



The Juvenile Justice Conundrum: A Roadmap to Reform (Legislation, Shortcomings and the Remedies Sorted to)

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ABSTRACT: With the escalating desensitization and injustice towards Juveniles who conflict with the law, the Juvenile Justice System has become of colossal importance in every Nation. In India, the Juvenile Justice Act 2015 deals with the safeguarding and promotion of Juvenile delinquents and reforming them. It has been widely acknowledged by the nations that the multifaceted challenges and problems of Juvenile delinquents cannot be administered by the standard criminal system as it is ill-suited to them and requires a special law.

The Authors in this research paper have dealt with factors causing the surge of juvenile crimes, charting to evolution of the juvenile justice system in India, and have also provided certain alternatives that will help bring change and fulfil the extensive needs of contemporary society. With this, the authors have noticed the complications with the current legislation which led to difficulties in its implementation in the further research paper. It has been realized that a strong voice is needed to provide certain shortcomings and criticism towards the Juvenile Justice Act 2015 and further give certain alternatives for a better and prosperous Juvenile justice system in society.

This Research paper focuses on the problems faced by 'juvenile delinquents according to India's National Policy made in 1975, 'Children' are stated and declared as supremely important national assets.

KEYWORDS: *Desensitisation, Injustice, Colossal, Delinquents, Juveniles)*

I. INTRODUCTION

"I think it's important for us as a society to remember that the youth within juvenile justice systems are, most of the time, youths who simply haven't had the right mentors and supporters around them - because of circumstances beyond their control." - Q'orianka Kilche

(1.1) The current legislation in India is the **Juvenile Justice (Care and Protection) Act, 2015**. It defines "Juvenile or a Child" as a person who has not attained the age of **18 years and has committed a crime** whether it is serious in nature or not. There are several other names by which they are known such as **Juvenile delinquents** or **Juvenile Offenders**. The word "Child" is synonymous with the word "Juvenile" and **can be used interchangeably**.

(1.2) The working of the current legislation is two folds –

1) This act deals with children who conflict with the law which means is are accused of a crime and,

2) This act deals with the care and protection of the children.

(1.3) There has been a significant growth in Juvenile Crimes in India which has raised concerns for the safety and future of our youth. With the growth in technology, the economy, striking imbalance of political scenarios, and religious extremism; the development of a Child's brain and the way of thinking has been uncontrollable. With the increase in the ability to analyze and think about the current world, conflicts arise which sometimes leads them to the world of crime. The major issue of Juvenile delinquency harms the country's social structure.

(1.4) A specific age range of children is prone to being seduced by life's temptations and turning them into criminals. A child of today is a citizen of tomorrow, as is frequently remarked. Young people's criminal propensity must thus be promptly restrained to prevent them from developing into lifelong offenders. The majority of nations are currently prioritizing the solution to the issue of adolescent delinquency.



**(2) HOW IS THE JUVENILE IN INDIA
DIFFERENT FROM OTHER COUNTRIES**

(2.1) Minimum Age when Juvenile can be charged
with an Offence

S. No.	Country	Minimum Age
1.	United States of America	age ranges from 6 to 10 years
2.	The United Kingdom	age limit is 10 years
3.	South Africa	age limit is 10 years
4.	France	age is determined as per the offence committed
5.	Canada	After the age of 12 years
6.	Germany	After the age of 14 years
7.	India	As per IPC – at the age of 14 years

(2.2) Juvenile Tried as Adults

S. No.	Country	Minimum Age
1.	United States of America	from the age of 13 years
2.	The United Kingdom	17 in England, Wales & Northern Ireland, 16 in Ireland
3.	South Africa	from the age of 16 years
4.	France	age of being an adult is 16
5.	Canada	age of being an adult is 14 years
6.	Germany	at the age of 14 years
7.	India	from the age of 16 years in case of heinous cases

(2.3) Type of Offence When Minor Can Be Tried

S. No.	Country	Minimum Age
1.	United States of America	aggravated sexual abuse, murder, assault, robbery, firearms offenses, and drug
2.	The United Kingdom	Murder, rape, causing an explosion likely to endanger life or property
3.	South Africa	robbery, murder, rape
4.	France	Armed robbery, murder, rape, and drug offenses
5.	Canada	Serious bodily harm to any person, murder, and aggravated sexual assault
6.	Germany	Abuse of persons who are incapable of resistance, sexual abuse, or child abuse leading to death
7.	India	“Serious offense (punishment 3-7 years e.g., cheating, counterfeiting) or heinous offense, (punishment more than seven years e.g. murder, rape, robbery)”

**(3) FACTORS FOR THE GROWTH OF
JUVENILE CRIMES**

factors which may lead to behavioral instability. The antisocial behavior of Juveniles makes them conscious of their surroundings, appearances, fashion and thus leading an unstable behavior.

