



A Critical View on the Sri Lankan Juvenile Legislation Rehabilitation and Re-integration Procedures Available towards Juvenile Delinquents

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Abstract

The purpose of this paper is to analyze the available national laws relating to juvenile delinquency, to discuss the contributory factors for the occurrence of juvenile delinquency in Sri Lanka, to discuss the rehabilitation procedures followed, to get insights of the reintegration procedure followed for juvenile delinquents and to analyze the drawbacks in the existing correctional system. Furthermore, the researcher proposes recommendations towards filling the loopholes of the present system of juvenile legislation, rehabilitation procedures and correctional methods available. The researcher has realized that, rehabilitation procedures undertaken for juvenile delinquents with the involvement of the correctional institutions and reintegration processes undertaken to settle them within the society are two mutually existing yet controversial issues persisting in Sri Lanka in a grave manner. Moreover, escalating the occurrence of juvenile delinquency rates and its reconvicted rates demonstrate distinctively that the existing policies and methods with regards to the aforesaid two procedures are lacking and persisting with many loopholes where the juvenile infringers get away from being actually rehabilitated or rather integrated with the society. Furthermore, this research aims towards enlightening the future legal researchers that both rehabilitation and re-integration procedures and techniques are much needed to be implemented and such practical challenges may affect the goodwill towards such juvenile infringers and unless it would be challenging towards mitigating the reconvicted rates. Since children are the greatest asset to any nation's future, juvenile delinquency is a sensitive legal issue which should be handled with much deliberateness.

Keywords: Juvenile Legislation, Juvenile Delinquents, Rehabilitation Procedures, critical view, correctional methods, re-integration procedures

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Introduction

“Uncovering the truth is important. But if delayed, it isn’t justice.”

-Sim Eunseok J-

Sri Lanka could be recognized as a South Asian country bestowing developing infrastructures and economical background where one third of its population comprises of children and adolescent community. Moreover, it is recorded that juvenile delinquency matters often emerge and higher tendency towards the occurrence of juveniles being involved in antisocial activities when considering the past years. The researcher has enhanced her opinion on the fact that guardianship and custody of parents of the neglected minors have a higher tendency towards involving in antisocial behaviours where it is necessary for the relevant authorities of the country to seriously take up on such matters towards mitigating the occurrences of such unfortunate situations. Additionally, the researcher distinguished the fact that Sri Lanka has adopted a judicial process exclusively directed towards governing such juvenile delinquency related cases by adopting distinctive ways of posing punishments which would focus more upon the objective of rehabilitating such minors with the long-term goal of reintegrating them with the society as law abiding citizens and towards understanding the weight of their criminal actions in a way where such would not be repeated. However, the researcher has undertaken in collecting evidences that such existing correctional systems specifically through methods of institutional rehabilitation were not successfully reached due to the various weaknesses and loopholes in the existing juvenile delinquency system in Sri Lanka where the researcher shall propose recommendations towards mitigating such challenging situations.

As per Collins English Dictionary, a juvenile delinquent is demonstrated as a “child or young person, who is guilty of an offence, an act of vandalism or antisocial behaviour” and Juvenile Delinquency is defined as “the participation in unlawful behaviour by persons younger than the statutory age of majority”.¹ As per the research carried out by Moffitt

¹ D Black, Collins English Dictionary (10th edn, Harper Collins Publishers, 2012).

in the year 2006, he signified the existence of two sorts of adolescent offenders.² The first is the **Life Course Persistence (LCP)**, who starts to pave antisocial or aggressive behaviours during childhood which shall continue towards their adulthood. The latter is the **Adolescent Limited (AL)** who exhibits antisocial behaviours only during the period of their adolescence.³ Moffitt further declared that, though in general AL offenders refrain from criminal activity once they reach their adulthood, they tend to suffer from psychological disorders, psychiatric disorders, substance abuse and problems related to management of their finances compared to the other adolescents who didn't undertake any actions amounting to being a juvenile delinquent.⁴

When finding out the core factors for the occurrence of the aforesaid offences through such juvenile delinquents, it was distinguished by the researcher that the cause of actions for the occurrence of such unfortunate social dilemma is as a result of the malpractices in the parenting style and the association of antisocial peers in general.⁵

The researcher has realised that, more probability of the occurrences of such juvenile delinquencies are roaming around the permissive style of parenting which would not encourage consequence-based discipline and also the authoritarian style of parenting which is an amalgamation of the neglectful parenting and indulgent parent respectively.⁶ On justifying these concepts, the researcher came across the fact that association of juveniles with antisocial peers and peer groups would have a higher probability towards the occurrence of juvenile delinquency due to the reason being the insufficient supervision.⁷

When determining other factors causing juvenile delinquencies would

² T Moffitt, *Life-course-persistent versus adolescent-limited antisocial behaviour* (2nd edn, John Wiley and Sons Inc, New York, 2006).

³ Ibid.

⁴ Ibid.

⁵ Sri Lanka Journal of Child Health, 'Juvenile delinquency Sri Lanka Journal of Child Health' [2018] 47(3) <http://dx.doi.org/10.4038/sljch.v47i3.8536> Accessed on- 11/03/2023.

⁶ Ibid.

