

“A Critical and Comprehensive analysis of juvenile justice system in India”

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Abstract

After a woman in Delhi was assaulted, gang raped, and murdered by six men in December 2012, the subject of India's juvenile age limit arose. A minor, aged seventeen, was one among the detainees. The Juvenile Justice (Care and Protection of Children) Act, 2000 states that a juvenile offender is subject to a maximum term of three years in a detention facility, regardless of the gravity of the offence. As a result, there was a tremendous public outcry for stricter punishments for juvenile offenders, modifications to the regulations governing juvenile justice, and a lower admission age for juveniles. A committee appointed to review the present criminal law system's inadequacies in preventing sexual assault against women, the Justice J.S. Verma Committee, rejected a proposal to lower the juvenile offender age to sixteen. He thought the current systems of juvenile justice and welfare need restructuring and reform, and that the Act of 2000 ought to be enforced with more rigour. To resolve the issue, Parliament approved the Juvenile Justice (Care and Protection of Children) Act 2015 after the administration's disdain for these recommendations and the concerning state of affairs. The primary goals of this legislation are the protection of victims' rights and the prevention of young offenders. As to the 2015 Act, juvenile offenders who conduct "heinous offences" between the ages of sixteen and eighteen would ideally be tried in an adult criminal court, in addition to being categorised as minors, severe, or heinous. This research aims to analyse the idea that a lower legal age can lead to retributive justice instead of restorative or reformatory justice, and it strives to understand why minors might perpetrate such crimes.

Keywords: *juvenile delinquency, age of criminal liability, Heinous Offences, Reformation theory, Sociological School*

YOUNG AND YOUTH DELINQUENCY

Young people make up a significant portion of society. They are regarded as the greatest gifts ever given to society. They are regarded as the cornerstones of society, providing the groundwork for future generations. They are valuable human resources that contribute to a nation's advancement and development. A kid is innocent at birth, and if given the proper care and attention, he or she will develop positively and reach their full potential in terms of their physical, mental, moral, and spiritual growth. However, unfavourable environments, disregard for basic necessities, and other forms of maltreatment might cause a youngster to become a delinquent.

Any individual who is unable of comprehending the repercussions of their actions or who has not yet attained adulthood in terms of immaturity or childlike behaviour is considered a juvenile. Juvenile or kid refers, in legal parlance, to an individual who has not reached a certain age specified by national law, after which he may be prosecuted for his crimes in the same manner as an adult. A person who has not reached the age of eighteen is referred to as a juvenile or kid in Indian culture. But under the IPC, a kid cannot be prosecuted for any offence for which they are less than seven years old.

Juvenile delinquency is defined as activity that is socially unacceptable in any community. It is an undesirable deed, omission, or moral conduct on the part of a minor. People generally expect children to fulfill specific social duties; if a youngster doesn't fulfill these requirements, he is seen to be delinquent. A juvenile delinquent is classified as having a behavioural condition, which is often described as "a child pretending or trying to act like an adult or grown up." Although the child's actions may seem silly to others, it might really be quite concerning. When an adult commits a criminal act that is against the law, it is regarded as a crime and is subject to legal consequences; however, when a child under a certain age commits the same act, it is not regarded as a crime and is labelled as juvenile delinquency, even though the child has committed a very serious, grave, grim, and heinous crime.

A JUVENILE IN DISPUTE WITH THE LAW

Anyone under the age of eighteen who is facing criminal charges or is believed to be in the vicinity of a crime is considered a juvenile under the framework of conflict law. Our juvenile justice system is founded on the belief that a kid

lacks maturity and cannot comprehend the repercussions of his actions, so these youngsters cannot be handled as adults. What constitutes a "Child in Conflict with Law" according to Section 2 (13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 is "A Child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence."

1. "Juvenile Justice System in US and India: Modern Scenario and Much Needed Modification," by Shivani Goswami and Neelu Behra, is accessible at jlcjnet.com/journals/jlcj/Vol_2_No_2_December_2014/14.pdf.
2. Geeta Chopra (Springer, New Delhi, 2015), Child Rights in India: Challenges and Social Action 85. Act No. 2 of 2016 is the Juvenile Justice (Care and Protection of Children) Act, 2015.

