

JUVENILE JUSTICE SYSTEM AND EXTENT OF JUVENILE DELINQUENCY IN INDIA

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I. INTRODUCTION

More than a century ago, Abraham Lincoln said:

A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands¹.

The problem of juvenile delinquency is not new. It occurs in all societies simple as well as complex, that is, wherever and whenever a relationship is affected between a group of individuals leading to maladjustments and conflict.

In a developing country like India the problem of juvenile neglect and delinquency is considerably low but gradually increasing according to the National Crime Record Bureau Report 2007. What is worrying more is that the share of crimes committed by juveniles to total crimes reported in the country has also increased in last three years. Considering the magnitude of the problem and issues involved, analysis indicates that the number of factors for neglect and delinquency are mostly common and interrelated, based on socio-economic and psychological reasons. Poverty, broken homes, family tensions, emotional abuse, rural-urban migration, break-down of social values and joint family system, atrocities and abuses by parents or guardians, faulty educational system, the influence of media besides the unhealthy living conditions of slums and such other conditions explain the phenomena of juvenile delinquency. The neglect of children by their parents,

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¹ Wroblewski.M, Henry, AN INTRODUCTION TO LAW ENFORCEMENT AND CRIMINAL JUSTICE 540-541 (Thomson learning, USA 2000).

family, society and the nation create detrimental effect on their physical, mental growth and over all development. Needless to say that most of the factors causing delinquency are in plenty in the Indian context and any attempt to prevent and control them can be fruitful for society. After all, the children represent the nation and the coming future of the country. Even international instance like UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985 and UN Convention on the Rights of Child, 1989, are notable and has articulated the global consensus on giving special attention to the children who come in conflict with law. In the above context, this paper tries to highlight the growth and development of juvenile justice system in India, constitutional provisions, Juvenile Justice Act, 2000 and extent of delinquency in India.

II. HISTORICAL BACKGROUND

It was Pope Clement XI, who first introduced, in 1704, the idea of 'the correction and instruction of profligate youth' in institutional treatment. Subsequently Elizabeth Fry and her associates mobilized resources to establish separate institutions for juvenile offenders. Consequently, in Britain, Reformatory Schools Act and Industrial Schools Acts were brought on statute book.

The move to establish special courts for juveniles was initiated, for the first time, in 1847, in United States of America. However, the first 'Juvenile Court' could be established, only in 1899, in Chicago under Juveniles Offenders Act. In England the first Juvenile Court was set up in 1905.

The first probation law was enacted in the State of Massachusetts, USA, in 1878 and in England in 1887.

The term 'Juvenile justice' was used for the first time by the legislature by the state of Illinois, USA, in 1899, while passing the Juvenile Court Act. The approach underlying this law was that juvenile offenders should not be meted out the same punitive and retaliatory treatment as adults but rather given individual attention for their own protection as well as that of the society².

² Chinte, C.I., *Fifty Years Of Juvenile Court* in M.Bell (ed.), *CURRENT APPROACHES TO DELINQUENCY* (New York: National Probation and Parole Association 1949).

The word 'Juvenile' has been derived from Latin term 'juvenis' meaning thereby Young.

The term 'delinquency' has also been derived from the term *do* (away from) and *liqueur* (to leave). The Latin initiative "delinquere" translate as to emit in its original earliest sense.

According to Reckless, the term 'juvenile delinquency' applies to the "violation of criminal code and /or pursuit of certain patterns of behavior disapproved of for children and young adolescents"³. Thus, both age and behavioral infractions prohibited in the statutes are important in the concept of juvenile delinquency. Caldwell prefers to leave the term vague and includes within it all acts of children, which tend them to be pooled indiscriminately as wards of the state⁴.

'Juvenile delinquency' when employed as a technical term rather than merely a descriptive phrase is entirely a legislative product. . . .', But generally speaking, the term refer to a large variety of behavior of children and adolescent which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest⁵.

In India, which has a long history of Juvenile legislation, most statutory provisions have followed, more or less, the British pattern. The English idea of providing separate treatment for juvenile offenders was passed on to India in the last quarter of the nineteenth century. The Apprentices Act, 1850 is chronologically the first law meant to deal with the children in distress who are to be trained for trade and industry. Even the penal laws such as the Indian Penal Code, 1860 exempts children under the age of seven years from criminal responsibility (Section 82). It also exempts children between the age of seven to twelve years, who have not attained sufficient maturity of understanding to judge the nature and consequences of their conduct, from criminal responsibility (Section 83). The Act also provides some protection to the children from the evil designs of the adults (Section 363-A).

