

WHEN REHABILITATION CENTRES TURN OUT TO BE DETERIORATION HOTSPOTS!

How safe are children in their shelter homes?

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The exposition of Cambridge Dictionary on the notion of ‘rehabilitation’ is similar to an action that aids someone to travel back to a good, healthy, or normal life or condition after they have been in prison, been very ill etc.¹ The act of rehabilitation is a benevolent gesture that helps an individual to rebuild his life back to normal. The aspect of rehabilitation is very vital when it comes to juvenile offenders are concerned. A “child in

conflict with law” is not an anti-social element instead the concept means someone who is maintained or identified in engaging or executing a crime, who has not completed eighteen years of age at the time of commission of such offence.²

A child³ offender is someone who committed an offence dubiously even without the right frame of mind, what he needs assistance from the hands of law and society in general.⁴

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¹ See [https:// dictionary. cambridge. org/ dictionary/ english/ rehabilitation](https://dictionary.cambridge.org/dictionary/english/rehabilitation)

² Section 2 (13) of The Juvenile Justice (Care and Protection of children) Act, 2015, “Child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

³ Section 2 (12) of The Juvenile Justice (Care and Protection of children) Act, 2015, means a person who has not completed the age of eighteen.

⁴ Section 2(14) of The Juvenile Justice (Care and Protection of children) Act, 2015, is defining about the “Child in need of care and Protection” it means a child - (i) who is found without any home or settled place of abode and without any ostensible means of subsistence ; or (ii) who is found working in contravention of Labour laws for the time being in force or is found begging, or living on the street ; or (iii) who resides with a person (whether a guardian of the child or not) and such person - (a) has injured , exploited , abused or neglected the child or has

violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unit to take care, if found so by the board or the Committee; or (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitate , by the Committee or the Board , to care for and protect the safety and well being of the child; or (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him ; or (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or (viii) who has been or is being or is likely

The very purpose of the relaxed position conceived by the law, in the case of a juvenile offender is due to the real understanding that a child can act as a catalyst in the holistic fostering of a society and the principles of law believes in the reintegration of a Child's situation to a healthier and advantageous living and social conditions.

In the face of reality, the actual situation that prevails in the rehabilitation of a child offender's social life situation is deplorable. Relying upon a data published earlier last year by the National Commission for protection of Child Rights (NCPCR) (the peculiarity of this data is still relevant, due to the fact that the situation and the problem still remains the same) in association with the psychiatry department of the All India Institute of Medical Sciences, it is shocking to note that almost one of every five inmates in rehabilitation institutions are critically suffering behavioural issues. This very factor makes them highly vulnerable to substance abuse and other criminal activities at the stage of their adulthood.⁵ Along with all these maladies there exist institutional exploitations from the persons who are

responsible for the running of these shelter homes. So the safety of these children who are in the rehabilitation centers and shelter homes are always under the shadow of doubts.

Juvenile Delinquency: A brief account

Children who commit offences do not do so based on their free will; instead, those are results of unbalanced and restricted social opportunities for their developments. Once they are being caught and tried before the law on rough measures, the social opportunity factors of the children will become a hard task to achieve.⁶ It can never be argued that the juvenile is the sole reason for the delinquent nature that he is possessing. Some of the common classification for the reasons of juvenile delinquency are:

- **External Factors:** The interaction of the child with the features and factors outside the four walls of his habitat. The external factors may include school, family, housing, friends, entertainment factors like media and other sources, etc.

to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (ix) who is sound vulnerable and is likely to be inducted in to drug abuse or trafficking ; or (x) who is being or is likely to be abused for unconscionable gains; or (xi) who is victim of or affected by any armed conflict, civil unrest or Natural calamity ; or (xii) who is in imminent risk of marriage before attaining the age of marriage and whose parents , family members , guardian and any

other persons are likely to be responsible for solemnisation of such marriage.

⁵ Durghesh Nandhan Jha, *1 in 5 Kids in rehab homes has behavioural issues, finds study*, TIMES OF INDIA (Nov, 12, 2019, 10:07AM), <https://timesofindia.indiatimes.com/city/delhi/1-in-5-kids-in-rehab-homes-has-behavioural-issues-finds-study/articleshow/64239921.cms>

⁶ <https://www.unicef.org/tdad/montenegrociclrigh07.pdf>

- **Internal Factors:** The internal factors are something that stays intrinsic, the emotions and character of the child, a major role in activating this internal factors.

