



## Juvenile Justice in India

Smriti Raturi

Amity Institute of Advanced Legal Studies, Noida, Uttar Pradesh, India

### Abstract

The future of a country is dependent on its children. As the last decade saw a large number of children been involved in different kinds of crimes, it is obvious that there is a threat to the society as a whole. Today juvenile crime has become a matter of concern for all. The paper starts with describing the evolution of Juvenile Justice Legislation in India and specially looks at the guidelines of Juvenile Justice Act 2015. Inspired by recent amendments which took place in the aftermath of the December 2012 gang rape in Delhi, there is a rise in crimes committed by juveniles across the country. Now the question arises as to what are the factors which lead to such unstable juveniles. The paper also tries to find out the psychological factors which lead to delinquency among juveniles. In the concluding part some suggestions are put forward for preventive measures of crimes committed by juveniles.

**Keywords:** juveniles, crime, juvenile justice

### Introduction

Much has been written, read and seen on our television sets about victim children but very little about juveniles in conflict with law who are truly neglected children. The state machinery hides them in institutions where no outsider is allowed to interact with little attention being paid to their physical and mental well-being. These children are deprived of care and little being done in respect of their rehabilitation. On completion of their sentence they are flushed out, ill-equipped to handle life and face society. This treatment towards juvenile offenders is most deplorable, especially when juvenile legislation recognizes that juveniles in conflict with law also require care and protection.

A separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. They are not to be treated in the same manner as are treated adult offenders. The reason being that a young person is believed to be less blameworthy than an adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

“..from their inception, youth justice systems have proceeded from the assumption that children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of their offences and less able to foresee the consequences of their action. Linked to this is the belief that the culpability of many young offenders may be further mitigated by the poverty, cruelty or neglect they have suffered [1].”

It should be borne in mind that Juvenile Justice (Care and protection of Children) Act 2015, as did Juvenile Justice (Care and protection of Children) Act 2000 and the other children Acts before it, deal with both children in need of care and protection and juveniles in conflict with law. Under Juvenile Justice (Care and protection of Children) Act, a separate and stringent adjudicating and treatment mechanism has been established for persons below 18 years of age who have

committed the offence. The present research paper explores the value base and philosophical origins of the juvenile justice system and how it has evolved over time. It also examines the policy shifts in the juvenile justice system. The paper also attempts to examine the balance between ‘welfarism’ and ‘justice’ in the present scenario.

### Historical background

#### International Scenario

In 1704, Pope Clement XI first introduced the idea of the „instruction of profligate youth in institutional treatment. Then Elizabeth Fry established a separate institution for juvenile offenders. Subsequently, in Britain, Reformatory Schools Act and Industrial Schools Act were brought a statute book. The first Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. In England, the first Juvenile Court was set up in 1905 [2]. And the first probation law was enacted in the state of Massachusetts, USA in 1878 and in England in 1887 [3]. The second and sixth UN Congress on Prevention of Crime and Treatment of Offenders in 1960 and 1980 discussed in detail, the problem of Juvenile delinquency [4]. They decided that there should be the standard Minimum Rules for the Administration of Juvenile Justice. Subsequently, it was accepted that special attention should be given to prevent Juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard Minimum Rules for the Administration of Juvenile Justice. In 1989; the UN Convention on Rights of the Child (CRC) draws attention to four sets of Civil, Political, Social, Economic and Cultural rights of every child. The Convention provides the legal basis for initiating action to ensure the rights of children in society [5].

#### Indian Scenario

The different Indian states enacted their own Children Acts in the early 20<sup>th</sup> Century. The Madras Children Act 1920 was the

first Children Act to be enacted <sup>[6]</sup>. The Bengal Children Act came into force in 1922 followed by The Bombay Children Act, 1924 <sup>[7]</sup>. The Bombay Children Act, 1924 was the first Children Act to become functional. The Children Aid Society, a state aided agency was formed in 1924 to implement the provisions of the Bombay Children Act, 1924 within the municipal corporation limits of Bombay <sup>[8]</sup>. Children Aid Society established institutions for the care and protection of children and is a full functional body which manages these institutions even today.

Further, the Government of India passed the Children Act 1960 to “provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories”. Under this Act, a child is a boy below 16 years of age and a girl, below 18 years of age. The child welfare Board handled neglected children and the children’s Court managed delinquent children. This statute was a precursor to the Juvenile Justice Act, 1986.