³ Reckless, Walter, *HAND BOOK OF PRACTICAL SUGGESTIONS FOR THE TREATMENT OF ADULT AND JUVENILE OFFENDERS* (Government of India, 1956).

⁴ Caldwell, *CRIMINOLOGY*, p-357.

⁵ *BLACK LAW DICTIONARY* (1999, seventh edition, west group).

The Reformatory School Act enacted in 1876 and later modified in 1897, was the next landmark legislation in the treatment of juvenile delinquents. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years but they would not be kept in the reformatory schools after they had attained the age of eighteen years. There was also a provision to license out boys over fourteen years of age if suitable employment could be found. In Bombay Presidency, the Act was applicable to boys under sixteen years of age, while elsewhere it applied to boys under fifteen years of age.

The Code of Criminal Procedure of 1898 provided specialized treatment for juvenile offenders. The Code also envisaged the commitment of juvenile offenders up-to the age of fifteen years to Reformatory Schools and provided probation for good conduct to offenders up-to the age of twenty one. Subsequent Indian children Acts passed by the Presidencies and provinces maintained this thinking. These laws contained provisions for the establishment of a specialized mechanism for the identification of handling and treatment of children and juveniles. In this regard, recommendations of the Indian Jails Committee, 1919-20, gave an added impetus to legislative action. In the post independence period, the Government of India was seized of the problems among others, of juvenile justice particularly in the centrally administered union territories. This is what led to the Children Act 1960. The law was in full force in all the UTs, but the states, not having juvenile legislation, were free to adopt it. As would be expected, at this stage, juvenile justice in the country was uneven and had varying standards, norms and practices. These problems were sought to be removed through the Juvenile Justice Act 1986. The law was in force throughout the country⁶.

On the other hand, the concept, approach and methodology of juvenile justice were under going some basic changes, as is indicated by the Beijing Rules and the UN Convention on Rights of the Child. This led to the formulation of the Juvenile Justice (Care and Protection of Children) Act, 2000, which was exhaustively amended in 2006 by Act No.33 of 2006.

⁶ JUVENILE JUSTICE SYSTEM & RIGHTS OF CHILD (2003, Paryas Institute of Juvenile Justice) pp. 9-20.

III. INTERNATIONAL CONCERN

The Second UN Congress on Prevention of Crime and Treatment of Offenders in 1960 stated that juvenile delinquency should be understood as the commission of an act, which when committed by an adult above a prescribed age would constitute an offence in law. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 discussed further and in detail the problem of juvenile delinquency. They decided that there should be the Standard Minimum Rules for the Administration of Juvenile Justice. Every child has its human rights and they should not be denied to it by anybody. Hence, they said that there should be laws to protect the right of the children. Consequent to it, it was accepted that special attention should be given to the steps initiated to prevent delinquency among children and also to homeless and street children in the urban setting. The need for giving special attention to youth criminality was also given due importance and emphasis. The nature of youth criminality in semi-urban and rural areas was considered. Further, the following areas were discussed at the meeting at Beijing (May 14 to 18, 1985) which examined the Standard Minimum Rules for the Administration of Juvenile Justice.⁷

A 'child' is defined in the UN Convention on the Rights of the Child (CRC) as a person under the age of 18. This includes infancy, early childhood, middle childhood and adolescents.

The UN Convention on Rights of the Child, 1989 draws attention to four sets of civil, political, social, economic and cultural rights of every child.⁸ These are:

- (i) Right to survival: Which includes the right to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right to a name and a nationality.
- (ii) Right to protection: Which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect

⁷ UNICEF, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (New Delhi, UNICEF, 1985).

⁸ UNICEF, United Nations Convention on Rights of The Child, (New Delhi, UNICEF 1989).

including the right to special protection in situations of emergency and armed conflicts.

- (iii) Right to development: Which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.
- (iv) Right to participation: Which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

The Convention provides the legal basis for initiating action to ensure the rights of children in society. Relevant articles from the UN Convention on the Rights of the Child are

Article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

Article 35: States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale or traffic in children for any purpose or in any form.

Article 36: States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Any child primarily on account of his dependence and vulnerability deserves to be completely looked after by others. As a child, he needs support and care to survive since the nature does not provide to the human infant any protection at all. The need to survival and protection continues till the child attains maturity and adulthood. The child being the nursery of all civilization and all human potential has to be provided with various institutional and non-institutional system of development which consists of programs pertaining to education, life skills, nutrition, health, shelter and most important, the right to childhood.

