

JUVENILE JUSTICE: NEED FOR A NEW LEGISLATION OR AN AMENDMENT IN THE EXISTING ONE IN INDIA

SHRADHA SHARMA

Research Scholar, Department of Law, Invertis University.

Dr. NUPUR SONY

Assistant Professor, Faculty of Law, Invertis University.

Abstract

Juvenile delinquency is a significant offence that undermines any country's social order. Unfortunately, there is a global trend toward increasing juvenile criminality, with adolescents becoming increasingly involved in violent crimes. India has comparable tendencies in terms of increasing the number of violent crimes perpetrated by juveniles. It is a grave worry for the nation, and we must seek solutions to the problem with great care. The Indian legal system and judiciary have responded to these changes by amending the country's juvenile justice legislation. This presentation will examine the evolution of juvenile delinquency in India and the need for new legislation or amendments to existing legislation. According to a review of statistical data available on government websites, juveniles are becoming increasingly involved in terrible crimes. To address the problem of juvenile delinquency in India, changed the Act on Juvenile Delinquency, and children charged with grave offences are now tried as adults.

Keywords: Juvenile Justice System, Delinquency, Juvenile Justice Act, Amendments

1. INTRODUCTION

Children are the bedrock upon which each nation's future is formed. They become the country's leaders, the builders of national riches, who care for and safeguard the land's human community. These children develop at varying rates and have varying worldviews. Nevertheless, they develop their capacity for abstract thought and the ability to formulate their positions on social and political matters. In addition, they develop the capacity for long-term planning and goal formulation. Additionally, there is a tendency to compare one to others. They yearn for a distinct identity & autonomy from their parents. This is the age of life when peer influence and approval are critical. Additionally, they have strong romantic/sexual beliefs and a desire for love and long-term partnerships

Crime by juveniles is a brutal reality in India. A juvenile can be described as a youngster who has not acquired a particular age at which he can be held liable for his criminal activities like an adult person. There is a difference between the phrase Juvenile & Minor. However, in common English, we use both the words interchangeably; 'juvenile' and 'minor' in legal terms are used in different circumstances. The term juvenile is used for a young criminal offender, and the term minor relates to legal competence or a majority of a person. Thus, a juvenile is a youngster accused of committing certain acts or omissions which are a criminal offense and are determined to be an offence. In recent years, adolescents have been implicated in some of the most terrible crimes, including murder & gang rape. Not all criminals come forth early in life.

While the causes of criminal behaviour in childhood are complicated, delinquency is fairly predictable in the early years of some children's lives. Likewise, antisocial behaviour manifested as adolescent delinquency predicts adult criminal activity. However, it becomes self-evident that early problem conduct should not be overlooked for two reasons: it is predictive of later, more significant difficulties and, if addressed, even modest interventions may help reduce future delinquency.

According to Indian law, a juvenile is defined as a person who is under the age of 16 years in Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (often referred to as the JJ Act). Before the 2015 Juvenile Justice Act, the minimum age for juveniles was 18 (Juvenile Justice (Care and Protection of Children) Act, 2000, 2006, 2012). Indeed, the age of a juvenile under Indian law varies in temporal and spatial dimensions. It ranges between 14 and 18 years, depending on the law & Indian state.

1.1 Meaning and Definition

Juvenile refers to youngsters who have not yet achieved adulthood because they are still immature or childlike.

Delinquency is atypical behaviour. When an individual deviates from the regular flow of social life, this is called "delinquency."

Thus, a juvenile delinquent is defined as a person under 18 who violates the law.

In simple terms, juvenile delinquency is a pattern of deviant or antisocial behaviour displayed by a child under the legal drinking age.

When a juvenile under age prescribed by a statute engages in potentially dangerous behaviour to society and/or to himself, he is referred to as a 'Juvenile delinquent'.

According to C.B. Mamoria, "the term 'juvenile delinquency' may be used generically to refer to any type of deviant behaviour by youngsters that violates the social system's normative rules, understanding, or expectations."