⁷ Ibid.

encompass low status of socio economical background, inefficient and inconveniences occurring in performing at schools and educational institutions, rejection from peers, and disorders such as Attention Deficit Hyperactivity Disorders which is commonly known as ADHD.⁸ Furthermore, Sri Lankan Journal of Child health suggest this situation might persist due to biological factors such as high levels of serotonin levels resulting in bad temper and poor self-regulation.⁹ Moreover, decreased intelligence, aggression, lack of ability towards foregoing gratification and absence of empathy and restlessness could be recognized as individual risk factors which cause juvenile delinquency more probable in nature.¹⁰ Additionally, language delays, aggressive behaviours and cruelty towards animals and lack of emotional control could be shown as some risk factors driving towards the occurrences of juvenile delinquency.¹¹ The fact that, family factors influencing Juvenile Delinquency are the extent of supervision by parents, modes of disciplining a child, conflicts among parents, parental separation, parents, or siblings who are criminals, abuse by parents and the parent-child relationship. Juvenile delinquents are often diagnosed with conduct disorders which may develop during childhood and then manifest during adolescence.¹² Learning about substance abuse, family counselling, youth mentoring, learning about parenting, educational support, and youth sheltering, prevention through providing educational aids towards young people towards topics such as how to effectively conduct themselves socially are some of these efforts could be recognized as some of the preventive and mitigative measures followed by the EL Grigorenko.¹³ However, there is a higher tendency in occurrence of juvenile delinquency interventions as bringing these

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ L Steinberg, *Adolescence* (11th edn, McGraw-Hill Education, 2016).

¹² Ibid.

¹³ EL Grigorenko, *Handbook of Juvenile Forensic Psychology and Psychiatry* (Springer Science & Business Media, New York, 2012).

children together merely disseminate delinquent behaviour.¹⁴

Sri Lanka adopts a separate judicial process to handle Juvenile Delinquency cases and implement distinctive methods of punishments focusing on their rehabilitation and reintegration into the society as law abiding citizens of Sri Lanka.¹⁵ In Sri Lanka, juvenile justice is administered according to the Children and Young Persons Ordinance No.47 of 1956. In the Ordinance, a “child” is aged below 14 years whilst a “young person” has reached the age of 14 years but is below 16 years of age.¹⁶ Under the Ordinance, Juvenile Courts are established to hear charges against children and young persons. Juvenile Courts are presided over by a Children’s Magistrate and sit in a place separate from other courts. In Sri Lanka, only one Juvenile Court has been established so far, and that is in Colombo.¹⁷

Research Outline

This research attempts to find the root causes for these problems and weaknesses and to bring about possible recommendations to overcome those problems. Further, this study deals with offences committed by the Sri Lankan Juvenile Delinquents, the risk factors which cause to aggravate the problem of Juvenile Delinquency, the special needs of Juvenile Delinquents, and the applicable laws relating to Juvenile Justice system in Sri Lanka. In this paper the author attempts to address the issue under three main parts with several subheadings. First, the author focuses on Juvenile Delinquency with a brief discussion of Sri Lankan Law relating to the subject. The second part summarizes the reasons for the Juvenile Delinquency in Sri Lanka. Thirdly, the rehabilitation and reintegration of the Juvenile Delinquents are discussed with its drawbacks. Finally,

¹⁴ Ibid.

¹⁵ J Nirriella, ‘Rehabilitation and re-integration of juvenile offenders in Sri Lanka’ [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMtY2NQ%3D%-3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

¹⁶ Ibid.

¹⁷ Children and Young Persons Ordinance of No.47 of 1956, s. 3(1).

the author attempts to suggest possible recommendations to improve the existing rehabilitation system for the Juvenile Delinquents in Sri Lanka which any country could align as per the shape of their necessity and the system.

Problem Statement

Although Sri Lankan Law has been developing to recognize and protect rights and interests of children, violent activities against children have been drastically increased during the last decade. Therefore, it is mandatory to look at this issue from a legal aspect towards ensuring the protection of the children and to analyze the causes for the increase of Juvenile Delinquency rate in Sri Lanka.

Research Objectives

This research shall:

- To examine the existing substantive and procedural penal laws in relation to the protection of children from the occurrences of violences and Juvenile Delinquencies.
- To present the applicable penal laws which are applicable to children who conflict with law.
- To highlight the present drawbacks of the Sri Lankan Juvenile Legislation System.
- To provide recommendations towards decreasing the Juvenile Delinquency rates in Sri Lanka.

Literature Review

The researcher was motivated to engage in this research and draft this paper to fill the gap created by a clear lack of relevant legal and academic scholarship on the subject, when there is a rising tide of opinion with regards to Sri Lankan juvenile legislation. The researcher has attempted in finding literary work done by both national and international researchers towards finding information on juvenile delinquency, applicable national laws with regards to juvenile delinquency, how Sri Lankan law has impacted on juvenile delinquency, causes for juvenile

delinquency in Sri Lanka, existing rehabilitation procedures towards juvenile delinquents, and issues existing with the current correctional system.

The research article written by Jeeva Niriella (2020) titled “Rehabilitation and re-integration of juvenile offenders in Sri Lanka” posits how the juvenile legislation and rehabilitation procedures are carried out within the Sri Lankan legal framework and provide recommendations towards enhancing the prevailing system to new heights depending on the available legal issues handled so far¹⁸. The author argues that the available juvenile legislation could be improved by providing recommendations and declare that there is a need for much firm and secure ways of handling the juvenile delinquents since they depict the future of the society.

