

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL  
STUDIES, KOCHI**

**DISSERTATION**

*Submitted in partial fulfilment of the requirement of the award of degree of*  
**MASTER OF LAW (LL.M)**



(2023-24)

ON THE TOPIC

**Critical analysis of Juveniles delinquency with respect to  
Juvenile justice Act 2015**

Under the Guidance and Supervision of

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4.	Similar Content Identified (%)	8%
5.	Acceptable Maximum Limit (%)	10%
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I declare that this Dissertation titled “**Critical analysis of Juvenile Delinquency with respect to Juvenile Justice Act 2015**” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional Law and Administrative Law, under the guidance and supervision of Dr. Abhayachandran K., and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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## **ACKNOWLEDGEMENT**

The completion of this dissertation work would not have been possible without the guidance and mentorship of Dr. Abhayachandran K., my guide and supervisor who was a pillar of support throughout. His regular inputs and meaningful suggestions meant that my work was made much easier than it could have been. I would also like to extend my gratitude to the Vice Chancellor of NUALS, Justice S. Siri Jagan and the Director of Centre for Postgraduate Studies, Prof. Dr. Mini S. Thanks also to all the other faculty members of NUALS, family and friends for their constant encouragement during the course of the writing of this dissertation.

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## List of Abbreviations

<b>S.NO</b>	<b>Abbreviations</b>	<b>Stands For</b>
1.	Anr.	Another
2.	CARA	Central Adoption Resources Authority
3.	Cr. P. C	Code of Criminal Procedure
4.	CWC	Child Welfare Committee
5.	CWPO	Child Welfare Police Officer
6.	DCP	District Child Protection
7.	DCPU	District Child Protection Unit
8.	DC	Deputy Commissioner
9.	DM	District Magistrate
10.	EIC	East India Company
11.	FIR	First Information Report
12.	ICDS	Integrated Child Development Services
13.	IPC	Indian Penal Code
14.	IYC	International Year of the Child
15.	JDL	Juvenile Deprived of their Liberty
16.	JJ Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
17.	JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
18.	JJB	Juvenile Justice Board
19.	NCRB	National Crime Record Bureau
20.	NGOs	Non-Governmental Organization
21.	Ors.	Others
22.	SAARC	South Asian Association for Regional Cooperation
23.	UN	United Nations
24.	UNCRC	United Nation Convention on the Rights of the Child
25.	UNO	United Nations Organisation
26.	w.r.t	with respect to

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# CHAPTER 1:

## 1.1: INTRODUCTION

"Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and the citizens of tomorrow." "The children of today will make the India of tomorrow. The way we bring them up will determine the future of the country."

- Pandit Jawahar Lal Nehru

Children are regarded as divine blessings and are the most valuable assets on both an individual and national level. It is our collective responsibility as individuals, parents, guardians, and society to ensure that children are given the chance and resources to develop in a positive sociocultural setting. This will enable them to become responsible citizens who are physically fit, mentally sharp, and morally sound. The State has a responsibility to guarantee that all children have equal opportunities for development throughout their growth, thereby reducing inequality and promoting social justice. Children are anticipated to exhibit obedience, respect, and possess virtuous qualities and good attributes. Nevertheless, for a variety of reasons, a significant proportion of youngsters fail to adhere to established social and legal norms. These youngsters frequently engage in criminal behaviour, which is referred to as juvenile delinquency or juvenile criminality.

The issue of juvenile delinquency is not a recent one. It also existed in ancient times. The epic Mahabharata portrays instances of adolescent malevolence. Duryodhan devised a scheme to eliminate the immensely powerful Bhim by offering him poisoned food with delicious meals. However, his malevolent plan finally failed. Although there were occasional occurrences, it is undeniable that during that time, there were limited opportunities for a youngster to deviate from societal norms because of a built-in system of social control. The social fabric was highly robust and, to a certain degree, impenetrable to those with anti-social tendencies. Consequently, there was no explicit legislation to address the issue of adolescent delinquency. It is present in all cultures, regardless of their level of complexity. In India, a developing country, the incidence of juvenile delinquency is relatively low but steadily rising. Of greater concern is the fact that the proportion of crimes perpetrated by minors out of the overall number of reported crimes in the country has also experienced a recent increase. Analysis reveals that the elements contributing to delinquency are predominantly shared and interconnected, stemming from socio-economic and psychological causes. Factors such as poverty, fractured families, family

conflicts, emotional mistreatment, migration from rural to urban areas, erosion of social values and traditional family structures, parental or guardian abuse, flaws in the education system, media influence, and unsanitary living conditions in slums contribute to the occurrence of juvenile delinquency. The lack of attention given to children by their parents, family, society, and the nation has a harmful impact on their physical, mental, and overall development. The majority of the causes contributing to delinquencies are specific to the Indian setting. Any endeavour to prevent and manage these problems can yield positive outcomes for society. It is important to recognize that children are not only representatives of the nation but also the future of the nation.

Approximately two centuries ago, Adolphe Quetelet, a distinguished social statistician from Belgium, noted that adolescents, especially young males, are more likely to engage in criminal behaviour, disorder, and delinquency due to their impulsive and conflicting nature during adolescence. According to him, the inclination towards criminal behaviour is most at the period when physical strength and intense emotions are at their peak, but when rationality has not yet developed enough to effectively manage their combined impact. Given that the future of a nation relies on the younger generation, it is imperative to provide children with compassion and the highest quality of care in order to safeguard this growing human asset. A kid is born in a state of innocence and, if provided with nurturing care and attentive guidance, they will develop and flourish in physical, moral, spiritual, and cerebral aspects, becoming an individual of great size and excellence. Conversely, if a youngster is exposed to harmful environments, deprived of essential necessities, influenced by negative companionship, and subjected to various forms of mistreatment and temptations, it is probable that the child's well-being will be compromised and they may become a delinquent.<sup>1</sup>

Expressing her concern for childcare, the esteemed Nobel Laureate, Gabriela Mistral, remarked long ago, "We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait; the child cannot. Right now, is the time his bones are being formed, his blood is being made, and his senses are being developed. To him, we cannot answer tomorrow. His name is Today." Recognizing our children as a vital asset, every endeavour should be directed towards

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<sup>1</sup> Justice V. R. Krishna Iyer, JURISPRUDENCE OF JUVENILE JUSTICE, A PREAMBULAR PERSPECTIVE –Souvenir of the International Conference on shaping the future of Law hosted by the Indian Law Institute, Delhi on 21-25 March 1994.

providing them with equal opportunities for development, enabling them to become physically robust, mentally alert, and morally healthy citizens equipped with the skills and motivations required by society. Radzinowicz noted that neglected children and juveniles easily succumb to criminality. He asserted that adolescents claim the highest share in violence due to their daring nature, lack of foresight, uncritical enthusiasm, physical strength, endurance, and desire for adventure<sup>2</sup>.

In today's world it is found both at national and international level that existing laws are not enough, thereafter it was felt that it is needed to revamp these laws that deals with these juveniles. We can find these aspects in the 'convention on the rights of children'<sup>3</sup>, 'the United nation rules for the protection of juveniles justice', 1985<sup>4</sup> also known as the Beijing rule. The United nation on 20 December 1989 adopted the convention on the rights of the child and the prime concern was the welfare of the child.

When we talk about India this convention on Child Rights was approved on 11<sup>th</sup> December 1989 in the assembly. We have some provision under Article 15(3), 39(c) and (f), Article 45 and 47 that obligates the state with the responsibility to shelter the basic rights of the child.

In the light of aspiration set forth by the Constitution as well as international convention, the Juvenile Justice (Care and Protection of child) Act,2015 has been enacted replacing the previous Act 'The Juvenile Justice (care and protection of children) Act 2000'. This new Act came up with the following two points:

- a) Child who are in conflict with law (juvenile delinquents);
- b) Children who are in need of care and protection;

The Act was made in such taking care of the four essential things which are

- Child friendly adjudication process
- Care and protection of the child
- To provide for the need that are crucial for the development of the child
- To provide for the treatment of the child

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<sup>2</sup> Radzinowicz and Joan King, The growth of crime The International Experience, New York, 1977, p.17

<sup>3</sup> U.N. General Assembly, Official Records, Sess. 61, U.N. document A/RES/44/25, (20/11/1989) available at <http://www.un.org/documents/ga/res/44/a44r025.htm>, last seen on 09/01/2024

<sup>4</sup> U.N. General Assembly, Official Records, U.N. document A/RES/40/33, (29/11/1985) available at <https://www.ncjrs.gov/pdffiles1/Digitization/145271NCJRS.pdf>, last seen on 09/01/2024

For the overall development of the country there is a need to provide equal opportunity to the child to grow so that they grow physically and mentally well and become a well to do citizen and contribute something to the society<sup>5</sup>.

This Act thus creates child welfare committee and juvenile Justice board and establish Children home, observation home, shelter home and special home to help the objectives to be achieved laid down in the act<sup>6</sup>.

To be able to understand the living condition and how to improve and implement in their countries, this has been provided in the “Convention on the Rights of the Child”. This declaration claims that: -

- That every child has a right to life and personal liberty
- That state in every sphere should think about the development of the child<sup>7</sup>
- That the child needs to be protected and cared for
- That the state parties shall take steps pertinent to juvenile justice to ensure that the child is protected from discrimination and is not punished on the ground of opinion, status or belief of the child’s family, guardian and other members<sup>8</sup>.

The children in India needs protection in two ways: -

1. To ensure the comprehensive development of individuals, regardless of their gender, family background, and fostering a suitable environment, in order to cultivate physical strength, mental agility, and academic excellence.
2. And prevention and treatment.<sup>9</sup>

As per the 'Crime in India' report released by the NCRB for the year 2018, there were a total of 31,591 reported crimes committed by juveniles. Maharashtra stood out with 19% of these cases, reporting the highest number of juvenile-related offenses in 2018. The term 'Juveniles in conflict with law,' as defined by the NCRB, refers to reported crimes committed by individuals below 18 years of age. In 2018, Maharashtra accounted for nearly 19% of the national total

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<sup>5</sup> Prof. N.V. Paranjape, Criminology and Penology, 484 (12th ed., 2006)

<sup>6</sup> R.N. Saxena, The Code of Criminal Procedure Justice Juvenile (Care and Protection of Children) Act and Probation Offenders Act, 343 (12th ed., 2004).

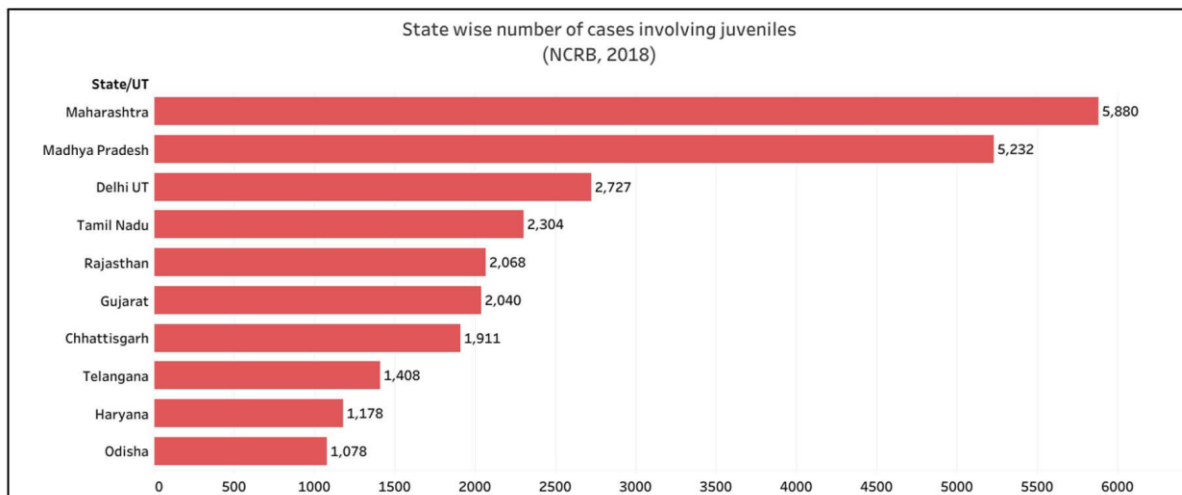
<sup>7</sup> Article 6, The Convention of the Rights of Child

<sup>8</sup> Article 2(1), The Convention of the Rights of Child

<sup>9</sup> 'Introduction' Chapter 1, available at

[http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/8/08\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/8/08_chapter%201.pdf) last seen on 15/01/2024.

under this category. Following closely, Madhya Pradesh contributed to 16.6% of these crimes, having reported the highest number in 2017. Delhi held the third position with 8.6% of the cases. Collectively, the top 10 states constituted 81.7% of the reported cases in 2018. Notably, a majority of the crimes committed by juveniles were offenses affecting the human body and property<sup>10</sup>.



Source NCRB 2018

## 1.2: Who is a juvenile?

In broad terms, a "child" is considered to be an individual below the age of eighteen who lacks the maturity to distinguish between right and wrong. The concept of 'Doli Incapax,' which outlines the criminal responsibility of adolescents, is one of the fundamental principles in Criminal Justice. In the application and interpretation of this doctrine within the framework of Indian legislation, it is stipulated that no child below the age of 7 should face prosecution for committing a crime.

The concept of 'Doli Incapax' revolves around an individual's incapability to infringe upon the law. This principle is articulated in Article 40 (3) (a) of the United Nations Declaration on the Rights of the Child. The declaration further mandates that every state must explicitly define the

<sup>10</sup> More than 99% of the Juveniles apprehended for crimes in 2018 are Boys (factly.in) (accessed on 15/01/2024)

age limit for juveniles who are exempt from criminal prosecution based on their inability to comprehend the nature and consequences of their actions.

In contemporary legal systems across most countries, criminal law embraces the principle of *Doli incapax*, requiring individuals to be aware that their actions are not criminal. Moreover, criminal law stipulates that the acts committed must be serious crimes, and the individuals must possess sufficient understanding and awareness of the consequences of their actions. The law specifies that only children aged twelve and above can face sentencing. According to Article 2(12) of the 2015 Juvenile (Care and Protection) Act, a "child" is defined as a person below the age of eighteen. The law categorizes "children" into two groups: "Children in Violation of the Law" and "Children in Need of Care and Protection." Those below eighteen at the time of committing a crime are commonly referred to as "Children in Conflict with Law."

The 1989 UN Convention on the Rights of the Child provides a definition for a "child" as an individual below the age of eighteen, unless the child attains the legally recognized age of majority.<sup>11</sup>

### **1.3: Meaning of Juvenile Delinquency**

Delinquency refers to the action or the behaviour shown by the juveniles which are considered socially undesirable. A juvenile is an individual below the legal age, is not held accountable for the criminal conduct. Juvenile delinquency encompasses illegal or criminalistic acts committed by a minor, making it necessary for the enforcement agency to interfere rather than the parents or the guardian, as such action pose a threat to societal wellbeing.

The term 'delinquency' has been derived from the Latin word *delinquer* which means 'to omit'. The romans used the term to refer to the failure of a person to perform the task assigned. It was William Coxson who in 1484 used the term 'delinquent' to describe a person found guilty of the customary offence. The word also found place in the shakespeare famous play 'Macbeth' in 1605. In simple words it may be said that delinquency is a form of behaviour or rather misbehaviour or deviation from the generally accepted norms of the conduct in the society. The laws which were there earlier did not differentiate between the crimes committed by the juveniles and by the adults, hence we can say that this juvenile delinquency is of the recent origin. The youngster between the certain age group is easily attracted to the temptation of the life and then fall into criminality. As it is often said the child of today is the citizen of tomorrow.

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<sup>11</sup> E.H. Sutherland, & Cressey, *Criminology*, J.B. Lippincott, Philadelphia, 1974, P 145.



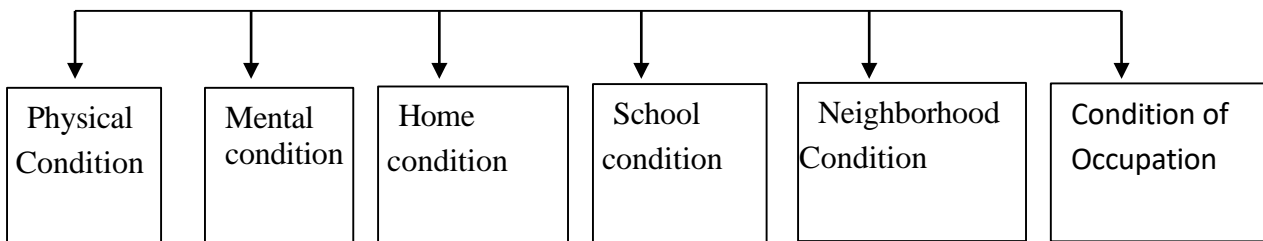
The tendency in the youngster should be timely curbed so that they did not turn into habitual criminal in their future life.

In his book "Law of Teenage Delinquency," Frederick B. Sussmann categorized the following actions as delinquent.

- Violation of any rule or ordinance
- Persistent absence, association with criminals
- Involvement with violent or immoral individuals<sup>12</sup>

#### 1.4: Causes of Juvenile Delinquency

There are basically six causes responsible for the delinquency in juvenile noted below<sup>13</sup>



##### 1. Physical Factor:

The physical factors can be divided into three parts or we can say that there are three ways in which these physical factors affect the juvenile delinquency

- a) Criminal behaviour can be directly influenced by physical factors.
- b) It can serve as a barrier to a child's ability to form positive relationships with others.
- c) Conditions such as excessive physical energy may lead to an abundance of energy seeking expression through delinquent activities.

Certain physical factors contribute to the rise of delinquency in juveniles, including malnutrition, insufficient sleep, sensory defects, speech defects, deformities, and nervous diseases. Malnutrition, stemming from factors like the unavailability of food due to negligence or poverty, irregular meals, and excessive intake of stimulants like tea or coffee, can disrupt the normal digestion and assimilation of food. This disruption in proper nutrition can

<sup>12</sup> Sarkar, Juvenile Delinquency in India: An Etiological Analysis, Daya Publishing house New Delhi, 1987.

<sup>13</sup> Supra 5 pg. 488

subsequently lead to malnutrition in children, further contributing to deviant behavior in juveniles.

Insufficient sleep is another factor contributing to juvenile delinquency, coming from inadequate sleep, bedroom congestion, or disturbing dreams due to mental unrest<sup>14</sup>. Sensory defects represent another physical factor influencing juvenile delinquency, encompassing issues in specialized sensory organs like eyes and ears. Additionally, speech defects contribute to the array of physical factors leading to juvenile delinquency. These defects may arise from mental conflicts, poor health, or parental neglect during a child's formative years. Speech defects typically manifest as stuttering, lispings, and lolling<sup>15</sup>.

## 2. Mental Factor

Through comprehensive research, it has been determined that a significant number of adolescent offenders experience mental instability, possibly due to intellectual disabilities or diseases. It is widely known that children with mental challenges may struggle to differentiate between right and wrong. These vulnerable children often exhibit signs of susceptibility and are frequently exploited by criminals for engaging in illicit activities.

## 3. Home Factors

In cases where both parents have passed away, one or both are dealing with severe health issues, are absent due to domestic duties, or are divorced, households can face significant challenges. Both the mother and father bear the vital responsibility of nurturing and engaging with their children. When a home becomes fractured due to any of the mentioned reasons, it can contribute to an increase in juvenile delinquency. Children who lack parental guidance and affection are more susceptible to negative influences from the antisocial aspects of their environment<sup>16</sup>.

## 4. School Condition

The school environment a child is exposed to can influence their tendency for delinquency. Schools facing issues of overcrowding and inadequate funding often lack order and discipline, leading to a defensive demeanour in children who regularly experience chaos and fear.

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<sup>14</sup> Ibid at 535

<sup>15</sup> Ibid at 537

<sup>16</sup> Ibid at 558

Research indicates that active parental participation in academics and school-related activities substantially diminishes the chances of delinquent behaviour.

#### 5. Neighbourhood condition

The conditions within a neighbourhood can significantly influence juvenile behaviour. Factors such as the socio-economic status of the area, community support, prevalence of criminal activities, access to quality education, and the overall environment play crucial roles in shaping the experiences and choices of juveniles in that locality. A positive and supportive neighbourhood can contribute to a healthy upbringing<sup>17</sup>, while a challenging or unsafe environment may increase the risk of juvenile delinquency.

#### 6. Occupational Condition

This is the cause which has the huge impact on the life of juveniles, it has an impact on the mental as well as the physical health of the juveniles. This factor includes irregular occupation, not able to fit in the occupation idleness, factory influences, and decrease in the money provides also the places in which they are living, right now we all know that that child are employed for number of task and this leads to cramming in the occupation they are not provided with the proper food nor a proper place to live and this affect their mental and physical condition.

