges against an estimated 4,500 people, most of them were youngsters detained by the law enforcing agencies. This initiative was based on recommendations by the centre's interlocutor for Kashmir, Dineshwar Sharma, a former Intelligence Bureau chief who was tasked with starting a peace process in the Kashmir. This was seen as a ray of hope for the young boys and their families, providing them with an opportunity to rebuild their lives. About 11,000 FIRs (First Information Reports) was registered over stone-pelting incidents only, in the aftermath of the killing of Hizbul Mujahideen militant commander 'Burhan Wani', a year earlier, which resulted in the most prolonged agitation in the valley for over more than a decade. Due to this order of the government, charges against many young people were dropped, including many juveniles also, who till then were at the mercy of the law enforcing personnel. This scheme provided many young boys and juveniles, a chance to start their lives again. However, this too was short-lived, as the other coalition partner of the government, Bhartiya Janta Party, withdrew support from the government, and hence this amnesty scheme was automatically halted, and no new offenders were granted amnesty.

METHODOLOGY

This is a qualitative study in nature as it employs personal interviews with juveniles, who have been sent to police stations and jails for their crimes, instead of reformation or Juveniles homes. They were asked a series of pre-determined questions like- the nature of their offence, period of arrest or detention, place of detention, the imposition of emergency laws like the PSA (Public Safety Act), and problems faced during and after the detention. The parents of these children were also interviewed to corroborate the statements given by them. In a qualitative study, a minimum number of respondents is justified. Crouch & McKenzie (2006), argue that less than 20 respondents in a qualitative study facilitate a researcher in building and maintaining a handy

relationship and thus improve the overall exchange of information. This can help in lessening some of the partiality and validity problems inherent in qualitative research approach. Accordingly, the sound sample size for several qualitative research studies ranges from 15 to 20 respondents. A great number of articles, book chapters, and books suggest anywhere from 5 to 50 participants as adequate for a qualitative study (Dworkin, 2012). The sample for the current study includes 25 young boys, who were arrested for conflicting with the law. These children belonging to different localities of Srinagar were selected through Snowball Sampling. Only the Srinagar district was involved in the study. Out of those 25 juveniles, only 23 were directly interviewed. As the other 2 juveniles were detained at a Central Jail, their parents were interviewed.

FINDINGS

"Children deprived of their liberty and placed in detention are at extreme risk of violence. The main sources of violence in both industrialized and developing countries are: violence by staff in detention institutions; violence while in custody of police and security forces; violence as a sentence; violence by adult detainees; violence by other children; and self-harm, including self-mutilation and suicidal behaviour" (Pinheiro, 2006).

The respondents, i.e., children in conflict with the law, were in the age group of 11 to 17 years old. Out of the total 25 juveniles, ten were apprehended from their homes during nocturnal raids on the charges of stone-pelting, whereas four children were caught for on-spot stone-pelting. Three children were caught for beating the escort of the DSP (Deputy Superintendent of Police), and two respondents were pellet-gun victims, who were arrested from the (SMHS) hospital while receiving treatment. Two juveniles were arrested for their alleged role in the infamous Jamia Masjid DSP lynching case. One juvenile each was arrested for disrupting law and order and carrying Pakistan Flag. One child was arrested after being hit by a slingshot on the right eye, by a CRPF personal and one juvenile was apprehended near a stone-pelting incident site.

One of the juveniles was arrested in 2008 and then again in 2010, while the rest of the juveniles were detained from 2013 to 2018. Most of them were detained after the 2016 summer agitation. The detention period ranged from spells of 7 to 55 days in different police stations of Srinagar, for all the respondents. Out of these 25 children, 2 minors were also sent to the Central Jails in both Jammu and in Kashmir. Most of the juveniles were detained in different police stations of Srinagar.

Maximum juveniles, i.e., around 15 were detained in police station M.R.Gunj, three were detained by the police station Nowhatta, and one each by police station Kak Sarai and Khanyar. Two juveniles are detained in Central Jail Rainawari (Badamwari).

