

# A Critical Analysis on Criminal Liability of A Juvenile in India

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**Abstract:** *Criminal liability occurs when a person commits a criminal act, and the Indian Penal Code (IPC), addresses all substantive areas of criminal law. In India, juvenile delinquency is a depressing reality. Over the last decade, the rate of juvenile offenses perpetrated by older teenagers aged 16 to 18 in India has risen considerably. These juveniles have recently been charged with some of the most terrible crimes, including murder and gang rape. This troubling rise of adolescent delinquency is a societal problem. In the aftermath of the incident in Nirbhaya gang rape case, the criminal law was amended by substituting the definition of rape with extensive one and making the punishment severer. Batch of petitions were filed in the Supreme Court for lowering the age limit of juvenility, as a juvenile was one of the most brutal perpetrators of the incident in Nirbhaya gang rape case, and attempts were made to amend the law relating to juvenile. A critical analysis of various aspects of the issue has been made in this research paper.*

**Keywords:** Juvenile, delinquency, adolescent, liability, offences

## I. INTRODUCTION

Children are the 'subservient' and 'underclass' of the society and their development is directly connected with how we raise them.<sup>1</sup> Every society has its own values for responding and treating the children but there are certain things which are universal like if certain wants and desires of the children are fulfilled satisfactorily, the children develop with a positive orientation and if there is neglect in this aspect the result may turn out to be different and dreadful. Thus there is a directly proportional relationship between the raising of the children and the responding and treating the children.

The word "juvenile" is derived from the Latin word 'juvenal,' meaning young. The Oxford Dictionary defines the word juvenile as 'an individual organism that has not yet reached the age of maturity.'

In law, a juvenile basically means a 'person who is a minor, a child who is under the age of eighteen.' The start of such a motion was made in 1986 by the Juvenile Justice Act, leading to a new society that understood its weaker counterparts. It was further amended into various acts to keep pace with the ever-evolving society of our country.

*"A nation's children are its supremely important asset and nation's future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow"*

**Rabindra Nath Tagore**

The Juvenile Justice System in India constitutes a legal structure designed to safeguard the well-being and rights of children while furnishing them with suitable care and protection. It operates on the foundation of rejuvenation and transformation rather than punitive measures.

This system is controlled by a range of laws and directives that are intended to guarantee the welfare and advancement of young offenders. This post will explore the Juvenile Justice System in India, its pertinent legislations, and illustrative legal cases.

### How is the Juvenile Justice System different from the Criminal Justice System?

The Juvenile Justice System and the Criminal Justice System possess certain differences:

- The accused in criminal cases can be arrested by police but a juvenile accused of committing an offence cannot be arrested in the juvenile justice system.
- Juveniles are not awarded punishment like death penalty, life imprisonment or sentence for a specific period in the jail but can be kept in special homes or observation homes.
- Under the juvenile justice system, the Juvenile Justice Board is empowered to hear and dispose of cases related to juveniles unlike the criminal justice system where this power is vested with the Courts.
- Juveniles are entitled to bail but an accused in the criminal justice system may or may not be entitled to bail depending on the nature and gravity of the offence committed.

### **Laws Governing Juvenile Justice in India**

The Juvenile Justice System in India has witnessed significant evolutionary stages throughout its history, reflecting a growing understanding of the nuanced needs of young offenders.

- In 1920, a pivotal step was taken with the establishment of the first juvenile Court in Bombay (now Mumbai) under the ambit of Children Act, 1920. This initiated a justice for individuals below 16 years required distinct safeguarding and nurturing, culminating in the establishment of a separate judicial framework dedicated to addressing juvenile crimes.
- The watershed moment arrived in 1986, when the Children Act -1920 was replaced by Juvenile Justice Act, 1986. This transformative legislation acknowledged that juveniles in conflict with the law weren't conventional criminals but rather individuals in need of both care and protection.
- Further amendment in juvenile Act was brought in year 2000, aligning the Juvenile Justice Act with the principles of the United Nations Conventions underlying the principles of the rights of the Child. This revision raised the age of juvenile delinquency from 16 to 18 years, emphasizing rehabilitation and the seamless reintegration of juvenile offenders into society.
- The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 repealing the 2000 Act shows India's dedication to making the juvenile justice system stronger. This amendment brought in provisions for foster care and the adoption of children in dire need of care and protection. Additionally, it bolstered measures intended for the holistic rehabilitation and social reintegration of juvenile wrongdoers.