Table 1.1 shows the delinquency in juvenile under Indian Laws such as Arms Act, gambling Act etc as we compare the table that we have mentioned below we can see that there is a trend of decrease in the cases that is happening in case of juvenile delinquency, this table shows the data from 2001-2022. Maximum cases that were registered in the year 2002

**TABLE 1.1 Juvenile Delinquency under Special and Local laws<sup>18</sup>**

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<sup>17</sup> Ibid at 570

<sup>18</sup> Ministry of Home Affairs, National Crime Records Bureau (NCRB), Government of India, published on data portal September 08, 2015, available at <https://data.gov.in/catalog/all-india-and-statewise-juvenile-delinquency-under-special-and-local-laws>, last seen on 25/01/24

Years	Arms Act	NDPS Act	Gambling Act	Excise Act	Prohibited Act	Immoral Traffic (Prevention) Act	Other Crimes	Total Crimes
2001	154	52	763	613	1007	125	5589	8303
2002	162	56	675	526	930	49	6492	8890
2003	232	62	863	508	1117	48	4918	7748
2004	201	54	989	480	566	47	3383	5720
2005	192	76	1061	472	830	50	3972	6653
2006	280	65	1116	556	632	79	2504	5232
2007	322	80	1013	556	510	60	2207	4748
2008	265	70	779	374	408	33	1603	3532
2009	223	61	1149	465	592	18	1795	4303
2010	154	82	326	249	314	10	1408	2543
2011	159	78	424	198	313	5	1637	2814
2017	240	196	23	275	255	5	1978	3018
2021	305	369	100	734	224	4	1419	4709
2022	363	408	24	191	261	1	2575	4519

### 1.5: Child in Conflict with law

Let us understand this by a perspective of a layman “child in conflict with law” means any juvenile who has committed any unlawful or illegal act. A "child in conflict with law" refers to

a minor (under 18 years of age) who has been accused, alleged, or found to be involved in criminal activities and is consequently subject to the legal system. The term recognizes that the individual is a child, emphasizing their age, and underscores their engagement with the law due to alleged criminal behaviour. Here the main thing that is taken in mind that the person or the delinquent should not be subjected to same procedures as that of a normal person they should be rehabilitated

In the context of Indian law, a "child in conflict with law" is a term used in the Juvenile Justice (Care and Protection of Children) Act, 2015. According to this legislation, a child in conflict with the law is someone who is alleged or found to have committed an offense at the age of 16 to 18 years. For children below the age of 16 who are involved in criminal activities, they are considered "children in conflict with law" as well, but they fall under the jurisdiction of the Juvenile Justice Board, which focuses on rehabilitation and reformative measures rather than punitive actions.

The Juvenile Justice system in India emphasizes the principles of care, protection, and rehabilitation for children in conflict with the law. The goal is to ensure the best interests of the child, recognizing their vulnerabilities and potential for positive change. The approach is different from that applied to adults, reflecting an understanding of the unique needs and circumstances of children in the legal system.

Now there are some instances where the question before the court was how to determine the age of the juvenile the court through numerous judgements held that the relevant date would be the date on which the juvenile was produce before the competent authority <sup>19</sup>

## **1.6: Shares of Juvenile Crimes**

The proportion of IPC crimes against juveniles recorded in the country in 2005 stood at 10%. This figure saw a slight increase of 1.1% in 2006 and remained steady at 1.1% until 2007. In 2008, there was a further increase of 1.2%, followed by a decrease of 1.1% in 2009. Subsequently, there was a decrease of 1.0% in 2010, followed by a slight rise of 1.1% in 2011.

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<sup>19</sup> Anrit Das vs. State of Bihar, (2000) 5 SCC (Cri) 962; AIR (2000) SC 2264:

In 2012, the rate of juvenile crimes increased to 1.2% and remained consistent at this level until 2013 and 2014. However, in 2015, this percentage decreased to 1.1% in the country<sup>20</sup>.

In 2022, a total of 30,555 cases were registered against juveniles, reflecting a decrease of 2.0% compared to 2021, which saw 31,170 cases. The crime rate also declined from 7.0 in 2021 to 6.9 in 2022. Of the 30,555 cases, 37,780 juveniles were apprehended, with 33,261 juveniles apprehended under IPC cases and 4,519 under SLL cases. The majority of juveniles apprehended for IPC and SLL crimes, totalling 78.6% (29,690 out of 37,780), were in the age group of 16 to 18 years in 2022<sup>21</sup>.

### **1.7: Juvenile in Need of Care and Protection**

There is another aspect of juvenile justice additional to dealing with the child in conflict with the laws they have made provisions for the children who are in need of care and protection.

Juvenile or children in need of care and protection means Child:

- a) who do not have any type of shelter, house, etc.; or
- b) working in to be conflict with labour laws; or
- c) who is mentally or physically not fit or suffering from any kind of diseases, and no one can support to him neither family member nor guardians of the child;
- d) whose parent is unfit or incapable to take care of his child as declared by the review committee;
- e) Who do not have parents or guardians and no one ready to take care of the child; or
- f) who run away from his house and went missing, and their parents cannot find him after inquiry;
- g) who are getting abused, tortured or exploited for sexual purposes.<sup>22</sup>

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<sup>20</sup> Ministry of Home Affairs, National Crime Records Bureau (NCRB), Government of India, Crimes in India-2015, available at <http://ncrb.nic.in/>, last seen on 30/01/2024.

<sup>21</sup> Ministry of Home Affairs, National Crime Records Bureau (NCRB), Government of India, Crimes in India-2022 <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>, last seen on 30/01/2024

<sup>22</sup> S. 2(14) Juvenile Justice (Care and Protection of Children) Act, 2015.

## **1.8: Juvenile justice System**

The juvenile justice system addresses not only juveniles in conflict with the law but also addresses the criminal conduct of juvenile offenders. Children's justice can be categorized into the following two divisions:

- a) How to shelter the child;
- b) How to insulate the child;<sup>23</sup>

### **Aims of Juvenile Justice System**

The aims of protecting children in India include:

- Ensuring that the juvenile justice system upholds the rights of the child.
- Emphasizing restorative and rehabilitative principles in delivering justice to children.
- Initiating actions that prioritize the best interests of juveniles or children.
- Prioritizing prevention as a key objective.
- Offering adequate care to juveniles and safeguarding them from torture, cruelty, harassment, exploitation, and similar abuses.
- Providing comprehensive care and education to children.

## **1.9 : IMPORTANCE OF THE STUDY**

The purpose of this study is to understand juvenile delinquency its various reasons and it is crucial to implement effective measures to manage juvenile delinquency and ensure the fundamental rights of juveniles in conflict with the law as we all know that the future of the entire country is dependent on the children. Presently, juvenile delinquency remains a significant and persistent social issue in India. Although the government has enacted the Juvenile Justice (Care and Protection of Children) Act, 2015, to deter juvenile delinquency and provide proper care and protection for children, there is a deficiency in the enforcement and applicability of certain provisions of this legislation. It is also emphasized that the judiciary plays a vital role in preventing juvenile delinquency and addressing the antisocial behaviour of children.

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<sup>23</sup> R. N. Choudhry, 'Law relating to juvenile justice in India' being Commentary on The Juvenile Justice (Care and Protection Act 2000 as amended by Act No. 33 of 2006 along with Central and State Rules), 2 (3rd ed. 2009).

## **1.10: OBJECTIVE OF THE STUDY AND RESEARCH QUESTION**

The proposed study aims to conduct a detailed analysis of the juvenile justice system in India. This research tries to provide a close examination of the historical, legislative, executive, and judicial processes associated with juvenile justice in the country at a micro-level. The study tries to find out the existing provision and policies related to juvenile delinquency in India and therefore analyse the strength and weakness of the provisions which provide for a comprehensive and integrated juvenile justice system in India.

## **1.11: Research Objectives**

1. To analyse the meaning of Juvenile Delinquency.
2. To understand the importance of 'Juvenile Justice System' in India.
3. To assess the validity of the 'Juvenile Justice (Care and Protection of Children) Act 2015' as well as analyse the amendment given under 'Juvenile justice (Care and protection of Children) amendment bill 2021 and 2022.
4. To examine the procedures and penalties for juveniles in India.
5. To evaluate the adequacy of India's juvenile trial procedures compared to those in other countries.

## **1.12: Research Questions**

1. How has the definition and understanding of juvenile delinquency has evolve over time?
2. What is the procedure followed in Juvenile cases in other countries where similar Legal System is followed?
3. Is the Juvenile Justice Act 2015 equipped to effectively accomplish the goals outlined within the Act?
4. What constitutes the central process for trials and penalties in India concerning juveniles?



5. Will the Juvenile Justice (care and protection of Children) amendment Act 2021 and Juvenile Justice (care and protection of Children) amendment Act 2022 able to fulfil the lacuna present under the exiting Laws?

### **1.13: Research hypothesis**

Juvenile delinquency poses a serious threat to our society.

Therefore, the process of administering justice within the Indian Juvenile Justice System is insufficient.

### **1.14: Research methodology**

The proposed research work is a **Doctrinal Research**.

Hence, this dissertation will be purely based on Primary and Secondary resources

### **1.15: Study Framework**

This Research work consist of six chapters.

Chapter 1 provides an introduction, offering an overview of concepts related to juveniles, juvenile delinquency, and the primary causes, objectives, and approaches associated with these issues. In Chapter 2, the historical development of the juvenile justice system in India is explored, detailing its evolution in five phases Chapter 3 examines the international perspective on juvenile justice systems, highlighting the diverse laws and regulations across countries such as America, Saudi Arabia, China, etc. Chapter 4 discuss about International Organisation on Rights of Children. Chapter 5 outlines legislative provisions governing the trial and punishment of juveniles in India, encompassing procedures, proceedings, inquiries, investigations, preliminary assessments, processes related to heinous offenses, rehabilitation, and reintegration. Also, this chapter focuses on judicial pronouncements, encompassing judgments handed down by the Supreme Court. Finally, Chapter 6 encompasses suggestions and conclusions drawn from the study.

## **Chapter 2 Historical background of Juvenile Justice System in India**

### **2.1: Introduction**

The juveniles in early times were subject to the same punishment as that of the adults because our justice system was not making any difference in the same proceeding and punishment were same for the juveniles as well as the adults, later in the 18<sup>th</sup> century, development towards the juvenile justice started.

Juvenile justice, as a distinct concept outside the adult criminal justice system, took centuries to evolve in the history of human civilization and legal administration. The emergence of a specific form of justice for children is a relatively recent development. Around 1750 B.C.E., King Hammurabi of Babylon, during the Sumerian period, established the first known state governed by a written legal code—the Code of Hammurabi. This code, supplementing tribal customs, enforced uniform laws for everyday social interactions, imposing severe penalties for deviant behaviour equally on all members of society. Notably, provisions resembling what we now term juvenile justice were enacted primarily for the preservation of Babylonian patriarchy<sup>24</sup>.

In ancient Rome, a doctrine called *patria parens patriae* defined the role of children within society and the family unit. Under *parens patriae*, fathers held absolute control over their children, including the power of life and death. State intervention in paternal discipline was non-existent, and children had no rights beyond their father's goodwill. Over time, as the Roman Empire developed a more sophisticated legal system, the severity of *parens patriae* softened.

In 1704, Pope Clement XI introduced the concept of instructing stubborn youth through institutional treatment. Elizabeth Fry later established a separate institution for juvenile offenders in Britain. Subsequent to these developments, the Reformatory Schools Act and Industrial Schools Act were enacted. The movement against harsh treatment of young offenders gained momentum in 1772 with special concessions granted to juvenile delinquents in civil

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<sup>24</sup> Gus Martin; Juvenile Justice process and system, Sage Publications India Pvt. Ltd. New Delhi, India, 2005, p.32.

matters<sup>25</sup>. Despite this, *parens patriae* remained the dominant doctrine influencing the treatment of children, leaving a lasting impact on the English doctrine of juvenile justice.

The shift towards separating juvenile court and criminal court proceedings began in the late nineteenth century. Massachusetts passed legislation in 1874, mandating separate court hearings for juveniles, known as children's tribunals. In Illinois, the Chicago Reform Act of 1855 made significant strides<sup>26</sup>, while New York followed suit in 1877 by requiring the separation of adult and juvenile offenders. Rhode Island enacted a juvenile court law in 1898, and Colorado, in 1899, passed the first legislation providing guidelines for trying truant "juvenile disorderly persons" under the compulsory school act. While these initiatives did not establish the modern juvenile court system, they served as important precursors to its development.

The Illinois Juvenile Court Act, which was the first juvenile court enacted in July 1899. Officially titled the "Act to regulate the treatment and control of Dependent, Neglected, and Delinquent Children," this legislation marked the inception of a comprehensive and modern juvenile justice statute.

Children, viewed as products of their environments, were deemed victims in need of reform and rehabilitation, leading to the establishment of the first juvenile court system. This innovative model operated independently of the adult criminal justice system, encompassing cases involving delinquency, dependency, and child neglect. Proceedings were characterized by reduced formality, and distinct facilities were set up for youth and adults within the justice system. The pivotal shift towards rehabilitating juveniles, initiated in the nineteenth century, reached its culmination. Rather than punitive measures, the focus for youths processed through the juvenile court was on treatment, aiming to mitigate the impact of their challenging backgrounds. Courts, assuming an advocacy role, based decisions on the best interests of the child. The period marked the normalization of separate procedures, records, personnel, and institutions in juvenile justice. A core principle of this era was the elimination of stigma, avoiding categorizing juveniles as criminal offenders undergoing proceedings within the criminal justice system. New terminology was introduced to differentiate juvenile proceedings from traditional criminal processes.

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<sup>25</sup> N.V. Paranjape, *Criminology and Penology*, Central Law Publications, Allahabad, sixteenth ed. 2015, p.625.

<sup>26</sup> Steven M. Cox, et al, *Juvenile Justice, A guide to Theory, Policy, and Practice*, Sage Publications, Los Angeles, New Delhi, Eight Edition, 2014, p.7

This progressive era was hit by the great depression but it was that time when human rights became the centre of attention and then it was realised that it was well needed that juveniles too have a separate justice system to deal with delinquency<sup>27</sup>.

## **2.2: Origin of the juvenile Justice System in India**

The East India Company (EIC) gained authority with the passing of the Regulation Act in 1773. The EIC was granted the power to create and enforce laws strictly. In 1833, the Charter transformed the commercial East India Company into a government entity<sup>28</sup>. The initial law aimed at keeping children out of jail was introduced in 1850. The All-India Jail Committee's report in 1919-1920 marked the start of completely separating children from the criminal justice system.

The origin of the Juvenile Justice System in India been institutionalised in five period periods. These Periods can be divided into five periods.

1. Initial to 1773
2. 1773-1850
3. 1850-1918
4. 1919-1950
5. 1950 onwards

### **Prior to 1773**

The society at that time was divided on the basis of religion majority was Hindus and Muslim they both had different set of laws and these laws were governed by the custom and practices prevalent at that time. Both religions had laws for the child's maintenance but there was no specific law to deal with juvenile delinquency. Ancient history books like Manusmriti and the Hedaya had some provision for the punishment for the juvenile but not specifically related to juvenile delinquency.

Under Hindu law the king had the power to determine the motive and then to impose the punishment whereas under Muslim law this power vested in the hand of the kazeer.

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<sup>27</sup> Supra 25 Pg 45

<sup>28</sup> Guide to the Records in the National Archives of India, Part V, 1-7, 1981

## 1773-1850

This period marks the beginning of the British getting more powerful in India, their atrocities towards the indigenous people increased that directly impacted the increase of crime which caused a relative increase in the crimes by the juveniles. There were many classes of people who were forced to do slavery.

The first “Ragged school” was established in the year 1843 by Dr. Buist, in Bombay as identified today as *David Sassoon Industrial School*. This school has two-fold purpose:

- a. To provide rehabilitation to juvenile offenders; and <sup>29</sup>
- b. To provide training to make them again suitable for the world.

Apprentices Act 1850 not only addressed the delinquent behaviour of children but also included provisions regarding the relationship between employers and young offenders learning a trade as apprentices. Some of its provisions anticipated the principles and practices of future Juvenile Courts and institutions. According to this Act, a child between the ages of 10 and 18 could be bound by their father or guardian until the age of 21. Magistrates were authorized to act as guardians for delinquent children or those convicted of vagrancy or petty offenses, allowing them to bind the child as an apprentice for learning a trade, craft, or employment.

## 1850-1919

During this period, several laws were enacted concerning children's well-being. The Female Infanticide Act of 1870 and the Vaccination Act of 1880 aimed to safeguard the lives and health of children. The Guardianship and Wards Act of 1890 provided provisions for their constant care and protection. Recognizing the issue of child labour, the Factory Act of 1881 acknowledged the need for special provisions. Additionally, legislation against the forcible abduction of children was proposed in 1848 following a personal vengeance-related abduction of a 17-year-old<sup>30</sup>.

This era also witnessed the Juvenile Offenders Act, which allowed magistrates to bind juveniles aged 10-15 as apprentices instead of sending them to prison for minor offenses. The Indian Penal Code of 1860 considered children below 7 years as *doli incapax*, while the presumption of *mens rea* could be rebutted for children aged 7-12. The Whipping Act of 1864 was enacted to address the increasing number of juvenile offenders, with the hope that it would significantly

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<sup>29</sup> Ved Kumari's, *The Juvenile Justice System in India from Welfare to Rights*, 59 (Upendra Baxi, 1st ed. 2004).

<sup>30</sup> *Ibid* at 60

reduce the juvenile population in jails. The establishment of the Indian Jail Committee in 1864 led to actions concerning juvenile offenders and reformatories, emphasizing the importance of separating juvenile inmates from adults in prisons. Reformatory schools for juveniles were subsequently established through the Reformatory School Act of 1897<sup>31</sup>, reflecting a growing recognition of the need to reform rather than neglect juvenile offenders.

### **1919-1950**

One of the most significant developments in the history of India's juvenile justice system is the Report of the Indian Jail Committee of 1919-20, led by Sir Alexander Cardew. This committee was tasked with assessing and recommending reforms for prison administration. After visiting various jails, the committee concluded that prisons should not only serve as deterrents but also have a reformatory function. They advocated for the discouragement of corporal punishment and emphasized the need for a system that focuses on rehabilitation. The committee recommended setting capacities for jails and reformatories based on their size and resources.

In 1917, the groundwork for the Children Act began in Madras, eventually passing in June 1920. The report highlighted that the health and behaviour of juvenile offenders are often shaped by their environment and circumstances. It emphasized the importance of giving young offenders a fresh chance and providing them with better surroundings. Recognizing that young offenders are not necessarily habitual criminals, the report called for a different approach to their treatment compared to adults, with a focus on rehabilitation within the prison system.

The Report of the Indian Jail Committee of 1919-20 underscored that a child's involvement in criminal behaviour is often a consequence of an adverse environment. It advocated for offering juvenile offenders a fresh start and better living conditions. The committee emphasized that young offenders are not inherently inclined towards habitual criminal behaviour and should be focused on rehabilitation within specialized institutions rather than punishment. Recognizing the need for a distinct approach, the committee recommended the establishment of juvenile courts with flexible and informal procedures, urging magistrates to adopt a more compassionate and paternal outlook in dealing with juvenile cases.

Additionally, the committee highlighted the plight of children who had committed crimes but lacked proper guardianship or were living amidst criminal influences. In response to these concerns, Madras (now Tamil Nadu) passed the Children Act on June 20, 1920, which set age

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<sup>31</sup> Ibid at 61

limits for juvenile offenders, prohibited their imprisonment, and established facilities such as remand homes and certified schools. The provisions of this act served as a model for other states, prompting them to adopt similar measures aimed at providing better care and rehabilitation for juvenile offenders in subsequent years.

- Delhi Children Court 1941;
- Mysore Children Act 1943;
- Travancore Children Act 1945;
- Cochin Children Act 1946; and
- East Punjab Children Act 1949;

## **Post -1950**

In 1950, both official and unofficial efforts played pivotal roles in shaping India's juvenile justice system. Various viewpoints were voiced, each contributing to the evolution of how young offenders are treated within the legal framework.

- i. The Children Act of 1960, enacted on December 26th, aims to ensure the care, protection, education, and rehabilitation of juveniles. According to the Act, a "child" is defined as a boy under 16 years or a girl under 18 years, while a "delinquent child" is one found guilty of an offense. The Juvenile Board is empowered to decide the appropriate course of action for delinquent juveniles, which may include allowing them to return home<sup>32</sup> or imposing fines for those over 14 years who earn money<sup>33</sup>. Section 24<sup>34</sup> of the Act mandates the separation of juveniles from adults during legal proceedings. Moreover, the Act outlines procedures for determining the age of juveniles, requiring competent authorities to conduct inquiries and record findings regarding their age<sup>35</sup>.

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<sup>32</sup> S. 21(a), Children Act, 1960.

<sup>33</sup> S. 21(d), Children Act, 1960

<sup>34</sup> "Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, no child shall be charged with or tried for, any offence together with a person who is not a child."

<sup>35</sup> S. 32(1), Children Act 1960

- ii. During the establishment of the Five-Year Plans starting in 1951, provisions for children's welfare were introduced within the Juvenile Justice System. However, details regarding funding for these activities were not specified. Implementation of these plans at both the central and state levels concerning issues like child neglect and juvenile delinquency was yet to occur.

The Eighth Five Year Plan (1992-1997) emphasized child survival, care, and protection as part of human development efforts, leading to a significant increase in budget allocation for social welfare schemes. The Ganga Sharan Sinha Committee in 1968 estimated the costs associated with child care and protection programs<sup>36</sup>.

The Tenth Five Year Plan aimed to ensure the fulfilment of every child's basic right, emphasizing compliance with international conventions, active participation of children in decision-making processes, and building self-confidence and self-reliance among children. This policy aimed to cater to children without familial support, those facing crises within their families, abused children, those with special needs, children of sex workers, children in conflict with the law, and those affected by disasters or conflicts<sup>37</sup>.

The 12th five-year plan places utmost importance on child care and protection, focusing on meeting the basic needs of children across all segments of society. It emphasizes the fundamental rights of children to survival, protection, participation, and development. The plan outlines specific targets to be achieved, including improving the child sex ratio, halving rates of undernutrition and anemia in girls and women, and ensuring children have a safe environment within families, communities, schools, and childcare centres. Additionally, the plan aims to make 80% or more of cities, districts, and panchayats child-friendly. The plan will implement various policies, programs, legislations, and institutions to address these issues and achieve the set targets by 2017<sup>38</sup>.