The State’s Children Acts brought within its ambit two categories of children 1.youthful offenders and 2.destitute and neglected children. During this period throughout the world, children were dealt with under the” welfarism “mode. The well-being of the child was at the center stage of all the State Children Acts. There were certain loop-holes in the State’s Children Act. State governments had not only enacted their separate legislations for children but the provisions contained in each State Act also varied. Even the definition of the term “child” differed from State to State. The Supreme Court in 1986 observed,

“We have by our order dated 5th August 1986 called upon the State Government to bring into force and to implement vigorously the provisions of the Children’s Acts enacted in the various States. But we would suggest that instead of each State having its own Children’s Act in other States. It would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children’s Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid such legislation and justification. For non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation <sup>[9]</sup>.”

The General Assembly on 29<sup>th</sup> November 1985 adopted the United Nations Standard Minimum Rules for the Administration of Justice. This was the first time the word ‘juvenile’ was used in International Law and the term ‘juvenile justice’ was coined. The introduction of new concepts were seen in domestic laws with the passing of

Juvenile Justice Act, 1986.As rightly put forward “The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society <sup>[10]</sup>.”

With the advent of Beijing Rules, the ‘welfarism’ era gave way to the ‘justice’ paradigm. “Juvenile Justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society <sup>[11]</sup>”

The concept of Juvenile Justice was to be divided between the well-being of the child and justice. Justice is not only to the child, but also to those aggrieved by his deed. This was necessitated by the growing cynicism towards “welfarism” among public, social organizations and civil libertarians. The public was of the opinion that children beyond a particular age should be made responsible for his actions. If they can act as adult do they should be treated as adults. Whereas civil liberations and human rights activists believed that juveniles in conflict with law should be given protection under “welfarism” as such juveniles are part of mainstream society and there is need not to punish them but to make them part of society.

Different nations introduced separate legislations for Juvenile offenders and children requiring care and protection. With the enactment of JJA 1986, two distinct machineries were set up to deal with “neglected juveniles” and “delinquent Juveniles”. Pending their inquiries before their respective competent authorities, both these categories of children were kept in the observation homes. JJA 2000 for the first time provided for juveniles in conflict with law” and “children in need of care and protection” to be kept separately pending their inquiries. The vulnerable misguided child is now perceived as a conniving violent juvenile from whom society, including other children, requires protection. Now-a-days juvenile crime is more noticeable, mostly occurring on the streets where the young attempt to survive without family or societal support. The media too had a major role in portraying juveniles in conflict with law as the perpetrators of the barbaric acts who get away lightly due to their age. But we must not forget that these children are themselves victims of physical and sexual abuse.

Juvenile legislation in India has attempted to balance ‘welfarism’ and ‘justice’ by providing a child his Constitutional and procedural safeguards at the inquiry stage and thereafter deciding his treatment mode keeping in mind the child’s best interest and his comprehensive rehabilitation. The United Nations Convention on the Rights of the Child, while assuring a child certain guarantees <sup>[12]</sup>, also obligates that “the best interest of the child shall be primary consideration in all actions concerning children <sup>[13]</sup>.” The various International Conventions on Child Rights are too regarded as the principles for the application and implementation of Juvenile Justice Act, 2015 and is to be of primary consideration while administrating Juvenile Justice.

### Types of juvenile delinquency

Juveniles are capable of committing the same crimes as adults. Because of the offender's status as minor, their acts are considered to be delinquent. There are three major categories of juvenile delinquency: (a) violent crimes which result in bodily injury, such as assault, rape, murder; (b) property crimes are committed when a juvenile uses force or threat of force to obtain the property of others and (c) Drug-related crimes involve the possession or sale of illegal narcotics <sup>[14]</sup>. These three types of delinquency are listed in the documents of the Office of Juvenile Justice and Delinquency.

### Juvenile delinquency is classified under following heads

1. Minor violations which include minor traffic violation,
2. Property violations,
3. Major traffic violations which include automobile theft,
4. Human addiction which include alcohol and drug addiction,
5. Bodily harm which include homicide offences <sup>[15]</sup>. Another classification presented two categories of juvenile offenders as follows:
  1. Neurotic offender's delinquency is the result of powerful unconscious impulses.
  2. Character Disorder offenders who come from disorganized family and have had a barren environment in their childhood <sup>[16]</sup>.

