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Victims in the Skin of Perpetrators

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ABSTRACT

21st Century has been a testimony to increase in the cases of criminal acts carried out by juvenile. According to the Uniform Crime Reports (UCR), children and youth under the age of 18 account for around 36% of individuals detained for all kinds of crime. There is a lot of debate on whether there is a link between adolescent criminality and learning impairments. Speaking of learning disabilities, the curve has shaped in a positive direction. During the last two decades, the world has witnessed a great deal of change for people with learning disabilities, at least in the sense that there is increasing recognition given to them along with the right to participate as normal citizens in community life. With this increased trend of movement towards 'ordinary life', there is a need to ensure that people with such disabilities are properly treated in the criminal justice system, both as offenders and as victims.

This research project is an initiative to cast sufficient light upon the concept of juvenile delinquency as a major consequence of the different facets of learning disabilities faced by such adolescents along with highlighting the flaws in the criminal justice system and providing recommendations and suggestions to curb the same.

Keywords: *Learning Disability, Juvenile Delinquency, Criminal behaviour*

I. INTRODUCTION

The advent of this century has been a witness to various studies, showing that rates of crimes committed have been higher for people with intellectual and learning disabilities when compared to the general population. No investigator, as such, can deny the fact that mental deficiency plays in fearsome role when it comes to crime and delinquency. According to Terman³, "not all criminals are feeble-minded but all feeble-minded are at least potential criminals". On further examination, findings of the earlier conducted studies proved to have been arisen as a result of poor methodology- inappropriate samples, tests or norms. However, until recently, in case people with such learning disabilities were alleged of an offence or a

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³ Lewis Madison Terman (1877 – 1956) was a psychologist and author from the United States. In the early twentieth century, he was recognised as a pioneer in educational psychology at the Stanford Graduate School of Education.

criminal act, they would be incarcerated in hospitals. This incarceration would sometimes go on for years at a stretch without a proper trial on the merits or facts of the case. Situations would occur where they would be either deemed unfit to plead or detained in hospitals, without proper trial rights, under the Mental Health Act. No recourse to the criminal courts was provided.⁴

Setting a link or causal connection between juvenile delinquency and learning disabilities is a problem which baffles many criminologists, researchers and other people concerned with the cause of juvenile crimes.⁵ There have been reported instances along with statistical data to prove that juvenile crimes such as assault, larceny, theft, arson, automobile theft, rape, murder etc. have been hiked since the 1950s with increased number of juveniles under arrest and or under trials and adjudication procedure. Case studies, case reviews and numerous clinical observations have allegedly reported that a huge number of juvenile delinquents are either 'school failures' or lack academic success of minimal kind. Studies have suggested that learning difficulties could be one of the major causes of juvenile delinquency.⁶

Juvenile delinquency is a legal term. It does not come under the special education category. However, many such delinquent children are awarded with the label 'learning disabled' and are assigned under the category special education.⁷ Learning disabilities often cause school failure; school failure generates rejection along with building of poor self-concept and this, eventually, leads to juvenile delinquency. Adolescents with learning disabilities are comparatively more vulnerable to delinquency.⁸ Failure in school and the amount of frustration and lowered self-esteem that it generates are the main ingredients that attract the adolescent and young people towards such delinquent and antisocial behavior. Some theorists, judges and people of intellect have even suggested that while the rate of learning difficulties among adolescents and juvenile delinquents is way higher than the general population, the same should not be perceived to be primary cause of juvenile delinquency.⁹

II. OPPRESSORS OR THE OPPRESSED?

(A) Learning Disability and Juvenile Delinquency

1. What is learning disability?

⁴ Laura F. Rothstein, *The Affirmative Action Debate in Legal Education and the Legal Profession: Lessons from Disability Discrimination Law*, 2 J. GENDER RACE & JUST. 1, 3,4 (1998).

⁵ Id.

⁶ Podboy, J. & Mallory, W., *Learning Handicap: The Underdiagnosed Disability*, 29(4) JUV. FAM. COURT. J 13, 16 (1978).

⁷ Concetta Culliver & Robert Sigler, *The Relationship Between Learning Disability and Juvenile Delinquency*, 3 INT J ADOLESC YOUTH 117-128 (1999).