### **Key Features of Juvenile Act:**

**Definition of a child** – Firstly, the Act defines a child as a person who has not completed eighteen years of age. The Act classifies the term “child” into two categories, namely ‘child in conflict with law’, and ‘child in need of care and protection’.

**Classification of offenses**– The Act has also made a clear distinction of the kinds of offenses, categorizing them as petty, serious, and heinous. It stated that in case of heinous offenses alleged to have been committed by a child who has completed or is above the age of sixteen years, a preliminary assessment concerning his mental and physical capacity to commit such offense will be conducted and that the child may be tried as an adult.

It was by this Act that it was recognized that the rights of children in conflict with law are equally important as those of victims, and therefore, special provisions were proposed to tackle heinous offenses committed by individuals in the 16-18 age group.

**2015 Amendment**– In the Act of 2015, the definition of a ‘child in need of care and protection’ had been expanded, such that it includes a child who is:

1. Found working in contravention of labor laws, or
2. At imminent risk of marriage before attaining the lawful age, or
3. Who resides with such a person who has or had threatened to injure, exploit, abuse, or neglect the child or violate any other law, or?
4. Whose parents or guardians are unfit to take care of him/her.

The Juvenile Justice (Care and protection of Children) Act, 2015: Due to uproar created by the Nirbhaya gang rape case in New Delhi on 16th December 2012, the Juvenile Justice laws of the country came under public scrutiny. As the Juvenile rapist in the said case was left off with a lenient sentence of 3 years in a reform facility, while his adult co-accused were all given death sentences, which was confirmed by the High Court and upheld by the Supreme Court, the nation reacted very angrily and demanded that the juvenile too be tried as an adult and punished. As a result the Juvenile Justice (Care and Protection of Children) Act 2015 was enacted repealing the 2000 Act.

#### **Importance of the Study:**

The most important matter in respect of juveniles which has attracted attention is the administration of criminal justice. This aspect may be broadly divided into two categories, first- the offences committed by juveniles and second- the offences committed against juveniles. In view of the constitutional imperative, the juvenile offenders cannot be treated on the equal footing by applying the general norms and procedure of the criminal justice, therefore the juvenile offenders require special and separate treatment in different aspects of criminal justice. This issue involves many questions, for example - determination of age of juvenile and the relevant data for this purpose, liberalization of bail provisions and the custody of juvenile prisoners, prevention of their abuse. The penology and sentencing laws adopted a liberal attitude towards juveniles and the reformatory theory of punishment prevailed. In this respect the punishment to be given to a juvenile after he is adjudged guilty is special treatment and not imprisonment like adult offenders. There were two important elements in the development of institutional concern for children: one was concerned with the physical abuse and other with moral contamination. The recognition of the stigmatizing effects on children resulting from their association with the penal system led to a concern to keep children out of ordinary criminal Courts and their hearing systems. In theory it was then recognized that it is desirable to treat children according to their underlying needs and not in response to specific acts.

#### **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;
- (c) Drug-related crimes involve the possession or sale of illegal narcotics.

These three types of delinquency are listed in the documents of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Different classifications of Juvenile delinquency and delinquents have been given by various authors. A few important classifications are given below:

Eaton and Polk in "Measuring Delinquency" classified the following kinds of juvenile offences:

- (i) Minor violations which include minor traffic violation,
- (ii) Property violations,
- (iii) Major traffic violations which include automobile theft,
- (iv) Human addiction which include alcohol and drug addiction,
- (v) Bodily harm which include homicide offences.