(3.1) Juvenile Instability

In today's world, every child wants to lead their life differently. Their behavior is influenced by certain biological, sociological, and psychological



(3.2) Family Disorientation

Families play a major role in the development of a Child's brain and their behavior. Family disorientation can harm the overall growth of a child. Parents going through divorce, excessive parental control all such things play a major role in Juvenile Delinquency.

(3.3) Economic Conditions

Children belonging to poor families often find a way to complete their desires by choosing the wrong path. Children often compare their living conditions with other children creating a situation of competition. To enhance their lifestyle and fulfill their needs they start doing the\ and making them into Juvenile delinquents.

(3.4) Substance Abuse

Substance abuse, including alcohol and drug use, is strongly linked to delinquency. The influence of drugs or alcohol can impair judgment, increase aggression, and lower inhibitions, leading to engagement in criminal behavior.

(3.5) Academic Problems

Juveniles who struggle academically, experience learning difficulties, or have low educational aspirations are more susceptible to delinquency. Poor performance in school, truancy, and dropping out increase the risk of delinquent behavior.

(3.6) Mental Health Issues

Juveniles with untreated or undiagnosed mental health disorders, such as conduct disorder, attention-deficit/hyperactivity disorder (ADHD), or oppositional defiant disorder, may be more prone to delinquent behavior.

(3.7) Lack of Positive Role Models

The absence of positive role models, both within the family and in the community, can leave juveniles without appropriate guidance and support. Without positive influences, they may seek validation and belonging in negative or delinquent activities.

(4) GROWTH OVER THE PERIOD

(4.1) EVOLUTION OF THE ACT

(a) In 1919–1920, the Indian Jail Committee was founded, and it encouraged the British government to create separate facilities and hold separate trials for minors. It further argued that

minors should almost always be granted bail and that the goal of the law should be their reformation and rehabilitation.

(b) During the British Period, several states implemented their own Children Act. They focused on the protection, care, and development of children. However, they did not mention the term delinquent rather they the term “Child”.

(c) The first ever Children's Delinquency Act was introduced by Madras in 1920. After that Bengal and Bombay also Introduced Children Act in 1922 and 1924 respectively.

(d) Following India's independence, the constitution included certain measures for child protection and development under the headings of Fundamental Rights and Directive Principles of State Policy.

(e) **Article 39(f)** says the State should direct its policy towards ensuring that children are given opportunities and facilities to develop healthily and conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment.

(f) The Children Act 1960 was enacted by the Indian government. This law forbade the detention of children under any circumstances and provided for their upkeep, care, welfare, education, training, and protection. Only Union Territories are subject to this law. The Children Act became the basis for the central legislation on Juvenile Justice.

(4.2) The Juvenile Justice Act evolved. Its evolution can be divided into 6 phases.

These are –

a. Before 1773

- Both Hindu Law (Manu Smriti) & and Islamic Law (Sharia) talked about the maintenance and proper upbringing of children.

- It was laid out that it was the sole responsibility of parents to provide care & and protection to children.

- If not possible, someone from the community took care of them.



- As per Islamic Law if anyone found an abandoned child & felt that he could be harmed, then he was under a duty to take care of the child.¹

- Family laws prescribed different punishments for the commission of certain offenses.

- Children were treated differently & separately from adults.

- The focus was on special care for survival; they were not held fully responsible for their actions as the adults were.

b. 1773 – 1849

- The failure of East India Company in India led to the shift of reins from the company to the crown.

- The Regulating Act of 1773 granted the East India Company, the power to make and enforce laws.

- The Charter Act of 1833 changed the commercial status of the company, into a governing body.

- Between 1773 and 1850, many committees were established focusing on children in jails.

- Krishna Chandra Ghoshal and Jai Narayan Ghoshal approached the then Governor General to establish homes for destitute juveniles in the major trading city of Calcutta.

- 1st Raged School for vagrant & orphan children was established in Bombay in 1843.

c. 1850 – 1919

- Apprentices Act, 1850 was laid to keep juveniles out of jails.

- All India Jail Committee was established which by 1919-1920 segregated children from the prevalent criminal justice system.

- Specific legislation for children was passed.

- The act of 1850 laid a provision wherein vagrant children who committed offenses in the age group of 10-18 years underwent sentences as apprentices.