⁸ Id.

⁹ Supra 3.

'Learning disability' as a proper English term was first coined by Kirk¹⁰, in 1963, during his speech to a group of parents and also professionals in Chicago. Before the use of this term gained popularity, terms like mild mental retardation, dyslexia, minimal brain dysfunction, neurological impairment and slow learner, perceptual impairment etc. were used to refer to children with such difficulties.¹¹ Now, most of these learning issues have been comprehensively included under the term learning disabilities. Under the definition of Kirk, "A Learning Disability (LD) refers to a retardation, disorder or delayed development in one or more of the process of speech, language, reading, spelling, language writing or arithmetic resulting from a possible cerebral dysfunction".¹² According to the definition given by the Individual with Disabilities Education Improvement Act (IDEA, 2004), Specific Learning Disabilities (SLD) are disorders which include basic psychological processes related to using or understanding language, both written or spoken, which basically manifests itself in insufficient and imperfect ability to think, listen, speak, read, spell, write, or do mathematical calculations. It, however, does not include a learning problem which results from hearing, motor or visual disabilities, emotional disturbance or mental retardation, cultural or economic disadvantage etc. Diagnostic and Statistical Manual of Mental Disorders (DSM) by the American Psychiatric Association gives yet another definition of Learning Disabilities which talks about criteria and symptoms helpful for diagnosing a wide range of learning disorders.¹³ The revised 2013 version of DSM-5 broadens the old definition and reflects light upon the latest scientific understanding of the term. It goes on to say that the disability originates from persistent difficulties in arithmetic or mathematical, reading, writing, and reasoning skills during the growing or formal years of schooling.¹⁴ Symptoms include poor writing, inaccurate, slow or effortful reading, spoken and written language that lacks clarity, problems with respect to remembering facts, numbers and also inaccurate mathematical reasoning. Types of learning disabilities include dyslexia, dysgraphia, dyscalculia, dyspraxia, Visual Processing Disorder, APHD, Auditory Processing Disorders, and Non- verbal Learning Disorders etc.¹⁵

The most confusing and controversial area, within the purview of special education, now, is learning disability, which is real and acts as a stumbling block in a nation's development

¹⁰ Samuel Alexander Kirk (1904–1996) was an American psychologist and educator, best known for coining the term learning disability.

¹¹ Supra 5.

¹² V.L Bruininks, *Actual and perceived status of learning-disabled students in mainstream programs*, 13 (1) INT. J. SPEC. EDUC. 57, 58 (1978).

¹³ Id.

¹⁴ W Cruickshank, *Myths and realities in learning disabilities*, 10 J. LEARN. DISABIL. 51-58 (1977).

¹⁵ C Houck, *Learning disabilities-Understanding concepts, characteristics, and issues*, Prentice Hall; Englewood Cliffs, NJ (1984).

process.. There is universally acceptable definition for the term the Specific Learning Disabilities. It varies from country to country. Comprehensively it can be said that the term learning disability describes the seeming unexplained difficulty that a person of average intelligence, at the least, faces in the course of acquiring basic academic skills.¹⁶ Other significant features of learning disability could be: (a) a considerable difference between the level of achievement expected from a person of that age and the level of achievement that actually secured (b) Apparent difficulties that are visible in different ways with different people (c) Issue with respect to socio-emotional skills and behaviour.¹⁷

Learning disability is not a single isolated disorder. It is a group of disorders inclusive of difficulty in speaking, listening, reading, writing and performing mathematical calculations. A learning disability, if simply put, is the inability of a person to grasp information after having provided every possible opportunity to learn it. Determining whether a student has learning disability is not a simple task. Recognizing the same is also not straight forward, as many of the signs of a disability resemble to those beginning learners or struggling learner exhibit.¹⁸ Hence, learning disability at the outset and when looked at from an internal point of view is a very complex phenomenon.