According to the Second United Nations Congress on the Prevention of Criminal and the Treatment of Offenders (1960), "by juvenile delinquency is meant the conduct of an act that would be deemed a crime if committed by an adult."

2. JUVENILE CRIMES IN INDIA

Numerous petty and serious crimes are committed regularly in India, including theft, burglary, snatching, robbery, dacoity, murder, and rape. And unfortunately, all of these crimes are committed by juveniles under the age of 18.

Only 1,088 of the 35,352 adolescents apprehended in 29,768 incidents in 2020 had completed higher secondary education, while as many as 2,552 were illiterate. In addition, over 29,000 minors lived with their parents, and 76% of those detained were between 16 and 18.

The data revealed in the National Crime Records Bureau's (NCRB) report Crime in India 2020

is revealing, as it reveals that 9,252 of the adolescents in conflict with the law had just completed primary education. The majority of juveniles (17,494) had completed their studies up to matriculation, while 4,966 had completed their education up to the upper secondary level. While the lack of education is unsurprising, many lived with their parents. They were not street children, which shows low-income households are frequently located in congested regions where children are exposed to criminality from an early age.

Compared to previous years, juvenile offences decreased by 7.8 per cent in 2020. (32,269) in 2018, there were 31,591 offences. According to the strict Protection of Children from Sexual Offences (Pocso) Act, 1,885 adolescents were involved in 1,668 child sexual offences.

According to age group data, 41 of those detained were under 12. There were 559 minors aged 12 to under 16 years. There were 1,285 minors; the majority of them were between the ages of 16 and 18.

Among IPC offences, 842 were murder and 981 involved attempted murder. In addition, there were 1,028 offences in the category of public tranquility, including 875 instances of rioting and 122 instances of unlawful assembly. Five juveniles were charged with violations of The Unlawful Activities Prevention Act, and the NCRB data for 2020 shows 260 juveniles charged with violations of The Arms Act. Additionally, the data indicates 1,154 offences under the IPC involving adolescents involving an assault on a woman to outrage her modesty.

3. LAW RELATING TO JUVENILE CRIMES

In India, the first legislation dealing with juvenile crimes was the Apprentices Act, 1850, which provided the imprisonment of minors under the age of 15 who commit petty offences. Following that, the Reformatory Schools Act of 1897 was enacted, which permitted the placement of children up to the age of 15 years sentenced to jail in reformatory cells.

Following independence, our Parliament established the Juvenile Justice Act 1986 to provide care, protection, development, and rehabilitation for neglected or delinquent adolescents. It was an act that established a unified framework for the entire country. The term 'juvenile' was defined in Section 2(a) of the Act as a "boy who has not attained the age of sixteen years and a girl who has not attained the age of 18 years."

Later the same year, Parliament passed the Juvenile Justice (Care and Protection) Act, 2000, raising the age limit for girls and boys to 18 years. A child may be imprisoned for three years under this Act, regardless of the offence committed. In addition, it exempts a child who is younger than 18 years of age at the time of the alleged offence from prosecution in a criminal court or any punishment under criminal law under Section 17 of the Act.

The new Act's objective was to rehabilitate and incorporate the kid into normal society. The logic is that a child has the potential to be reformed owing to their immaturity and immaturity, and it is the state's job to protect & reform the child.

3.1 Amendment in Juvenile Justice Act, 2000

In response to widespread public outrage over the increasing number of crimes perpetrated by juveniles, the Government decided to introduce the proposed legislation in the current Parliament. This amendment would have a profound effect on the criminal justice system in the United States.

In summary, the following significant changes have occurred:

- The proposed law would repeal the Juvenile Justice (Care and Protection) Act 2000, enacted in 2000.
- It categorizes & defines offences as small, serious, and heinous.
- There has been an increase in the number of significant offences committed by minors between 16 and 18. Thus, in acknowledgement of victims' rights and juvenile rights, it is advocated that such horrific offences be treated differently.
- As a result, it has been proposed that when a person between the ages of 16 and 18 commits a horrific crime, the Juvenile Justice Board will first determine whether that person did the crime as a 'child' or an 'adult'.
- The Juvenile Justice Board will comprise psychologists and social experts who will ensure that the juvenile's rights are adequately protected if the offence was committed as a kid.
- The case will be tried based on the Board's determination of whether the juvenile committed the crime as a child or as an adult.