- Indian Penal Code, 1860 fixed age limit for criminal culpability of juveniles as under Sections 82 & 83. Also protected children until

they developed cognitive abilities to understand the nature of actions.

- The Criminal Procedure Code, 1898 under Sections 298, 399 & 562 laid various provisions like separate trials for persons below the age of 15 years and changed the juvenile system from **punishment to reformative**.

d. 1919 – 1950

- The All-India Jail Committee urged the British government to establish separate institutions for separate trials for juveniles.

- It was laid that compulsory bail would be given in most cases.

- The motive of the law was to rehab and reform.

- Bengal had juvenile courts since 1914.

- Madras Children's Act, 1920 was the 1st Delinquency law in India which did not define "delinquent" but instead defined "child" to be a person till the age of 14 years and "young" to be children between the age of 14 to 18 years.

- **The Vagrancy Act, 1943** was legislation for street or vagabond children. It was established to provide care and training for children below 14 years who are –

- i. Living on begging
- ii. Lacked proper guardianship
- iii. Had parents involved in crimes

e. 1950 – 2001

- The Children Act, 1960 established varied separate systems and laws for juveniles which became the basis for the Juvenile Justice Act of 1986.

- In the **Sheela Barse case**², the Supreme Court triggered the passing of uniform law on Juvenile Justice.

- It also laid that children in jails were entitled to special treatment.

- **The Juvenile Justice Act, 1986** mandated care & provision for protection, treatment, development & rehabilitation of

- i. Neglected, delinquent juveniles and
- ii. Adjudicatory & disposition of Juvenile Delinquency throughout the nation.

¹ Ved Kumari (2004), p. 57

² **Sheela Barse vs State of Maharashtra 1983 AIR 378**



- It formulated separate systems for delinquents and neglected juveniles.
- It laid to the establishment of
 - i. Separate Juvenile courts
 - ii. Juvenile Welfare Boards

f. 2001 – 2015

- The Juvenile Justice (Care and Protection of Children) Act 2000 was passed in December 2000 and came into force on April 1, 2001.
- This was amended in 2002 and 2006 aiming to protect, care, rehabilitate, and educate the juvenile and to provide them with vocational training opportunities.
- A new law was enacted in 2015 which was The Juvenile Justice Act, 2015.
- It is also the current major legislation related to juvenile justice in India.

(5) THE CURRENT LEGISLATION

(5.1) THE JUVENILE JUSTICE ACT, 2015

It was necessitated partly due to a **mass hysteria created after the Delhi gang rape of 2012**, as one of the members of the group that raped the woman in a moving bus was a juvenile who was **aged a few months short of 18 years**, and he was tried as a juvenile and sent to a reformation home for three years and released in December 2015, while other accused who were adults were awarded death penalty.

(5.2) SCOPE OF THE ACT OF 2015

- While a juvenile was defined as a child below the age of 18 years, children in the age group of 16-18 can be prosecuted as adults if they commit a heinous crime;
- A child of 16-18 years who commits a less serious offense, may be prosecuted as an adult if he/she is apprehended after the age of 21 years;
- Offences perpetrated by juveniles are classified into three categories –
 - A heinous crime is any offense that prescribes a minimum of seven years imprisonment;
 - A serious offense attracts 3-7 years of imprisonment, and
 - A petty offense prescribes three or fewer years of imprisonment.

The act of 2015 brought certain laudable changes. However, public discourse and discussion have ensued on the desirability of treating 16-18-year-olds who commit heinous offenses as adults and prosecuting such juveniles in adult courts.

(5.3) IMPLEMENTATION OF THE ACT

(a) Section 24 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides that whoever, employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.³

(b) Section 24 (2) of the JJ Act provides that whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of an offense punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

(c) The onus of implementation of the JJ Act rests with the State Governments/UT Administrations.

(d) To ensure the proper implementation of the JJ Act and to improve the quality of services for children under the Act, the Ministry of Women and Child Development is implementing the Integrated Child Protection Scheme (ICPS) which provides financial and technical assistance to State Governments/UT Administrations to put in place a range of measures for rehabilitation of such children.

(e) The Scheme also provides non-institutional care through Sponsorship to take care of the needs of such children living with families.

In the case of *Re Chinnathambi*⁴, the Court observed and prescribed some guidelines to determine the age of juveniles in the Juvenile Justice System:

³ Smt. Krishna Tirath, Minister for Women and Child Development, in a written reply to the Rajya Sabha.