IV. CONSTITUTIONAL PROVISIONS

After Independence, the constitutional provisions have inspired the developments in the field of juvenile justice. Part III and Part IV which deal with Fundamental Rights and Directive Principles of State Policy, respectively, contain some special provisions with respect to children.⁹

Article 15 (3): Permits the State to make special provisions for children and women

Article 23: Prohibits the traffic in human beings and forced labour

Article 24: Forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations

Article 39 (e): Directs the State to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity

Article 39 (f): Directs the State to secure facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

Article 45: Requires the State to provide free and compulsory education to all children up to age of 14 years.

Article 47: states it is the duty of the state to raise level of nutrition and standard of living.

Parliament has enacted the 86th Constitutional Amendment in 2002 and made Right to Education a fundamental right.

V. JUDICIAL EFFORTS

The judiciary in India plays very important role and has passed many significant judgments in favor of child rights.

In *Sheela Barse v. Union of India*,¹⁰ The Supreme Court issued directions to the state government to set up necessary observation homes where children accused of an offence could be lodged, pending investigation and trial will be expedited by juvenile courts.

⁹ Narender Kumar, CONSTITUTIONAL LAW OF INDIA (Pioneer Publication, Delhi, 2003).

¹⁰ AIR 1986 SC 1733. Bartol, Curt r. & Bartol, Anne m., JUVENILE DELINQUENCY-A SYSTEM APPROACH 117-149 (Eaglewoodcliff, New Jersey, Prentice Hall-inc., 1989).

In *Sheela Barse v. Secretary, children Aid Society*,¹¹ The Supreme Court commented upon setting up dedicated juvenile courts and special juvenile court officials and the proper provision of care and protection of children in observation Homes.

In *Vishal Jeet v. Union of India*,¹² The Supreme Court issued appropriate directions on a PIL to the state Governments and all Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of the young fallen victims.

In *M.C. Mehta v. State of Tamil Nadu*,¹³ Supreme Court pronounced upon the constitutional perspective of abolition of Child labor and issued appropriate guide lines to the Government of India with respect to compulsory education, health, nutrition, etc of the child laborers.

In *Sakshi v. Union of India*,¹⁴ Supreme Court directed the government/ Law commission to conduct a study and submit a report on the means of curbing child abuse.

VI. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

The Act is a central Act, which came into force on April 1, 2001, through out the country. It is based on (i) provisions of the Indian Constitution; (ii) United Nations Convention on Rights of the Child, 1989; (iii) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); (iv) United Nations Rules for the Protection of Juveniles deprived of their Liberty, 1990.

The Juvenile Justice Act, in its preamble itself signifies the need of the child care by providing that it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly

¹¹ AIR1987 SC 656.

¹² AIR 1997 SC 699.

¹³ (1999)6 SCC 591.

¹⁴ AIR 199 SC 1412.

approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. Recently the exhaustive amendments of 2006, and rules framed in the year 2007 is credit worthy as it incorporates many aspects regarding juveniles.

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

- The age for boys and girls has been uniformly raised to 18 years in accordance with the UN CRC.
- It deals separately with two categories of children i.e. 'child in need of care and protection' and 'juvenile in conflict with law'. A 'child in need of care and protection' is a child who due to various reasons are found in difficult circumstances and are in danger of survival and growth. The 'juvenile in conflict with law' are those juveniles who are alleged to have committed an offence. The Act provides separate treatment in the matter of institutional care, legal adjudication and disposition of cases.
- The Competent Authority in relation to 'child in need of care and protection' is Child Welfare Committee and in relation to 'juvenile in conflict with law' is Juvenile Justice Board.
- The members of the Committee in the Board have been given magisterial power.
- The social workers and the representative of the NGOs having prescribed qualifications under the Act can now become member of the Competent Authority.
- For the 'juvenile in conflict with law', the Act envisages to establish Observation Homes and Special Homes. For the 'child in need of care and protection', provision has been made to establish Comprehensive Children's Homes. While the Shelter Home and the After-Care Organizations may be established for juveniles or children. The Shelter Home shall be exclusively established and run by the voluntary sector with the assistance from the government. All others Homes can either be established or run by the government in association with the voluntary organizations.