3.2 2021 Amendments

As of July 2018, 629 adoption cases were still ongoing in various courts. The new amendment vests the district magistrate with authority to issue adoption orders to accelerate adoption proceedings. The Indian Parliament enacted the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 in 2021. The preceding laws state that adoption is final once a civil court issues an adoption order. The new amendment states that the district magistrate shall issue such adoption orders rather than the court.

According to the 2015 Act, adolescents commit three types of offences: heinous offences, serious offences, and small offences. Serious offences include those punishable by three to seven years in jail. The proposed amendment expands the definition of serious offences to include non-heinous offences. The maximum penalty is more than seven years in jail, and the minimum penalty is not specified or is less than seven years.

4. REASONS FOR JUVENILE CRIMES

Interdisciplinary research on juvenile delinquency reveals that numerous behavioural changes occur in juveniles/adolescents worldwide due to the abrupt changes in their bodies caused by the hormonal surge associated with puberty. The changes are most noticeable in physical characteristics, such as teenagers' height and weight, and are quickly followed by other sexual and physical maturational changes. These bodily changes occur together with mental

alterations.

4.1 Social Factors

Occasionally, juveniles establish a deviant subculture due to cultural deprivation and status frustration. They frequently succumb to peer pressure and develop deviant tendencies. According to Walter B. Miller (1958), certain kids (often from the lower class) flip the mainstream culture on its head; hence, whatever is valued & seen as positive by society as a whole is abandoned by these youth & replaced by an entirely different value system. Thus, if society upholds certain morality, young delinquents abandon these principles and strive to excel in areas of toughness, outwitting their peers & indulging in activities that excite them (defined as focal concerns by Miller). Recent research in the United States has used the delinquent subculture theory, focusing on a new area of juvenile attitude toward the police in China.

Cloward and Ohlin (1960) believe that adolescent delinquent tendencies vary according to the opportunities available in their environment. For example, if youth have the opportunity to study unlawful behaviours, they may become criminals. On the other hand, they may engage in street brawls and hooliganism if they do not access these changes or cannot excel in organized crime.

Additionally, some research indicates that social variables such as poverty and a lack of education contribute to adolescent criminality (Ombato, John Onyango et al., 2013). Substance usage habits also predispose youth to crime. Families in disarray are directly associated with increased delinquency rates. Other research has also emphasized the detrimental influence of family (World Youth Report, 2003). According to the survey, juveniles who receive less familial supervision, live in dysfunctional family environments or in economically low-income families are more likely to engage in delinquent behaviour.

4.2 Psychological Factors

There are also psychological factors for delinquency, which can be readily comprehended through Freudian ideas such as the id, ego, and super-ego. When the id (the instinctive portion of an individual's personality) grows excessively powerful, and the super-ego (the socially taught element of personality) becomes insufficiently strong, the ego evolves into an antisocial individual (K. S. Williams 2012). Delinquent inclinations arise when a juvenile's self-control and social control through primary groups deteriorate. Additionally, the dissolution of social institutions has been linked to deviation and criminality (Chris Knoester and Dana L. Haynie, 2005). There may be a considerable correlation between a child's psychological state and delinquent tendencies. A study of female detainees in Bangladesh revealed a relatively high prevalence of psychiatric disorders among female juvenile centre offenders (Maruf et al., 2015). Additionally, these offenders demonstrated a significant prevalence of substance misuse.

David Brandt (2006) has discussed the social and psychological elements that contribute to delinquency in India extensively. Under social variables, it has been noticed that the social environment significantly affects adolescent deviant tendencies. Among these factors, community ties & social organisation can play a significant role in determining the juvenile's

delinquent behaviour. This is demonstrated in He Len Chung and Laurence Steinberg's work (2006). According to the study, when neighbourhood links are poor and social organisation components are ineffective, social control over society's members becomes weak, resulting in delinquent inclinations. Along with a poor neighbourhood, inadequate parenting & youth interaction with deviant peers contribute to increased offending rates.