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<sup>36</sup> Manisit Das and Ankit Mukta, Children in India's Five Year Plan, at 24 (2011), available <https://thelawbrigade.com/wp-content/uploads/2019/05/AnkitaPandey.pdf>, last seen on 26/03/2024.

<sup>37</sup> Supra 30 Pg 73

<sup>38</sup> Sub Group Report- Child Protection in the Twelfth Five year Plan (2012-2017), Ministry of Women & Child Development, Government of India, Shastri Bhawan, New Delhi, available at <https://thelawbrigade.com/wp-content/uploads/2019/05/AnkitaPandey.pdf>, last seen on 26/03/2024.



### iii. Policies and Programme

SAARC<sup>39</sup>, since 1985, has also prioritized children's issues in national development plans<sup>40</sup>. Following the World Declaration on the Survival, Protection, and Development of Children, India reaffirmed its commitment by adopting 'A National Program of Action on Children-India' on June 18, 1992, further emphasizing its dedication to achieving children's welfare goals<sup>41</sup>.

In 2005, India introduced 'The National Plan of Action for Children' with a primary focus on safeguarding the fundamental rights of children up to the age of 18. This comprehensive plan aimed to create a conducive environment for children's survival, growth, and protection, ensuring their full potential is realized, thereby contributing to the nation's productivity and well-being<sup>42</sup>.

In April 26, 2013, India embraced a National Policy for Children, recognizing them as the nation's greatest treasures. This policy aimed to nurture their potential through various programs, covering aspects like healthcare, education, rehabilitation, and protection. Inspired by the International Year of the Child declared by the UN in 1979, the policy focused on uplifting deprived children, safeguarding their rights, and ensuring their well-being. Over the years, states have intensified efforts, introducing new programs and services to cater to the needs of children.

### iv. Status of Juvenile Justice 1950-2000

Juvenile Justice Act 1986: Juvenile Justice Act of 1986, replacing the Children Act of 1960, was introduced on August 22, 1986<sup>43</sup>, aimed at addressing the issues concerning troubled juveniles and neglected children across India. Beyond just reforming the juvenile justice

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<sup>39</sup> SAARC (South Asian Association for Regional Cooperation), it is intergovernmental organization and union of Asian countries. The members of the SAARC declaration are India, Afghanistan, Bangladesh, Bhutan, Maldives, Pakistan, Nepal and Sri Lanka. This declaration found in Dhaka on 8th December 1985.

<sup>40</sup> Dhaka declaration, adopted by SAARC in Dhaka, 1985, available at <http://www.saarc-sec.org/userfiles/01-Dhaka-1stSummit1985.pdf>, last seen on 27/03/2024

<sup>41</sup> Eighth Five Year Plan (1992-1997).

<sup>42</sup> Department of Women and Child Development, 'The National Plan of Action for Children 2005', at 1, available at

[https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S001608/P001809/M027674/ET/1520851568JJM ODULE1CONTENTS.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001809/M027674/ET/1520851568JJM ODULE1CONTENTS.pdf), last seen on 27/03/2024.

<sup>43</sup> Juvenile Justice Act, 1986, available at <https://ijcdhc.nic.in/wp-content/uploads/2021/02/1986.pdf>, last seen on 03-04-2024

system, it sought to embed the principles of social justice outlined in the Indian Constitution. Its key goals included:

- Ensuring that no child, regardless of circumstance, would be placed in jail or police custody.
- Providing specialized prevention and treatment for juveniles in conflict with the law.
- Establishing a dedicated authority responsible for investigating and prosecuting juvenile cases.
- Offering comprehensive care, protection, and rehabilitation for various groups of children within the juvenile justice system.
- Defining specific offenses related to juveniles and prescribing suitable penalties.

According to this Act, a delinquent juvenile is identified as "a young individual found guilty of committing an offense." Moreover, the Act defines a juvenile as "a boy under the age of 16 and a girl under the age of 18<sup>44</sup>."

Juvenile Justice (Care and Protection of Children) Act, 2000: The enactment of the "Juvenile Justice (Care and Protection of Children) Act 2000" marked a significant shift from the previous Juvenile Justice Act 1986. Under this Act, a "Juvenile" or "Child" is defined as someone who hasn't yet turned 18<sup>45</sup>. Moreover, it identifies a "Juvenile in conflict with the law" as a young person accused of an offense and under 18 at the time of the commission of the offence<sup>46</sup>. The core aims of this legislation were:

- Ensuring equal treatment for both boys and girls by setting a uniform age limit of 18.
- Prioritizing swift resolution of cases involving juveniles or children, aiming for resolution within four months.
- Establishing guiding principles for administering justice to juveniles or children, emphasizing fairness and protection.
- Harmonizing juvenile law with international standards, particularly the UN Convention on the Rights of the Child.
- Introducing specialized juvenile police units, trained to approach cases involving young individuals with empathy and understanding.

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<sup>44</sup> 'Historical Development of Juvenile Justice system', 65, at 69 available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08_chapter%202.pdf), last seen on 03/04/2024.

<sup>45</sup> S. 2(k), Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>46</sup> S. 2(l), Juvenile Justice (Care and Protection of Children) Act, 2000.

The Juvenile Justice (Care and Protection of Children) Bill, 2014<sup>47</sup>, steps in to update and replace the earlier Juvenile Justice (Care and Protection of Children) Act of 2000. It acknowledges the unique needs of children in the legal system, distinguishing between those in conflict with the law and those requiring care and protection. Furthermore, it specifies the age range defining juveniles. Notably, individuals between 16 and 18 years old may face adult trial if they commit serious offenses. Additionally, the Bill paves the way for the establishment of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in every district across states. These Boards are empowered to conduct preliminary assessments into heinous offenses<sup>48</sup>.

The Juvenile Justice (Care and Protection of Children) Act, 2015, replaced the previous Juvenile Justice (Care and Protection of Children) Act of 2000. This newer legislation addresses the needs of both vulnerable children in need of care and protection, as well as those involved in legal conflicts. According to this Act, a 'Child' and 'Juvenile' are defined as individuals under 18 years of age, while a 'child in conflict with law' is a young person accused or found guilty of committing an offense and is below 18 years old at the time of the offense<sup>49</sup>.

**Table 2.1 showing some distinctive feature of Juvenile Justice Act 1986, Juvenile Justice (Care and Protection of Children) Act,2000 and Juvenile Justice (Care and Protection of children) Act, 2015**<sup>50</sup>:

S. no	1986 legislation	The year 2000 legislation	2015 legislation

<sup>47</sup> Juvenile Justice (Care and Protection of Children) Bill, 2014 (draft bill, Aug 2014), available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>, last seen on 03-04-2024

<sup>48</sup> PRS Legislative Research, Legislative Brief, The Juvenile Justice (Care and Protection of Children) Bill, 2014, 1, available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>, last seen on 03-04-2024.

<sup>49</sup> Press Information Bureau, Government of India, Ministry of Women and Child development, The Juvenile Justice (Care and Protection of Children) Act, 2015 come into force from today, 2016, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134513>, last seen on 03-04-2024

<sup>50</sup> Dr. SS. Srivastava, Criminology, Penology and victimology, 471, (4th ed., 2012).

1.	A juvenile refers to a male individual who is below the age of 16 or a female individual who is below the age of 18.	Juvenile refers to an individual, regardless of gender, who is below the age of 18 years.	Juvenile refers to an individual who is under the age of 18, or under the age of 16 in the case of a very serious offense.
2.	The 1986 Act addressed both aspects.  Delinquent juveniles and neglected one	The 2000 Act was applied to the situation.  Adolescent engaged in a conflict with law and who are in need and protection	The 2015 Act is applicable to  Children engaged in conflict with the law and who are in need and protection.
3.	A 'delinquent juvenile' refers to a juvenile who has been determined to have committed a crime.	A "juvenile in conflict with the law" refers to a person under the age of eighteen who is accused of committing a crime.	A "juvenile in conflict with the law" refers to a person under the age of eighteen who is accused of committing a crime.
4	Corporal punishment was not provided.	Corporal punishment was not provided.	'Corporal punishment' refers to the deliberate use of physical discomfort as a kind of punishment in response to an offense, or for the aim of correcting or shaping a child's behavior. It is not here

5	<p>A "neglected juvenile" refers to a kid who-</p> <ul style="list-style-type: none"> <li>• Discovered engaging in the act of begging; or</li> </ul> <p>The child was discovered to be homeless, without a permanent residence or any apparent means of support, and in a state of destitution.</p> <ul style="list-style-type: none"> <li>• The individual had a parent or guardian who was deemed unsuitable or unable to exert authority over the minor; or</li> <li>• The individual resided in a brothel or cohabitated with a prostitute, or regularly visited establishments dedicated to prostitution, or was discovered in the company of a prostitute or any other individual engaged in immoral, intoxicated, or morally corrupt behaviour; or</li> </ul>	<p>A "child in need of care and protection" refers to a child-</p> <ul style="list-style-type: none"> <li>• A youngster discovered without a permanent residence or any visible means of support;</li> <li>• A child found begging and either living on the streets or engaged in labour</li> <li>• Who cohabits with an individual (regardless of whether they are a guardian or not) and said individual-</li> </ul> <p>a) An individual had made a credible threat to harm or cause injury to the child, and there was a substantial probability that the threat would be executed; or</p> <p>b) An individual who has caused the death, mistreatment, or neglect of one or more children, and there is a reasonable probability that the child</p>	<p>A "child in need of care and protection" refers to a child-</p> <ul style="list-style-type: none"> <li>• An individual who lacks a permanent residence or settled location to live, and does not own any apparent means of financial support;</li> <li>• Individuals who are discovered working in violation of current labour laws or are found begging or living on the streets; or</li> <li>• Individuals who live with someone (whether or not they are the child's guardian) and that person:</li> </ul> <p>a) Has harmed, exploited, abused, or neglected the child, or has violated any other laws currently in place to protect children; or</p> <p>b) Has made threats to kill, harm, exploit, or abuse the child, and there is a reasonable possibility</p>
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	<ul style="list-style-type: none"> <li>The individual was at risk of being subjected to abuse or exploitation for immoral, criminal, or unethical purposes or for unjustifiable personal gain.</li> </ul>	<p>in question will be subjected to harm, abuse, or neglect by that individual.</p>	<p>that the threats will be carried out.</p> <p>c) An individual who has caused the death, mistreatment, neglect, or exploitation of one or more children, and there is a reasonable probability that the child in question will be subjected to harm, abuse, exploitation, or neglect by the same individual.</p>
6	Juvenile Homes were provided.	Special Homes, Observation Homes, and After-Care Organizations	The available options for child care institutions include Open Shelter, Foster Care, Sponsorship, Observation Homes, Special Homes, Place of Safety, Children's Home, and aftercare services for children transitioning out of child care institutions.
7	There was no provision for offence which are heinous in nature	There was no provision for offence which are heinous in nature	The term 'heinous offences' refers to offenses for which the minimum punishment, as prescribed by the Indian Penal Code of 1860 or

			any other current statute, is a prison sentence of at least seven years.
8	The Board did not have any provision for conducting a preliminary assessment of heinous offenses.	The Board did not have any provision for conducting a preliminary assessment of heinous offenses.	<p>According to this Act, there is a provision for an initial evaluation of heinous crimes by the Board.</p> <p>'If a child above the age of sixteen is accused of a serious crime, the Board will evaluate their mental and physical capability to commit the offense, their understanding of the consequences of the offense, and the circumstances in which the offense was allegedly committed.'</p>

### **2.3 THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT BILL, 2021**

The Lok Sabha approved the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, aimed at enhancing and streamlining child protection and adoption provisions. This bill revises the Juvenile Justice (Care and Protection of Children) Act, 2015, focusing on children in conflict with the law and those in need of care and protection.

Here are the key amendments proposed by the bill:

- **Expansion of Serious Offences:** Serious offences now include crimes punishable with imprisonment exceeding seven years, or those where no minimum punishment is prescribed, or it's less than seven years. Previously, serious offences were defined as those carrying a punishment between three and seven years of imprisonment under the Indian Penal Code or any other relevant law.
- **Non-Cognizable Offences:** Offences punishable with imprisonment between three to seven years will now be considered non-cognizable under the amended bill.
- **Adoption Process:** Instead of the court, the District Magistrate (including Additional District Magistrate) will issue adoption orders, establishing the child's placement with the adoptive parents.
- **Appeals Process:** Individuals dissatisfied with adoption orders by the District Magistrate can file an appeal before the Divisional Commissioner within 30 days, with a mandate for swift resolution within four weeks.
- **Expanded Role of District Magistrates:** District Magistrates will now oversee the District Child Protection Unit and conduct quarterly reviews of Child Welfare Committee operations.
- **Designated Court:** All offences under the Juvenile Justice Act will be tried in children's courts.
- **Criteria for Child Welfare Committee Members:** Prospective members cannot have a record of human rights or child rights violations, convictions for morally reprehensible offences, previous dismissal from government service, or involvement in managing child care institutions within the district.
- **Removal of Members:** Committee members failing to attend consecutive CWC proceedings for three months without valid reasons or attending less than three-fourths of annual sittings may be terminated by the state government following an inquiry.<sup>51</sup>

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<sup>51</sup> <https://www.drishtias.com/daily-news-analysis/issue-with-the-juvenile-justice-amendment-act-2021> last seen on 05-04-2024



## **2.4 THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT BILL, 2022**

The Juvenile Justice (Care and Protection of Children) Act of 2015 was established with the goal of consolidating and revising laws related to children in conflict with the law and those in need of care and protection. The Act aims to meet the fundamental needs of these children through appropriate care, protection, development, treatment, and social reintegration. It adopts a child-friendly approach in adjudicating and resolving matters, ensuring decisions are made in the best interests of children, including their rehabilitation.

In 2021, the Juvenile Justice (Care and Protection of Children) Amendment Act introduced several changes to the principal Act, including modifications to section 86. Initially, section 86 stipulated that offenses punishable by imprisonment for three to seven years were cognizable and non-bailable. However, the amendment altered this provision, making such offenses non-cognizable and non-bailable. These changes impact serious offenses as defined under section 2(54) of the principal Act.

For Example, one such serious offense is the sale and procurement of children for any purpose (section 81), which is punishable by rigorous imprisonment for up to five years. Under the original Act, this offense was classified as cognizable, meaning the police were required to register a case and initiate an investigation. With the amendment, this offense has been reclassified as non-cognizable, requiring the aggrieved party to approach the appropriate court to seek an order for case registration and the commencement of an investigation. Given that these offenses target socially vulnerable children, it is unreasonable to expect these children or their parents to navigate the court system to register a case. While the new provision may reduce the number of registered offenses, it significantly undermines the Act's primary objective of providing "care and protection of children," as many offenses will likely go unreported.

Therefore, it is imperative to revoke the amendment to section 86 of the Act that reclassifies such offenses as non-cognizable and to reinstate the original provision as it was in the original Act.

## **CHAPTER 3**

# **INTERNATIONAL PERSPECTIVE OF JUVENILE DELINQUENCY LAWS**

### **3.1: JUVENILE DELINQUENT & LAW IN VARIOUS COUNTRIES**

In delinquency, young people globally exhibit similar behaviours. Despite varying social, political, and economic circumstances across nations, delinquency remains prevalent even in places without conflicts, famines, or disasters. It is suggested that in societies undergoing modernization, delinquency among adolescents, particularly those influenced by Westernization, may emerge as a natural consequence.

The UN Guidelines for the Prevention of Juvenile Delinquency (1990) assert that deviant behaviour among youth, diverging from societal norms, is often part of the developmental process and tends to diminish as individuals mature. Delinquency is increasingly viewed as a normal aspect of adolescence worldwide, with most young individuals engaging in minor transgressions during their childhood, which typically do not lead to lifelong criminality.

However, there are gender disparities in delinquency and criminal behaviour, with boys exhibiting higher rates than girls. Global police data indicate that the delinquency rate among boys is double that of girls, with ratios significantly skewed towards males. Cultural and familial factors contribute to these differences, with girls often facing stricter controls and societal intolerance toward their misbehavior compared to boys. In patriarchal societies, concepts of masculinity and dominance may reinforce aggression and violence among young men.

Despite the prevalence of individual delinquency, adolescents frequently form organized criminal groups. Peer influence plays a significant role, with subcultural communities of like-minded youth facilitating criminal activities. Research indicates that two-thirds of delinquency worldwide is perpetrated by young individuals, with larger and more populous nations experiencing greater impacts.

For instance, Russian data reveals significantly higher rates of child delinquency compared to adult criminality, with juvenile group crime peaking among 14-year-olds. Violent crimes such as rape, robbery, and theft are more common among adolescents, reflecting shared traits among this demographic.

Studies suggest that adolescent peer groups, characterized by hierarchy and cohesion, play a pivotal role in shaping delinquent behaviour. These groups often reject adult norms and values, instead integrating entertainment sector ideals with local or familial influences. Deviant subcultures within these peer groups may endorse behaviours such as substance abuse, risk-taking, and violence, providing an alternative social outlet for youth experiencing social concerns.

Ultimately, the environment significantly influences delinquent behaviour among adolescents, with peer groups and subcultures exerting considerable influence on both delinquent and pro-social behaviours.

### **3.2: Juvenile Justice System in United States**

About a century ago, the United States had established its juvenile justice system, aimed at safeguarding juvenile offenders from adult criminals through social welfare supervision and rehabilitation. However, significant policy shifts occurred during the 1960s, altering the fundamental principles of juvenile justice. Presently, the juvenile justice system in America serves as the primary framework for handling minor offenders, with involvement from law enforcement, judicial institutions, and correctional facilities for rehabilitating juvenile offenders.

The repercussions of these changes are manifold, impacting both children and their families. Proponents of youth justice advocate for early intervention in delinquency to mitigate future adult criminal behaviour. Nonetheless, the evolution of the US juvenile justice system has led to a shift towards punitive measures akin to those applied to adults, rather than focusing on rehabilitation.

The constitutional rights of teenage offenders in the criminal justice system are robust, yet the emphasis on rehabilitation has waned. As crime rates decline, there is a growing need for cost-effective juvenile justice systems that prioritize rehabilitation, particularly in affluent nations like the United States. Despite efforts to address juvenile delinquency, the US continues to grapple with high rates compared to other countries.

Statistics reveal a significant number of American teenagers involved in delinquency, with estimates suggesting that one in four of the country's 75 million teens in 2013 may have engaged in juvenile offenses. Additionally, instances of sexual abuse among US teens increased by two million between 2007 and 2009, highlighting ongoing challenges

Population projections indicate a continued rise in the youth demographic in the US until 2015, with government statistics predicting an increase to 101.6 million teenagers by 2050. Factors such as demographics, ethnicity, and lifestyle significantly influence juvenile delinquency rates, with disparities evident in poverty levels among different racial and ethnic groups.

Age of Juvenile in USA: The age of juveniles in the United States varies from state to state. In 43 states, the age of juveniles is considered to be 17 years old. However, five states— Georgia, Michigan, Missouri, Texas, and Wisconsin—consider the age of juveniles to be 16 years old. The remaining two states, New York and North Carolina, set the age of juveniles at 15 years old<sup>52</sup>. If a juvenile reaches the age of majority, they are considered an adult and are subject to adult laws.

### **Similarities and dissimilarities between Indian Juvenile Justice System and American Juvenile Justice System**

There are similarities and dissimilarities between Indian and American system. Both systems have some distinctive features. Table 3.1 shows comparison between these two systems.

<b>S. No.</b>	<b>Indian Juvenile Justice System</b>	<b>American Juvenile Justice System</b>
1.	In India the age of juvenile is same throughout the country. Initially the age of juvenile was considered to be of 18 years, but after amendment the age of 16 years has been introduced, but only in the heinous offences.	In America the age of juvenile varies from state to state. They follow three types of age groups i.e. 15 years, 16 years and 17 years.
2.	Separate Board i.e. JJB and CWC which hold the cases related to juveniles only has been established.	There is no such Juvenile Board set up in America as all the proceedings are managed by police itself.

<sup>52</sup> Anne Teigen, NCSL (National Conference of State Legislatures), (02/01/2017), available at <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>, last seen on 05-04-2024.

3.	Child to be treated in friendly manner.	Hearings can be conducted either in informal or formal way.
4.	Under Indian law, in case of heinous crime corporeal punishment can be provided.	There no such concept of heinous crime.
5.	The releasing or parole system is under the control of Juvenile Board.	Proper machinery dealing with parole system exists.
6.	Rehabilitation and reformative process to alter the conduct of the juvenile has been ensured.	America do follow it same
7.	Principle of beyond reasonable doubt should be followed by prosecution.	America also follow same principle

### **3.3: Juvenile justice system in United Kingdom**

English administrators in the criminal justice system are striving to address adolescent misconduct through means outside of criminal legislation. Despite gaining national attention, many reformists believe that teenage misbehaviour is transient and will decrease with age, advocating for differentiated treatment. Inspired by this perspective, reformists in England have implemented changes in the treatment of young offenders. The establishment of 70 English juvenile courts under the 1908 Children Act marked a departure from the public, formal, and authoritative nature of other courts. These specialized courts ensured the anonymity of the accused and minor witnesses, prohibiting the publication of photographs. Proceedings in juvenile courts were guided by the principle of guardianship, with the primary objective of providing care and protection to young offenders, removing them from harmful environments, and facilitating their education and training.