JUVENILE CRIMINALS' EXCLUSION FROM CRIMINALITY

SCHOOLS OF SOCIOLOGY

According to the sociological theory of crime, those who break legal norms and traditions are at risk of criminal consequences. These people are more or less unaffected by social norms and do not adapt to the framework of accepted standards in society. For example, it is well understood that morals or legal regulations forbid taking another person's property without that person's agreement, yet some people nonetheless engage in these kinds of actions. The cause of this deviance is that these people have either seen their parents or other family members stealing or have been urged to do so by elders.

Social learning theory: This crucial theory of crime is useful for both preventative and intervention efforts. Sutherland's advancements in the idea of differential association provided the foundation for sociology. According to the hypothesis, individuals pick up criminal skills via social interaction. When it comes to crimes, this learning encompasses not only the methods of executing the crimes but also the mindset and logic that lead to their commission.

The social learning hypothesis explains why criminal activity occurs. Their affiliation with other people is the main way that they pick up criminal skills. They are exposed to criminal role models, they get reinforcement for crime, and they pick up attitudes that support crime. As a result, individuals start to believe that there are circumstances in which crime is acceptable or even desired.

Similar to how kids take up conforming conduct from their peers, the social learning theory posits that young individuals acquire criminal behaviour via their interactions with others. The major or personal groups that have the most impact on our learning are our families and friends. The most telling sign of delinquency, second only to a criminal record, is as simple as hanging around with other criminals. However, witnessing other people in the media could teach someone how to be violent, so it's not necessarily necessary to engage directly with them in order to learn from them.

1. Theory of social disorganisation: Society is dynamic. Values shift in tandem with societal changes. The dynamic character of society has been increased by industrialization and urbanisation. When people of diverse racial backgrounds, cultures, religions, and communities interact, conventional ways of life and values are disrupted. Individualism has replaced the family-oriented mindset. Deviant behaviour is the result of societal disarray. For instance, honour killing
2. N.V. Crime, Penology, and Victimology, Paranjape, Central Law Publications, Allahabad, 16th ed., 2016).
3. Crime Causation: Sociological Theories-Social Learning Theory accessible at: [http://law.jrank.org/pages/815/Crime Causation-Social-learning-theory.html](http://law.jrank.org/pages/815/Crime-Causation-Social-learning-theory.html)
4. N.V. Crime, Penology, and Victimology, Paranjape, Central Law Publications, Allahabad, 16th ed., 2016).

THEORY OF REFORMATION IN PUNISHMENT

The juvenile legislature's main goal is the reformation and rehabilitation of the juvenile so that he may benefit from chances that are available to many other kids. The goal of juvenile law is to treat juveniles' illnesses. This view holds that the goal of punishment should be the offender's reform via the individualization process. It is predicated on the humanistic idea that a criminal does not automatically lose his humanity. It's possible that he committed a crime in circumstances that won't happen again. Therefore, throughout his detention, an attempt should be made to rehabilitate him. The goal of punishment ought to be the offender's moral transformation. In order for him to be able to start again after being released from prison, he has to have an education and be taught some trade or artistic skills during his incarceration. The court should consider a number of considerations before imposing punishment, including the offender's age and character, early upbringing, education, and surroundings, the circumstances surrounding the offence, the item used in the offence, and other elements. The purpose of doing this is to fully inform the judge about the

specifics of the case so that he can assign a sentence that is appropriate for the situation. Rehabilitative sentencing is another name for the reformatory idea. "Reform the offender as a person, so that he may become a normal law-abiding member of the community once again" is the stated goal of punishment.

CRIME AGE AT RESPONSIBILITY

Every nation has laws dictating the minimum age at which a person must be born. A person under the legal age of majority is not subject to prosecution or penalty. Mens rea and actus reus are the two necessary components of a crime, and this is the fundamental justification for the exclusion of the individual in question because they lack mens rea. It involves not criminalising the actions of those who, at the time of the offence, were ignorant of right and wrong. Individuals who are younger than this minimal age neither intend nor realise the repercussions of their actions.

State parties are required under CRC Article 40(3)(a) to set a minimum age. Youngsters under this minimal age will not be prosecuted or held criminally accountable.