The research article written by Swarna Wijethunge (1991) titled “A study of children’s homes to investigate the needs of children in institutional settings” has been referred by the researcher which highlights regarding disintegration of the family and laxity in parental control over children increasing tendency of juvenile delinquency¹⁹. Furthermore, this research has enlightened the researcher with regards to correctional institutions and the bitter experiences faced by such juvenile delinquents due to the reasons of divorce, mutual separations, domestic violence, abusive behavior of parents, drug and alcohol addictions, smoking and gambling leading such children to seek satisfaction outside their household ends up with antisocial and criminally liable activities. Along with the research done by Swarna Wijethunge, the researcher has compared the statistical

¹⁸ J Niriella, ‘Rehabilitation and re-integration of juvenile offenders in Sri Lanka’ [2020] (8)https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMTzMTY2NQ%3D%3D&e=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

¹⁹ S Wijethunge, ‘A Study of Children’s Homes to Investigate the Needs of Children in Institutional Settings’ [1991].

study conducted by Jeeva Niriella where it is proven that over the years from 1991 to 2010, there is a progressive increase of juvenile delinquency in Sri Lanka.

The journal article produced by the Sri Lanka Journal of Child Health regarding juvenile delinquency and child health in 2018 is referred by the researcher in order to determine the factors affecting the occurrence of juvenile delinquencies from the perspective of children's health.

The research article exhibited by Save the Nation (1994) titling "A Study into the Reasons for Admission to Residential Care in Sri Lanka" was reviewed by the researcher where the researcher was able to find the contributing factors for aggravating juvenile delinquency, such as illiteracy, child labour, squalor, and disobedience²⁰.

The book written by T Moffitt titled Life-course-persistent versus adolescent-limited antisocial behavior in the year 2020 was analyzed by the researcher to examine the antisocial behavior proposing two primary hypothetical prototypes of life-course-persistent versus adolescence-limited offenders²¹. As per the taxonomic theory, life-course-persistent offender's antisocial behavior originated from neurodevelopmental processes beginning from childhood and continues persistently thereafter. Alternatively, adolescence-limited offender's antisocial behavior originates from social processes, beginning from adolescence.

The book written by L Steinberg titling "Adolescence" in the year 2020 is cited by the researcher in appraising the parent-child relations and psychological development during the adolescence concerning the growth and development of adolescents across diverse social, economic, and cultural backgrounds²².

²⁰ Save the Nation, 'A Study into the Reasons for Admission to Residential Care in Sri Lanka' [1994].

²¹ T Moffitt, *Life-course-persistent versus adolescent-limited antisocial behaviour* (2nd edn, John Wiley and Sons Inc, New York, 2006).

²² Steinberg L, *Adolescence* (11th edn, McGraw-Hill Education, 2016).

Handbook of Juvenile Forensic Psychology and Psychiatry, written by EL Grigorenko, published in the year 2012 is explored by the researcher in taking an overview on the most critical issues in the field of forensic work with juveniles focusing on the juvenile justice system in proposing recommendations towards improving the current juvenile justice system in Sri Lanka²³.

The foreign research article of the two authors Mark W. Lipsy and David B. Wilson titled “Effective Intervention for Juvenile Offenders, in Serious and Violent Juvenile Offenders, Risk Factors and Successful Interventions” suggested that rather than depending on institutional based corrections towards meeting best interests of juveniles and towards reducing the reconvicted rates of juvenile delinquency, it is more effective to practice community based correction mechanisms by treating them specially and differently from adult offenders²⁴.

Therefore, based on the above literary work, it is clear that there is a dearth of relevant and helpful scholarly articles on the topic of juvenile delinquency considering both foreign and local legal research work. Thus, this paper attempts in filling the research information gaps by contributing and exploring as to how the present Sri Lankan legal background upon juvenile delinquency works and how it could be improved by introducing newer aspects to the legalities and benefit the future of Sri Lanka by reducing the crime rate of juvenile delinquents and rehabilitating them to prevent future occurrence of crimes.

Method, Methodology and Epistemology

Towards achieving the motive of finding answers towards the research problem and research objectives hereto in this particular research, the researcher has aided the research to be conducted under the guidelines available in the prominent article of research which justifies method, methodology and epistemology of a research written by SM Carter

²³ Grigorenko EL, *Handbook of Juvenile Forensic Psychology and Psychiatry* (Springer Science & Business Media, New York, 2012).

²⁴ Lipsy MW, Wilson DB and Cothorn L, ‘Effective Intervention for Serious Juvenile Offenders’ [2020] <https://www.ojp.gov/pdffiles1/ojdp/181201.pdf> Accessed on- 29/02/2023.

and M Little titling, “Justifying Knowledge, Justifying Method, Taking Action: Epistemologies, Methodologies, and Methods in Qualitative Research”. Furthermore, the traditional Black Letter or Doctrinal Legal Research Approach has also been utilized by the researcher when stigmatizing the research methodology to contain a legal approach to its methodology aiming to reduce the content of the research study to an essentially descriptive analysis towards collating, describing and organizing legal rules and procedures towards offering comments upon the significance and the emergence of the related and authoritative legal sources which could be primary and secondary sources of law utilized by the researcher towards conducting the respective research study.

The researcher followed a qualitative research approach where methods of data collection utilized are as per the primary sources, the researcher has utilized, national and foreign statutes and case laws. As per secondary sources, the researcher has utilized books. Finally, as tertiary legal sources, the researcher utilized online law journals, online legal conference papers, and quotations through surfing credible e-journals and websites such as LexisNexis, Emerald, Westlaw, Google Scholar and JSTOR etc and other frequently utilized databases by legal researchers across various legal disciplines for the literature search and the following keywords: Mens Rea, Legal Psychology, Criminal Law, Comparative legal Analysis.

However, the researcher was able to encounter only one article written by Jeeva Niriella (2020) based on Rehabilitation and re-integration of juvenile offenders in Sri Lanka” on the afore-mentioned search criteria. The other articles and books mentioned in the literature review shows that there is a clear lacunae of pursued research gaps over this area of discussion. Thereby, due to this clear lack of helpful research studies and inadequacy of research articles on the area of research motivated this study to be taken forward.