The 1933 Children and Young Offender Act expanded the jurisdiction of juvenile courts to include civil matters in addition to criminal cases, stipulating that children under the age of 10 could not be held responsible for any offense. In the criminal justice system, "child" refers to

individuals under 14 years old, while "young person" pertains to those between 14 and 18 years old. Subsequent legislation, such as the Children Acts of 1989 and 2004, defined a "child" as anyone under 18 years old. The primary objective of juvenile justice is to prevent juvenile offending.

Juvenile court proceedings could result in two outcomes: the offender might be permitted to return home upon discharge, payment of a fine, or compliance with attendance requirements at a designated center; alternatively, they could be placed in a correctional institution or borstal. The 1933 Children and Young Person Act established remand facilities in England for juveniles under 17, with similar provisions proposed for 17–21-year-olds under the 1938 English Criminal Justice Bill, which was ultimately stalled due to the outbreak of World War II. Remand facilities provided some level of protection for young adult offenders under the Criminal Justice Act of 1948. Subsequent reforms, such as the Criminal Justice Act of 1982, aimed to modernize and liberalize juvenile law in the UK<sup>53</sup>.

### **3.4: Juvenile Justice System in Saudi Arabia**

Saudi Arabia's penal laws, rooted in Sharia, are not codified. They encompass severe punishments such as the death penalty, corporal punishment, and life imprisonment, which are permissible for juvenile offenders. The country employs various laws to govern its juvenile justice system, including:

- Basic Law of Governance, 1992
- Detention and Imprisonment Act, 1978
- Detention Regulation and Juvenile Home's Regulation, 1975;
- Juvenile Justice Act, 1975;
- Law of Criminal Procedure, 2001; and
- The Juvenile Justice Regulation Act, 1969;

The minimum age of criminal responsibility for children ranges from 7 to 12 years, with exceptions for girls and cases governed by Qisas<sup>54</sup> laws. The Detention Regulation and Juvenile Home's Regulation of 1975 define a juvenile as "a child under 18 years of age." While the law stipulates that juveniles should be treated according to relevant laws and regulations, it is not

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<sup>53</sup> <https://www.ijcrt.org/papers/IJCRT2309720.pdf> last seen on 05-04-2024

<sup>54</sup> 'Qisas' is the kind of retributive punishment in nature that means 'eye for an eye'

mandatory for all juveniles to be treated as such in criminal cases. The decision to treat a juvenile as an adult in criminal proceedings depends on the judiciary's discretion and the physical development of the child<sup>55</sup>.

**Similarities and Dissimilarities between Saudi Arabian and Indian Juvenile Justice System:**

<b>S. No.</b>	<b>Juvenile Justice System in Saudi Arabia</b>	<b>Juvenile Justice System in India</b>
1.	In this Country the minimum age of criminal responsibility is 7 to 12 years old.	In India the minimum age of criminal responsibility is 18 years and 16 years in the case of heinous offences.
2.	They have adopted 7 laws related to juvenile offenders.	Only one law Juvenile Justice (Care and Protection of Children) Act,2015 deals with juvenile offenders.
3.	Capital punishment is legal in the cases child offenders.	There is no provision of capital punishment in the case of child.
4.	Corporeal punishment can be imposed to the child offenders.	There is no provision that Corporeal punishment can be imposed to the child.
5.	Life imprisonment is also legal for child offenders. They are kept in rehabilitation homes for reformation.	In India, in the case of heinous crimes for the child between the age group of 16-18, may be imprisoned for 7 years or more. In other cases,
		the child under 18 years to be kept in rehabilitation centers.

<sup>55</sup> Human Rights Watch, Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System, p.13 (2008).

6.	Order is passed by King only.	Order is passed by judges only.
7.	There are discretionary powers in hand of judges or ruler of the State.	In India, there are no discretionary powers in the hands of judges.
8.	Punishment is more retributive in nature.	Punishment is more reformative in nature.
9.	Quran or Hidith is the grundnorm of the Country.	Constitution is the grundnorm of the Country.

### 3.5: Juvenile Justice System in China

In China, a combination of informal and formal methods is used for social control. Formal control is particularly effective in dealing with juvenile offenders. Unlike adults, juveniles are subject to special laws and regulations tailored specifically for them. Key laws related to juvenile offenders include the Constitution and Criminal Justice Laws, as well as specialized laws such as the Juvenile Protection Law and the Juvenile Delinquency Prevention Law.

Prior to the 1980s, there were no specific laws for juvenile offenders in China. The introduction of the Shanghai Youth Protection Ordinance in 1987 marked a significant step in protecting juvenile offenders and establishing juvenile tribunals. The Criminal Code and Criminal Procedure Code are crucial laws addressing juvenile offenders, who are defined as individuals under the age of 18 according to the Juvenile Justice Law.

These laws create a clear distinction between the treatment of adults and juveniles. They define juvenile delinquency and outline the procedures for court proceedings and punishments for



juvenile offenders. The Juvenile Protection Law of 1991 and the Juvenile Delinquency Prevention Law of 1999 are particularly significant. The JPL of 1991 emphasizes prioritizing education over punishment for juveniles, reflecting a policy that focuses on rehabilitation and education as the primary responses to juvenile delinquency. It ensures that

- Administering court procedures with fairness and integrity.
- Safeguarding children in need of care and protection.
- Protecting juveniles. Ensuring their rights are upheld and respected<sup>56</sup>.

### **Juveniles are categorized into two groups:**

a) Delinquents

b) Offenders

Certain offenses are not punishable under China's Criminal Code, such as curfew violations, running away, disobedience to parents, and school truancy. However, offenses like theft, drinking, and assault are considered delinquent and are punishable under the Code. The JDPL, 1999, distinguishes between minor and serious behaviors of children.

### **Key Points:**

- **Article 14** of the JDPL Act defines some minor misbehaviors of children, including school truancy, unlawfully carrying a knife or blade, theft, pornography, and gambling.
- **Article 34** of the JDPL Act outlines serious misbehaviors, such as forming gangs and disturbing the peace, gang violence or forcible demands for property, involvement with obscene materials, and drug abuse.

The age of criminal responsibility for children is defined under the Criminal Code, 2011. According to this Act, the general age of criminal responsibility is 16 years. However:

- **Serious Crimes:** Children aged 14-16 who commit serious crimes like rape, murder, robbery, or causing explosions are held criminally liable.
- **Under 14 Years:** Children under 14 years are exempt from criminal liability.

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<sup>56</sup> 8 Ruohui Zhao, Hongwei Zhang and Jianhong Liu, China's Juvenile Justice: A system in Transition, p-148 (2015), available at file:///C:/Users/HARMESH%20LALA/Downloads/[2014]%20Juvenile%20Justice%20in%20China%20Chapter.pdf, last seen on 05/04/2024.

- Mitigated Punishments: Judges can impose lighter or mitigated punishments for children under 18 years. Delinquent juveniles aged 14-18 are subject to punishment, but courts cannot impose severe penalties<sup>57</sup>.

### **3.6: Juvenile justice system in Pakistan**

In Pakistan, a 'juvenile' is defined as a child under the age of 18 years. Several laws specify the term 'juvenile,' including:

Key Points:

**1. Juvenile Justice System Ordinance, 2000:**

At the time of the crime, the child should be below 18 years.

**2. Pakistan Penal Code, 1860:**

A child under 7 years is free from criminal liability.

A child between 7 and 12 years may have criminal liability depending on their conduct during the crime.

**3. Offence of Zina (Enforcement of) Ordinance, 1979:**

Sets the age of a child at 18 years.

**4. Code of Criminal Procedure, 1983:**

Considers the age of a child to be 15 years.

**5. Punjab Youthful Offender Ordinance, 1963:**

Considers the age of a child to be 15 years.

Juveniles are tried according to their School Leaving Certificate. The Juvenile Justice System Ordinance, 2000 (JJSO), provides provisions related to:

- Protection of the child
- Procedure of juvenile courts
- Proceedings related to juvenile offenders

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<sup>57</sup> Ibid at 150

- Establishment of juvenile courts
- Separation of juvenile trials from adult trials

The court must determine the age of the child through an inquiry, which is recorded along with a medical report.

The juvenile justice system in Pakistan has a somewhat retributive nature. Juveniles can be punished with imprisonment but not the death penalty, which is prohibited for juvenile offenders. However, in the case of heinous offenses, a child of 15 years or older may be arrested and subjected to severe punishment. In cases of brutal crimes or crimes against public morality, the court has the power to refuse bail and impose life imprisonment or the death penalty<sup>58</sup>.

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<sup>58</sup> Ashraf Ali, Juvenile Justice System Ordinance 2000 Judgments of Apex Court in Pakistan, p-7, available at file:///C:/Users/HARMESH%20LALA/Downloads/Juvenile\_Justice\_System\_in\_Pakistan.pdf, last seen on 14/04/2024.

## Chapter 4: International Organisation on Child Rights

### 4.1: Introduction

At the international level, the United Nations (UN) has adopted several conventions and frameworks to ensure the proper administration of juvenile justice systems worldwide. These international instruments serve as guiding principles for practitioners dealing with children's justice, helping them implement strategies more effectively. This chapter focuses on the international instruments adopted by the UN, addressing juvenile delinquency, the administration of juvenile justice, child-related policies and programs, and the rights of children in areas such as survival, development, and education.

### 4.2: Key International Instrument:

#### 4.2.1: United Nations Convention on the Rights of the Child (UNCRC)

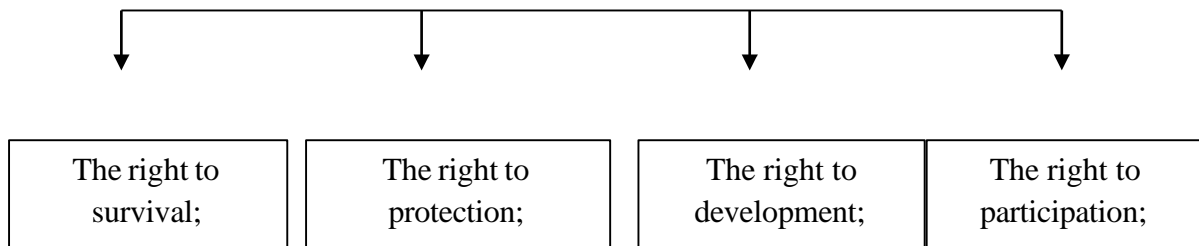
Adopted in 1989, the UNCRC is a comprehensive document that outlines the legally binding obligations of countries to protect children's rights. It plays a crucial role in guiding the administration of juvenile justice.

#### Key Articles:

- **Article 37:** Ensures that no child is subjected to torture, inhuman treatment, or punishment. It prohibits capital punishment and imprisonment for offenders under 18 years of age.
- **Article 40:** Recognizes the rights of every child accused of an offense to be treated with dignity, with their human rights and fundamental freedoms protected. It emphasizes the importance of considering the child's age and presumes innocence until proven guilty. The child's case must be resolved without delay by a competent, independent, and impartial authority according to the law<sup>59</sup>.
- **Article 54** of the United Nations Convention on the Rights of the Child (UNCRC) sets out comprehensive civil, political, economic, social, and cultural rights to protect every child within the states. These rights are fundamental to ensuring the well-being and development of children.

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<sup>59</sup> Dr. A. Selva Kumar and Dr. G. Kauranithi, *Child Rights: Issue and Problems*, 121, in *Human Rights and Gender Justice* (S. Gurusamy, 1st ed., 2010).



a) The Right to Survival:

This right includes the child's right to life, the highest attainable standard of health, proper nutrition, and adequate living standards. It also encompasses the right to a name and nationality. In many states, children as young as 7 or 8 work in beedi factories, severely impacting their physical and mental development<sup>60</sup>.

b) The Right to Protection:

This right protects children from exploitation, abuse, inhuman or degrading treatment, and neglect. It includes special protection in situations of emergencies and armed conflict. For example, children working in beedi factories are exploited both by their parents for family survival and by employers for profit. This exploitation must be prevented to safeguard children's rights.

c) The Right to Development:

This right includes access to education, support for early childhood development and care, security, and the right to leisure and cultural activities. In beedi factories, children often work all day, losing the innocent joy and happiness of childhood. They miss out on playing with friends and other forms of entertainment crucial for their development.

d) The Right to Participation:

This right includes the child's freedom of expression, speech, thought, religion, and other personal freedoms. In factory settings, girls and boys often work together without certain freedoms, and many activities are restricted for girls<sup>61</sup>.

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<sup>60</sup> Ibid, at 123.

<sup>61</sup> Ibid, at 124.

#### **4.2.2: UN Minimum Rules for the Administration of Juvenile Justice: The Beijing Rules (1985):**

The Beijing Rules provide comprehensive guidelines for the protection of children's rights within the juvenile justice system. They aim to ensure that children's needs are met and that their rights are safeguarded. This framework was the first instrument to comprehensively address the administration of juvenile justice<sup>62</sup>.

#### **4.2.3: UN Guidelines for the Prevention of Juvenile Delinquency: The Riyadh Guidelines (1990):**

The Riyadh Guidelines<sup>63</sup> focus on the prevention of juvenile delinquency and social reintegration. They recognize the need for new approaches and strategies at national, international, and regional levels to prevent juvenile delinquency. The guidelines also emphasize the importance of prevention policies and measures to address juvenile delinquency effectively.

#### **4.2.4: UN Resolution 1997/30: Administration of Juvenile Justice (Vienna Guidelines):**

Adopted in 1997<sup>64</sup>, this resolution is known as the Vienna Guidelines. It recognizes the importance of administering juvenile justice in line with the Convention on the Rights of the Child. The resolution highlights several key aspects, including:

- i. Ensuring that authorities handling juvenile cases are independent experts.
- ii. Prohibiting the criminalization of children below the legal age of criminal responsibility.
- iii. Prioritizing agencies and legal programs established for the protection of juveniles.

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<sup>62</sup> Supra 23, pg. 28.

<sup>63</sup> U.N. General Assembly, UN Guidelines for the Prevention of Juvenile Delinquency: the Riyadh Guidelines (1990), Res. 45/112, Sess. 45, U.N. Document A/RES/45/112, 1, (14/12/1990) available at <http://www.un.org/documents/ga/res/45/a45r112.htm>, last seen on 14/04/2024.

<sup>64</sup> U.N. General Assembly, UN Resolution 1997/30-Administration of Juvenile Justice (1997), Res. 1997/30, Sess. 30, UN Document A/RES/1997/30, (21/07/1997) available at <http://www.un.org/documents/ecosoc/res/1997/eres1997-30.htm>, last seen on 14/04/2024.

#### **4.2.5: Optional Protocols to the Convention on the Rights of the Child**

On May 25, 2000, in New York, the UN adopted three optional protocols to the Convention on the Rights of the Child (CRC):

1. Optional Protocol on the Involvement of Children in Armed Conflict:
  - This protocol stipulates that "no person under the age of 18 shall be subjected to compulsory recruitment into armed forces or conflict."<sup>65</sup>
2. Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography:
  - Adopted on January 18, 2002, this protocol provides provisions for protecting children from exploitation, including sale, prostitution, and pornography. It also establishes rules for addressing violations of these provisions.
3. Optional Protocol to the Rights of the Child on a Communication Procedure:
  - Adopted on April 12, 2014, this protocol sets out a specific procedure for children to file complaints regarding the violation of their rights. It allows children to communicate grievances by submitting written complaints<sup>66</sup>.

Key Points:

- The first two protocols focus on prohibiting the involvement of children in armed conflict and protecting them from various forms of exploitation.
- The third protocol provides a mechanism for individual complaints, allowing children to report violations of their rights directly.

These protocols enhance the CRC by addressing specific issues affecting children and providing frameworks for their protection and avenues for recourse in cases of rights violations.

#### **4.2.6: Other International Instruments**

The United Nations has also adopted additional international instruments to improve the treatment and management of prisoners and offenders. These include:

1. Standard Minimum Rules for the Treatment of Prisoners (1955):
  - Article 8: Separation of Categories:

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<sup>65</sup> Dr. H.O. Agarwal, Human Rights, 125 (15th ed., 2014)

<sup>66</sup> Ibid, 126.

- This article mandates the separation of prisoners based on categories. Men and women are to be kept in different prisons. Importantly, juveniles must be kept in separate facilities from adults to ensure their protection and appropriate treatment<sup>67</sup>.
2. UN Minimum Rules for Non-Custodial Measures (1990) (also known as the Tokyo Rules):
- These rules aim to enhance the criminal justice system and promote a sense of responsibility among offenders towards society. They encourage non-custodial measures as alternatives to imprisonment, which can contribute to rehabilitation and reintegration into society<sup>68</sup>.

Key Points:

- Standard Minimum Rules for the Treatment of Prisoners:
  - Emphasizes the importance of categorizing and separating prisoners to provide appropriate conditions and safeguards.
  - Ensures juveniles are not housed with adult prisoners, protecting their welfare and promoting better rehabilitation outcomes.
- UN Minimum Rules for Non-Custodial Measures (Tokyo Rules):
  - Focuses on improving the criminal justice system by promoting non-custodial measures.
  - Encourages measures that foster offenders' responsibility and facilitate their reintegration into society.

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<sup>67</sup> Article 8(d) of Standard Minimum Rules for the Treatment of Prisoners (1995).

<sup>68</sup> *Supra* 23, pg. 30.



# **CHAPTER 5 Legislative Provisions and Judicial Interpretation of Trial and Punishments of Juveniles in India**

## **5.1 Introduction**

"There can be no keener revelation of a society's soul than the way in which it treats its children."

-Nelson Mandela

The Juvenile Justice System is specifically tailored to address concerns pertaining to minors, encompassing trial, investigation, punishment, and rehabilitation. The fundamental idea of this system is that children must be handled distinctively from adults. The Juvenile Justice (Care and Protection of Children) Act of 2015<sup>69</sup> delineates the specific protocols for managing issues pertaining to minors in India<sup>70</sup>.

In India, the government has enacted multiple legislations to regulate the juvenile justice system. Notable among these are the Code of Criminal Procedure enacted in 1973, the Juvenile Justice Act passed in 2015, and the Indian Penal Code established in 1860. The statutes specify the authority of the Juvenile Justice Board, the permissible sanctions, the age requirements for juveniles, and the exact procedures to be adhered to in these circumstances.

## **5.2 Legislative Provisions in The Code of Criminal Procedure**

Section 27 of the Code of Criminal Procedure (Cr.P.C.) delineates the authority of Juvenile Courts in India, in accordance with the structure established by the Children Act of 1960. This provision stipulates that in the event that a minor offender, who is below the age of 16<sup>71</sup>, commits a crime that does not carry the penalty of death or life imprisonment, they can be prosecuted in the court presided over by the Chief Judicial Magistrate or any court formed under the Children Act of 1960. The clause guarantees that minors are managed within a system specifically tailored to accommodate their age and circumstances.

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<sup>69</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>70</sup> Dr. T.H. Khan, Juvenile Justice System in India: An Appraisal, 61, at 62, available at <http://www.delhihighcourt.nic.in/library/articles/Juvenile%20Justice%20system%20in%20India%20-%20an%20appraisal.pdf>, last seen on 15/04/2024.

<sup>71</sup> Session Judge, Tirunelveli, (1974) Cr. L.J. 261.

Furthermore, the Criminal Procedure Code (Cr.P.C.) contains rules that allow for the release of specific offenders on probation or after receiving an admonition<sup>72</sup>. More precisely, if an individual who is younger than 21 or a woman is found guilty of a crime that does not carry the penalty of death or life imprisonment, and there is no evidence of previous convictions, the court has the discretion to take into account factors such as the offender's age, character, past behaviour, and the specific details of the conduct. If the court determines it to be suitable, it may grant the offender probation based on their good behaviour. This entails entering into a bond, with or without sureties, to present oneself and accept a sentence if summoned within a maximum duration of three years, while also adhering to proper conduct.

In the case of *Somabhai vs. State of Gujarat*, the Supreme Court determined that the accused could not be awarded probation since there were no mitigating circumstances, even though the accused caused the death of a 10-year-old girl due to reckless and negligent driving. Nevertheless, if the perpetrator lacks any previous criminal history and is below the age of 21, the court has the authority to invoke Section 360 of the Cr.P.C. and contemplate probation as a viable alternative<sup>73</sup>.

Section 448 of the Criminal Procedure Code (Cr.P.C.) contains explicit regulations that pertain to individuals who are under the age of legal adulthood. As per this section<sup>74</sup>, if a minor is asked to provide a bond by a court or officer, the court or officer has the option to accept a bond that is entirely executed by surety or sureties. This ensures that minors are not excessively burdened by the bond requirements.

### **5.3 Legislative provisions outlined in the Juvenile Justice Act of 2015.**

The Juvenile Justice (Care and Protection of Children) Act of 2015 has specific regulations that govern the juvenile justice system in India. These provisions comprehensively delineate the functions, procedures, trials, responsibilities, and authorities within the juvenile justice framework.

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<sup>72</sup> S. 360, The Code of Criminal Procedure, 1973.

<sup>73</sup> *Md. Syad Ali vs. State of Gujarat*, 1989, Cr. L.J. 2063 (Guj).

<sup>74</sup> See S. 448 reads, "Bond required from minor."

An exceptional aspect of this act is the Juvenile Board, which functions with unique attributes specifically designed to meet the requirements of children. The elements encompass distinct hearings for matters involving minors, informal and confidential hearings, procedures for appeals from juvenile courts, and precautions against legal repercussions.

The Juvenile Board's functions are divided into two primary areas and are implemented throughout many courts. The Juvenile Board specifically handles procedures concerning children who have committed crimes, ensuring that their distinct circumstances and requirements are given special attention.