In India, there is no universally accepted cutoff for children's ages. Different statutes provide different minimum ages for children. Because seven years of age is the minimum age for criminal responsibility according to IPC 9 Sec. 82. The ability to understand the consequences of one's actions is still developing in children at this age. Without thinking about the consequences or about right and wrong, he behaves in this manner since it is what he has seen or learnt from society. Consequently, no adult may take legal action or impose punishment on a child less than seven years old. He is completely exempt from any criminal liability under Indian law. We are not going to treat him like a

5. You may find the Reformatory Theory of Punishment at <https://www.lawctopus.com/academike/reformatory-theory-of-punishment/>. The last time it was visited was on April 11, 2020.

6. Paragraph three of Article 40 of the 1989 Convention on the Rights of the Child. Legislation No. 45 of 1860, which is the Indian Penal Code, Section 82. Incarcerated minor whose case is pending before the juvenile court system. The child Welfare Committee may be summoned to ensure the rehabilitation, care, and protection of the kid if he meets the criteria for a child in need of such assistance.

Most European nations have set the age of criminal responsibility at 13 or 15 years old. The set ages for France, Poland, Germany, Italy, and Finland are 13, 13, 14, 14, and 15 years, respectively. It is necessary to elevate the criminal responsibility age of seven years old since it is much too low.

The legal system has acknowledged that a minor, someone between the ages of 7 and 18, is not as responsible as an adult. As a result, there are various degrees of criminal liability based on an individual's age and level of maturity. If a youngster between the ages of seven and twelve commits an offence, it is not considered an offence under Section 8311 of the IPC. However, there is a catch: the youngster hasn't grown up enough to comprehend the nature of his actions that day or the repercussions of them. In order to qualify for this provision, the accused youngster must demonstrate that he is less than 12 years old, that he lacks the necessary maturity to comprehend the repercussions of his actions, and that he is incapable of knowing whether his actions are right or wrong or illegal. When a child between the ages of 12 and 18 commits a crime, they are held accountable for their actions but are not given the same treatment as adults. These kids are regarded as delinquents, and the Indian juvenile court system will handle their cases. Juvenile law primarily focuses on their reform and rehabilitation.

The handling of juvenile offenders is outlined in Article 37 of the Convention on the Rights of the Child. A child must not be treated inhumanely or degradingly. No youngster less than eighteen years old may get the death penalty or life in prison. A child cannot be isolated from an adult and treated like an adult. Each and every kid is entitled to legal aid. To protect the rights of juvenile offenders, all nations that have joined the CRC are required to pass laws that comply with Article 37.

A person is deemed a kid under the Juvenile Justice (Care and Protection of Children) Act, 2013, if they are under the age of 18. Both boys and girls may use it.

Ajmal Kasab, the defendant in the Mumbai terror attack on November 26, 2008, asserted his juvenile status and requested that the Indian legislation pertaining to juvenile justice be applied to him. It doesn't matter whether he took part in the terror assault. In a similar vein, the primary offender in the Delhi gang rape case from 16–12, 2012, was also a minor and was granted juvenile benefits. Following this, a number of social groups have demanded that the legislation be changed to treat this minor as an adult¹⁴. Following

7. The Juvenile Justice and Protection System for Children in Conflict with the Law may be found at <https://www.childlineindia.org.in/pdf/CP-JJ- JCL.pdf> (last accessed on April 11, 2020).
8. Section 83 of the Indian Penal Code, 1860 (Act No. 45 of 1860).
9. Convention on the Rights of the Child, 1989, Article 37.
10. 2000's Juvenile Justice (Care and Protection of Children) Act (Act No. 56 of 2000).
11. "Juvenile Delinquency: Estimating Fearless Symbol and Fertilisation," by Shruti Chaturvedi and Sorabh Dahiya, is accessible at Shruti Sorab's PDF, ijldai.thelawbrigade.com/wp-content/uploads/2017/01/, was last seen on April 15, 2020.

After much deliberation, the Juvenile Justice (Care and Protection of Children) Act, 2015 was finally approved. On May 7, 2015, the Act's bill was adopted by the Lok Sabha, and on December 22, 2015, it was approved by the Rajya Sabha. The President assented to this Act on December 31, 2015, and it went into effect on January 15, 2015.