Finally, the researcher follows ‘revelational epistemology’ as the philosophical foundation of gathering new knowledge throughout the

research by justifying the aforesaid primary, secondary, and tertiary sources of data collection methods.

Limitations

Although this research is focused upon minor victims and offenders coming under Juvenile Delinquency, it was not conducted any in person interviews with the victimized juveniles or those who conflict with law towards maintaining research ethics and privacy of the minors and due to practical difficulties upon collecting and analysing such data through field visits due to time limitations.

Findings and Discussion

Applicable National Laws Relating to Juvenile Delinquency

The Sri Lankan law clearly define the term ‘child’ and it is a noticeable fact that, many issues arise, where Juvenile Delinquency is one such matter that warrants the legal attention and should be dealt carefully. Furthermore, crimes committed by persons under the legal age of 18, diverse from petty thefts, trespassing, and vandalism to more serious offences such as drug abuse, assault, and even murder.²⁵ As per the common elements leading towards the aforesaid crimes are, deficient upbringing, domestic abuse, peer influence, intellectual disability, and mental illness respectively. It is encountered that majority of aforesaid committed offences are performed by such Juvenile Delinquents in unplanned, attention-seeking, and opportunistic manner.²⁶

Created on the understanding that youth did not have the rationality and cognition towards committing criminal offences unlike the adult criminal offenders, juvenile delinquents are handled in Juvenile Courts. In Sri Lanka there is an inadequacy of specialized Juvenile Courts where there is only two of such where this inadequacy leads towards majority of the Juvenile Delinquent’s cases to be heard in ordinary Courts that would

²⁵ S Wijethunge, ‘A Study of Children’s Homes to Investigate the Needs of Children in Institutional Settings’ [1991].

²⁶ Ibid.

hinder the needs and protection for juvenile's privacy protection.²⁷ Since Sri Lankan Court System face an increase of case backlog in Courtrooms which often leads to years passing from the commencement of the trial to the passing of the verdict, it fails to provide considerably reduced sentences and fail to prioritize the distinction among adult offenders and Juvenile Delinquents from the formal justice system.²⁸

Furthermore, Juvenile Delinquents are subjected to intensified institutionalization at stake of their social and psychological well-being. Though international communities have given their continuous efforts in advancing legislation towards ensuring children not being deprived of their personal liberty, in Sri Lankan legislation, institutionalization is not resisted.²⁹ Since Sri Lanka has ratified international agreements such as the Convention on the Rights of the Child (CRC), Sri Lankan legislation is obliged towards incorporating a progressive international legal practice into Sri Lankan Legal Framework. A Juvenile Court can remand a Juvenile Delinquent in a remand home or in the custody of a 'fit person' for a period not exceeding twenty-one days, to collect the information necessary to establish guilt. These time-limits do not align with the international frameworks and give way to the possibility of children being unduly detained without sufficient oversight.³⁰

There are several legislative instruments which handles the law relating to Juvenile Delinquency in Sri Lanka. They are; Children and Young Persons Ordinance (CYPO) No. 48 of 1939 (as amended) functions as the basic law dealing with the administration of Juvenile Justice. Additionally, this legislation provides provisions towards

²⁷ Save the Nation, 'A Study into the Reasons for Admission to Residential Care in Sri Lanka' [1994].

²⁸ J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8)https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9b9bbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMtY2Nq%3D%-3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

²⁹ Ibid.

³⁰ Children and Young Persons Act No.47 of 1956, ss 4,9,10,11.

the establishment of the Juvenile Court in the country. Youthful Offenders (Training Schools) Ordinance No. 28 of 1939, Probation of Offenders Ordinance No. 42 of 1944, Penal Code Act No. 2 of 1882, Code of Criminal Procedure Act No. 15 of 1979 and Prison Ordinance No. 16 of 1877 also contain some special legal provisions applicable to govern Juvenile Delinquents. In Sri Lanka the minimum age of criminal responsibility is 8 years.³¹

A person under 18 years is considered incapable of possessing “mens rea” which is one of the main elements required to constitute a crime under criminal law in Sri Lanka.³² Moreover, the individuals who are less than 12 years of age are not punished unless they have attained sufficient maturity. Death sentence is not imposed on the person who is under the age of 18 years.³³

According to the Children and Young Persons Ordinance 1939, child means a person under the age of 14 years and young person means a person who has attained 14 years but under 16 years of age.³⁴ Additionally, young persons who are between the age limit of 16-18 are not considered as Juveniles under this Ordinance. However, according to the Sri Lankan Children’s Charter, child means any person under the age of 18. Therefore, there is an incompatibility in Sri Lankan Law as to the definition of a child. Furthermore, Penal Code does not duly recognize the distinction among the age at the time of the offence and the age in which the verdict is passed.³⁵

Furthermore, a major drawback in Children and Young Persons Ordinance 1939 is that a detention order by an approved or certified

³¹ Penal Code, s 75.

³² Penal Code, s 76.

³³ Penal Code, s 53; Code of Criminal Procedure Act, s 288.

³⁴ Children and Young Persons Act No.47 of 1956, s 88.