### Causes of juvenile crimes

There is no single cause of Juvenile crimes, but there are many and varied causes. Basically, causes of Juvenile delinquently may be of three types <sup>[17]</sup>.

#### a) Biological Causes

Biological problems such as speech and hearing problems, irritation, excessive strength etc. may lead to delinquency.

#### b) Socio-Environmental Causes

1. Mobility: Migration of persons to a new place where they are strangers offers them opportunity for crime.
2. Cultural conflicts: Cultural conflicts between inhabitants are immigrants" results in deviant behavior and enormous increase in crime.
3. Family background
  - i) Family structure: The nature and structure of the family are largely responsible for carving out the personality and that personality makes up of the children. A functionally adequate family encourages growth, confidence, frankness and ability to face reality. "The young human being needs to remain emotionally dependent on a mother figure for a considerable number of years. Without this attachment we know that children have difficulties in formation early relationship with other children <sup>[18]</sup>." Delinquents mostly come from functionally inadequate homes.
  - ii) Broken Homes: Broken Homes means a home where either of the parents is dead or living separately. In such situations, the child feels insecure and thereby finds his way on the cross roads. He is exposed to the anti-social activities, which he adopts to satisfy himself and in the process, he is led towards delinquency.

iii) Child's Birth order is the family: It is found that the intermediate children are attended less by parents as compared to the oldest and youngest children who lead the intermediate children towards delinquency.

iv) Parent-child Relationship: Misunderstandings, hard feelings, insufficient love and open conflicts between parents and child results in dissatisfaction and hostility in the child. Subsequently, such dissatisfaction and hostility precipitates social deviance.

Alcoholic parents and constant quarrel between parents make the home environment intolerable for the children that lead to delinquent behavior of the child. Even excessive punishment also leads to child's involvement in anti-social activities because of his feelings of frustration. Parents are responsible for teaching their children how to live in a normal life within their limits.

4. Socio-economic condition: The poverty contributes a major factor in commission of crime. Now-a-days, money is the parameter to measure the social status of a man in society. The crimes in the high circle of society easily are covered up through money. The rich-poor divide is considered to be instrumental in promoting youth crime.

#### c) Psychological factor

Certain mental disorders that involve difficulties in the regulation of emotions and impulsive behavior make children prone to criminal behavior. Even depression can lead a person to adopt criminal ways. It acts as a vent to one's suppressed anger and aggression.

#### d) Others

A few others causes of Juvenile crime may be noted as under:

- i) Bad company;
- ii) Extra-pocket money;
- iii) Revenge factor;
- iv) Poor literacy rate;
- v) Over exposure to media;
- vi) Lack of values;
- vii) Cheap literature;
- viii) Love for adventures;
- ix) Early sex experience;
- x) Mental conflicts etc.

### Statistics of Crimes: Post juvenile justice act, 2015

Crimes committed by juveniles saw an increase in the capital in 2016. According to National Crime Records bureau, from 1,671 cases in 2014 and 1,981 in 2015, the figure rose to 2,368 in 2016, making Delhi the number one ranked among metropolitan cities with 35.6% of the crimes committed by minors across the country <sup>[19]</sup>. The year saw 3,610 juveniles being apprehended, of whom 2,977 lived with parents, while 220 were homeless teenagers, according to the NCRB data. Only 75 of them had studied up to high school, 1,463 had received primary education and 1,007 had had no schooling at all. Of the 2,368 crimes committed by minors, 766 cases were related to theft, 370 to robbery, 143 to rape, and 138 cases were for outraging women's modesty, 66 for sexual harassment, 37 for assault, 15 for stalking and 46 were for abduction and kidnapping. And while crime against children showed a dip to 7,392 cases against 8035 in 2015, Delhi still led the category. After the capital's 39.6% share in this genre, the cities to follow were Mumbai (3,400 cases) and Bengaluru (1,333 cases), accounted for 16.9% and 7.0%, respectively. Nationally, most crime cases against children involved kidnapping & abduction (67.7%), followed by cases under the

Protection of Children from Sexual Offences Act (24.2%) read with Section 376 (rape) of IPC. In Delhi, 37 children were killed, 24 were abandoned and 11 faced attempts on their lives. Two cases of infanticide and seven of foeticide were reported in 2016. At least one juvenile is arrested on charges of rape every four hours on an average in India since the last three years. Similarly, one juvenile is apprehended every two hours for assault on women with intent to outrage their modesty. Five such juveniles are charged with one cognisable crime or the other.