4.3 Biological Factors

According to biological reasons, individuals are influenced by their biological/genetic makeup. They are not strictly captives of biological design, but it does predispose them to deviant inclinations. For example, juveniles' impulsive and rebellious behaviour results from hormonal changes in their bodies. Ecological/environmental/economic factors also have a significant role in the lives of juveniles. However, it is typically a mixture of these elements that results in a scenario of juvenile delinquency.

5. RELEVANCE OF SOCIO-PSYCHOLOGICAL STUDIES IN CREATING NEED FOR INTERNATIONAL INSTRUMENTS

These studies conducted on juvenile delinquency across numerous academic disciplines demonstrated the necessity for a robust international instrument that could establish guidelines for how different countries should respond to the situation.

In 1989, the United Nations Convention on the Child's Rights (CRC) was adopted, becoming a watershed in international human rights legislation. It articulated clearly the children's rights and why they should be protected. This rights-based approach embodied in the CRC resulted in changes in social justice, equity, and empowerment of society's youth.

The CRC is a legally binding pact that establishes each child's civil, political, economic, social, and cultural rights, regardless of ethnicity, religion, or ability. It contains 54 items and outlines children's rights and how governments should collaborate to protect them. Since the convention's adoption in 1980, 194 countries have ratified it. All countries that have accepted the United Nations Convention on the Child's Rights are obligated by international law and its implementation. The Committee on CRC ensures that nations that ratified the UN treaty adhere to its provisions.

India ratified the CRC in 1992 and has since enacted numerous laws to protect children's rights. In India, the Juvenile Justice Act is one such legislation that deals explicitly and comprehensively with concerns concerning delinquent adolescents.

6. NEED FOR PASSING NEW BILL

The Bill's primary objective was to increase child protection and adoption provisions.

Numerous child care centres were discovered to lack access to proper drinking water, mattresses, and toilets. According to the National Commission for the Protection of Child Rights (NCPCR), 90% of childcare institutions are administered by NGOs, with 39% remaining unregistered even after the 2015 modification.

There was no provision for a minimum sentence in the case of significant offences.

As a result of these concerns, it was critical to enact a new Bill.

6.1 Key Amendments purposed by the Bill

The Juvenile Justice (Care and Protection of Children) Bill, 2021, was introduced to address a significant gap in the Juvenile Justice Act, 2015. The Supreme Court observed in *Shilpa Mittal vs NCT Delhi*[2] that the Juvenile Justice Act does not address the fourth category of offences, namely those with a maximum sentence of more than seven years imprisonment but no minimum sentence or a minimum sentence of fewer than seven years, which are treated as "serious offences" under the Act.

Thus, the new Bill attempts to close the gap by expanding the definition of severe offences to include a maximum sentence of more than seven years in prison and a minimum sentence of fewer than seven years.

A youngster in need of care and protection is defined significantly differently. According to Section 2(14)(vi) of the Bill, a child in need of care and protection is defined as a kid who lacks parents, and no one is willing to care for and protect them or has been abandoned or surrendered.

Additionally, it wants to add a child in need of care and protection, defined as a youngster who has been or is currently being indoctrinated into drug misuse or trafficking.

Section 16 of the proposed Bill empowers the District Magistrate to obtain information from all stakeholders, including the Board and the Committee, in the child's best interests.

Section 17 of the Bill has also been amended to suggest that the term "Child Welfare Officer" refers to an officer assigned to a "Child Care Institution" rather than a Children's Home responsible for carrying out the Committee's or Board's orders.

Additionally, Section 26(A) of the Bill creates the position of Additional District Magistrate in addition to the District Magistrate.