⁴ *Re. Chinnathambi Rowthan & Ors. v. Unknown* (AIR



1. Finding the age of the juvenile should be recorded based on proper and exact evidence.
2. For removing conflicts in evidence produced regard could be given to oral evidence.
3. The school certificate of the child should be considered precise and accurate.
4. All possible efforts must be made by the Court to determine the age of the Juvenile.
5. A document like a birth certificate, or school leaving certificate should be given priority as compared to radiological examination and physical features.

(5.4) FUNCTIONS OF THE CURRENT LEGISLATION

- (a) The Act amended in 2015 changed the nomenclature of 'juvenile' to 'child' and 'child in conflict with the law'.
- (b) The Act defines orphaned, surrendered, and abandoned children.
- (c) It also gives definitions for petty, serious, and heinous crimes by children.
- (d) A heinous offense attracts a maximum punishment of 7 years imprisonment under any existing law.
- (e) A serious offense attracts imprisonment of 3 to 7 years.
- (f) A petty offense attracts a maximum of 3 years imprisonment.
- (g) The Act gives more clarity on the functions and powers of the Juvenile Justice Board and the Child Welfare Commission.

a. **Juvenile Justice Board:**

This is a judiciary body before which children detained or accused of a crime are brought. This acts as a separate court for juveniles since they are not to be taken to a regular criminal court. The Board comprises a judicial magistrate of the first class and two social workers, one of whom at least should be a woman. The Board is meant to be a child-friendly place and not intimidating for the child.

b. **Child Welfare Committee:**

The State Governments set up these committees in districts following the provisions of the Act. The Committees have the power to dispose of cases for the care, protection, treatment, development, and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The Act provides for an

efficient and organized system for the adoption of orphaned, surrendered, and abandoned children. It also makes it compulsory for all childcare institutions to be registered.

- (h) An important provision of the amended Act is that it provides for minors in the age group 16 – 18 years to be treated as adults in the case of heinous crimes.
- (i) The Act also gives the **Central Adoption Resource Authority (CARA) statutory status.**
- (j) The Act distinguishes between children in conflict with the law and children in need of care and protection.

(5.4) POSITIVE ASPECTS OF THE LEGISLATION

- (a) There is a clear distinction between children in conflict with the law and children in need of protection and care.
- (b) It makes the registration of all children's homes mandatory, bringing in more transparency and efficiency in the system.
- (c) It seeks to reduce crimes committed by children between the ages of 16 and 18.
- (d) By including the provision for 16-18-year-olds to be tried like adults in case of heinous crimes, it provides justice to the victims of such crimes.

(6) FUNDAMENTAL PRINCIPLES IN THE ACT

- a. *Principle of Family Responsibility,*
- b. *Positive measures to promote the well-being of the child,*
- c. *Reduce Vulnerabilities and enhancement of child identity,*
- d. *Principle of Non-Waiver of Rights,*
- e. *Principle of Last Resort,*
- f. *Principle of Dignity and Worth,*
- g. *Principle of Equality and Non-Discrimination,*
- h. *Principle of Right to be Heard,*
- i. *Principle of Safety - No Harm, No Abuse, No Neglect, No Exploitation, and No Maltreatment,*
- j. *Principle of Best Interest,*
- k. *Principle of Right to Privacy and Confidentiality*



(7) ISSUES INVOLVED IN THE JUVENILE JUSTICE ACT, 2015

At the outset, the Standing Committee Report states that the process of consulting and obtaining feedback from stakeholders was duly conducted by the Government. However, closer scrutiny reveals that major concerns such as those about provisions of children in conflict of law and the entire rationale behind repealing the Act of 2000 have not been given due consideration by the Ministry.⁵ The Committee expressed its displeasure and dismay at the Ministry for not having taken into account the suggestions and concerns sent in by stakeholders while drafting the legislation.

The primary area of examination in the Act is that of the children in conflict with the law. One of the reasons cited behind bringing down the age of juveniles for heinous crimes from 18 to 16 is the NCRB data on the rise in crimes committed by children in this age group. The Ministry has relied on and interpreted this data without discerning the lacunae evident in it.

(a) A total of 1.2% of all crimes in India are committed by juveniles, a minuscule number.

(b) Moreover, this percentage had hovered around the same figure over the years when the Act was drafted.

(c) The number of children booked for heinous crimes in 2012 stood at 6747 and in 2013, it rose marginally to 6854.

(d) To compare, the child population between the age of 16–18, as per the last census data, was over a staggering six and a half crores.⁶

(e) Minna Kabir, a child rights activist, adds that if one analyses the data further then around half of the cases turn out to be love affairs which are pressed as rape charges and another third of the cases can be attributed to a lack of sex education⁷.