Union home ministry's latest data reveals that between January 1 and December 31, 2016, some 2,054 juveniles were arrested for rape (one every 4.2 hours to be exact) and 1,627 were apprehended for assaulting women. In fact, the number of juveniles held for rape has been consistent for the last three years. There were 6,039 arrests of juveniles between January 1, 2014 and December 31, 2016 (that's one arrest every 4.3 hours). Juveniles arrested for assaulting women is higher in 2016 compared to the data of last three years as a whole, when one juvenile was charged every two hours. The increasing trend in incidence of Juvenile Crimes (under IPC) is a matter of grave concern, though the percentage of juvenile crimes to total crimes is around 1% during 2001 to 2011. The juvenile IPC crimes in 2011 have increased by 10.5% over 2010 as 22,740 IPC crimes by juveniles were registered during 2010 which increased to 25,125 cases in 2011. Major Juvenile crimes were under 'Theft' (21.17%), Hurt (16.3%) and Burglary (10.38%) in 2011.

The highest decrease in Juvenile delinquency was observed under the crime head 'Preparation & Assembly for Dacoits' (35.3%), 'Death due to negligence' (25.6%) and 'Criminal breach of trust' (14.0%) in 2011 over 2010. The highest increase in the incidence of juvenile crimes was observed under the heads 'Counterfeiting' (81.8%), 'Dowry deaths' (63.2%), 'Arson' (57.6%) and 'Kidnapping & abduction of women & girls' (53.5%). Juvenile delinquency under SLL crimes has increased by 10.9% in 2011 as compared to 2010 as 2,558 cases of juvenile delinquency under SLL were reported in 2010 which increased to 2,837 in 2011, while there was substantial decrease of 40.8% in 2010 as compared to 2009. A large number of Juvenile crimes (SLL) were reported under Gambling Act (14.77%) followed by Prohibition Act (10.7%). Cases under 'Indian Passport Act' and 'Forest Act' have registered a sharp decline of 66.7% each, while cases under 'Prohibition of Child Marriage Act' and 'Immoral Traffic (P) Act' registered sharp increase of 200% and 50% respectively.

The States of Madhya Pradesh (19.9%), Maharashtra (19%), Chhattisgarh (8.7%), Andhra Pradesh (7.3%), Rajasthan (7.3%) and Gujarat (6.4%) have reported high incidence of juvenile crimes under IPC<sup>[20]</sup>. Out of the total 888 juvenile murder cases reported in the Country in 2011, Maharashtra and Madhya Pradesh reported 16.3% and 12.6% cases. The highest incidence of the juvenile rape cases in the country was reported from Madhya Pradesh (23.6%) followed by Uttar Pradesh (12.7%) and Maharashtra (10.9%) in the country. The highest incidence of the juvenile theft in the country was reported from Maharashtra (23.6%). The highest number of juvenile delinquency cases under Special and Local Laws was reported from Tamil Nadu (23.7%) of total juvenile crimes

under SLL followed by Chhattisgarh (18.1%), Gujarat (16.4%), Maharashtra (10.4%) and Madhya Pradesh (9.7%). A total of 33,887 juveniles were apprehended during 2011 out of which 31,909 were boys and 1,978 were girls.

The percentage of girls to total juveniles was 5.84% whereas the percentage share relating to 2010 was 5.1%. Out of total 33,887 Juveniles arrested, 30,766 (90.7%) were arrested under IPC comes while 3,121 (9.3%) were arrested for committing SLL crimes. The percentage shares of Juveniles apprehended under the age groups 7-12 years, 12-16 years, and 16-18 years are 3.3%, 32.5% and 63.9% respectively.

An increase has been observed in number of juveniles apprehended in all the age groups in 2011 over 2010, and the highest percentage increase was for 7-12 age group (30.6%) whereas the rise in crimes in 12-16 years and 16-18 years were 8.9% and 12.5% respectively.