Certain changes have been made to the Child Welfare Committees. Section 27(4) has been substituted, and it states that a person is ineligible to be nominated to the committee unless & until they meet the following criteria:

- He holds degrees in child psychology, psychiatry, law, social work, sociology, human health, education, human development, and special education for children with disabilities.
- He has been actively involved in children's health, education, and welfare activities for 7 years.
- He is a licensed professional in child psychology, psychiatry, law, social work, sociology, human health, education, human development, or special education for differently-abled children.

Further, Section 27(4)(A) specifies that a person will not be eligible for selection as a member of a committee if he-

- Has any record of violation of human rights or child rights,
- Has been convicted of an offence involving moral turpitude,
- Has been removed or dismissed from the employment of the government of India or state government or an undertaking or company-owned or managed by the government of India or state government,
- Has ever indulged in child abuse or employment of child labour or immoral act or any other violation of human rights or immoral activities, or
- It is part of the management of a childcare institution in a district.

The proposed Bill strengthens the District Magistrate's authority. According to Section 27 of the Bill, the Committee must submit its report to the District Magistrate in the specified format. In addition, he will conduct a quarterly review of the Committee's operation.

Additionally, the District Magistrate shall be the authority for resolving grievances. He shall hear any complaint regarding the Committee's operation, and the affected child or anyone connected with the child may file a complaint with the District Magistrate. He shall take cognizance of the Committee's action, afford the parties an opportunity to be heard, and then issue the appropriate order. Section 53 of the Bill provides that inspection committees must perform mandatory visits to all facilities housing children within the designated region and submit reports to the District Magistrate detailing their findings. Following the submission of the report, the District Magistrate must take necessary action. The District Magistrate has the authority to adjudicate adoption procedures under Section 61 of the Bill. Section 63 of the 2015 Act states that the Court issues an adoption order establishing that the child belongs to the adoptive parents.

However, the Bill provides that the District Magistrate, including the (Additional District Magistrate), shall execute all functions and issue all orders instead of the Court. The Act of 2015 provides that acts against children punishable by more than seven years imprisonment shall be prosecuted in the Children's Court. In contrast, offences punishable by less than seven years imprisonment shall be tried by a Judicial Magistrate. However, the 2021 amendment bill proposes that all offences be tried in the Children's Court. The Act specifies that an offence punishable by imprisonment for three to seven years is cognizable and non-bailable. However, the Bill states that such offences are not cognizable or bailable.

Additionally, amendments to the appeal process are proposed. Section 101(3) stipulates that no appeal shall lie from a Board order acquitting a child accused of having committed a non-heinous offence by a kid who has completed or is over sixteen years.

Additionally, the Bill specifies that any individual aggrieved by a District Magistrate's adoption order may appeal to the Divisional Commissioner within thirty days of the order. Such appeals should be decided within four weeks of the date of filing.

SUGGESTIONS

At the moment, a sizable portion of society is asking that minors between the ages of 16 and 18 be regarded as adults if they are convicted of severe crimes such as rape, gang rape, murder, or dacoity. The reason for this is that several recent incidents have revealed that minors in the 16-18 age brackets are participating in major crimes and are committing them with full knowledge & maturity.

Children's maturity levels have not remained constant over the last decade; a youngster develops mental maturity early in today's socio-cultural milieu due to the influence of the Internet and Social Media. Therefore, to have a deterrent impact, such perpetrators in the age range of 16 to 18 must be punished as adults, ensuring that victims receive justice. Additionally, this view asserts that it is not only the child's fault that he or she committed such heinous crimes but also the society's fault that society was unable to provide a proper and healthy childhood for the child and why such forms of discrimination & deprivation, both social & economical, existed that drove the child to commit crimes; additionally, it is the state's fault that it failed to provide care & protection to its children. As can be seen, there are strong views on both sides of the debate over the revision or amendment to the Juvenile Justice Act.