Around 22 juveniles admitted that they were severely beaten and tortured during their detention. The parents of those two juveniles, who are still in Central Jail, also admitted that their children were tortured. Only one of the juveniles, who was arrested near the stone-pelting incident site said that he was not beaten or tortured. Most of the juveniles admitted to facing a lot of problems, after their release from the detention, which included, frequent visits to court and police stations, in those cases where FIR was filed, and in cases where a formal FIR was not filed, they too had to frequently visit and stay in police stations, on some specific occasions like Republic Day and Independence Day of India or any other major event or strike. Another major problem encountered by such children was the loss of education, with many even leaving studies altogether. Many children also admitted suffering from tension and depression after the torture and abuse they had endured during the detention. Only one juvenile, who was arrested near the stone-pelting site admitted to not facing any issues after the detention. Two juveniles against whom PSA was imposed, and are lodged in Central Jail, must formally attend the hearings of their case. On every hearing, they are brought to the court, handcuffed and in chains.

Barring those two juveniles who are still in the Central Jail, all the other children and their parents said that they had to pay money for the release of their children. The amount paid for the release of their children, ranged from 4000 to 50,000 Indian Rupees, depending upon the offence committed by the child. Out of the 25 juveniles, around 7 juveniles have been granted amnesty, and their cases quashed, under the Mehbooba Mufti's Amnesty Scheme. Even after so many months have passed, and cases against them have been cancelled. These juveniles must still face certain problems like reporting to the concerned police stations on some specific days or events, problems in getting passports, problems in police clearance in connection of jobs and other things that require police verification, etc.

ANALYSIS

The central and local governments are obliged and responsible for the implementation of child protection and the fulfilment of children's rights regardless of ethnicity, religion, race, class, sex, culture and language, legal status, birth order and physical and / or mental

condition of the child, by formulating and implementing policies in the field of child protection (Marlina *et al.*, 2018). However, UNICEF (2006) revealed that in South Asia implementation of special juvenile protection has been far from splendid. In general, insufficient emphasis has been placed on diversions, both in legislation and in practice, on introducing alternatives to the formal justice system, or on changing the fundamentally custodial nature of the entire juvenile justice system. As a result, most of the children who come into conflict with the law end up deprived of their liberty either in observation homes, children's rehabilitation centres or special homes without the touch of family. Examining the various relevant instruments regarding child rights and India's commitment to them, this analysis considers which rights were violated in the treatment of juveniles in Kashmir, during and after detention.

Article 1 of the United Nations Convention on the Rights of the Child, 1989, states that everyone under the age of 18 years is a juvenile and has all the rights under this convention (McGoldrick, 1991). But in this study, all the subjects though minors in the age group of 11 to 17, were arrested irrespective of their age, mostly from their homes during nocturnal raids and were treated as adult criminals. This was in total violation of the very first article of the child rights convention.

The Convention on the Rights of the Child (CRC), 1989, also sets out rules for the use of arrest, detention, and imprisonment. Article 37(b) provides that "the arrest, detention and imprisonment of a child shall be used only as a measure of last resort, and for the shortest appropriate period of time" (McGoldrick, 1991). Juveniles under this study were arrested or detained at the very first instance. While 23 of them were detained for a period ranging from 7 to 55 days, the remaining 2 are still detained in the central jail.

CRC, 1989, states in Article 37(c) that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so" (McGoldrick, 1991). Also, Beijing Rules, Article 26(3) states that, "Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults" (United Nations, 1985). However, the juvenile offenders of this study were kept in police stations and jails meant for adults. Most of them were detained at the different police stations of the city and 2 were detained at the central jail.

Article 37 of the CRC, prohibits torture or other cruel, inhuman, or degrading treatment or punishment, as well

as capital punishment and life imprisonment without possibility of release (McGoldrick, 1991). But all the juveniles under this study, except for one, admitted to being severely beaten and tortured during their detention. Article 40 of the CRC, on the administration of juvenile justice states that children who come into conflict with the law should be, “treated in a manner consistent with the promotion of the child’s sense of dignity and worth” (McGoldrick, 1991). Also, the Juvenile Justice Act 2015, of India states that if the need arises the Juveniles should be produced before Juvenile Justice Board, only that too under the supervision of the special juvenile police or the designated child welfare officer. The juveniles in Kashmir are humiliated and shamed, repeatedly, as they must formally attend the hearings of their case in the courts meant for adult criminals. Besides, on every hearing, they are brought to the court, handcuffed and in chains.