The committal of crimes by a juvenile is the result and a wrong combination of both these factors.

Rights of the ‘child in conflict with law’ is not a fallacious conception

In the land mark decision laid in the *Maneka Gandhi*⁷, the apex court had identified that, A person is not deprived of his personal liberty, except in accordance with procedure established under law and the procedure as laid down is to be just and fair. In the case of a child who is in conflict with law is never deprived of his rights that are guaranteed by the law of the land.⁸ The rights of the child in conflict with law are well recognised in the international arena. The central aim of these crucial principles are the sustenance of the

rights of the children for the gain of the best interest of the child and for the positive realisation of his life survival and development in a non-discriminate climate.

Beginning from the Convention of the Rights of the child (1989)⁹, the world had witnessed several international principles and instrument that voices and preserves the rights of the child who is in conflict with law. It is peculiar to note that the preamble of the 1989 convention is well recognising the need for the harmonious and constructive growth of every child in a safe environment and further the essentiality of legal protection.¹⁰ Some of the International instruments that touched the rights of the child in conflict with law are listed below:

- UN Standard Minimum Rules for the Administration of Juvenile Justice, Beijing Rules (1985)¹¹
- UN Guidelines for the preservation of Juvenile Delinquency¹²
- Riyadh Guidelines (1990)¹³

⁷ Maneka Gandhi v. Union of India (1978 AIR SC 597)

⁸ Every child in conflict with the law shall enjoy the following rights, including but not limited to : (a) Humane treatment (b) No corporal punishment (c) Separation from adult criminals (in case of detainment) (d) Access to legal assistance (e) Bail and release on recognisance (f) right to privacy (g) Diversion (h) Right to gain proportionate judgment (i) Restriction on liberty kept to a desirable minimum (j) Automatic suspension of sentence (k) probation right (subjected to qualification) (l) Confidentiality of proceedings (m) Right against discrimination (n) Constitutional rights.

⁹ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁰ The 1989 Convention reiterates that , “Recognising that the child , for the full and harmonious

development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding” Also it further extends that “ Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth.””

¹¹ <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

¹² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

¹³ [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/14UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency\(TheRiyadhGuidelines\)\(1990\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/14UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency(TheRiyadhGuidelines)(1990).aspx)

- UN Rules on the Protection of Juveniles in Custody (1990)¹⁴
- Guidelines for the Treatment of Juveniles within Juvenile Justice, Vienna Guidelines (1997)¹⁵
- UN Standard Minimum Rules for Non-Custodial Measures - Tokyo Rules (1990)¹⁶
- International Covenant on Civil and Political rights - ICCPR (1966)¹⁷
- European Convention for the Protection of Human Right and Fundamental Freedoms (1953)¹⁸
- Council of Europe Social Reaction to Juvenile Delinquency, 1987 (CER (87)20)¹⁹
- European Rules on Social Sanctions and Measures (1992), (CER (92) 16)²⁰
- Council of European Social Reaction to Juvenile Delinquency of Juveniles from Migrant Families , 1989 (CER (88)6)²¹

The Indian legal scenario also very much acknowledged the rights of the juvenile delinquents through legal documents like Juvenile Justice (Care and Protection of Children) Model Rules , 2016 and The Juvenile Justice (Care and Protection of

children) Act, 2015. Also the rights guaranteed under the Constitution of India are also applicable for the juveniles.

Locating the real issues of Juveniles

Even in the middle of all these legal safeguards the rights of the juveniles cannot be said as fully preserved. It is a real castigatory practice to take a casual approach towards the rights of the juvenile delinquents. They are not second grade people and through reformation they can be brought back to the realm of the society as reasonable and responsible citizens. Correction homes and rehabilitation centers being the so-called establishments of resurrections, do possess an undeniable duty towards the children who failed in life due to social inequalities. Rather than being the hotspot of detonations they must positively transform themselves in to an abode of revitalisation.

¹⁴ https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

¹⁵ https://www.unafei.or.jp/activities/pdf/Public_Lecture/Public_Lecture2017_Dr.Joutse_n_Paper.pdf

¹⁶ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx>

¹⁷ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁸ https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁹ <https://rm.coe.int/168070ce24>

²⁰ <https://rm.coe.int/168070c09b>

²¹ https://www.unicef.org/protection_26484.html