³⁵ J Niriella, ‘Rehabilitation and re-integration of juvenile offenders in Sri Lanka’ [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMjY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

school lasts for a time period of three years which is potentially a larger time period than an adult offenders detainment period for an offence identical in nature.³⁶ Additionally, it doesn't need a parent or a guardian of the Juvenile to be notified before a child being brought to a magistrate and it's not necessary by the law enforcement towards explaining the reasons for such juvenile detainment.³⁷ Thus, it has been the international practice towards resorting to restorative means of justice, rather than conducting retributive measures, when minors are concerned. Moreover, Juvenile Delinquents are penalized ideally less than the adult criminal offenders in relation to the gravity of the criminal charge by justifying the legal philosophy that same as children being prevented from owning property, voting and entering into legally enforceable contracts.³⁸

Towards ensuring a fair judicial procedure towards Juvenile Delinquents, Sri Lanka has taken progressive legal measurement of enacting legislative reforms and Bills such as Children (Judicial Protection) Bill (CJPB) and several similar Acts, drafted by Ministry of Justice.³⁹ However, it is a noticeable fact that certain legal clauses and legal practices of such reforms and Bills continuing to exist would impede the effectivity of the Juvenile Justice System of Sri Lanka.

Since human resource constraints are available in the Juvenile Justice Institutions such as Police, Department of Probation and Child Care Services and National Child Protection Authority of the Sri Lankan Justice System, where administrative capacities are minimalistic, Children's and

³⁶ UNICEF, 'A legal and Institutional Assessment of Sri Lanka's Justice System for Children' [2017] <https://www.unicef.org/srilanka/media/376/file/A%20Legal%20And%20Institutional%20Assessment%20Of%20Sri%20Lanka%E2%80%99s%20Justice%20System%20For%20Children.pdf> Accessed on- 13/03/2023.

³⁷ Ibid.

³⁸ Ibid.

³⁹ J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMzY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

Women's Desks are severely understaffed and occurrence of systematic delays which would impede the effectiveness of the Sri Lankan Juvenile Justice System.⁴⁰ Furthermore, the child friendly area in Juvenile Justice Institutions and prevalent of Child friendly attitudes of the officers of the Juvenile Justice System has to be improved in order to increase the efficiency and effectivity of the Sri Lankan Juvenile Justice System.

Contributory Factors for the Occurrence of Juvenile Delinquency in Sri Lanka

Though it is difficult to prioritize the causes of juvenile delinquency according to its contribution to the problem, this research found some causes that contribute to aggravate the problem of juvenile delinquency. Those are as follows:

- 1. Disintegration of the family and laxity in parental control over children is one of the main reasons that increase juvenile delinquency.**⁴¹ Additionally, **increase in divorce and mutual separation rates, domestic violence against wives at home, abusive behaviour of parents especially fathers using filthy words and quarrelsomeness, drug, and alcohol addiction, smoking and gambling of fathers, may derive children to seek satisfaction from outside** where they may end up with antisocial activities. This situation is common in the urban areas of the country.⁴²
- 2. Temptation for modern luxuries of life** provoke youngsters towards resorting to wrongful acts to satisfy their needs by prompting them to commit crimes. The children and young person's belonging to low and middle classes and urban and semi-urban areas involve

⁴⁰ S Wijethunge, 'A Study of Children's Homes to Investigate the Needs of Children in Institutional Settings' [1991].

⁴¹ UNICEF, 'A legal and Institutional Assessment of Sri Lanka's Justice System for Children' [2017] <https://www.unicef.org/srilanka/media/376/file/A%20Legal%20And%20Institutional%20Assessment%20Of%20Sri%20Lanka%E2%80%99s%20Justice%20System%20For%20Children.pdf> Accessed on- 13/03/2023.

⁴² S Wijethunge, 'A Study of Children's Homes to Investigate the Needs of Children in Institutional Settings' [1991].

in petty crimes due to this reason.⁴³

3. The **associational impact** is another factor which causes Juvenile Delinquency leading them to encounter bad association and fall prey to the various circles where most of the time it is difficult to come out of bringing them in contact with delinquency activities.⁴⁴
4. **Association with modern technology** dominated by the theme of sex and violence often make the teenagers to be lured into experiencing what they see in the movies and finally they involve in delinquencies.⁴⁵
5. **Biological factors such as low intelligence, irresistible impulses, physical maturity often leads to delinquent behaviour among juveniles in Sri Lanka.** Furthermore, illiteracy, squalor, illiteracy, and disobedience can cause as the contributory factors which would aggravate Juvenile Delinquency.⁴⁶
6. **Truancy** is another reason for Juvenile Delinquency where some children may not be mentally prepared to go to school and learn what they are being taught and get used to loiter in shopping complexes or other places where they are drawn into the world of delinquency without knowing that their doings are prohibited by law.⁴⁷
7. **Poverty** leading to Juvenile Delinquency where it is encountered that most of the delinquents belong to the lower economic class. Parents fail to provide necessities of life draws their children into

⁴³ MW Lipsey, DB Wilson and L Cothorn, 'Effective Intervention for Serious Juvenile Offenders' [2020] <https://www.ojp.gov/pdffiles1/ojdp/181201.pdf> Accessed on- 29/02/2023.

⁴⁴ Ibid.

⁴⁵ EL Grigorenko, *Handbook of Juvenile Forensic Psychology* (Springer Science and Business Media, New York, 2012)

⁴⁶ EL Grigorenko, *Handbook of Juvenile Forensic Psychology* (Springer Science and Business Media, New York, 2012).

⁴⁷ Ibid.

delinquency in a quest for earning money by whatever means.⁴⁸ However, middle class juveniles may become delinquents due to their inability to satisfy parents' expectations, lack of self-discipline or due to bad association.⁴⁹ As stated previously, juvenile delinquency is present in the higher economic class too. In rich families, parents are busy, cold, and distant which drives their children to be manipulative. They engage in delinquency activities for the sake of fun and excitement or sometimes to get away from their isolated feelings.⁵⁰

8. **Cultural Conflicts** among the various ethnicities in the country also contributes to the increase of the rate of Juvenile Delinquency. During the last 30 years, the LTTE group recruited children and young persons as soldiers. Juveniles in the North and the East were drastically involved in terrorist activities and in the war front as child combatants. However, at present this factor has been reduced with the end of war.⁵¹ However, due to the presence of political propaganda in the Country in recent times due to the economic downfall of Sri Lanka, there is a tendency of emerging the cultural conflicts which would lead the young crowd of the country to undergo delinquencies.