- The representatives of voluntary organizations and social workers can become members of Advisory Committee.
- New mode of dispositional alternatives like counseling and community services have been incorporated for the juveniles in accordance with Beijing Rule.
- A new chapter on rehabilitation and social re-integration comprising of adoption, foster care and sponsorship has been added.
- The police has been assigned specialized role in accordance with Beijing Rules. A Special Juvenile Police Unit (SJPU) shall be set-up in every police station. A police officer of the rank not below an Assistant Sub-Inspector (ASI) shall be designated as Child Welfare Officer. He shall be assisted by two local voluntary social workers.
- A new concept of Social Audit has been introduced in accordance with Beijing Rules.
- Besides police, the social worker and the voluntary organization have role in production of children before the Child Welfare Committee.
- A child himself/herself can appear before the Competent Authority and demand his/her rights.
- The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.
- Juvenile/child cannot be kept in police lock-up or jail.
- Effort shall be made to release the juvenile on bail or probation.
- Enquiry to be completed within a period of four months from the date of its commencement unless the period is extended by the JJB/CWC, else for reason to be recorded
- The state governments (under section 68 of the Act) are directly responsible for the implementation of the Act.

VII. EXTENT OF DELINQUENCY IN INDIA

The statistics of juvenile crimes in the country against total crime in the country indicates steady decline in early 1990s and static in late 1990s and then again rose significantly in early 2000 and still increasing gradually. It has been observed that children at the threshold of adulthood -in the age groups of 16-18 years are more prone to taking up criminal activities. This increase may be partly attributed to inclusion of delinquent boys from 16 to 18 years for the first time as per new definition of Juvenile Justice Act, 2000. The table below gives a clear picture of the rate of juvenile delinquency under the Indian Penal Code (IPC), incidence of juvenile (SLL) crimes in India and juveniles apprehended under IPC and SLL (age wise) during the period 1990 to 2007.¹⁵

| Year | Juvenile Crimes | % to total crimes* | Juvenile (SLL) crimes | % to total crimes* | Juveniles Apprehended under IPC and SLL & their age AGE(in years) | | | |
|------|-----------------|--------------------|-----------------------|--------------------|---|--------|---------|---------|
| | | | | | Number | 7 - 12 | 12 - 16 | 16 - 18 |
| 1990 | 15, 230 | 0.9 | 14,799 | 0.45 | 30, 816 | 11.9 | 76.5 | 11.5 |
| 1991 | 12, 588 | 0.8 | 22,143 | 0.66 | 29, 591 | 19.7 | 63.8 | 16.4 |
| 1992 | 11,100 | 0.7 | 7,532 | 0.21 | 21, 358 | 16.1 | 69.3 | 14.7 |
| 1993 | 9, 465 | 0.6 | 7,199 | 0.19 | 20, 067 | 19.6 | 67.0 | 13.5 |
| 1994 | 8, 561 | 0.5 | 5,962 | 0.15 | 17, 203 | 21.5 | 64.3 | 14.3 |
| 1995 | 9, 766 | 0.6 | 5,255 | 0.12 | 18, 793 | 18.0 | 63.9 | 18.1 |
| 1996 | 10, 024 | 0.6 | 5,719 | 0.12 | 19, 098 | 18.3 | 59.6 | 22.1 |
| 1997 | 7, 909 | 0.5 | 4,408 | 0.09 | 17, 796 | 15.4 | 68.4 | 16.2 |
| 1998 | 9, 352 | 0.5 | 6,007 | 0.14 | 18, 923 | 17.6 | 61.0 | 21.3 |
| 1999 | 8, 888 | 0.5 | 5,569 | 0.18 | 18, 460 | 21.9 | 55.9 | 22.3 |
| 2000 | 9, 267 | 0.5 | 5,154 | 0.15 | 17, 982 | 18.3 | 63.3 | 18.4 |
| 2001 | 16,509 | 0.9 | 8,332 | 0.23 | 33,628 | 10.9 | 37.9 | 51.2 |
| 2002 | 18,560 | 1.0 | 8,981 | 0.23 | 35,779 | 12.5 | 38.7 | 48.7 |
| 2003 | 17,819 | 1.0 | 7,867 | 0.20 | 33,320 | 10.8 | 35.1 | 54.2 |
| 2004 | 19,229 | 1.0 | 5,756 | 0.13 | 30,943 | 6.8 | 40.1 | 53.1 |
| 2005 | 18939 | 1.0 | 6,662 | 0.20 | 32,681 | 5.0 | 40.1 | 54.9 |
| 2006 | 21088 | 1.1 | 4,729 | 0.14 | 32,145 | 5.0 | 39.0 | 56.0 |
| 2007 | 22865 | 1.1 | 4,756 | 0.12 | 34,527 | 4.2 | 35.1 | 60.7 |

* Percentages

¹⁵ NATIONAL CRIME RECORDS BUREAU, REPORT (New Delhi, 2007).