2. Vulnerability to Criminal Behaviour?

Similar to victimisation, the functional deficits that are evident in Learning Disability is that people with such disorders may also be likely to offend and commit crimes. Sentiment of such a nature has a long run tradition, having been a centre of consistent research over the years. These research studies often claim that people with learning disability are overrepresented among people processed by the criminal justice system.¹⁹ The estimated percentage of criminals with learning and intellectual disability ranges from 2 to 10 per cent which mainly varies on the basis of factors like population and methods utilised. Pooling results of a recent statistical review of 10 studies, including a total of 11,969 prisoners resulted into the conclusion that 0.5 % to 1.5 % of prisoners, typically, are diagnosed with intellectual disabilities.²⁰

Courts and police contacts can provide an alternative and more effective means of establishing prevalence since they are more sensitive because of the records being more adequately captured and the considerably effective extent of contact people have with the criminal justice system.²¹

¹⁶ Id.

¹⁷ D. Hammill, G McNutt & S C Larson, *A new definition of learning disabilities*, 4(4) LEARN DISABIL Q 336, 336-342 (1981).

¹⁸ Id.

¹⁹ Supra 15.

²⁰ D LEWIS, *VULNERABILITIES TO DELINQUENCY* (SP Medical and Scientific Books; New York 1981).

²¹ A Mauser, *Learning disabilities and delinquent youth*, 11(6) Academic Youth 343-344 (1971).

According to the available literature, around 1 in 10 people suffering from various learning disabilities are more prone to come into contact with the courts or the police as a perpetrator of crime. These rates substantially differ in the sense that males with learning disabilities are three times more likely to have a prior conviction than males in the general public.²² On the other hand, females are four times more likely to have a prior conviction when compared to females in the general public. Unfortunately, this statistics was more pronounced for violent offences. The rate of such offences by males with disabilities four times higher and that of females was 25 times higher than the general public. This study shows significant vulnerability of these people.²³

Evidences show that people with learning or intellectual disabilities are more susceptible to specific crimes like sexual offences.²⁴ Statistics show that violent and sexual offences are more common for people suffering from learning disabilities with nearly six and a half times higher rate for violent crimes and approximately 19 times higher rate for sexual crimes.²⁵ Routine Activities Theory, which asserts that higher exposure to circumstances and surroundings that stimulate crime, as well as personal reactions of people with learning disabilities, increase the vulnerability to victimisation, could be used to perceive this outcome, in the context that when a person is exposed to risky situations, there is indeed a prospect for him/her to become an offender in a traumatic or threatening event. In line with the aforesaid theory higher rates of crimes by people facing learning or intellectual difficulty may be related to the significant individual or environmental challenges faced by them.²⁶

Talking about the reasons that lead to such a discourse by the sufferers of intellectual disabilities, the same are multi-facet. Findings reveal that various issues such as bullying, lack of sensitiveness towards such children, childhood neglect, unawareness, mental and physical health problems, prenatal adversity etc. arising as a result of learning difficulties are some major reasons that create a strong link between sufferers of such difficulties and crimes. Some suggestions also contend that the crime rates by such people could also be because the offenders suffering from learning disabilities are more visible as perpetrators as they lack the intellect to evade the police at times.²⁷

²² Supra 18.

²³ Zaremba, B McCullough, & P Broder, *Learning disabilities and juvenile delinquency*, 3(2) STATE COURT JOURNAL 24-26, 44-47 (1979).

²⁴ W Simon, *Psychological needs, academic achievement, and marijuana consumption*, 30 J. CLIN. PSYCHOL. 496-498 (1974).

²⁵ Supra 18.

²⁶ Id.

²⁷ Wilgosh, & D Paitich, *Delinquency and learning disabilities: More Evidence.*, 15(5) J. LEARN. DISABIL., 278-279 (1982).

3. Inadequate and Improper Justice Mechanism?

If we had to sum up all of the encounters of people with intellectual and learning impairments with the criminal justice system in two words, they may be isolation and bewilderment. The synthesis of research papers conducted by Hyun et al. (2014) paints a grim picture. The research explores the experiences of such people who have been arrested or have spent time in prison.²⁸

According to various studies, people with learning difficulties often give harrowing accounts of cases where they go from police stations to prisons to courts clouded by a fog of anxiety and a fear of bullying, with utterly no knowledge or half-knowledge what is happening to them. They have worse experiences of absence of police safeguards leading to increased likelihood of vulnerable people experiencing higher chances of miscarriages of justice. Often in courts, their lack of understanding and intellectual deficiency leads to a situation where their lives are taken over by legal terminology and opaque court procedures. In addition to this, many are left to fend for themselves in prisons where the atmosphere is shadowy and threatening with no or half understanding of or what is expected of them or what is going on with them²⁹.