According to societal norms, Article 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is enough. Teens and young adults who commit horrific crimes between the ages of 16 and 18 are the targets of this strategy. Any offence with a mandatory minimum jail sentence of seven years or more is considered "heinous" under the Indian Penal Code and other newly enacted laws.

For the purpose of dealing with serious juvenile offenders who commit their offences between the ages of sixteen and eighteen, the New Act of 2015 laid forth certain requirements. Following an initial evaluation, the children's court gives the Juvenile Justice Board the chance to consider cases involving very serious crimes. The accused's grasp of the nature and extent of the offence, its potential outcomes, and his mental and physical abilities to carry it out will all be essential to the preliminary evaluation. In summons instances, the Board will go forward with trials if its first assessment suggests that the Board should address the concerns. Chapter 8 of the Code of Criminal Procedure does not apply to offences against preserving peace and good conduct committed by children under the age of 18, as stated in the Act of 2015, which is consistent with the policy of the Act of 2000. After such an investigation, the board will transfer the cases to Children's Court if it decides the juvenile in question requires an adult trial.

CHILDREN'S CATEGORIES FOR THE INTENDED INQUIRY

There was no classification of the minors for the purpose of investigation under the Act of 2000 that was abolished. Under the 2015 Act, children fall into two groups. The first group includes children who were less than 16 on the day the offence was committed. The second group includes children who have committed horrible acts and have reached the age of sixteen or older. Regardless matter the crime committed by a minor under 16, a board is always the investigating authority. A child who has committed a horrific crime and is 16 years of age or older may be investigated by the Board or the Children Court at the Board's recommendation.

The juvenile justice (care and protection) act of 2015: critics and loopholes

Juvenile Justice Board's discretionary powers: The Juvenile Justice (Care and Protection) Act, 2015 does not specify exactly when a case will be moved to the court and when a juvenile will be handled as an adult. Owing to the lack of clarity in the statute and regulations, the juvenile justice board exercises its prerogative to issue directives. There are two instances, one of which has a transfer to adult court ordered by the Juvenile Justice Board. Act No. 2 of 2016 is the Juvenile Justice (Care and Protection of Children) Act, 2015.

12. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).
Section 15 of Act No. 2 of 2016, which is the Juvenile Justice (Care and Protection of Children) Act, applies.
13. Act No. 2 of 2016: Juvenile Justice (Care and Protection of Children) Act, 2015, Section 22.
Court, and in some instances, the Juvenile Justice Board chooses not to forward the matter to adult court. In the second instance, the Juvenile Justice Board chooses not to consult an expert for a preliminary evaluation.
 - a. Both times, if the victim reported the incident, the accused threatened to murder them. They are 17-year-old first-time offenders. There are a number of parallels between the cases, so it seems sense to wonder why the two Juvenile Justice Board justices reach such different conclusions. A juvenile cannot be tried again in the Juvenile Justice Board after being tried in adult court. Furthermore, the maximum sentence for sodomy under the Juvenile Justice Board is three years in jail, while in adult court, the penalty is life in prison. Is the Juvenile Justice Board using its discretionary jurisdiction inconsistently as a result of ambiguities in the modified Juvenile Justice Act? For the remainder of his life, the juvenile must live with the repercussions of the juvenile justice board's judgement. Section 15 grants the Juvenile Justice Board the discretionary authority to carry out an initial investigation in order to decide whether to send a juvenile criminal for rehabilitation or to try them as an adult.

b. The fresh start philosophy has been broken. The youngsters are given a second opportunity for a new start by being sent to juvenile homes for reformation. Their illnesses are cured in juvenile homes, and they are given a fresh start so they may take advantage of all the same chances as other children. However, the 2015 Act infringes their right to equal opportunity and takes away their right to a new start by recognising children as adults.

c. The 2015 Act protects their right to privacy, which advances the Fresh Start Principle. It protected young offenders' right to privacy by expunging their records. However, there is a clause that permits the divergence under certain conditions. There is a vague component to the nature of these exceptional situations as they have not been defined. His right to privacy has been violated in this way, and it is worried that this unrestricted clause may encourage "racial profiling" of criminals based on factors such as caste, colour, religion, or background.

d. Under the 2015 Act, juvenile offenders are excluded from being disqualified from any legal consequences for committing an infraction. However, under this section, minors who have committed the terrible acts and are older than 16 are not protected and are not excluded.