CONCLUSION

Indian administrations are striving to improve the country's youth crime situation. Although juvenile criminality has declined in recent years, several challenges remain. The government is taking steps to provide appropriate entertainment for children, such as activities & competitions; pornography and poor films are prohibited. Each district has a child guidance centre that gives appropriate training to individuals who will impact. Punishment is compelled to justify itself by its actual influence on society, in preserving order without legalizing cruelty, and on the offender, in discouraging or assisting their reform. Punishment's moral justification is found in its results, assistance to crime prevention and criminal rehabilitation. It is predicated on a forward-looking hypothesis. It assesses the future benefit to society that we can achieve for juveniles. Collaboration among government agencies, educational institutions, law enforcement, the courts, social workers, and non-profit organizations is necessary for juvenile crime prevention.

REFERENCES

- 1) Omboto, J. O., Ondiek, G. O., Odera, O., & Ayugi, M. E. (2013). Factors influencing youth crime and juvenile delinquency. *International Journal of Research in Social Sciences*, 1(2), 18-21.
- 2) Ren, L., Zhang, H., Zhao, J. S., & Zhao, R. (2016). Delinquent subculture and juvenile offenders' attitudes toward the police in China. *Police quarterly*, 19(1), 87-110. <https://doi.org/10.1177%2F1098611115604450>
- 3) Tyagi, M. (2016). Analysis of juvenile Crime: Effects of State Apparatus. *Economic and Political Weekly*, 17-20. <https://www.jstor.org/stable/44166198>
- 4) Bajpai, A. (2018). The Juvenile Justice (Care and Protection of Children) Act 2015: an analysis. *Indian Law Review*, 2(2), 191-203. <https://doi.org/10.1080/24730580.2018.1552233>

- 5) Agarwal, D. (2018). Juvenile delinquency in India—Latest trends and entailing amendments in Juvenile Justice Act. *People: International Journal of Social Sciences*, 3(3), 1365-1383. <https://doi.org/10.20319/pijss.2018.33.13651383>
- 6) Gupta, N. K. (2015). The guardian state and the child: Juvenile justice system in India. *International Journal of Advanced Research in Management and Social Sciences*, 4(4), 261-270.
- 7) Chaudhury, A., & Chakraborty, S. (2019). Understanding juvenile delinquency cases of India (2010-2015) through statistical measures. <http://localhost:8080/xmlui/handle/123456789/87>
- 8) Goswami, S., & Mehra, N. (2014). Juvenile Justice Systems in United States and India: Modern Scenario and Much Needed Modifications. *Journal of Law and Criminal Justice*, 2(2), 251-263. <http://dx.doi.org/10.15640/jlcj.v2n2a14>
- 9) Dhaka, S. K. (2021). Juvenile Delinquency in Delhi (India)-Latest Trends and New Amendments in Juvenile Justice. *RESEARCH JOURNEY*, 102.
- 10) Savia, F. G., & Mulimani, C. F. (2021). A Review of Trends and Crime Patterns of Arson Offences in India: 2009-2018. <https://doi.org/10.21203/rs.3.rs-602057/v2>
- 11) Jacob, P., Golhar, T., Seshadri, S., Nandan Mani, R., & Purushothaman, K. (2014). Child and adolescent mental health in the juvenile justice system in India: Challenges and initiatives. *Adolescent Psychiatry*, 4(4), 278-283.
- 12) Babar, A. V. (2018). The law for juvenile injustice: Critical analysis of the Juvenile Justice (Care and Protection) Act, 2015. *Journal of Legal Studies and Research*, 4(2).
- 13) Singh, D. (2019). An Analysis of Section 15 of the Juvenile Justice Act, 2015. *Christ University Law Journal*, 8(2), 1-23. <https://doi.org/10.12728/culj.15.1>
- 14) Kumar, S. (2019). Shifting epistemology of juvenile justice in India. *Contexto Internacional*, 41, 113-140. <https://doi.org/10.1590/S0102-8529.2019410100006>
- 15) Chakraborty, T. (2002). Juvenile delinquency and juvenile justice in India. *Juvenile justice systems: International perspectives*, 265.
- 16) Bajpai, G. S. (2019). *Juvenile Justice: Impact and Implementation in India*. Bloomsbury Publishing.