Rehabilitation Procedure Followed in Sri Lanka for Juvenile Delinquents

Sri Lanka recognized that corporal punishments are not mandatory to be implemented as a response towards juvenile delinquency in the latter half of the 20th century and declared that rehabilitation

⁴⁸ DJ Shoemaker, *Juvenile Delinquency* [2013] https://books.google.com/books?id=oucF-byODBMgC&printsec=frontcover&dq=juvenile+delinquency&hl=en&sa=X&ved=2ahUKEW1iqX91NP9AhWY3jgGHbJ_BksQ6AF6BAGIEAI Accessed on- 05/03/2023.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ UNICEF, 'A legal and Institutional Assessment of Sri Lanka's Justice System for Children' [2017] <https://www.unicef.org/srilanka/media/376/file/A%20Legal%20And%20Institutional%20Assessment%20Of%20Sri%20Lanka%E2%80%99s%20Justice%20System%20For%20Children.pdf> Accessed on-13/03/2023.

should be the main aim of punishment for the Juvenile Delinquents.⁵² Additionally, adults are responsible for the care, protection, and rehabilitation of Juvenile Delinquents. Similarly, during the same period, some empirical research work conducted in other countries investigated that corporal punishments do not reduce the Juvenile Delinquency rate, or such punishments do not contribute to decrease the reconvicted and recidivism rate in Juvenile Delinquency.⁵³ Some researchers suggested that community based corrections are more effective than the institutional based corrections to meet the best interest of Juveniles and to reduce the reconvicted and recidivism rate of juvenile delinquency⁵⁴. Therefore, juvenile delinquents should be treated specially and differently from adult offenders.

Sri Lanka has both the institutional and the community based corrections in the correctional process of Juvenile Delinquency which interconnect in the proceedings of Juvenile Delinquents⁵⁵. The convicted Juvenile Delinquents cannot be committed to prisons where they should be sent either to remand homes, approved or certified schools.⁵⁶ Therefore, in Sri Lanka there are three types of correctional institutions established under the Children and Young Persons Officer (CYPO) to rehabilitate children and young persons during the term of punishment. These institutions are administered by the Department of Probation and Child Care and the correction programmes are conducted by the Provincial Department of Probation

⁵² S Wijethunge, 'A Study of Children's Homes to Investigate the Needs of Children in Institutional Settings' [1991].

⁵³ Ibid.

⁵⁴ S Wijethunge, 'A Study of Children's Homes to Investigate the Needs of Children in Institutional Settings' [1991]; J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWd1OzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMTY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on-12/03/2023.

⁵⁵ Children and Young Persons Ordinance, s 23

⁵⁶ Ibid ss 23,24,26.

and Child Care Service.⁵⁷

An underage offender could be sent to a remand home for a period of not exceeding one month. If a person who is under 18 years commits an offence, where the prescribed punishment against the offence is death sentence, the Court then should order that person to be detained in a remand home until the pleasure of the President is made known. If the juvenile commits any other indictable offence, the court should order that person to be detained in a remand home until the pleasure of the Minister is met.⁵⁸

The young person's may be sent to a certified or approved school for the maximum period of three years. Mental development of the children and young persons, moulding towards good qualities, turning them into law abiding persons and improving their skills are the main aims of the institutional rehabilitation activities.⁵⁹ However, young persons may also be committed to prison only if the Court certifies that they are unruly or disobedient and cannot be detained in a remand home or a certified school.

The male prisoners are trained in vocational training programmes such as carpentry, masonry, electrical and mechanical work, and female prisoners are trained in home science and handicraft in these institutions.⁶⁰ However, it is hard to find correctional programmes such as individual counselling, cognitive behavioural therapy, or

⁵⁷ Ibid s 25; J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMTY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

⁵⁸ Children and Young Persons Ordinance s 24.

⁵⁹ Ibid s 26.

⁶⁰ J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdlOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMTY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

formal education.

Community based correctional methods such as probation and supervision under suitable persons are available to rehabilitate the Juvenile Delinquents.

When a child or a young person commits an offence, the court may release the offender on probation under Probation of Offenders Ordinance taking into consideration the nature of the offence, the character of the offender, antecedents, family environment, mental and physical condition of the juvenile delinquent.⁶¹ The Probation Service should be performed by the Probation Officer of the Probation Unit in the respective Judicial Zone. Additionally, he should provide the relevant information about the delinquent to the court. The supervision activities are conducted by a Court Order. Juvenile Delinquents committed to the probation service are supervised for three years and children on a court order are supervised for 1 or 2 years and for a maximum period of 3 years.⁶² During this period the officer's role is as follows: to improve the juvenile offenders behaviour through counselling, maintaining individual profiles of each juvenile offender, if the offender is schooling, make the necessary arrangements to continue the schooling and take follow up action and supervision on him/her, if the offender is not schooling and interested in another vocational career, admit him to a Professional Training Institute and have him trained and provide the necessities to continue the training.⁶³

⁶¹ DWUC Wickramasinghe, PY Jayasuriya, IADT Medhavani, WAL Avindhya, HMKKA Herath, KMND Konarathne and LS Liyanage, 'An Evaluation on the Rehabilitation Programmes Conducted for Juvenile Delinquents in Remand Homes and Certified Schools in Sri Lanka: A Case Study based on Southern Province'[2020] http://ir.kdu.ac.lk/bitstream/handle/345/2861/pdfresizer.com-pdf-split%20%281%29_4.pdf?sequence=1&isAllowed=y Accessed on-13/03/2023.