There are no reliable estimates of the proportion of such people in any country's criminal system. Nevertheless, studies in the United States and the United Kingdom have consistently revealed that they make up between 10% to a startling 60% of the prison population.³⁰ According to the study of Hyun et al (2014), many characteristics that have emerged from a number of studies reveal that people with such disabilities are more likely to commit less serious crimes and serve shorter prison sentences than others, but also have greater rates of recidivism.³¹

A further line of argument is that there have been numerous factors that contribute to the over-representation of people with a disability, including their weaker life situations, economic hardship, lower rates of education and employment, a lack of support systems, a lower socioeconomic status, social isolation, and so on. These people enter the criminal justice system with inherent disadvantages that makes accessibility to their rights extremely difficult.

The major consistent themes that have emerged in this regard are:

The first theme that has emerged is that people with disabilities are bewildered by their experience with the criminal justice system. Most of them either do not understand what is

²⁸ K Unger, *Learning disabilities and juvenile delinquency*, JUV FAM COURT J, 25-29 (1978).

²⁹ Id.

³⁰ J Voorhees, *Neuropsychological differences between juvenile delinquents and functional adolescents: A preliminary study*, 16 ADOLESCENCE 57-66 (1981).

³¹ Supra 13.

happening or are extremely fearful. Many are unaware of the reason for their arrest whereas many do not even understand that their arrest might lead to imprisonment. Some do not understand the questions they are being asked at the time of police interrogation whereas many do not have the slightest clue that anything they say may be used as evidence against them.³²

Second, these folks frequently feel alone in the system, with little help or support. They frequently say that they have no one to talk to or answer even the most basic queries while in jail. They are frequently unsure of what will happen to them in imprisonment.³³

People with impairments, as per Hyun et al, are particularly susceptible to criminal activity. According to an Australian study by Ellem et al (2012), such people have very limited “personal resources” to help them overcome with the distressing condition of incarceration. This absence of availability and help causes panic and uncertainty, and their human and legal rights are not always honoured.³⁴ Typically, the prison, police station, and neighbourhood provide them with a dreadful sense of isolation, and the transition between places is badly handled, reinforcing their feeling of futility.

Individuals with these disorders are more likely to have cognitive, communication, and problem-solving difficulties, all of which have ramifications in interview situations and vary significantly across a broad range of ability.³⁵ In terms of communication, for example, a police officer may encounter someone who does not grasp the language or who communicates by signing.

These challenges may appear to ‘change their stories’ under police custody and in courtrooms if they are not adequately interviewed. Furthermore, suspects with learning disabilities may be unable to understand their rights. Another of the critical problems is that people with intellectual disabilities have poor reading comprehension and also language skills, that also leads to issues like whether they tell law enforcement officers, whether they understand the restraint, if they are able to read the Notice addressed to Detained Persons, or whether they understand the material of the Notice once it is read to them.³⁶

III. HUMAN RIGHTS IN THE NEED OF HUMAN INTERVENTION

Disability has now become a part of human life. People with disabilities are found in every

³² Supra 21.

³³ Concetta Culliver & Robert Sigler, *The Relationship Between Learning Disability and Juvenile Delinquency*, INT J ADOLESC YOUTH, 1991.

³⁴ Id.

³⁵ F Spellacy, *Neuropsychological differences between violent and nonviolent adolescents*, 33 J. CLIN. PSYCHOL. 966, 966-969 (1977).

³⁶ Supra 31.

community and every sphere of society throughout the world. They have equal rights of respect and support so that equality and their full participation in the society can be ensured. However, due to the individual, environmental, social and sometimes the legal attitude leads to a situation where these people are unable to realise these rights. The society and legal system, though, has turned sensitive to the rights of people suffering from disabilities to some extent; lack the same attitude towards people, especially adolescents suffering from learning disabilities. The society mostly never views this disability as a disability at all. This attitude needs immediate makeover.