The number of juvenile crimes in 2007 increased by 8.4 per cent over 2006 with 22,865 crimes registered during 2007, up from 21,008 in 2006. Out of 34,527 juveniles apprehended in year 2007, 29,771(86.2%) were arrested under IPC crimes while 4,756 (13.8 %) arrested for committing SLL crimes. It is observed that during 2007, 1,460 juveniles were apprehended in the age group of 7-12 years, 12,114, juveniles were apprehended in the age group of 12-16 years whereas bulk of juveniles (20,953) were arrested under the age group of 16-18 years. The percentage share of juveniles apprehended under these age groups was 4.2%, 35.1% and 60.7% respectively. However, their share in the IPC is small, and it is even smaller in SLL crimes. A large number of juveniles (68.4%) belong to the poor families. (Income below 25000/) Main IPC offences in which they are reported to be involved are hurt, theft, burglary, riot and molestation. Similarly, main SLL offences are gambling, excise and Prohibition

**Type of juvenile (IPC)
offences in the year 2007.**

| OFFENCE | INDIA |
|-------------------|-------|
| Attempt to murder | 547 |
| Murder | 672 |
| Rape | 746 |
| Molestation | 476 |
| Riot | 1440 |
| Burglary | 2603 |
| Theft | 5,606 |
| Hurt | 3,810 |
| others | 5,418 |

In presenting these facts, the idea is to point out the weakening of figures, the motives for conformity to social norms and the disruption of social relationships and social bonds. Despite preventive legislation, the problem of delinquency continues unabated. It is therefore, necessary that children should be the focus of development. Since they have only one opportunity to grow and develop, while the handling of a child is recognized as delinquent. Though a formal Juvenile Justice system may be justifiable to a certain extent, there must be some concrete and comprehensive plan of action. It should be evolved for the well being and welfare of all children who, due to various situational compulsions, are totally marginalised or left out of the social stream. We also need to evolve an appropriate policy framework for the protection, care and development of neglected children involving the active cooperation and participation of individuals, groups, communities and civil society at large. Keeping this in view, a few suggestions may be offered.

VIII. PROBLEMS IN ADMINISTRATION OF JUSTICE

There are several problems which encountered in the effective administration of justice regarding juvenile delinquency. First, most of the States are yet to constitute juvenile courts to cover all the districts as required under the Juvenile Justice Act, 2000. As a result, the powers of such courts are being exercised by other authorities who may not have special knowledge of child psychology and child welfare. Though this provision may be legally tenable, yet it may run contrary to the spirit of law. The mandatory requirement of honorary social workers on the panel of juvenile courts and efforts may be made that magistrates appointed on juvenile court must have special knowledge of child psychology and child welfare as laid down under the Act. Second problem area is the the approach of the agencies involved in the system are penal not social and reformatory which is against the best interest of child theory.

IX. PREVENTING JUVENILE DELINQUENCY

It is widely believed that early-phase intervention represents the best approach to preventing juvenile delinquency. Prevention requires individual, group and organizational efforts aimed at keeping adolescents from breaking the law. Some focus on punitive prevention intended to frighten potential offenders by making sure they understand the possibility of severe punishment and also explaining them the negative aspects of an offence to a delinquent and attempting to reconcile offenders and their victims. Through the economic sector, development programmes with income generation opportunities, professional training and vocational education are the areas which can help and prevent youth involvement in delinquent activities. Involvement of NGOs and local community can also help in preventing juvenile gang delinquency.¹⁶

X. SUGGESTIONS

- Control of delinquency needs effective implementation of Juvenile Justice Act, with full public awareness and proper orientation and training to professionals and law enforcement agencies.
- Application of UN Rules for Juveniles Deprived of their Liberty (1990)
- Advocacy for various legal provisions provided for juveniles.

¹⁶ JUVENILE DELINQUENCY, WORLD YOUTH REPORT (2003) pp.200-201.

- A proper mechanism should be created to assess the needs and requirements of the juveniles and it should be reviewed regularly.
- The approach of the agencies like police involved in the system may be more of reformative character rather than pure penal. The objective may be to reform the delinquents, rather than just to punish them.
- Government should put more emphasis on useful and attractive beneficial long-term schemes for Juveniles so that they feel motivated to join main stream of the society and regain their self-confidence, which is generally lost because of the callous attitude of the society.
- State Governments and Union Territories administrations should encourage and provide support to voluntary organization to start or modernize juvenile services including community services.
- Longer association of community and voluntary organizations in the schemes of Government programs like nutrition for all, literacy, health, eradication of child labour, etc. shall help to a great extent to weed out delinquency.
- All the stakeholders should give coordination and networking, as the aims of juvenile justice could be achieved mainly through concentrated and co-ordinate functioning.