As to this legislation, issues pertaining to minors involved in criminal activities are dealt with by the 'Juvenile Justice Board,' whilst situations linked to children who require care and protection are managed by the 'Child Welfare Committee.'

Within this particular framework, the term 'Board'<sup>75</sup> specifically denotes the 'Juvenile Justice Board' that has been instituted in accordance with 'Section 4' of the aforementioned legislation. On the other hand, a 'Committee'<sup>76</sup> refers to the 'Child Welfare Committee' that is constituted under 'Section 27' of the same Act. These entities are vital elements of the juvenile justice system, each with specific duties to ensure the welfare and proper handling of minors according to the law.

### **5.3.1 Justice Board for Juvenile**

Chapter III of this Act pertains to the formation and operations of the 'Juvenile Justice Board.' It is required that every juvenile who is accused must be presented before this board. The main objective of these processes is to revamp and restore juvenile offenders, with a focus on addressing their distinct requirements and situations.

These boards differ from conventional courts because they are solely focused on handling cases involving juveniles. The establishment of the first juvenile court in India may be traced back to 1927 in Bombay, a presidential town. At first, these courts functioned for a restricted

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<sup>75</sup> S. 2(10), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>76</sup> S. 2(22), Juvenile Justice (Care and Protection of Children) Act, 2015

duration during the day, usually inside regular business hours.

During these legal proceedings, the magistrate has a crucial role in evaluating both the age of the accused and if they have indeed committed the alleged offense. As a result, social workers have the authority to evaluate the process of rehabilitating and reforming the juvenile depending on the specific circumstances of the case and the juvenile's behaviour<sup>77</sup>.

According to the Act, it is required for the state government to create a juvenile board in each district. This board is responsible for carrying out duties and exercising authority for minors who have committed offenses under this Act. Section 4(1) of the Act has a non-obstante clause, indicating that it has priority above any provision of the Code of Criminal Procedure, 1973. In essence, this language suggests that the regulations outlined in the Juvenile Justice Act, 2015, take precedence over those in the Cr.P.C., making them not applicable to issues controlled by the former.

### **5.3.2 Structure of the Juvenile Justice Board:**

The Juvenile Justice Board consists of either a 'Metropolitan Magistrate' or a 'Judicial Magistrate of First Class', both of whom must have at least three years of experience, as well as two social workers, one of whom must be female<sup>78</sup>. According to this Act, social workers must possess a minimum of seven years of active engagement in health, education, or welfare activities related to children, or they must be practicing professionals with a degree in child psychology, psychiatry, sociology, or law<sup>79</sup>.

The Act outlines the specific criteria that would result in the disqualification of individuals from becoming members of the Board. Membership eligibility excludes anyone who:

- a) Have a prior history of infringing upon human rights.
- b) Must not have any convictions for offenses involving moral turpitude, unless the conviction has been overturned or a complete pardon has been issued.

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<sup>77</sup> Role of the Juvenile Justice Board, 1, available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/12/12\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/12/12_chapter%206.pdf), last seen on 18/04/2024.

<sup>78</sup> S. 4(2), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>79</sup> S. 4(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

- c) Have been terminated or expelled from employment by the Central Government, State Government, or any government-owned corporation.
- d) Have committed acts of child abuse, employed child labor, or engaged in any other violation of human rights or immoral behaviour<sup>80</sup>.

The State Government is required to provide comprehensive training and awareness sessions, especially for the Principal Magistrate of the Board, within 60 days of their appointment. This training should cover topics such as care, protection, rehabilitation, legal provisions, and justice for children<sup>81</sup>.

Membership on the Board may be revoked following an investigation by the State Government, unless the Principal Magistrate is involved,

- a) if the member is proven to have abused the authority granted by this Act.
- b) The member is absent from Board proceedings for three consecutive months without a valid reason.
- c) The member fails to attend fewer than three-fourths of the sittings in a year<sup>82</sup>.

### **5.3.3 Power, function and responsibilities of the Juvenile Justice Board under the JJ Act 2015:**

Section 8<sup>83</sup> of the Juvenile Justice Act of 2015 outlines the authority, duties, and obligations of the Juvenile Justice Board. Some examples of these are:

The Juvenile Justice Board is responsible for carrying out several roles and duties.

- (a) Guaranteeing the child and their parent or guardian's active engagement and well-informed participation at each phase of the process<sup>84</sup>.

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<sup>80</sup> S. 4(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>81</sup> S. 4(5), Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>82</sup> S. 4(7), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>83</sup> S. 8(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>84</sup> S. 8(3)(a), Juvenile Justice (Care and Protection of Children) Act, 2015

(b) Ensuring the protection of the child's rights throughout all stages of the process, including apprehension, investigation, aftercare, and rehabilitation.<sup>85</sup>

(c) Guaranteeing the child's access to legal aid through legal service institutions<sup>86</sup>.

(b) Furnishing an interpreter or translator, as needed, to aid the child in comprehending the proceedings<sup>87</sup>.

(e) Conducting a social investigation by the Probation Officer, Child Welfare Officer, or social worker to determine the specific details and context of the reported offense<sup>88</sup>.

(f) Adjudicating and resolving matters involving minors who have violated the law in accordance with the prescribed investigation procedure<sup>89</sup>.

(g) If children who are accused of breaking the law are also considered to be in need of care and protection, their cases will be sent to the Child Welfare Committee<sup>90</sup>.

(h) Issuing a conclusive directive that include a personalized care strategy for the child's restoration, with subsequent monitoring by pertinent authorities<sup>91</sup>.

(i) Conducting investigations to identify appropriate guardians for juveniles involved in criminal activities<sup>92</sup>.

(j) Performing monthly inspections of residential facilities for juveniles involved in criminal activities and providing recommendations for enhancements to the appropriate authorities<sup>93</sup>.

(k) Instructing the police to file a First Information Report (FIR) for crimes committed against

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<sup>85</sup> S. 8(3)(b), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>86</sup> S. 8(3)(c), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>87</sup> S. 8(3)(d), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>88</sup> S. 8(3)(e), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>89</sup> S. 8(3)(f), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>90</sup> S. 8(3)(g), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>91</sup> S. 8(3)(h), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>92</sup> S. 8(3)(i), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>93</sup> S. 8(3)(j), Juvenile Justice (Care and Protection of Children) Act, 2015

youth involved in illegal activities<sup>94</sup>.

(l) Instructing the police to file a First Information Report (FIR) for crimes committed against children who require care and protection, upon receiving a written complaint from the Committee<sup>95</sup>.

(m) Conducting routine inspections of adult jails to identify and relocate any children who are detained there to observation homes<sup>96</sup>.

(n) Carrying out any additional duties as mandated by legislation<sup>97</sup>.

#### **5.3.4. Procedure in relation to Board:**

The protocol pertaining to the Juvenile Justice Board is delineated in the Juvenile Justice (Care and Protection of Children) Act of 2015<sup>98</sup>. The Board holds meetings at predetermined intervals and follows regulations set forth in the Act for subjects falling under its authority. If a juvenile offender requires emergency attention and the Juvenile Board is not currently in session, they can be brought before a single member of the Board for consideration<sup>99</sup>.

It is crucial to note that the attendance of all Board members is essential during court proceedings in order for any orders pertaining to matters under the Act to be considered lawful. The Court's ruling is deemed invalid if any member is absent, underscoring the significance of complete Board participation during proceedings<sup>100</sup>.

When disagreements emerge or diverse perspectives exist among Board members, the prevailing opinion is determined by the majority. If a consensus cannot be reached by the majority, the viewpoint of the Principal Magistrate is given priority<sup>101</sup>. These provisions align

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<sup>94</sup> S. 8(3)(k), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>95</sup> S. 8(3)(l), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>96</sup> S. 8(3)(m), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>97</sup> S. 8(3)(n), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>98</sup> S. 7, Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>99</sup> S. 7(2), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>100</sup> S. 7(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>101</sup> S. 7(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

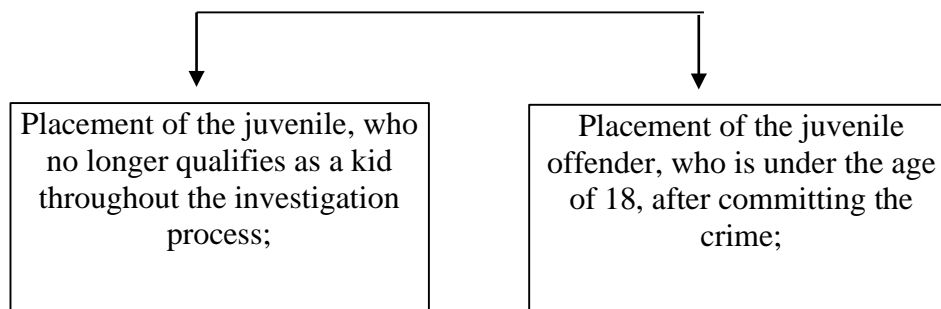
with the ones specified in the preceding Juvenile Justice (Care and Protection of Children) Act of 2000.

In addition, Section 9 of the JJ Act, 2015, outlines the particular procedures that a Magistrate must take if they do not have explicit authority under the Act. If a Magistrate concludes that the individual presented before them is a minor, they are obligated to expeditiously transfer the minor, together with the legal proceedings, to the relevant Juvenile Board that has the authority to handle such cases<sup>102</sup>.

Upon receiving the case, the Board conducts an inquiry and collects relevant evidence, excluding affidavits, to establish the age of the juvenile or child. If a violation is established, the Board has the authority to impose a suitable directive and penalty. The Board may provide protective custody of the kid if it is judged necessary throughout the inquiry process.

### 5.3.5 Child Placement during the Proceedings:

The JJ Act 2015 has two distinct types of placements for juveniles or children during legal processes.



a) Placement of the juvenile, who ceases to be considered a child throughout the inquiry process<sup>103</sup>: This is the inaugural system established under the Juvenile Justice Act of 2015. The Board is authorized to initiate an inquiry regarding an individual. If the individual is above 18 years old at the time of the inquiry, the Board will proceed with the investigation and may issue orders pertaining to the individual as if they were still a minor.

<sup>102</sup> Juvenile Justice (Care and Protection of Children) Act, S 9(1) , 2015.

<sup>103</sup> Juvenile Justice (Care and Protection of Children) Act, S 5, 2015.



b) Placement of a juvenile who committed a crime when they were under the age of 18<sup>104</sup>: Once an individual reaches the age of 18 and is apprehended for committing a crime. However, if an individual has not yet reached the age of 18, they will be subject to an investigation in accordance with this legislation. If an individual is determined to be ineligible for bail as per sub-section (1), they must be detained in a secure facility as determined by the Board. The individual shall be handled in accordance with the procedures outlined in this Act.

### **5.3.6 Protocol pertaining to Juveniles in Violation of the Law:**

Section IV of the Juvenile Justice Act, 2015 establishes the protocol concerning youngsters who are involved in criminal activities.

i Section 10 of this Act outlines the protocol for apprehending a youngster who claims to be engaged in unlawful activities. Such a youngster may be apprehended by law enforcement and then placed under the jurisdiction of either the Special Juvenile Unit or the Designated Authority. The Child Welfare Police Officer must appear before the Juvenile Justice Board within 24 hours of the children's arrest, not including travel time<sup>105</sup>. This section empowers the State Government to establish regulations for all processes.

ii. Section 11 states that the person who is responsible for a kid in dispute with the law, while the order is in effect, will have the same responsibilities as a parent and will be accountable for the child's upkeep.<sup>106</sup>

iii. Another procedure is to provide bail to the person who is in conflict with the law<sup>107</sup>. If a kid commits a crime that is either bailable or non-bailable, they will be arrested by the police or brought before the Juvenile Board. In such cases, the child may be released either with or

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<sup>104</sup> Juvenile Justice (Care and Protection of Children) Act, S 6, 2015.

<sup>105</sup> One provision stated in this Act is that under no circumstances can a juvenile who has committed a crime be placed in a lock-up or jail.

<sup>106</sup> This section includes a provision that states that the child will remain under the care of the specified person for the duration determined by the Board, even if the parents or any other person claim the child. However, the Board may allow the parents or any other person to take charge of the child if they are deemed suitable by the Board.

<sup>107</sup> S. 12, Juvenile Justice (Care and Protection of Children) Act, 2015.

without a guarantee (surety), or they may be placed under the supervision of a probation officer or entrusted to the care of a suitable individual<sup>108</sup>. If an individual is not granted bail by the police, it is the responsibility of the police to send the individual to observation homes in accordance with the defined procedure until they can be presented before the Juvenile Board<sup>109</sup>. During the period of the inquiry, the individual should be kept in observation homes<sup>110</sup>. In addition to this section, the provisions also indicate the period of the bail. If any individual, whether an adult or a minor, fails to comply with the terms of the bail order within a period of 7 days, that individual shall be brought before the Board to modify the conditions of their bail<sup>111</sup>.

iv. Additionally, this Act delineates regulations pertaining to the disclosure of information to parents, guardians, or probation officers regarding the child's arrest<sup>112</sup>. According to this section, the Child Welfare Police Officer (CWPO) from the police station or special juvenile police unit where the child is brought, must provide information:

a) The parents or guardians of the children, if they can be readily located, should be informed of the child's involvement in a legal dispute and instructed to appear before the Board during the child's presentation.

b) The probation officer, or in the absence of a probation officer, the Child Welfare Probation Officer (CWPO), must prepare and submit a report to the Board within 2 weeks. This report should include information about the family background and any other relevant circumstances that may assist the Board in conducting its investigation.

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<sup>108</sup> In this section, there is a provision that states that a person cannot be released or set free on reasonable grounds if there is a strong belief that the person is a criminal or poses a threat to their own moral, physical, or psychological well-being. Additionally, if the person's release will undermine the pursuit of justice, they cannot be released.

<sup>109</sup> See Juvenile Justice (Care and Protection of Children) Act, S 12(2), 2015.

<sup>110</sup> See Juvenile Justice (Care and Protection of Children) Act, S 12(3), 2015.

<sup>111</sup> See Juvenile Justice (Care and Protection of Children) Act, S 12(4), 2015.

<sup>112</sup> See Juvenile Justice (Care and Protection of Children) Act, S 13, 2015.

#### v. Inquiry

The Juvenile Board shall conduct an inquiry regarding the age of the child involved in the legal conflict<sup>113</sup>. The inquiry must be concluded within a 4-month timeframe starting from the date when the kid is presented before the Juvenile Board. The Board has the authority to extend the time period by an additional two months, based on the circumstances of the case<sup>114</sup>. The Board will provide a clear explanation for the extension. An investigation will be carried out regarding the preliminary assessment of a serious offense under Section 15 of this Act. The Board must resolve the inquiry within a 3-month period from the date the kid was presented before the Board<sup>115</sup>. The investigation into minor offenses committed by a juvenile shall be stopped, even if the time limit is extended as specified in subsection (2) of this Act<sup>116</sup>. The Board will undertake the following measures to ensure a just and expeditious investigation under this legislation, specifically;

- Children who are involved in criminal activities should not be subjected to any form of mistreatment by police officers, advocates, probation officers, or any other individuals. The board has the authority to implement measures to safeguard children from mistreatment.
- The inquiry shall be conducted in a straightforward manner and in a child-friendly atmosphere before the Board. The child has the right to be given the chance to express their views and should be involved in any investigation or examination.
- Inquiry regarding a Heinous offence:

If the child is under the age of 16 at the time the offense was committed, the matter will be handled by the Board. If the child is beyond the age of 16, the kid will be prosecuted in accordance with Section 15 of this Act.

vi. Section 15 delineates the initial evaluation of heinous crimes by the Board. If a child who is 16 years old or older is accused of committing a heinous crime, the Board will evaluate their mental and physical ability to commit the offense, their understanding of the consequences of

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<sup>113</sup> See Juvenile Justice (Care and Protection of Children) Act, S 14, 2015.

<sup>114</sup> See Juvenile Justice (Care and Protection of Children) Act, S 14(2), 2015.

<sup>115</sup> See Juvenile Justice (Care and Protection of Children) Act, S 14(3), 2015.

<sup>116</sup> The proviso of this section states that for serious offence, if the board require additional time to complete the inquiry, the chief judicial magistrate or metropolitan magistrate as the case may be may grant extension, provide reason in recording.

the offense, and the circumstances in which the offense was allegedly committed. If any offense is established during the preliminary assessment process, the Board will proceed with the trial in summon cases as specified in the Criminal Procedure Code (Cr. P. C.).

**vii.** Another procedural requirement regarding children is the review of pending inquiries. The Chief Judicial Magistrate or Chief Metropolitan Magistrate has the authority to evaluate the pending cases of the Board every three months<sup>117</sup>.

**viii.** Another step involves issuing orders pertaining to minors who are discovered to be in conflict with the law. If, during an investigation<sup>118</sup>, it is determined that a child has committed any type of offense, whether minor or major, or if a kid under the age of 16 has committed a particularly heinous offense, the court will make a decision based on the specific circumstances of the case. If deemed appropriate by the Board, they may also issue an order.

- The board will permit the children to return home following an investigation and psychotherapy session including the child and their family or guardians.
- The board will instruct the child to participate in group counselling and similar activities.
- The Board has the authority to issue an order for the execution of a public service, which must be carried out by an institution or a specific individual, individuals, or group of individuals designated by the Board.
- To grant custody of a child to a responsible adult, such as a parent, guardian, or suitable individual, and require them to sign a bond, with or without a guarantor, as determined by the Board, to ensure the child's good behaviour and welfare for a maximum period of three years. The child will then be placed under the supervision and guidance of a suitable facility to ensure their continued good behaviour and well-being for a period not exceeding three years.
- In order to direct the placement of a child in observation homes or special homes for a maximum period of 3 years, it is essential to ensure the provision of necessary facilities such as reformatory services, education, skill development, counselling, and psychiatric support to modify behaviour during their stay in the special homes.

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<sup>117</sup> See Juvenile Justice (Care and Protection of Children) Act, S 16, 2015.

<sup>118</sup> See Juvenile Justice (Care and Protection of Children) Act, S 18, 2015.

If the Juvenile Board issued the order on the aforementioned characteristics, the Court<sup>119</sup> has the authority to issue the order with certain modifications in order to-

- Grant permission to enrol in the school;
- Grant permission to enrol in the vocational training center;
- Grant permission to enrol in the therapeutic facility;

If, upon initial evaluation, it is determined that it is necessary for the juvenile to be tried as an adult, the board has the authority to transfer the case to the children's court with appropriate jurisdiction<sup>120</sup>.

**ix. Power of Children Court:** the Children's Court is granted many authorities under the Act<sup>121</sup>. When matters are submitted to the Children Court for preliminary assessment, the Court has the authority to make the following decisions:

- According to the provisions of Cr.P.C. 1973, the child should be treated as an adult. They have the authority to issue accurate orders after trials and ensure that the trials are fair and conducted in a child-friendly setting.
- If a child is not to be considered as an adult, the court may issue an order in accordance with Section 18 of this Act after conducting an inquiry.

Upon issuing the final order, the Court must incorporate an individual care plan for the rehabilitation of children, which includes monitoring by either the probation officer, the District Child Protection Unit, or a Social Worker in relation to the delinquent children<sup>122</sup>. Following the legal proceedings, the youngster will be taken to a rehabilitation center until they

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<sup>119</sup> See Juvenile Justice (Care and Protection of Children) Act, S 18(2), 2015.

<sup>120</sup> See Juvenile Justice (Care and Protection of Children) Act, S 18(3), 2015.

<sup>121</sup> See Juvenile Justice (Care and Protection of Children) Act, S 10, 2015.

<sup>122</sup> See Juvenile Justice (Care and Protection of Children) Act, S 19(2), 2015.

reach the age of 21. After that, they will be moved to a correctional facility<sup>123</sup>. The child is protected from any form of mistreatment in both the jail and rehabilitation programs.

## **5.4 CHILD WELFARE COMMITTEE**

The Child Welfare Committee is the sole group responsible for addressing the needs of children requiring care and protection. This Committee addresses issues pertaining to the provision of treatment, rehabilitation, and care for children, as well as ensuring their fundamental needs are met and their human rights are protected. Additionally, the Committee is responsible for rescuing children in need.<sup>124</sup>

The establishment prioritizes the child's best interests and ensures a child-friendly environment<sup>125</sup>. Chapter V of the Juvenile Justice (Care and Protection of Children) Act, 2015 outlines the regulations of the Child Welfare Committee (CWC) and specifies the authorities and tasks assigned to it.

### **5.4.1 Constitution of CWC**

The Child Welfare Committee's constitution has been established in each area. This committee takes proactive measures to assure the care and safety of children. Additionally, it mandates that all committee members get educational training and sensitization within 2 months of being notified. The composition of this committee shall consist of a Chairperson and four members, who will be selected by the State Government. At least one woman with expertise in child-related problems is required among the four members<sup>126</sup>.

According to this legislation, the District Child Protection (DCP) is required to provide a secretary and other staff members to assist the committee with administrative tasks for their

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<sup>123</sup> The proviso of this section stipulates that reformatory services, including educational services, skill development, alternative therapies such as counselling, behaviour modification, and psychiatric support, shall be provided to the child during their stay in the place of safety.

<sup>124</sup> *Special Police Unit for Women and Children*, Child Welfare Committee, available at [http://www.dpju.com/index.php?option=com\\_content&view=article&id=53&Itemid=161](http://www.dpju.com/index.php?option=com_content&view=article&id=53&Itemid=161), last seen on 20/04/2024.

<sup>125</sup> Trishla Jasani, *Role of the Child Welfare Committee*, available at <http://www.childlineindia.org.in/role-of-child-welfare-committee.htm>, last seen on 20/04/2024.