⁶² DWUC Wickramasinghe, PY Jayasuriya, IADT Medhavani, WAL Avindhya, HMKKA Herath, KMND Konarathne and LS Liyanage, 'An Evaluation on the Rehabilitation Programmes Conducted for Juvenile Delinquents in Remand Homes and Certified Schools in Sri Lanka: A Case Study based on Southern Province'[2020] http://ir.kdu.ac.lk/bitstream/handle/345/2861/pdfresizer.com-pdf-split%20%281%29_4.pdf?sequence=1&isAllowed=y Accessed on-13/03/2023.

⁶³ Ibid.

Reintegration Procedure Followed in Sri Lanka for Juvenile Delinquents

It is true that the life in the correctional institution is different to that of the home environment. Conceptually, reintegration is very much important for the delinquents to overcome the various social and psychological problems that they will be faced after their release from these institutions. In some countries there are several after care service programmes that are conducted for ex juvenile offenders to facilitate them to reintegrate to the society as law abiding citizens. In those countries after care service programmes are an integral part of the rehabilitation process of the juvenile justice.⁶⁴ The former and the present Magistrates in the Sri Lankan Juvenile Court have the view that reintegrating delinquents into society is an important aspect of the rehabilitation where the Ministry should take the initiatives to establish and institutionalize such programmes into the juvenile justice system.⁶⁵ According to them, although the delinquents have committed offences or they have been accused of involving in anti-social activities, these children must be absorbed into the mainstream and the present system of institutional correction is wholly inadequate in achieving this aim.⁶⁶

⁶⁴ J Niriella, 'Rehabilitation and re-integration of juvenile offenders in Sri Lanka' [2020] (8) https://www.researchgate.net/publication/342624073_REHABILITATION_AND_RE-INTEGRATION_OF_JUVENILE_OFFENDERS_IN_SRI_LANKA?enrichId=rgreq-e9a9bbbbcc757a21036e9ad00e0da3d3-XXX&enrichSource=Y292ZXJQYWdIOzM0MjYyNDA3MztBUzo5MDg3Mzc1ODE2OTA4ODJAMTU5MzY3MTMzMTY2NQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf Accessed on- 12/03/2023.

⁶⁵ M Dias and KGNU Ranaweera, 'A Study on the Factors Related to Recidivism of the Juvenile Delinquency in Sri Lanka' [2018] <http://dr.lib.sjp.ac.lk/bitstream/handle/123456789/7937/A%20Study%20on%20the%20Factors%20Related%20to%20Recidivism%20of%20the%20Juvenile.pdf?sequence=1&isAllowed=y> Accessed on- 07/03/2023.

⁶⁶ M Dias and KGNU Ranaweera, 'A Study on the Factors Related to Recidivism of the Juvenile Delinquency in Sri Lanka' [2018] <http://dr.lib.sjp.ac.lk/bitstream/handle/123456789/7937/A%20Study%20on%20the%20Factors%20Related%20to%20Recidivism%20of%20the%20Juvenile.pdf?sequence=1&isAllowed=y> Accessed on- 07/03/2023.

Analysis on the Drawbacks in the Existing Correctional System

As per the drawbacks pertaining in the existing correctional system, the major problem that could be identified in the Sri Lankan juvenile system would be the presence of an uncertainty as to the definition of a child where different legal instruments of different jurisdictions define the term child in diverse manner leading towards an incompatibility with the United Nation treaties such as, Convention on Child Right and International Non Treaty Guidelines and Principles which are commonly known as Riyadh Guidelines and Beijing Rules respectively.

Next drawback would be the punitive nature of the punishments imposed by the Sri Lankan Juvenile Courts which are absent with therapeutic approaches towards the Juvenile Delinquents. This resulted in increasing the number of juvenile offenders in such centres where the capacity of such correctional system has not been adequate and extended towards aiding the juvenile offenders the necessary psychological assistance towards rehabilitating them. Furthermore, numerous practical problems take place with regards to bad conditions of such institutions in lack of proper infrastructure, adequate space due to overcrowding of the juvenile delinquents, difficulties, and inconveniences in providing adequate care and protection towards inmate juvenile delinquents, occurrence of child rights violations such as ill treatment, torture and psychological traumas, obscurities in adequately providing required standard of health and privacy to the delinquents, difficulties in performing treatment programs properly, inadequacy of the existing rehabilitation methods to suffice the needs of the juvenile delinquents, financial difficulties faced in conducting standardized rehabilitation programs, lack of sufficient well trained staff and non-acceptance of children by their parents and guardians after the completion of rehabilitation process respectively.

Furthermore, it is a noticeable fact that Community Based Correction Programs too has its share of problems such a lack of efficient and

trained staff, limited public participation, displeasing family background and effects of poverty and inadequate attention provided by the Courts towards the correctional system are some of such drawbacks which are apparently available in Sri Lanka.

Conclusion

In conclusion, by taking cognizance towards the analysis of the findings in the research conducted by the researcher, it could be acknowledged that the juveniles are an important asset to any society at large since they are the future of the world at large. As law makers and law implementers, it shall be the prime responsibility to encounter and take measurements with the sense of love, care, protection by maintaining the best interests of the juveniles in handling the matters of juvenile delinquency issues. Therefore, effective function of rehabilitation, reintegration, correctional methods, and community based correctional methods are of prime importance. The drawbacks mentioned in the research with regards to the present juvenile justice system in Sri Lanka could be bridged by the below mentioned recommendations by the researcher. Therefore, the researcher emanates that it is the most suitable time for the Sri Lankan law and policy makers to bring remedial measures to the existing juvenile justice system by protecting the best interests of the juvenile delinquents.