Maharashtra has reported the highest number of juveniles arrested (20.9%) under IPC crimes followed by Madhya Pradesh (17.9%), Rajasthan (7.9%), Andhra Pradesh (7.9%), Chhattisgarh (7.1%), and Gujarat (6.4%). In 2011, the states of Madhya Pradesh (406) and Maharashtra (353) reported the highest number of girl offenders under IPC which constituted 49.54% of the total girl juveniles apprehended. In 2011, the states of Chhattisgarh (178) and Gujarat (121) reported the highest number of girl offenders under SLL which constituted 67.04% of the total girl juveniles apprehended. Out of the total juveniles involved in various crimes, 81.4% are children living with parents, whereas the share of homeless children involved in various crimes are 5.7% and the remaining are children living with guardians. Out of the total juveniles involved in various crimes 18.1% are illiterate and 37.8% had education up to primary level. 31% juveniles belonged to the education level of above primary but below secondary category and 13.11% are with secondary/ higher secondary & above education. About 57% of juveniles belonged to the poor families whose annual income is up to Rs. 25,000/-. The share of juveniles from families with income between 25,000/- and 50,000/- is 27%. The share of juveniles hailing from middle income group (50,000 - 2,00,000) is 11%.

### Conclusion

The excuse of juvenility cannot be accepted especially when they are involved in heinous crimes like rape and murder. Therefore, an amendment was a necessity. But juvenile crimes cannot be curbed only by making the legislations. The work needs to be done at the grassroots level. India is with 1.21 billion people, while children represent 39% of total population of the country. According to UNICEF there are 12 million street children in India. Further, age-wise 40% of street children are between 11-15 years while 33% are between 6-10 years. A study conducted by Childline Foundation found that majority 89.8% of children live on the street with their parents. There are number of factors that lead children to living on the street. Major cause has been identified as poverty. Other factors are like over-population, family disintegration, inadequacy of formal school institutions leading to large number of dropouts. Almost 50% of street children are rag-pickers, hawkers and shoeshine boys while others works in shops and other small establishments. They are made to work 10-13 hours a day. They are physically and

sexually abused too. In Juvenile Justice institutions 70.21% children in conflict with law and 52.86% of children in need of care and protection reportedly having been physically abused.

Juveniles involved in crimes are not criminals, they are victims of society. Instead of labelling them “criminals” or “delinquents”, steps need to be taken to give them a scope of rectification. The issues of juvenile crimes like many other social evils are attributed to imperfections in our societal framework. It should be understood that wider acceptance of such children is the need of the hour. There is need of sympathy and care of our society and not the heavy hand of the law.

## References

1. Young justice in England and Wales, John Pitts, contained in *The New Politics of Crime and Punishment*, edited by Roger Mathews and Jock Young, Wilan Publishing, p.g 71
2. Adenwalla M. *Child Protection and Juvenile Justice System for Juvenile in conflict with law*. Mumbai, Childline India Foundation, 2006.
3. Mehta, N. *Child Protection and Juvenile Justice System*, Mumbai, Childline India Foundation, 2008.
4. Bhattacharya, S K. *Juvenile Justice: An Indian Scenario*, New Delhi, Regency Publications, 2000.
5. *The UN Convention on Rights of the Child*, 1989
6. Hansaria V, Jose PI. *Juvenile Justice System*, Delhi. Universal Law Publishing Company Pvt. Ltd., 2011.
7. Adenwalla M. *Child Protection and Juvenile Justice System for Juvenile in conflict with law*. Mumbai, Childline India Foundation, 2006.
8. Mehta, N. *Child Protection and Juvenile Justice System*, Mumbai, Childline India Foundation, 2008.
9. *Sheela Barse v Union of India*, (1986) 3SCC632; (1986) SCC (Cri) 352; 1986 CriLJ 1736(SC)
10. *Juvenile Justice Act*, 1986
11. Sabnis, MS. *Juvenile Justice and Juvenile Correction: Pride and Prudence*. Bombay and New Delhi, Somaiya Publications Pvt. Ltd., 1996.
12. Art.40, *Convention on the Rights Of The Child*
13. Art.3.1, *Convention on the Rights Of The Child*
14. Eaton JW, Polk K. *Measuring Delinquency*, Pittsburg Press, Pittsburg University, 1961.
15. Ferdinand, TN. *The Offence Pattern and Family Structure of Urban, Village and Rural Delinquents*. *Journal of Criminal Law, Criminology and Police Science*, 1964, 55, 86-93.
16. Trojannovicz, RC. *Juvenile Delinquency; Concept and Control*, Prentice Hall, New Jersey, 1973
17. Schafer S. *Introduction to Criminology*. Reston VA, Reston Publishing, 1976.
18. Desai Arvindrai N. *Juvenile Delinquency in India-A Psychological Analysis*. Ahamedabad, H A Desai, 1979
19. *Times of India*, dated Nov 11, 2017