<sup>126</sup> See Juvenile Justice (Care and Protection of Children) Act, S 27(2), 2015.

internal operations<sup>127</sup>. The appointment of members to the Committee is subject to certain conditions. Specifically, individuals must have at least 7 years of active involvement in health, education, or welfare activities related to children, or possess a professional degree in child psychology, psychiatry, law, sociology, or human development<sup>128</sup>. This Section specifies the duration of the members' term on the Committee. The individuals serving on this Committee will be appointed for a duration of 3 years<sup>129</sup>. Section 27, sub-section (7) of this Act outlines the specific criteria for impeaching or terminating a member from the Committee. The prevailing circumstances are as follows:

- If they discover any individuals responsible for the misuse of their authority in accordance with this legislation;
- If they have committed any acts of moral turpitude or have not received a complete pardon for such offenses;
- If an individual is absent from the Committee's meetings for three consecutive months without a valid reason, or if they are present for less than three-fourths of the total sittings in a year, they will be considered to have failed to attend.

#### **5.4.2 Responsibility, power and Function of CWC**

The Child Welfare Committee possesses the authority to handle cases pertaining to the well-being, safeguarding, and advancement of children, including their treatment and rehabilitation. Additionally, the committee is responsible for ensuring the provision of basic necessities and safeguarding the human rights of children in need of care and protection, as mandated by this legislation<sup>130</sup>.

This legislation also delineates the functions and obligations outlined in Section 30 of this Act, which are as follows:

- a) To acknowledge and summon the kid before the Committee;

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<sup>127</sup> See Juvenile Justice (Care and Protection of Children) Act, S 27(3), 2015.

<sup>128</sup> Section 27(4) of JJ Act, 2015.

<sup>129</sup> See Juvenile Justice (Care and Protection of Children) Act, S 27(6), 2015.

<sup>130</sup> Section 29 of JJ Act ' powers of the committee'

- b) Investigating all matters pertaining to and impacting the safety and welfare of the children under this legislation;
- c) To instruct Child Welfare Officers, Probation Officers, District Child Protection Units, or Non-Governmental Organizations to conduct a social investigation and submit a report to the Committee;
- d) To investigate matters pertaining to children that require care and protection;
- e) To determine the placement of a child in foster care;
- f) To provide crucial guidance to parents or guardians in overseeing the care, safety, and appropriate rehabilitation of a child who need care and protection:
- g) Choosing a recognized institution to place each kid who requires institutional help, taking into consideration their age, gender, disability, and specific needs, while also considering the capacity of the institution.
- h) To fulfill a minimum of two inspections per month in observation homes or rehabilitation institutions for children in need of care and protection, and offer recommendations on the quality of service to the District Child Protection Unit (DCPU) and the State Government.
- i) To establish that orphaned, abandoned, and surrendered children will be legally eligible for adoption following a thorough examination;
- j) To initiate proactive action by a minimum of three committee members in cases of cognizable offenses;
- k) Implementing measures to rehabilitate sexually abused children who have been identified as children in need of care and protection by the Special Juvenile Police Unit or local police, in accordance with the Protection of Children from Sexual Offences Act, 2012;
- l) Any other duties and obligations that are specified in this legislation;

### **5.4.3 Procedures regarding the care and protection of a child in need:**

Chapter VI outlines the protocol for providing care and protection to children in need as specified in this Act. Section 31 outlines the procedural requirements for the production of a child before the Committee. A kid may be presented before the Committee by any of the following individuals:



- a) A police officer, Special Juvenile Police Unit, designated kid Welfare Police Officer, officer of District Child Protection Unit, or Inspector appointed under current labour legislation.
- b) Any individual employed in a governmental position;
- c) Childline Services or any voluntary or non-governmental organization or any agency recognized by the State Government;
- d) Child Welfare Officer or probation officer;
- e) Any individual who is a social worker or a civic-minded citizen;
- f) By the children themselves; or
- g) Any nurse, physician, or administrator working in a nursing home, hospital, or maternity facility<sup>131</sup>;

The State Government is required to establish regulations that are essential for this Act to specify the procedure for submitting the report to the Committee, as well as the option of placing the kid in a children's home during the inquiry process<sup>132</sup>. This document provides more details regarding the protocol for mandatory reporting in cases where a kid is discovered to be separated from their guardian<sup>133</sup>. An investigation will be carried out in accordance with Section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which pertains to a child who requires care and protection. The special investigation and inquiry into shelter houses will be concluded within 15 days, allowing the Committee to issue a final order within 4 months from the commencement of the Children's production. If the committee determines, after conducting an inquiry or investigation, that a child requires the support of a family, and the kid is under the age of 6 years, the child may be placed in a 'Specialized Adoption Agency'. The child is placed in a children's home, a suitable institution, or a foster family until adequate methods of rehabilitation are identified or until they reach the age of 18. The Committee is required to provide a quarterly report to the District Magistrate regarding the handling and status of cases pertaining to the kind of offense and the resolution of pending cases.

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<sup>131</sup> The condition stated in this Section is that the kid must be presented before the committee promptly before 24 hours excluding travel time.

<sup>132</sup> Juvenile Justice (Care and Protection of Children) Act, S 31(2), 2015.

<sup>133</sup> Juvenile Justice (Care and Protection of Children) Act, S 32, 2015.

#### **5.4.4 Order according to the committee's decision:**

Upon receiving the report from the Child Welfare Officer, the Committee will proceed to issue the required subsequent instructions, which are as follows:

- a) To assert that a kid need care and safeguarding;
- b) Reunification of the child with their family or guardians, with or without the involvement of a Child Welfare Officer or designated social worker;
- c) To place the kid in child care homes or appropriate facilities or Specialized Adoption Agency for either long-term or temporary care, with the aim of reintegrating the child into the family that is most beneficial for the child's well-being;
- d) To instruct individuals or organizations to offer care, safeguarding, and restoration to the youngsters. Other directions include promptly addressing shelter and service's needs, such as medical attention, psychiatric and psychological support, counselling tailored to individual needs, occupational therapy or behaviour alteration therapy, skill development training, legal assistance, educational services, and additional enrichment activities. These measures should be implemented as required, and ongoing monitoring and coordination with the District Child Protection Unit (DCPU), State Government, and other relevant agencies should be ensured.
- e) The Committee is authorized to provide supplementary directives pertaining to-
  - Assessing the individual's suitability for placement in foster care;
  - Providing support and assistance to a child who resides in a care institution after they leave.

### **5.5 Provision for juvenile delinquents under Indian Penal Code**

The Indian Penal Code (IPC) contains specific provisions pertaining to children. There are many provisions in the Indian Penal Code (IPC) that exempt children from being penalized if they are below a certain age. Sections 82 and 83 of the Indian Penal Code provide young offenders with protection against being held criminally responsible. This immunity might be examined in relation to the notion of juvenile justice<sup>134</sup>.

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<sup>134</sup> See Gopinath Ghosh vs. State of West Bengal (1984) SC 237; Gaurav Jain vs. Union of India (1997) SC 3021; Satto vs. State of Uttar Pradesh (1979) SC 1519.

### **5.5.1 Legal provision regarding the actions of children under the age of seven**

Section 82 assumes that a child under the age of 7 years is incapable of forming criminal intent, sometimes known as *doli incapax*<sup>135</sup>. It states that a child lacks the capacity to comprehend the distinctions between right and wrong<sup>136</sup>. Put simply, he lacks the cognitive ability to comprehend the nature, circumstances, or repercussions of the offense. This premise is absolute and irrefutable. In this section, a child cannot be held responsible for a criminal offense, even if they have committed an offense with criminal intent before the age of 7 years.

### **5.5.2 Child between the ages of seven and twelve**

Section 83 assumes that a kid who is older than 7 years but less than 12 years is capable of forming criminal intent (*doli capax*)<sup>137</sup>. The assumption can be refuted by the cunning and calculated behaviour of the children. The prosecution bears the responsibility of providing sufficient evidence to establish, beyond a reasonable doubt, that the kid in question committed an act with the necessary mental state (*mens rea*).

In the *Kalka Prasad v State of Uttar Pradesh*<sup>138</sup>, the court determined that individuals above the age of 12 are not exempt from criminal responsibility, regardless of their limited intellectual capacity or inability to comprehend the nature and repercussions of their actions. In the case of *Hiralal Mallick v State of Bihar*<sup>139</sup>, the court determined that if a child is older than 12 years, the matter of their age does not become irrelevant. The issue of his youth and level of comprehension will be relevant in determining the terms to be imposed upon him following his conviction.<sup>140</sup>

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<sup>135</sup> *Doli incapax* is a legal term which means child is capable of committing a crime and cannot be guilty of any offence.

<sup>136</sup> PSA Pillai's, *Criminal Law*, 93 (12<sup>th</sup> ed., 2016).

<sup>137</sup> *Doli capax* is a legal term which means child is capable to committing the crime and depend upon his maturity of understanding and nature of the offence.

<sup>138</sup> *Kalka Prasad v State of Uttar Pradesh*, (1959) All 698.

<sup>139</sup> *Hiralal Mallick v State of Bihar*, (1977) SC 2236.

<sup>140</sup> *Ibid*, at 94.

### **5.5.3 Immunity of individuals under the age of 18, often known as juveniles.**

As per the Indian Penal Code (IPC), a child is considered fully responsible and liable for their actions if they commit a crime and are treated as an adult. However, under the Juvenile Justice (Care and Protection of Children) Act 2015, a juvenile is exempt from responsibility until they reach the age of 18, or 16 in the case of heinous crimes. Throughout Indian history, there have been several legislations has been enacted to ensure the optimal care and protection of children. Furthermore, instead of being subjected to punishment, young offenders are transported to rehabilitation facilities<sup>141</sup>.

The issue surrounding the determination of the age of juveniles is very contentious due to the lack of clarity in legally defining the age at which juveniles can be held criminally responsible<sup>142</sup>.

In the case of *Umesh Singh v. State of Bihar*<sup>143</sup>, there was a single accused named Arvind Singh. He was a minor at the time the crime occurred. The individual was accused of committing the crime of murder as defined in Section 302 of the Indian Penal Code (IPC), in conjunction with Section 149 of the same code. Additionally, they were charged with causing injuries with a hazardous weapon, as outlined in Section 324 of the IPC, in conjunction with Section 148 of the IPC. Furthermore, they were charged under Section 27 of the Arms Act, 1959 for unlawfully employing firearms without a license. During the commission of the crime, he was 13 years of age. The trial of the juvenile offender was conducted together with the adult accused, and the court found all of them guilty of the offense. However, the issue of trying the juvenile under the Criminal Procedure Code (Cr. P. C) did not arise during the proceedings in either the Trial Court or the High Court. In the case of *Bhola Bhagat v. State of Bihar*<sup>144</sup>, the Supreme Court upheld the appellant's conviction on all charges but overturned the sentence imposed on the accused<sup>145</sup>.

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<sup>141</sup> K. D. Gaur, *Commentary on The Indian Penal Code*, 239 (Justice P.V.Reddi 2<sup>nd</sup> ed.,

<sup>142</sup> Haveripeth Prakash D., *Juvenile Justice – A Hard Look*, 2(1) *Journal of Social Sciences* 38, 39 (2013), available at <http://www.isca.in/IJSS/Archive/v2/i1/8.ISCA-IRJSS-2012-067.pdf>, last seen on 21/04/2024.

<sup>143</sup> *Umesh Singh v. State of Bihar*, Cr. Appeal (S.J.) No. 100 of 1998, date of judgment order is 17 April 2009.

<sup>144</sup> *Bhola Bhagat v. State of Bihar*, (1997) ALV Cri 645, (1997) 8 SCC 720.

<sup>145</sup> *Ibid*, at 240.

## 5.6 Rehabilitation and Re integration of Juveniles

Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the process of rehabilitation and re-integration process under juvenile justice system in India.

- The Act stipulates that the rehabilitation and social integration of children will be carried out according to the child's unique care plan. This is preferably done through family-based care, such as returning the kid to their family or guardian, with or without supervision, financial support, adoption, or foster care<sup>146</sup>. In order to provide care and safety for a child, it is necessary to register the child in an institution with a suitable caregiver or facility, either temporarily or on a permanent basis. They must be housed in designated facilities or places of security until they reach the age of 18 years.
- The primary objective of children's homes, specialized adoption agencies, or open shelters is to ensure the rehabilitation and safety of children<sup>147</sup>. They have the ability to implement essential measures in order to restore and safeguard the child.<sup>148</sup>
- Additionally, this Act allows for the registration of child care institutions. All institutions operated by non-governmental organizations (NGOs) and state governments must be officially registered according to this legislation. During the registration process, the State Government will assess and verify the capacity and purpose of the institution seeking registration as a Children's Home, Open Shelter, Specialized Adoption Agency, Observation Homes, Special Homes, or other place of safety. Registration can provide temporary approval, within 1 month of applying, for a maximum duration of 6 months. The registration should include information about the capability of the institution being organized. Following the issuance of provisional registration, the institution is permitted to operate for a maximum duration of 6 months.

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<sup>146</sup> See S. 39(1) of Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>147</sup> S 40, Juvenile Justice( care ad protection of children) Act, 2015.

<sup>148</sup> Under this Section restoration and protection if the child means restoration to-

- a) parents;
- b) adoptive parents;
- c) foster parents;
- d) guardians; or
- e) fit person;

The registration will have a duration of five years, and it must be renewed after the five-year period has ended.

- If any individual responsible for the institution fails to register, they will be subject to imprisonment for a maximum of one year or a fine of no less than one lakh rupees<sup>149</sup>.
- Open Shelters can be constructed by either the State Government or NGOs in accordance with this Act. The Open Shelters must undergo registration in accordance with the method outlined in this Act<sup>150</sup>.
- Foster Care: Children in need of care and protection are placed in foster homes by a committee, in accordance with the procedures outlined in the Act. These homes are either households that do not include the child's biological or adoptive parents, or unrelated families approved by the State Government. The children may stay in foster care for a short or extended period of time. The selection of the foster family should be based on the family's aptitude, determination, and capacity to provide care for children. The provision of education, health, and nutrition services to the foster family shall be provided.<sup>151</sup>
- Observation houses are facilities designed to house children who have engaged in delinquent behavior or have come into confrontation with the law. The State Government establishes and maintains these observation homes in every district through NGOs. Observation homes are licensed rehabilitation facilities specifically established for delinquent teenagers. The State Government have the authority to enact regulations that are essential for the creation and enhancement of Observation Homes. The child should not be entrusted to their parents or guardians, but rather placed in Observation Homes based on the child's age, gender, and the child's physical and mental capabilities.<sup>152</sup>
- Special Homes are required to be constructed and maintained in every district by the State Government, and they must also be registered under this Act. It also functions as a rehabilitation institution for juvenile delinquents.
- Place of Safety: The State Government has established a minimum of one officially registered place of safety in each district. Individuals who are 18 years or older, or children between the ages of 16 and 18 who have committed serious crimes, will be

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<sup>149</sup> Juvenile Justice (Care and Protection of Children) Act, S 42, 2015.

<sup>150</sup> Juvenile Justice (Care and Protection of Children) Act, S 43, 2015.

<sup>151</sup> Juvenile Justice (Care and Protection of Children) Act, S 44, 2015.

<sup>152</sup> Juvenile Justice (Care and Protection of Children) Act, S 47, 2015.

housed at this facility. The facility is equipped with all necessary measures and amenities for the care and accommodation of these individuals.<sup>153</sup>

- Children's Home: These facilities have been created to house and safeguard children who require care and protection, as well as to offer them appropriate treatment, education, training, development, and rehabilitation. The State Government has the authority to designate any Children's Homes that offer specialized services to children with special needs, based on their individual requirements.

## **5.7 Punishment and Rehabilitation of Juveniles**

Before 2015, there was no punishment imposed on minors. Following the occurrence on December 16, 2012, the age of juveniles has been decreased and a novel notion of heinous crime has been implemented. In 2015, the Indian Parliament approved a legislation known as the "Juvenile Justice (Care and Protection of Children) Bill 2014". This bill has brought about significant modifications to the Juvenile Justice System in India.

The Bill has been transformed into a new Act known as the "Juvenile Justice (Care and Protection of Children) Act, 2015." This legislation mandates that juveniles between the ages of 16 and 18 who commit heinous crimes be classified as adults and receive a minimum prison sentence of 7 years. 'Serious offenses' refer to offences that are of a grave nature and are subject to punishment as per the Indian Penal Code, 1860 or any other applicable legislation<sup>154</sup>. If the Juvenile Board deems it appropriate, the delinquent kid is brought before them. The Board has the authority to issue a punishment order if they see fit. However, if the Board determines that the child has not committed a major offense, they may choose to send the child to a rehabilitation center. Rehabilitation facilities are an integral component of the reformatory theory of punishment.

The primary objective of rehabilitation is to modify and reshape the behaviour of the child. According to Kautilya, it is the responsibility of the village elders to safeguard and ensure the appropriate growth and progress of the child.

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<sup>153</sup> Juvenile Justice (Care and Protection of Children) Act, S 49, 2015.

<sup>154</sup> N V. Paranjape, Criminology and Penology with Victimology, 284 (16th ed., 2015).

The reformatory theory facilitates the transformation of the child's criminal mindset. Put simply, the reformatory approach aims to change the child's behaviour and rehabilitate them so that they become a law-abiding member of society. This hypothesis is justified since it is focused on the future rather than the past. The reformatory technique has a beneficial influence on delinquent juveniles, women, and first-time offenders<sup>155</sup>.

Salmond argues that while substituting reformation for deterrents may appear catastrophic, it is necessary in specific instances, especially for individuals who exhibit anomalous behavior and have diminished accountability. Another aspect to consider is that it does not involve a form of punishment that causes just minor discomfort, and hence it cannot be accurately classified as punishment in the true sense of the term.

There are a limited number of existing laws that are in Favor of the reformatory theory, one of which being 'The Probation of Offenders Act 1958'. In the case of *Rattan Lal vs. State of Punjab*<sup>156</sup>, the Supreme Court noted that this Act is a significant milestone in the recent trend of liberal reform in the field of penology. Furthermore, according to Section 27 of the Criminal Procedure Code (Cr. P. C.), it is mandated that youthful offenders get therapy, rehabilitation, and training<sup>157</sup>.

Reformation refers to the resolve to rehabilitate an individual, transforming them into a more virtuous and exemplary member of society. The reformatory or rehabilitative procedure is justified due to the following reasons:<sup>158</sup>

- a) It offers an opportunity for the State to implement measures to rehabilitate young offenders and manage crime;
- b) It employs a deterrent approach and includes an effective condemnation, as well as having reformatory implications;
- c) The primary objective of this approach is to "resocialize" the juvenile delinquent, enabling

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<sup>155</sup> id

<sup>156</sup> *Rattan Lal v. State of Punjab*, (1965), SC 444.

<sup>157</sup> J.P. Sirohi, *Criminology Criminal Administration*, 119, (15th ed., 1999).

<sup>158</sup> *Prison Commissioners Report*, 24 (1912).



them to "readjust" within society.

The Jail Committee Report of 1919-1920 states that the objective of correctional administration or rehabilitation institutions is to prevent the occurrence of future crimes and reintegrate the criminal into society with improved behaviour. In the *Narotam Singh v. State of Punjab*<sup>159</sup> case, the Supreme Court determined that the primary objective of criminal law should be to adopt a reformatory approach to punishment and to facilitate the rehabilitation process in order to achieve social justice.<sup>160</sup>

## **5.8 Juvenile Justice (Care and Protection of Children) Model Rules, 2016**

The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, are designed to provide comprehensive guidelines for the care, protection, development, treatment, and rehabilitation of children in conflict with the law and children in need of care and protection. Below are some key rules with their respective numbers and detailed explanations:

1. **Rule 7<sup>161</sup> - Juvenile Justice Boards (JJBs):** The Juvenile Justice Boards (JJBs) are constituted to handle cases involving children in conflict with the law. This rule outlines the procedures for the establishment and functioning of JJBs, ensuring that their operations are in line with the principles of juvenile justice. JJBs are responsible for conducting inquiries, passing appropriate orders for the care, protection, treatment, and rehabilitation of juveniles, and ensuring that they receive legal aid and other necessary support services. The rule also emphasizes the importance of a child-friendly environment during proceedings to ensure that the child's dignity and rights are upheld.
2. **Rule 15<sup>162</sup> - Child Welfare Committees (CWCs):** Child Welfare Committees (CWCs) are established under this rule to handle cases involving children in need of care and protection. The rule details the procedures for forming CWCs and their functions, which include conducting inquiries, making decisions regarding the care and protection of children, and providing rehabilitation services. CWCs are empowered to place

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<sup>159</sup> *Narotam Singh v. State of Punjab*, (1978) SC 1542, (1979) 4 SCC 505.

<sup>160</sup> Tanu Priya, *Reformatory Theory of Punishment*, Lawctopus's Law Journal, (2014) available at <https://www.lawctopus.com/academike/reformative-theory-of-punishment/>, last seen on 23/05/2024

<sup>161</sup> Rule 7, reads, 'Functions of the Board' of Juvenile Justice (Care and Protection of Children) Rules, 2016, available at <https://cara.wcd.gov.in/PDF/english%20model%20rule.pdf> last seen on 21/05/2024

<sup>162</sup> Rule 15, reads, 'Composition and Qualifications of Members of the Committee' of Juvenile Justice (Care and Protection of Children) Rules, 2016, available at <https://cara.wcd.gov.in/PDF/english%20model%20rule.pdf> last seen on 21/05/2024

children in various forms of alternative care, such as foster care, sponsorship, and adoption, and to monitor the functioning of child care institutions (CCIs). This rule ensures that CWCs operate effectively to safeguard the best interests of children and provide them with the necessary support and protection.