Various changes are needed which need human intervention and public participation along with changed attitude of the legal and administrative professionals. Some of the suggestive changes could be:

1. The contemporary academic skills should be reduced below the average range of scores in linguistically and culturally appropriate tests of mathematics, reading and writing for such children. Such difficulties should be better explained in the sense that the neurological, sensory or motor disorders significantly interfere with academic and occupational performance of the person along with hindering of daily activities. Specific learning disorders should be diagnosed by way of clinical reviews taking into account their medical, developmental, educational and family history, test scores, observations and feedback of teachers.³⁷ Defining learning disability in such a way, at the initial stages, ensures that differentiation, effective instruction, and multiple ways of access to information has been utilised before reaching on a conclusion as to labelling a student as having a learning disability. In this way future research would seek to discern the relative importance of these variables to crime in the population of people with learning disabilities.

2. Criminal justice agencies should act in compliance with The Rights of People with Disabilities Act, 2016 and specifically the provisions concerning people with learning disabilities..

3. All the prisons and courts should be brought in line with the public authorities and should be required to construct disability equality schemes of their own.

4. Every small or big information, with respect to criminal justice system, forms and letters should be in “easy read” format and all everything should be made accessible to such offenders, or alternatives of the same quality should be provided.

³⁷ S YOCHELSON & S SAMENOW, *THE CRIMINAL PERSONALITY, VOL. 1: A PROFILE FOR CHANGE* (Jason Aronson, Inc. 1993).

5. As per research, there is a correlation between social seclusion and re-entry into the society following incarceration. This can be achieved with the support of family, friends, community and people in general. They can be returned to 'old friends'.³⁸ Without the support and acceptance of the society, the same is very difficult in and risky. Experiences can be made to be more 'tolerable,' or even avoided. There is a need for "real steps" to raise awareness and gain positive support and understanding for intellectually impaired people in the criminal justice system.

6. Accessibility to formal as well as informal support measures should be increased because the same is vital in order to address the hiked rate of confusion and isolation described by the people with such disabilities.

7. Social and health services, criminal justice and other vital services should pull in their resources to establish local multi-agency forums with a motive to develop local strategies for the prevention of offending and re-offending by such people.

8. Vulnerable people, who are suffering from such difficulties, should be identified at the initial stage that is, at point of arrest and provide with appropriate aid and support without diverting away from the criminal justice system.

9. Another critical consideration is the need for appropriate and adequate advocacy to ensure proper respect and protection of the rights of people with learning and intellectual disabilities and problems within the criminal justice system, as well as to create an environment in which hopelessness does not define a feature of such people's lives after entering the system. Alternatively, they ought to have recourse to all of the resources they require to make a better life for themselves.³⁹

10. Finally, the reported estimates and statistics of the extremely high prevalence of people with learning and intellectual disabilities, particularly adolescents and juveniles, in the criminal justice system indicate that the situation is extremely urgent, and that more should be done, both efficiently and effectively, to protect and advance the rights of such people. More research is required to evaluate advocacy services and support from all aspects of society in order to improve the situation of accessibility to justice for people with intellectual and learning disabilities. Research may be a good place to start with.

³⁸ Id.

³⁹ Phillips & D Kelly, *School failure and delinquency*, 17 *Criminology* 194, 194-207 (1979).

IV. CONCLUSION

As a concluding note it can be said that people with learning disabilities, especially kids, adolescents and young people are ‘victims in the skin of perpetrators’. They are sufferers in the sense that, though, they are the ones who are offending criminal laws and causing harm to people and lives around them, they are majorly affected by the attitude of the society, the people and the criminal justice system towards them. Starting with the scenario before the commission of the crimes, when they are either bullied or forced to drop out from school or work and fend for themselves, to the scenario after the commission of crime where they are not provided with adequate facilities to defend themselves with majority of them being unaware of their rights or treated hideously, it is all the attitude of others that makes the difference for people like them.

Keeping in view the aim of this project work and taking into account the result of the research, it can be deduced that if these people are provided with adequate facilities, aid and help at all times, the same could at the best prevent the commission of crimes and birth of more juvenile delinquents with learning disabilities and the worst, after the commission of crimes, at least help them have their basic human needs and rights fulfilled that is provided to a normal criminal or even more because of the inherent deficit that they suffer from.

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