Article 40(4), of the CRC, states that: “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence” (McGoldrick, 1991). In Kashmir, any such provision is hardly made available to juvenile offenders, as one can observe from the findings above; none of the subjects of this study were sent to a juvenile or foster care home, besides there were no provisions for their care, protection or well-being in the police stations and jails where they were detained.

Besides the articles 19, 37 and 40, various other articles contained in the CRC also emphasise on the importance of reintegration and rehabilitation in the administration of juvenile justice. Everything that happens to a juvenile during his detention should be aimed at that young person’s eventual release and reintegration back into the society, and prevent them from coming in conflict with law again (McGoldrick, 1991). In this study the juveniles, even after their release, had to face continuous harassment from law enforcing agencies, as they are asked to report to the concerned police stations every now and then and they also face difficulties in getting clearances for passport verifications, jobs, etc.

Article 40(4), of the CRC also emphasises that provisions for education and vocational training programmes should be made available to the juvenile offenders during their detention (McGoldrick, 1991). No provisions were made for the education or any vocational

training for the juveniles during their detention, leading to their loss of education during the detention and after their detention too, due to disturbances caused by the frequent harassment by police and visits to police stations and courts. Another surprising observation revealed by this study is the extortion of money from the parents of the juveniles, by the police officials, in return for their children’s release and dropping of charges against them. Some parents believe that their children were arrested for the sole purpose of extorting money from them.

Every international or local juvenile justice system strives to reform the child so that he/she returns to the society as a respectable and responsible citizen, but the penitentiary system in Kashmir that deals with children in conflict with law, whilst violating juvenile rights, fails to comply with juvenile reintegration and reformation, and the juvenile assuming a constructive role in society. It hampers their normal life and reintegration into the society, and might lead them to come in conflict with the law again.

IMPLICATIONS/RECOMMENDATIONS

In recent times, Kashmir has seen many children disrupting law and order, resorting to anti-social behaviour, and some even joining militancy, due to the abuse and torture suffered at the hands of police officials during and after their detention. Treatment of children in conflict with law should conform to international standards. By arresting minors, treating them on par with other criminals, torturing and abusing them, extorting money from the parents, asking them to frequently come to police stations and courts, the law enforcing officials are doing a great disservice to the future generation. Such a treatment will compel them to come in conflict with law more often. All stakeholders i.e., the parents, teachers, schools, community, and law enforcement agencies, need to understand, prevent, and reduce such issues which drag children to come in conflict with the law and harm themselves and the society. The research suggests the following set of recommendations for an effective juvenile justice:

- i. Introduction of legal reforms by the government that should ensure that all forms of violent punishments are prohibited for offences committed as a juvenile.
- ii. Promoting diversion and restorative justice through limiting the use of institutionalization and development of community-based sentencing alternatives.

- iii. Arrest and detention should be used as a measure of last resort, and if a child is still detained, child-friendly police practices and training for law enforcement officers should be encouraged.
- iv. Detention orders of children should be reviewed at regular intervals and alternatives should be provided to those families who cannot afford monetary bonds for their child's release.
- v. Conditions of detention centres should be checked periodically, children should not be detained with adult inmates, torture, violence, and abuse should be banned in prisons and other detention centres.
- vi. Budgetary allocations by the government and collaboration with NGO's and civil society should be promoted to develop alternative measures to institutionalization.
- vii. Every step taken for children in conflict with law should be aimed at their rehabilitation and reintegration back into the society.

Reliable and complete knowledge about the juveniles, their conditions and the operation of the entire juvenile justice system is vital if the society wants to protect the children in conflict with law from any injustice or abuse. This study through its findings will help the various stakeholders like government, legislators, civil society, NGO's, academia as well as masses in their evaluation of how juveniles are treated in Kashmir. This data can be reviewed by the concerned policy makers and child protection authorities for monitoring the existing legislations and policies and identifying areas of improvement in them or for introducing new laws and programmes. Based on this information, concerned authorities can demand information regarding the treatment meted to juveniles and can also request for investigations into the accusations of torture and abuse. This research can also pave way for a more detailed and descriptive study on this topic and other aspects related to it.

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