3. **Rule 26<sup>163</sup> - Child Care Institutions (CCIs):** This rule sets the standards for the establishment, maintenance, and functioning of Child Care Institutions (CCIs), which include observation homes, special homes, and children's homes. The rule outlines the minimum standards of care, including accommodation, nutrition, clothing, education, vocational training, and recreational facilities, to ensure the holistic development of children residing in these institutions. It also mandates regular inspections and monitoring of CCIs to ensure compliance with these standards and to address any issues related to the care and protection of children.
4. **Rule 45<sup>164</sup> - Adoption Procedures:** Rule 45 provides detailed guidelines for the adoption process, aimed at ensuring transparency, accountability, and the best interests of the child. The rule outlines the roles and responsibilities of adoption agencies, the procedures for matching children with prospective adoptive parents, and the legal processes involved in adoption. It also highlights the role of the Central Adoption Resource Authority (CARA) in regulating and monitoring adoptions, both domestic and inter-country. This rule ensures that the adoption process is child-centric, ethical, and in compliance with legal standards.
5. **Rule 54 - Rehabilitation and Social Reintegration:** This rule emphasizes the importance of non-institutional care for the rehabilitation and social reintegration of children. It outlines various measures such as foster care, sponsorship, aftercare programs, and vocational training to support children in their transition to independent living. The rule underscores the need for a community-based approach to rehabilitation, involving family and community participation in the reintegration process. It aims to equip children with the necessary skills and resources to lead productive and fulfilling lives.

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<sup>163</sup> Rule 26, reads, 'Management and Monitoring of Child Care Institutions.' of Juvenile Justice (Care and Protection of Children) Rules, 2016, available at <https://cara.wcd.gov.in/PDF/english%20model%20rule.pdf> last seen on 21/05/2024

<sup>164</sup> Rule 45, reads, 'procedure before the court.' of Juvenile Justice (Care and Protection of Children) Rules, 2016, available at <https://cara.wcd.gov.in/PDF/english%20model%20rule.pdf> last seen on 21/05/2024

## 5.9 Differences between the 2007 and 2016 Rules

### Juvenile Justice (Care and Protection of Children) Rules, 2007:

- **Presumption of Innocence:** The 2007 rules emphasize that a child or juvenile under the age of 18 years is presumed innocent until proven guilty. This principle is foundational to the juvenile justice system and ensures that children are treated with the presumption of innocence throughout the legal process.
- **Fundamental Principles:** The rules outline several fundamental principles, including the right to life with dignity, the principle of best interest, family responsibility, safety, equality, and non-discrimination. These principles guide all actions and decisions related to children in the juvenile justice system.
- **Age Determination Procedure:** Rule 12 of the 2007 rules specifies the procedure for determining the age of a juvenile. It outlines the use of documents such as matriculation certificates, birth certificates from schools or municipal corporations, and medical certificates in the absence of other evidence.
- **Establishment of Institutions:** The 2007 rules mandate the establishment of various institutions for the care and rehabilitation of juveniles, including observation homes, special homes, and children's homes. These institutions are categorized based on age and gender to ensure appropriate care and protection.

### Juvenile Justice (Care and Protection of Children) Model Rules, 2016:

- **Enhanced Scope:** The 2016 rules provide more detailed and comprehensive guidelines for the functioning of JJBs, CWCs, and CCIs. They emphasize a child-friendly approach in all proceedings and institutions.
- **Adoption Procedures:** The 2016 rules include clear and detailed guidelines for the adoption process, focusing on transparency, accountability, and the best interests of the child. The involvement of CARA is highlighted to regulate and monitor adoptions effectively.
- **Non-Institutional Care:** The 2016 rules place greater emphasis on non-institutional care options, such as foster care, sponsorship, and aftercare programs. They aim to provide a community-based approach to rehabilitation and reintegration.

- **Monitoring and Accountability:** The 2016 rules introduce stricter standards for the management and oversight of CCIs. Regular inspections and monitoring are mandated to ensure compliance with care standards and address any issues related to child protection.

### **Summary of Differences:**

- **Presumption of Innocence and Fundamental Principles:** Both sets of rules emphasize the presumption of innocence and fundamental principles like dignity, best interest, safety, and non-discrimination. However, the 2016 rules provide more detailed guidelines to operationalize these principles.
- **Adoption Procedures:** The 2016 rules provide more detailed guidelines and emphasize the roles of adoption agencies and CARA, compared to the more basic provisions in the 2007 rules.
- **Non-Institutional Care:** The 2016 rules place greater emphasis on non-institutional care, rehabilitation, and vocational training, reflecting a shift towards more community-based approaches.
- **Monitoring and Accountability:** The 2016 rules introduce stricter standards for the oversight of child care institutions, ensuring better compliance and accountability compared to the 2007 rules.

## **5.10 Key Differences between Juvenile Justice Rules 2016 and 2022**

The 2022 amendments to the Juvenile Justice (Care and Protection of Children) Model Rules were introduced to streamline processes, enhance monitoring and accountability, and update definitions to provide better care and protection for children compared to the 2016 rules. Below are the key differences elaborated with specific provisions where necessary.

Under the 2016 rules, adoption orders were issued by the courts, involving a longer legal process that often delayed the adoption procedure. The 2022 amendments now allow adoption orders to be issued by District Magistrates (DMs), significantly speeding up the adoption process and reducing the time children spend in institutional care, ensuring faster placement in family environments. Previously, DMs had limited roles primarily related to administrative oversight and coordination. With the 2022 amendments, DMs have increased responsibilities in implementing and monitoring the Juvenile Justice Act. They are now directly involved in

overseeing the functioning of Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs), ensuring compliance with the rules, conducting regular inspections, and addressing grievances, which enhances the accountability and efficiency of juvenile justice administration.

Monitoring mechanisms in the 2016 rules were in place but lacked the rigor and frequency required to ensure compliance with standards. The 2022 amendments introduce strengthened mechanisms for monitoring and accountability. DMs are required to conduct regular inspections and audits of Child Care Institutions (CCIs) to ensure adherence to standards and promptly address any issues, ensuring that children receive proper care and protection as per the established guidelines. The 2016 rules included definitions and terminologies that were sometimes ambiguous or outdated, leading to varied interpretations and implementation challenges. The 2022 amendments update definitions and terminologies for better clarity and understanding, providing precise definitions for terms related to adoption, child care institutions, and other critical aspects of juvenile justice, which helps in uniform implementation and reduces ambiguities.

Non-institutional care options such as foster care, sponsorship, and aftercare programs were emphasized but not adequately detailed in the 2016 rules. The 2022 amendments place greater emphasis on alternative care options, providing more detailed guidelines on the implementation of foster care, sponsorship, and aftercare programs. This shift aims to minimize institutionalization and promote community-based care, ensuring children grow up in family-like environments whenever possible. Rehabilitation and vocational training programs were included in the 2016 rules but lacked detailed frameworks and implementation guidelines. The 2022 amendments enhance focus on vocational training and reintegration programs, providing specific guidelines for vocational training, skill development, and other rehabilitation measures. These programs aim to equip children with the necessary skills and support for successful reintegration into society, reducing the chances of reoffending and ensuring better future prospects.

## **5.11 JUDICIAL INTERPRETATION**

The cornerstone of the criminal justice system is the conviction of offenders, ensuring that each individual faces consequences for their actions. This principle extends to children and young offenders, but with a specialized approach. Referred to as juveniles, these young offenders are

governed by the Juvenile Justice Act (Care and Protection of Children) 2015, which distinguishes them from adult offenders.

Unlike adults, juveniles are not subjected to the same punitive measures, as the goal is to prevent them from becoming hardened criminals. Instead, they are guided through the juvenile justice system, aimed at reforming them and fostering their rehabilitation into law-abiding citizens.

Over time, significant progress has been made in the juvenile justice system, largely due to landmark judgments delivered by the Supreme Court. These legal precedents have played a crucial role in shaping the treatment of juveniles within the country's legal framework which we will discuss now.

For the ready reference there has been division made between the case laws based on the issue which are being raised in the Apex court

### **5.11.2: Parag Bhati (Juvenile) vs. State of UP<sup>165</sup>**

In the case of Parag Bhati (Juvenile) vs. State of UP, the circumstances surrounding the death of Satender were brought to light through a complaint filed by his father, Shri Rajpal Singh. Parag Bhati was arrested and charged with multiple offenses under the Indian Penal Code (IPC). However, the issue of his age arose during the legal proceedings.

The appellant-accused's father submitted various school certificates to prove his son's juvenility. The Board of Juvenile Justice, after scrutinizing the evidence, referred the case to a Medical Board to ascertain the accused's age. The Chief Medical Officer determined that the accused was 19 years old. Consequently, the Board ruled that the accused was not a juvenile and transferred the case to the Chief Judicial Magistrate.

The key issues addressed by the Court were:

a) Whether the date of birth mentioned in the matriculation certificate was reliable? b) Whether the ossification test was the final resort to establish the accused's juvenility?

The Court made the following observations:

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<sup>165</sup> Parag Bahti vs. State UP, Cri. Appeal No. 486 of 2016.

a) The Court acknowledged that the matriculation certificate could be considered as evidence, or if unavailable, a birth certificate would suffice. However, the date of birth mentioned in the matriculation certificate raised doubts, warranting medical examination to determine the accused's age.

b) Following the medical examination, the accused's age was determined to be around 19 years at the time of the crime, contrary to the claimed juvenility.

c) It was emphasized that individuals below the age of 18 are entitled to special protections under the Juvenile Justice Act, even if they commit serious offenses. However, maturity of mind, as evidenced by the gravity and planning of the crime, could affect the application of juvenile status.

d) The Court highlighted that if a crime reflects a high degree of planning, it indicates maturity of mind, and the plea of juvenility may not be accepted.

e) The Court ruled that the date mentioned in the matriculation certificate should be considered conclusive proof of the accused's date of birth.

### **5.11.3: Raghubir vs. State of Haryana<sup>166</sup>**

In the case of Raghubir vs. State of Haryana, a juvenile accused was found guilty of murder and sentenced to life imprisonment by the trial court. This case holds significant importance in the juvenile justice system, both legally and socially. Let's delve into the legal ramifications:

a) The ordinary courts established under the Criminal Procedure Code (Cr. P. C) do not possess jurisdiction to adjudicate offenses involving juveniles.

b) However, it's crucial to understand that juveniles can still be held accountable, albeit with a more compassionate approach.

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<sup>166</sup> Raghubir vs. State of Haryana, (1981), 4 Sec 210.

c) The rights of juvenile delinquents should be safeguarded, ensuring that they receive exclusive treatment under the relevant legislation, irrespective of the gravity of the offenses they're involved in.

d) In cases of serious offenses where a juvenile is tried jointly with an adult, special legislation pertaining to juveniles should be applied, emphasizing their unique needs and circumstances rather than subjecting them to common legal procedures.

#### **5.11.4: Pratap Singh vs. State of Jharkhand<sup>167</sup>**

In the case of Pratap Singh vs. State of Jharkhand, a special leave appeal was filed by the appellant who was accused of being involved in a conspiracy leading to the death of the victim by poisoning. An argument was put forth on behalf of the appellant, claiming that he was a minor at the time of the crime.

The Board assessed the appellant's age to be between 15 to 16 years based on a report submitted by the Civil Surgeon, prompting the formation of a Medical Board to scientifically examine the appellant's age.

The Court referred to the case of Arnit Das vs. State of Bihar and emphasized that the date of birth certificate and school certificate should be considered the best evidence for determining the age of a juvenile.

Furthermore, the Court highlighted the objectives of the legislation aimed at juvenile justice:

- Ensuring that no child is lodged in jail or police lock-up under any circumstances.
- Providing treatment suitable for their development.
- Offering care, protection, and rehabilitation in the best interest of the child.
- Establishing norms and standards for the administration of juvenile justice related to investigation, adjudication, care, rehabilitation, etc.
- Enacting special offenses pertaining to juveniles and specifying punishments for them.

The Court's observations included:

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<sup>167</sup> Pratap Singh vs State of Jharkhand and Anr., Appeal (Cri) 210 of 2005.



- If an accused is declared a juvenile, they are entitled to the advantages provided under the Juvenile Justice Act, and this entitlement cannot be denied.
- The age of the juvenile should be determined based on their age at the time of the occurrence of the crime, not the date when they are produced before the authority or in court.

### **5.11.5: Jai Prakash Tiwari vs. State of UP and another<sup>168</sup>**

In the case of Jai Prakash Tiwari vs. State of UP and another, the accused asserted their juvenility before the trial court in response to charges under sections 302 and 394 of the Indian Penal Code. The court acknowledged several key observations:

- The court emphasized that the age of the juvenile can indeed be determined at the time of the occurrence of the crime. The court is tasked with conducting an inquiry and proceeding accordingly based on this determination.
- It was noted that juvenility can be claimed at any stage of the trial process. Whether it's raised during the initial trial, after the final disposal of the case, or even in appeals, the claim can be asserted.
- Should an accused wish to claim juvenility after conviction, they must provide relevant documents to support their claim. The court is then obligated to conduct a necessary inquiry, with the burden of proof lying on the claimant.
- Additionally, the court highlighted the importance of providing an affidavit from the claimant, their parents, guardians, siblings, or relatives in support of the claim of juvenility. This affidavit should be presented during appeals, revisions, or at any time during the pendency of the case.

### **5.11.6: Bhoop Ram vs. State of UP<sup>169</sup>**

In the case of Bhoop Ram vs. State of UP, a Special Leave Petition was filed by the appellant, who had been convicted along with five other individuals under various sections of the Indian

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<sup>168</sup> Jai Prakash Tiwari vs. State of UP, Criminal Revision of 4694 (2011).

<sup>169</sup> Bhoop Ram vs. State of UP, (1989) SC 1329, (1989) 3 SCC 1.

Penal Code. The court felt it necessary to conduct an inquiry to determine if the appellant was a juvenile.

After an inquiry conducted by the Chief Medical Officer, who provided a radiological examination and physical features certificate to the Board, it was found that the appellant did not produce any certificate except for a school certificate. The court considered both the medical and school certificates and concluded that the appellant appeared to be 29-30 years old, indicating that he had completed the age of 16 years.

The learned counsel argued that the school certificate should prevail over the medical certificate.

### **Decision**

The Court addressed the conflict between the school certificate and the medical certificate regarding the appellant's age. While the school certificate indicated that the accused was below the age of 16 years, the medical certificate suggested otherwise. The Court acknowledged that the school certificate, based on the possibility of error, could not be ruled out.

Ultimately, the Court accepted the age as shown in the school certificate. Consequently, the Supreme Court quashed the trial court's order of life imprisonment and directed the release of the appellant from jail.

This case highlights the importance of accurately determining a defendant's age in criminal proceedings and the significance of documentary evidence such as school certificates in establishing juvenility<sup>170</sup>.

### **5.11.7: Arnit Das vs. State of Bihar<sup>171</sup>**

In the case of Arnit Das vs. State of Bihar, the petitioner was arrested on charges of murder under Section 302 of the Indian Penal Code after Abhishek was shot dead on 5 September

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<sup>170</sup> See also Jayender vs. State of UP (1982) SC 685, (1981) 4 SCC 149; Pradeep Kumar v. State of UP (1994) SC 104.

<sup>171</sup> Arnit Das vs State of Bihar, (2000) 5 SCC 488, (2000) SC 2261.

1998. The petitioner claimed to be a juvenile and entitled to the benefits under the Juvenile Justice Act. The court referred the petitioner to a Medical Board for examination.

After considering the medical report and evidence presented, the court concluded that the petitioner was above the age of 16 years at the time of the incident.

The legal issue addressed by the court was whether the petitioner was indeed a juvenile during the course of the incident.

The court observed that when an accused appears before the Juvenile Board and is found to be less than 16 years old (for boys) or less than 18 years old (for girls), the Board must adhere to the procedures outlined in the Juvenile Justice Act.

This observation underscores the importance of accurately determining the age of the accused in cases involving juveniles and ensuring that appropriate legal procedures are followed as per the Juvenile Justice Act.

### **5.11.8: State vs. Ram Singh and Anr.<sup>172</sup>**

In December 2012, a horrific crime shook Delhi. Jyoti Singh, along with her friend, boarded a bus for their journey home. However, instead of reaching their destination, they were brutally attacked by six men who were heavily intoxicated. The men gang-raped Jyoti on the moving bus and then threw them both out onto the road. Despite receiving medical attention in Singapore, Jyoti succumbed to her injuries a short while later.

Fueled by outrage, authorities swiftly apprehended all the accused within 24 hours with the help of CCTV footage. The case garnered immense attention due to its heinous nature. The court acknowledged the severity of the crime and classified it as the "rarest of rare cases."<sup>173</sup>

#### **The Medical Evidence and the Juvenile Offender**

The post-mortem report revealed the extensive injuries Jyoti sustained during the assault. One of the accused, Mohammad Afroz, was a minor at the time of the crime. Reports indicated his

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<sup>172</sup> State vs Ram Singh and Anr. (2013) SC 114.

<sup>173</sup> Nirbhaya case, House of Legal Cases, available at <http://legalcasehouse.blogspot.in/p/nirbhayacase.html>, last seen on 08/05/2024.

involvement in the rape and the brutal act of inserting a rod into Jyoti's body, leading to fatal internal injuries.

This case sparked a legal debate regarding the treatment of juvenile offenders. A committee was formed to investigate the root cause of such crimes and suggest legislative reforms. This resulted in amendments to the Indian Penal Code, the Indian Evidence Act, and the CrPC.

### **The Central Legal Question: Can a Juvenile be Tried as an Adult?**

The core legal issue revolved around whether a juvenile offender should be treated the same as an adult and tried in a regular court.

### **Varying Sentences and the Juvenile Justice Act**

All the adult accused were sentenced to death, reflecting the gravity of the crime. However, Mohammad Afroz, being a minor, faced a different fate. Since Indian law, prior to 2015, did not allow capital punishment for those under 18, he was sent to a rehabilitation home for a maximum of three years as per the Juvenile Justice (Care and Protection of Children) Act, 2000.

The Supreme Court upheld this ruling, stating that Afroz could not be considered an adult and sentenced to death. While the prosecution contested this, arguing for harsher punishment, the court's decision stood.

### **Criticism and the Issue of Age Verification**

The judgement sparked widespread criticism. Concerns arose regarding the process of determining Afroz's age. In an era of advanced technology, relying solely on school documents for such a crucial aspect of the case raised questions.

## **5.11.9: Sheela Barse v. Union of India<sup>174</sup>**

In the case of Sheela Barse v. Union of India (1986), a petition was filed seeking the release of children under the age of 16 who were being held in jails across various states. The petition

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<sup>174</sup> 1986

also requested information regarding the number of existing juvenile courts, shelters, schools, and the condition of these children in prison. In response, the Supreme Court issued notices to the concerned respondents and directed Judicial Magistrates in districts to inspect all jails, shelter homes, and observation homes within their jurisdiction. These magistrates were instructed to submit a report to the court within a week.

The main issue addressed in this case was whether children under the age of 16 held in jails were subjected to mistreatment and abuse. The Supreme Court emphasized that it is well-established in law that children should not be confined in prisons alongside adult criminals, as it could adversely impact their growth and development.

To address this concern, the court issued several directives:

- All states were instructed to implement the Children Act, 1960, and ensure compliance with its provisions.
- Prisons across the country were directed to diligently maintain jail manuals.
- District and session judges in each state were mandated to visit prisons at least once every two months.
- It was the responsibility of visiting judges to ensure that children in prisons were afforded the benefits outlined in the jail manuals.

### **5.11.10: Subramanian Swamy and Others vs. Raju through Member Juvenile Justice Board and Another<sup>175</sup>**

**Overview:** In this significant case, the Supreme Court of India examined the legal and constitutional aspects of the Juvenile Justice Act, particularly in the context of heinous crimes. The case arose from the infamous Nirbhaya gang rape and murder incident, where one of the accused, Mohammad Afroz (Raju), was found to be a juvenile.

**Facts of the Case:** On December 16, 2012, Jyoti Singh and her friend Arvind Pratap Pandey were brutally assaulted on a bus in Delhi. Jyoti was gang-raped and severely injured by six men, including Mohammad Afroz. Despite receiving the best medical treatment, she

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<sup>175</sup> Subramanian Swamy and Ors. Vs. Raju thr. Member Juvenile Justice Board and Anr., 2014 (2) ACR 1615 (SC), (2014) SC 1649

succumbed to her injuries on December 29, 2012, in Singapore. All the accused were arrested within 24 hours using CCTV footage. The case was considered "the rarest of rare" due to its brutality.

**Juvenile Offender:** Mohammad Afroz, identified as a juvenile based on his birth certificate and school documents, could not be tried as an adult. This raised significant public outcry and led to debates about the appropriateness of juvenile laws for heinous crimes.

**Key Legal Issues:**

1. Whether a juvenile involved in a heinous crime should be tried under the Juvenile Justice Act or the regular criminal court.
2. Whether the age criteria for juveniles should be reconsidered for serious offenses.

**Court's Observations and Decisions:**

- The Supreme Court maintained that the juvenile, even in cases of heinous crimes, could not be treated as an adult if he was under 18 at the time of the offense. This decision was grounded in the Juvenile Justice (Care and Protection of Children) Act, 2000.
- The Court upheld that the age determination based on school documents and birth certificates is valid.
- Mohammad Afroz was sentenced to three years in a reformatory home, the maximum punishment under the Act for a juvenile.