e. The welfare of society is the fundamental goal of all laws, and the wellbeing of children is the primary goal of the juvenile justice system. However, the 2015 Act goes against the notion of children's wellbeing. It makes them hard core criminals to regard minors over 16 as adults in horrible crimes. It totally undermines the juvenile justice system's premise of rehabilitation. Legislators do not take into account the many new causes of adolescent delinquency. Help is needed to treat the disease of these young people who are in legal trouble. The 16–18 age range is very delicate and important, thus they need extra care. We undermine the previous juvenile justice system's rehabilitative base by taking a retributive approach. They don't need to be handled like adults or go through a distinct legal system. By doing this, we transgress the Constitution's Articles 14(3) and 15(3) as well as any international agreements on child protection that India has ratified.

The New Juvenile Justice Act has Unlocked A Can of Worms, last accessed on May 1, 2020; accessible at: <https://www.thequint.com/news/india/new-juvenile-justice-act-leads-to-new-problems>.

SUMMARY AND RECOMMENDATIONS

The government's 2015 Juvenile Justice (Care and Protection) Act is a commendable move. Given the NCRB findings and the current circumstances, this is absolutely necessary. Many minors commit crimes at the age of 17 because they are aware that they are minors, and adults profit from this by employing the minors even though they are no longer abusing the law. Our juvenile justice system is founded on the idea that, because to technological advancements, adolescents are now sufficiently competent to grasp the repercussions of their actions by the time they are 16 years old. Many times, after being released from a reformatory home, young people commit crimes that are even more horrible than the ones they committed before. Since they are still young at the time, they take advantage of their juvenility once again. This Act is a very positive and proactive move to avoid such abuse. However, I believe that there need to be a clause for repeat offenders that applies to all children, regardless of age. The explanations are as follows:

1. It won't stop others from committing crimes against women to sentence a horrible crime victim to merely three years in a correctional institution. That is the primary cause of the rise of juvenile offenders.
2. The main goals of the legal system are to punish the guilty for their conduct and to provide justice to the victim. However, granting merely three years in jail, even for the most terrible and horrific crimes, contradicts the main goal and acts as a protection for offenders.
3. The true age of the juvenile is never revealed in the documents. In essence, maturity, not age, determines crime.
4. Laws must be updated to reflect societal changes.
5. Everyone have the ability to discern between good and wrong around the age of sixteen.

In order to address the problem of juvenile delinquency in India, certain recommendations may be made. Even though the Indian government has been working hard to address the issue and has made some daring and progressive moves in that area, more effective implementation strategies are still needed. For example, the Juvenile Justice Board members need to have training in child psychology and be made aware of issues pertaining to children; however, they are often lacking in these areas.

Every police station has a Special Police squad specifically designed to deal with juveniles. These unique pieces aren't really working. Therefore, the police department is unable to handle situations of juvenile delinquency or neglected children that are brought to them in an anticipated way. The police officers show little empathy for the problems that arise.

In order to address the issue holistically, it is recommended that significant efforts be made to ensure that the laws relevant to juvenile delinquency be implemented effectively.

To decide who will be handled as an adult, the Juvenile Justice Board should have specific established guidelines. Without these guidelines, their exercise of authority is arbitrary. The Juvenile Justice Board's ruling in comparable situations with same circumstances is different, casting doubt on JJB.

It doesn't matter how old they are; repeat offenders should be handled like adults.

It is equally important to monitor the operations of shelter homes and observation homes. Although these one-of-a-kind places are meant to help rehabilitate children and youth, they wind up becoming magnets for even greater misbehaviour. Instead of helping the inmates and giving them with therapy, these institutions create an atmosphere that promotes resocialization and teenage crime. Major crimes committed by inmates at the Observation Home have been documented on many occasions. Implementing reformatory and rehabilitative techniques requires treating the situation with utmost respect.

It is crucial that the community become involved and become more aware of issues pertaining to juvenile delinquency. The use of preventative measures is crucial in the management of juvenile justice. Because of this, individuals in society may play a significant part in rehabilitation if they become aware of the problems affecting neglected children and children in challenging circumstances. Informal organisations such as legally recognised residential associations in various localities might be contacted to report cases involving minors engaging in deviant activity or whose behaviour is out of control for their parents.

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