#### **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:

1. Biological Causes: Biological problems such as speech and hearing problems, irritation, excessive strength etc. may lead to delinquency.
2. Socio-Environmental Causes
3. Mobility: Migration of persons to a new place where they are strangers offers them opportunity for crime.

4. Cultural conflicts: Cultural conflicts between inhabitants are immigrants’ results in deviantbehaviour and enormous increase in crime.

**Family background:**

1. 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 Delinquents mostly come from functionally inadequate homes.
2. 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.
3. 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 which lead the intermediate children towards delinquency.
4. 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 behaviour 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.
5. 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.
6. Psychological factor: Certain mental disorders that involve difficulties in the regulation of emotions and impulsive behaviour make children prone to criminal behaviour. Even depression can lead a person to adopt criminal ways. It acts as a vent to one’s suppressed anger and aggression.
7. Others: A few others causes of Juvenile crime may be noted as under:
  - Bad company;
  - Extra-pocket money;
  - Revenge factor;
  - Poor literacy rate;
  - Over exposure to media,
  - Lack of values;
  - Cheap literature;
  - Love of adventures;
  - Early sex experience; and
  - Mental conflicts etc.

**Preventive programmes for juvenile delinquency:**

**Education**

Education is essential to shape a person’s life. If quality education is imparted to the children and youngsters, they can become assets for the country and contribute towards its growth and development. The aim of every government must be to provide quality education and guidance to its younger generation. These programmes not only help the children choose their career path but also open opportunities for them to shine and use their energy in a proper manner.

### **Recreational activities**

A famous saying that “*all work and no play makes Jack a dull boy*” is actually true. Recreational and fun activities can contribute towards the growth of children and help in preventing delinquent behaviour. With the help of these activities, children can be engaged in fun yet intellectual activities which will also give them a chance to interact with peers, counsellors, teachers, businessmen, motivational speakers, and other eminent personalities. These people can help them understand how to differentiate between right and wrong.

### **Parent-children interaction**

Children are usually sensitive by nature. It is important that their parents interact with them and create a friendly environment at homes where they are not hesitant or scared to share their problems, thoughts and opinions. They must not be abused or harassed in any manner because if done so, it would have a negative impact on their mental growth.

### **Community services**

Children must be engaged in community services like helping people in need through scouts, youth groups, and NGOs. It would also imbibe in them the values of helping and respecting each other, honesty, and truthfulness, and make them responsible citizens.

### **Anti-ragging programmes or anti-bullying programmes**

Ragging or bullying had negative and adverse effects on the minds of children. Initiatives were taken by the government to stop these activities. The Central Board of Secondary Education in India issued guidelines to schools to establish a committee to ensure an anti-ragging culture in schools and that there must be a counsellor in every school. Further, in 2007, the Ministry of Human Resource Development constituted the Raghavan Committee on the issue of increasing bullying and ragging incidents in colleges and universities. In 2009, the University Grants Commission (UGC) issued regulations to prevent and reduce the menace of ragging in universities and higher education institutions. Due to all these initiatives, ragging is completely prohibited and punishable.

## **II. CONCLUSION**

The Juvenile Justice (Care and Protection of Children) Act, 2015 is a regressive step as opposed to the initial progressive philosophy followed towards juvenile justice. While many countries have now adopted the concept of restorative justice even for heinous crimes like murder and rape committed by adults, India seems to have chosen to ignore the knowledge generated by new research. The prime focus of the Juvenile Justice (Care and Protection of Children) Act is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order. Children are the future resources of the country. They must be transformed from negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carry the dreams, we need to make the dream reality. The idea is gradually gaining wider acceptance that juvenile delinquent needs the sympathy and understanding of our society and not the heavy hand of the law.

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