**Writ Petition by Subramanian Swamy:**

- The petition challenged the constitutional validity of certain provisions of the Juvenile Justice Act.
- It called for striking down unconstitutional and void provisions, arguing that juveniles committing serious crimes should face the same legal consequences as adults.

**Arguments Presented:**

1. The petitioner argued that Sections 82 and 83 of the Indian Penal Code (IPC) describe criminal liability based on maturity, and similar principles should apply to juveniles aged 12 to 18.

2. It was contended that the Juvenile Justice Act should consider the nature and conduct of the offense rather than just the age of the offender.
3. The Act, based on the UN Convention on the Rights of the Child, specifies that the age of 18 should be the cutoff for juvenile status, but this does not account for the severity of crimes.

### **Comparative Analysis with Other Countries:**

- **Canada:** The Youth Criminal Justice Act (2002) deals with juveniles aged 12 to 18, with provisions for considering the severity of the crime and the mental capacity of the offender.
- **Afghanistan:** The Juvenile Code sets the minimum age of criminal responsibility at 12 and excludes life imprisonment and the death penalty for juveniles.
- **Bhutan:** Criminal responsibility begins at 10 years, and juvenile offenders can receive half the sentence of an adult.
- **Nepal:** Sets criminal responsibility at 10 years, with those aged 16-18 tried as adults.
- **United Kingdom:** Children under 10 cannot be charged with a crime. Those aged 10-18 can be tried in youth courts, but severe crimes are reserved for Crown Court.

The Supreme Court's decision upheld the existing juvenile justice framework, emphasizing the rehabilitative approach over punitive measures for juvenile offenders. However, the judgment also highlighted the need for a balanced approach that considers the gravity of offenses committed by juveniles. The case prompted discussions and eventual amendments to the Juvenile Justice Act, reflecting societal concerns and the need for justice for victims of heinous crimes.

### **5.11.11: Sher Singh @ Sheru v. State of U.P.<sup>176</sup>**

Conviction and Claim of Juvenility:

- The appellant was convicted of kidnapping and claimed juvenility based on his High School Examination record, which indicated he was under 18 years old at the time of the crime.

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<sup>176</sup> 2016

#### Initial Rejection by Juvenile Justice Board:

- The Juvenile Justice Board rejected his plea of juvenility, citing a medical report that estimated his age as 19 at the time of the offense.

#### Subsequent Appeals and Rejections:

- Four years later, the appellant filed another request during the Session trial to be declared a juvenile, which was dismissed and became final.
- He then filed a writ petition in 2013, which was also dismissed as infructuous, but the court observed that his right to raise the plea of juvenility remained unaffected.

#### Supreme Court Observations:

- The court emphasized that under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, and Rule 12 of the 2007 rules, the court is obligated to conduct an inquiry, not an investigation or trial, to determine juvenility.
- This inquiry must be completed within 30 days from the date of application.

#### Evidence for Determining Age:

- The court can seek evidence and obtain matriculation or other required certificates.
- In the absence of a matriculation certificate, a birth certificate from the first school attended should be referred to.
- Alternatively, a birth certificate from the corporation, municipal authority, or panchayat can be used.
- A medical report is required only if the aforementioned documents are not available.

#### Right to Raise Plea of Juvenility:

- The court held that a person's right to raise the plea of juvenility cannot be denied by dismissing or treating the writ petition as infructuous.



- The plea can be raised in a criminal appeal, even if it has been previously addressed by the Juvenile Justice Board.

### **5.11.12: Sampurna Behura v. Union of India<sup>177</sup>**

#### **Background of the Case:**

- **Petitioner:** Social activist Sampurna Behura filed a writ petition.
- **Concerns Raised:** The petition highlighted numerous problems faced by children in observation homes, shelter homes, and other institutions. It pointed out deficiencies in the implementation of various constitutional and legal provisions aimed at protecting and promoting the welfare of children.

#### **Constitutional and Legal Framework:**

- The petition drew attention to the constitutional mandate requiring state governments to ensure the welfare, development, and protection of children. It specifically noted failures in establishing effective juvenile justice boards, providing adequate medical facilities, ensuring proper living conditions, and setting up specialized juvenile police units.

#### **Supreme Court Observations:**

- The Court acknowledged the systemic issues affecting children in institutional care and the state's failure to fulfil its obligations under the Juvenile Justice (Care and Protection of Children) Act.

#### **Supreme Court Directives:**

- Ministry of Women and Child Development:
  - Ensure that the National Commission for Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights function effectively and are adequately staffed.

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<sup>177</sup> 2018

- Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC):
  - Directed to hold regular and timely sessions to expedite the delivery of justice for children in conflict with the law.
- Commissions for Child Rights:
  - Both the NCPCR and state-level Commissions must diligently perform their duties, including conducting regular surveys and assessments of child welfare conditions.
- High Courts:
  - Chief Justices of High Courts were instructed to ensure that court environments are child-friendly, facilitating a supportive atmosphere for juveniles undergoing legal proceedings.
- State Governments and Union Territories:
  - Mandated to ensure all child care institutions are properly registered and provide essential services such as nutrition, healthcare, and education.
- Training for Officials:
  - Officers and members of JJBs, CWCs, special juvenile police units, and district child protection units must receive comprehensive and adequate training to handle cases involving juveniles appropriately and sensitively.

**Specific Recommendations:**

- Implementation of the Act:
  - Emphasized the necessity for state governments to fully implement the Juvenile Justice Act, ensuring it meets the specific needs of children.
- Operational Efficiency:
  - NCPCR and state commissions must work towards improving the living conditions and overall welfare of children in various institutional settings.
- Survey and Monitoring:
  - Regular surveys should be conducted to monitor and evaluate the conditions and treatment of children in care facilities.

**Broader Impact:**

- The Court’s directives aimed at systemic reform to ensure that children in conflict with the law receive timely and appropriate justice.
- Focused on creating a child-friendly judicial and institutional environment, enhancing the quality of care and protection offered to children.
- Reinforced the importance of specialized training for officials to handle juvenile cases with the necessary expertise and sensitivity.

### **5.11.13: In Re Contagion of COVID-19 Virus in Children’s Protection Homes<sup>178</sup>**

#### Background of the Case:

- A writ petition was filed concerning the health and safety of children in observation homes, juvenile homes, shelter homes, foster care, and kinship care during the COVID-19 pandemic and lockdown.

#### Supreme Court Directives:

- Child Welfare Committees (CWCs):
  - Take preventive measures to maintain the health and safety of children in homes.
  - Coordinate with district child protection committees and foster care/adoption committees to keep records of children sent back home.
  - Establish online help desks and support systems.
  - Monitor and prevent incidents of violence and sexual harassment.
- Juvenile Justice Board (JJB):
  - Implement proactive steps to prevent the virus spread in juvenile homes.
  - Children can remain in child care institutions for their health and safety.
  - Ensure speedy disposal of cases via online sessions.

#### Health and Safety Measures:

- Government Responsibilities:
  - Inform child care institutions about necessary measures.

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<sup>178</sup> 2020

- Ensure premises are properly sanitized.
- Provide good quality face masks, sanitizers, and hygiene products to children.
- Ensure children are educated about the virus and precautions.
- Maintain social distancing at all times.
- Quarantine individuals showing symptoms immediately.
- Staffing and Volunteer Management:
  - Ensure adequate staff in district protection units and child care institutions on a rotational basis.
  - Train volunteers to care for children effectively.

#### Counseling and Mental Health:

- Conduct regular counseling sessions for children in observation homes to manage stress and anxiety.
- Encourage activities to keep children engaged and divert their minds from stress.

#### Family and Fostering:

- Families involved in fostering must be updated on virus prevention measures.
- Monitor the health and safety of foster families and children.

## **CHAPTER 6: CONCLUSION AND SUGGESTION**

Juvenile delinquency is a well-established phenomenon in India. Juvenile delinquency pertains to the criminal or aberrant behaviour shown by a youngster.

The concept of juvenile delinquency has undergone significant evolution over time. Historically, children were often treated as miniature adults and subjected to the same legal and punitive measures as their older counterparts. This perspective began to change in the late 19th and early 20th centuries with the establishment of juvenile courts, which recognized the developmental differences between children and adults and aimed to provide rehabilitation rather than punishment. Over the decades, this understanding has further evolved, incorporating insights from psychology, sociology, and criminology. Modern approaches to juvenile delinquency emphasize restorative justice, focusing on rehabilitating the offender and reintegrating them into society rather than solely on retribution.

In countries with similar legal systems to India, such as the United Kingdom, Canada, and Australia, juvenile justice procedures generally emphasize rehabilitation and restorative justice. These countries often employ specialized juvenile courts that provide a more supportive and less adversarial environment for young offenders. Procedures include diversion programs aimed at redirecting juveniles away from formal judicial processes, comprehensive assessments to develop individualized care plans, and ensuring access to legal representation. These systems also prioritize maintaining the confidentiality of juvenile records to avoid future stigmatization and employ restorative justice practices that involve victims, offenders, and the community in resolving conflicts.

The Juvenile Justice Act 2015 in India is designed to provide care, protection, and rehabilitation for juveniles in conflict with the law. While it includes progressive measures such as categorizing offences, establishing Juvenile Justice Boards (JJB), and promoting rehabilitation, several challenges hinder its effectiveness. The act lacks clarity in certain areas, such as the definitions of parental responsibility and procedural guarantees like the right to a speedy trial. Additionally, there are issues with the implementation of social welfare schemes related to education, healthcare, and legal guidance for juvenile offenders. Inadequate training for JJB members, insufficient infrastructure, and the need for better-defined roles for parents and guardians indicate that the act is not fully equipped to achieve its intended goals.

In India, the central process for juvenile trials and penalties involves several steps. Upon apprehension, a juvenile must be brought before the Juvenile Justice Board (JJB) within 24 hours. The JJB then conducts a preliminary assessment to determine the nature of the offence and whether the juvenile should be tried as an adult for heinous crimes. A social investigation report is prepared to understand the juvenile's background, and the proceedings are conducted in a child-friendly manner with a focus on the juvenile's welfare. Depending on the findings, the JJB may order rehabilitation measures, counseling, community service, or in severe cases, refer the juvenile to a children's court for trial as an adult. Regular follow-ups and reviews are conducted to monitor the juvenile's progress and ensure the implementation of rehabilitation measures.

The Juvenile Justice (Care and Protection of Children) Amendment Bill 2021 aims to address several gaps in the existing laws. It introduces measures to streamline adoption processes, granting greater powers to District Magistrates to ensure effective implementation of the Act and address delays. The amendment bill also provides clearer definitions of key terms and roles within the juvenile justice system and enhances provisions for the rehabilitation and social reintegration of juveniles. While these amendments are promising, their success will depend on effective implementation and adequate resource allocation. Continuous monitoring, stakeholder training, and infrastructure development will be essential to address the existing lacunae comprehensively and achieve the legislative changes' full potential.

Prior to the implementation of the JJ Act, 2015, there were no provisions for the explicit identification and definition of serious crimes. Following the public outcry and criticism directed at the government for its handling of the Delhi Gang rape (Nirbhaya's Case), the Legislative body recognized the necessity to enact the "Juvenile Justice (Care and Protection of Children) Act, 2015". The Juvenile Justice (Care and Protection of Children) Act, 2015 is a significant measure aimed at improving the juvenile justice system in India. The comprehensive analysis of the aims, scope, provisions, definitions, and general principles of the JJ Act, 2015 reveals that these elements are crucial to the legislation and demonstrate a favourable stance towards juvenile delinquents.

This legislation has categorized the crimes into three types: petty crimes, heinous offenses, and serious offenses. Regarding children who are under the age of 18, they are presented before the Juvenile Justice Board (JJB) first. If a person has reached the age of 18 but was still deemed a

juvenile at the time the offense occurred, they will be regarded as a minor.

JJB has the authority to settle disputes concerning both sorts of offenses.

When a child is accused of committing a serious crime, the Juvenile justice board must conduct a preliminary assessment inquiry. During this inquiry, experts appointed by the board will evaluate the child's mental condition and the consequences of the offense committed by the child. Furthermore, in such instances, a child is regarded and handled as an adult.

The JJ Act, 2015 has classified the offences in three categories, which are provided as follows:

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- Petty offences<sup>179</sup>; provides maximum imprisonment of up to 3 years under IPC.
- Serious offences<sup>180</sup>; provides imprisonment between 3 to 7 years under IPC.
- Heinous offences<sup>181</sup>; provides minimum imprisonment of 7 years or more under IPC

The classification delineated by the act does not adequately justify the distinction between serious and heinous offences, nor does it explain the rationale for such differentiation. Additionally, the definitions of crimes ranging from petty offences to heinous crimes lack clear criteria for this differentiation. The same issue applies to the penal provisions, as there is no underlying basis for the prescribed punishments for the three categories of offences listed in the act. For example, offences punishable by up to 3 years are categorized as petty offences, while those punishable by up to 7 years fall under serious offences, and heinous offences are defined as those with a minimum punishment of 7 years of imprisonment. However, the act fails to specify which offences qualify as heinous or serious, leaving a gap in clarity and justification for these classifications.

Furthermore, it must be noted that the punishment for petty offences is capped at a maximum of 3 years, while the punishment for serious offences ranges from 3 to 7 years. This overlap creates confusion as it implies that the penalty for a serious offence could be equivalent to the maximum penalty for a petty offence, which is 3 years. Such an inconsistency undermines the act's intention to provide a clear and distinct legal framework for categorizing offences. Instead

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<sup>179</sup> Section 2(45), Juvenile Justice Care and Protection of Children) Act, 2015

<sup>180</sup> Section 2(54), Juvenile Justice Care and Protection of Children) Act, 2015

<sup>181</sup> Section 2(33), Juvenile Justice Care and Protection of Children) Act, 2015

of clarifying the law, the act introduces several ambiguities that hinder its effectiveness for the general public.

To address these gaps, it is essential for the legislation to precisely define serious and heinous offences, thereby establishing a clear distinction between the two categories. Additionally, the act overlooks several critical aspects, such as the treatment of juvenile sex offenders and female juvenile delinquents. It also fails to acknowledge the rights of victims, remaining silent on their rights, needs, and the services that should be available to them.

Under this act, juveniles who have committed heinous crimes are sent to be tried in criminal courts, a measure intended to curb juvenile delinquency. However, this approach often proves more harmful than beneficial. The criminal justice system focuses solely on the crime, while the juvenile justice system emphasizes 'restorative justice,' aiming to rectify the harm caused by juvenile offenders rather than simply punish them. Unlike the criminal justice system, which considers only the past, restorative justice considers the past, present, and future of the offender. For heinous offences, trying juveniles as adults and imposing harsh punishments contradicts the principles of restorative justice.

Restorative justice differs from 'restitution' and 'reformatory justice.' Restitution involves compensation for pecuniary losses or damages, while reformatory justice focuses solely on the rehabilitation of juvenile offenders. Restorative justice addresses both the victims and the offenders, aiming to restore relationships and resolve disputes. Section 18 of the JJ Act refers to restorative justice, allowing the Juvenile Justice Board (JJB) to order counseling and community service for the child.

The purpose of the JJ Act, 2015, is to help juvenile offenders realize their mistakes and provide opportunities for personal growth and improvement, rather than merely punishing them. However, the state has failed to protect the rights of children, including care and protection, and to implement various provisions of the act. Effective implementation requires adequate resources and instruments.

The act prioritizes documentary evidence, such as school and birth certificates, to determine a child's age, with medical evidence considered only when these documents are unavailable. This diminishes the value of medical certificates compared to the JJ Act, 2000. The act mandates 'ossification tests,' dental exams, and physical tests to determine a juvenile's age. The JJ Act,



2015, specifies that the board should conduct 'bone ossification tests' or other 'latest medical age determination tests.' However, the act lacks provisions for cases where neither medical examinations nor certificates can ascertain a child's age, leaving ambiguity in how such cases should be handled.

Juveniles should only be punished for heinous offences, highlighting the need for amendments to the current act. However, juvenile delinquency cannot be addressed solely through the JJ Act, 2015. Juvenile offenders are often victims of society and need care and protection from homes and schools. Parents and teachers play crucial roles in a child's life, and addressing juvenile crime requires understanding a child's mindset and treating them with empathy rather than imposing severe punishments.

Chapter 7 of the act establishes rehabilitation homes to provide care, protection, and opportunities for personal growth to juvenile offenders through restoration, reformation, and rehabilitation. However, there is a significant gap between the theoretical and practical aspects of the juvenile justice system in India. The legislature must create better infrastructure and procedures to administer juvenile justice effectively, focusing on treatment rather than punishment.

Principal Magistrates appointed for adjudicating these matters often lack the necessary qualifications and experience in child psychology. The act does not specify such qualifications for the principal magistrate. While the JJB aims to maintain a child-friendly atmosphere, applying the Criminal Procedure Code (Cr.P.C.) in criminal courts for juvenile offenders contradicts the JJ Act's objectives, as the proceedings do not foster a child-friendly environment.

The JJ Act aims to protect the interests of juvenile offenders, emphasizing rehabilitation, care, and protection. However, numerous ambiguities exist within the act, necessitating legislative action to resolve these issues and achieve the objectives outlined in the JJ Act, 2015.

## **6.2 Where Focus should have been more in JJ Act, 2015**

1. **Parental Responsibility:** The JJ Act, 2015 fails to define the concept of parents' responsibility in cases of juvenile delinquency.

2. **Procedural Guarantees:** It lacks procedural guarantees, such as the right to speedy trials.
3. **Adoption Provisions:** While the Act includes provisions related to adoption, it is silent on the procedures for inter-country adoption. There is also a lack of integration between the JJ Act, 2015 and other legal provisions concerning child labor, education, sexual abuse, adoption, and exploitation.
4. **Social Welfare Schemes:** Although the Act aims to ensure the social welfare of juveniles, it fails to provide schemes related to education, healthcare, legal guidance, and social assistance for juvenile offenders.

## **6.3 Suggestions**

### **6.3.1 Special Training for Board Members**

According to Section 4 of the Juvenile Justice Act, the State Government should ensure that all members of the Juvenile Justice Board (JJB), including the Principal Magistrate, receive specialized training. This training should encompass the basics of child psychology to make them adept at handling cases involving child or juvenile offenders. Understanding the psychological development and behavior of children is crucial for fair and empathetic adjudication.

### **6.3.2 Child-Friendly Inquiry Environment**

The inquiry environment should be designed to be child-friendly. The proceedings must be comfortable and considerate of the tender age of the child offender. A supportive environment can help reduce the stress and anxiety experienced by juveniles during legal proceedings, making it easier for them to engage and respond truthfully.

### **6.3.3 Consideration of Maturity and Consequences**

During legal proceedings, the Juvenile Justice Board should take into account the maturity level of the child and the consequences of their actions. Juveniles often lack the foresight and understanding of the long-term impacts of their behavior. Recognizing their developmental stage is essential for fair and just treatment, which aligns with rehabilitative rather than punitive objectives.

#### **6.3.4 Proper Record Maintenance**

Maintaining proper records and files related to juvenile cases is essential. This includes meticulous documentation of all proceedings, decisions, and interventions. Accurate record-keeping ensures transparency, accountability, and the ability to review cases effectively in the future.

#### **6.3.5 Inclusion of Social Workers in JJB**

The membership of the Juvenile Justice Board should include at least one social worker with a law degree. This inclusion brings a necessary social perspective to the legal process, ensuring that decisions are informed by both legal and social considerations. Social workers can provide insights into the child's background, environment, and needs, facilitating more holistic and rehabilitative outcomes.

#### **6.3.6 Regular Counselling for Juveniles and Parents**

To provide the best possible service to the child, juvenile offenders, and their parents, regular counselling sessions should be conducted. Counselling can help address the underlying issues that may have contributed to the juvenile's behaviour and support the family in creating a more supportive and stable environment.

#### **6.3.7 Timely Production Before the Board**

Following an arrest, it is imperative that the juvenile be produced before the Juvenile Justice Board within 24 hours. This ensures that their case is handled swiftly and reduces the time they spend in potentially harmful detention environments. Timely processing is crucial for protecting the rights and well-being of the juvenile.

#### **6.3.8 Age Determination Based on Offence Occurrence**

The determination of a juvenile's age should be based on the age at the time of the occurrence of the offence. This approach ensures that the juvenile is treated according to their age and developmental stage when the offence was committed, which is essential for fair treatment under the juvenile justice system.

### **6.3.9 Provision for Victim Compensation**

The Juvenile Justice Act, 2015, is currently silent on the issue of compensation for victims of crimes committed by juveniles. Amendments are required to include provisions for victim compensation. Addressing the needs and rights of victims is a critical component of a just legal system and helps in fostering a sense of closure and justice.

### **6.3.10 Ensuring Protective Custody**

Protective custody must be ensured for juveniles in conflict with the law. This involves safeguarding their physical and emotional well-being during detention and throughout the legal process. Protective custody should aim to shield juveniles from harm and provide a safe environment for their rehabilitation.

### **6.3.11 Age Reduction for Heinous Offences**

There is a need to reconsider the age criteria for juveniles involved in heinous offences. The age limit for treating juveniles as adults should be reduced for serious crimes. This measure could potentially deter severe offences and ensure that those who commit grave crimes are held appropriately accountable.

### **6.3.12 Uniform Age of Criminal Responsibility**

The age of criminal responsibility should be uniform across all acts and legislations. A consistent approach ensures clarity and fairness in the legal treatment of juveniles. Uniformity in age criteria helps in standardizing legal processes and protections for juveniles across different legal contexts.

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