Recommendations

By analyzing the available penal legislation towards juvenile delinquents in Sri Lanka, the researcher would propose certain recommendations towards filling the loopholes of the present system of juvenile legislation, rehabilitation procedures and correctional methods available. As per the first recommendation, the researcher suggest in proposing new legal reforms especially towards bearing the purpose of judicial intervention in mind towards preventing recidivism noting that children are more vulnerable to rehabilitation method than adult inmates. The reforms should enlighten the law towards making righteous citizens in future rather than making it a point to punish

the youth in such a manner which would hinder their adulthood by continuing their criminal actions.

As per the second recommendation, the researcher proposes amending the Penal Code by specifically mentioning the age of commission of a crime and the age of the conviction being made. Furthermore, the researcher would enlighten the law makers towards developing an alternative legal framework towards handling juveniles in conflict with law without making judicial proceedings to be their only resort of correction.

As the third recommendation, the researcher further insinuates in issuing a circular by the Judicial Service Commission towards instructing Judges of Courts specially Magistrates towards ordering a child to undergo punitive proceedings at court as a final option and to first direct them for proper rehabilitation and correctional methods.

As the fourth recommendation, limiting of juvenile delinquency should be practiced by providing standardized opportunities for counselling, stabilization of family environments, educational opportunities to such juvenile delinquents, promoting of aforesaid community-based programs. Moreover, the existing Institutional Correction System should be strengthened by introducing a new rehabilitation reform which distinct on improving physical, mental, social, health and educational standards of the juvenile delinquents based on their respective special needs.

As the fifth recommendation, the researcher highlights the fact that Sri Lankan policy makers should not make international conventions a burden in ratifying them and effectively comply them with Sri Lankan policies by improving the judicial functions and use them as instruments towards gaining international fundings in improving Sri Lankan Juvenile system with regards to its infrastructure and standard of service provided. Furthermore, local law enforcement officers, social workers and prosecutors must be properly acknowledged with regarding the existing international standards of juvenile delinquency and should be effectively trained towards handling

sensitive issues involving juvenile delinquency matters. Additionally, factors to be considered in handling juvenile delinquency matters are: age, sex, behavioral patterns, character, and other factors such as the family background should be properly examined and analyzed in treating and determining the most appropriate method of treatment towards handling such juvenile delinquents. Furthermore, proper training sessions should be introduced to the staff with regards to properly providing services in such correctional systems. Moreover, by increasing the public participation of the juvenile justice system and volunteering in community-based programs are equally dominant towards increasing the efficiency and effectiveness of the rehabilitation and correctional systems undertaken.

As the sixth recommendation, the researcher suggests implementing a continuous assessment mechanism towards the respectively implemented rehabilitation and correctional mechanisms in order to assist and identify the pros and cons of them making it much convenient and accessible in making decisions towards brining concrete and firm solutions towards developing both rehabilitation and correctional systems followed. By conducting such assessments over the prevailing system in governing juvenile delinquency issues, it would enable to identify the needs, pros, cons and risks available in each system covering the factors such as heath, attitudes, education of the juvenile delinquent, motivation and behavioral change, presence of special needs such as love, protection, understanding of the child, neighborhood of the juvenile delinquent, lifestyle, child-parental relationship, financial status of the family etc.

As the final recommendation, the researcher declares that it is mandatory to introduce a institutionalized and standardized after-care service for the juvenile delinquents towards achieving the main goal of juvenile correction procedure, rehabilitation and reintegration towards juvenile delinquents where they finally get exposed to the society and towards achieving the best interest of the juveniles.

Avenues for Future Research

The aim of this paper is to determine a critical view on the Sri Lankan Juvenile Legislation and rehabilitation procedures available towards Juvenile Delinquents. It is hoped that this researcher shall bridge the gap and provide a source of reference to the future academics, researchers and readers who are interested in studying the legalities and to stimulate their knowledge upon the practical aspects of the legal implications with regards to this area of discussion.

Additionally, this research is carried out by the researcher from a legal perspective of criminal law highlighting the significance attached to crimes committed by offenders under the legal age of 18, may range from vandalism, petty thefts and trespassing to more serious offences such as drug abuse, assault, and even murder due to common elements such as deficient upbringing, domestic abuse, peer influence, intellectual disability, and mental illnesses are common elements that drive minors towards crime.

The researcher highlights the fact that, a majority of such acts tend to be unplanned, opportunistic, and attention-seeking. Additionally, young offenders are usually tried at juvenile courts, which were created on the understanding that youth do not have the rational and cognitive development that adults have, and they require more legal security. Thus, it has been the international practice to resort to restorative means of justice, rather than retributive measures, when minors are concerned. Sri Lanka has been progressive in enacting legislative reforms to ensure a fair judiciary procedure for juvenile offenders. The statement is reinstated by the Children (Judicial Protection) Bill (CJPB), which has been drafted by the Ministry of Justice, and several other similar acts. However, certain legal clauses and practices continue to exist, which impede the effectiveness of Sri Lanka's youth justice system.

Finally, this research offers a source of legal information to the future legal scholars, legal academics, and legal researchers towards addressing the present Sri Lankan Juvenile Legislation available and

the loopholes present. The researcher shall provide recommendations towards the end of the article to enhance and develop the available legislation towards juvenile legislation.