⁵ 264th Report, Parliamentary Standing Committee on Human Resource Development, 25th February 2015, pg. 15

⁶ Rashme Sehgal, Does the Juvenile Justice Act Need

Amendment? <https://www.rediff.com/news/column/does-the-juvenile-justice-act-need-amendment/20140728.htm> (30–07–19, 23:17)

⁷ Ibid

(f) Questions that are being raised on the entire rationale of the re-enactment of the act of 2000 to a new Juvenile Justice Act, 2015 are not entirely farcical. One of the reasons that could have been behind the government's eagerness to bring in the new law is the public and media pressure that piled up post the 2012 Delhi rape. In essence, this move appears to be a populist measure, one to secure the vote bank, rather than one based on the actual need to amend the law.

(g) There is no scientific research to prove that jailing minors for heinous offenses would provide a positive outcome in the form of a deterrent to future child offenders. Studies from the US have proved that spending twenty years in jail is not at all beneficial for a juvenile. The US Department of Justice revealed in 2012 that putting juveniles on trial under the adult system did not act as a deterrent.

(8) CRITICAL ANALYSIS OF THE CURRENT LEGISLATION

a) The current legislation will majorly torment socially and economically backward sections of society – the **poor, illiterate children** who have been deprived of proper education & opportunities facing discrimination & leading them to a life into crime at a very young age. It is well documented by scientists that the brains of young adolescents in the age range of 16–18 are not fully developed, very volatile, and impulsive. These findings have to be factored in when surveying the data on crime rates. **The solution lies in education, not in punishment.**

b) The Bombay High Court, in the case of *Mumtaz Ahmed Nasir Khan v. State of Maharashtra*, held that the juvenile justice system is meant to be reformative and not punitive.

c) The Court commented that it ought to be more than just evaluating the child's capacity to commit the offense as the purpose of the system is to save the child and reform, not retribute.⁸

⁸ Sadaf Modak, Juvenile Justice Act reformative, not retributive, says Bombay High Court, <https://indianexpress.com/article/cities/m>



d) Expressing concern about the data being relied upon, he said “*In 2012, India had approximately 434 million children below 18, of which about 40 percent were vulnerable to committing crimes. It is being said that there is a spike in crimes committed by children... This is false. Out of the total crimes committed, crime rate by children constituted only 1.2 percent.*”⁹

e) The second challenge that this Act faces is that the **scope of the term ‘heinous crime’ has not been laid out**. Under the Indian Penal Code, heinous crimes include all those crimes for which the minimum punishment is imprisonment for seven years or more. Under this classification, even counterfeiting, cheating, arson, theft, and trafficking come under heinous crimes.

f) The Centre for Child and the Law, NLSIU has compiled a list of all offenses fitting into the definition of heinous crimes under the IPC, Commission of Sati (Prevention) Act, Narcotic Drugs and Psychotropic Substances Act, Unlawful Activities (Prevention) Act and others. This is very ambiguous and given that the principle of fresh start is not applicable in such cases, more clarity is necessary.

g) **It is the researcher’s opinion that the provision for reducing the age of juvenility in heinous crimes be restricted to gruesome acts such as murder and rape, subject to the facts of each case.**¹⁰

h) The Justice S. Verma Committee report found itself against the move to reduce the age for juveniles from 18 to 16 in cases of heinous crimes.

umbai/juvenile-justice-act-reformative-not-retributive-says-bombay-high-court-5835359/, (30-07-19, 23:55)

⁹ **Proposed Juvenile Justice Bill not in Children’s Interest,**
<https://www.india.com/news/hyderabad/propose-d-juvenile-justice-bill-not-in-childrens-interest-207963/>, (30-07-19, 23:25)

¹⁰ **Shalini Nair, The Many Heinous Crimes that Make a Juvenile an Adult,**
<https://indianexpress.com/article/explained/the-many-heinous-crimes-that-make-a-juvenile-an-adult/>, (31-07-19, 00:27)

The report cited the Convention on the Rights of Child which mandates that a life sentence should not be given to those below eighteen years of age.¹¹

i) The age of 16–18 is a critical one, where many sensitive and hormonal changes take place and children require greater protection. Therefore, there is no need to subject juveniles to the adult judicial system as it also goes against Articles (s) 14 and 15(3) of the Indian Constitution.¹²

j) The next bone of contention is another clause through which a person of age more than 21 can be tried as an adult for serious offenses he/she committed as a juvenile. This provision violates Article(s) 14 and 20 of the Constitution and is also morally wrong as it tries to punish the juvenile for the failure of the investigative agencies.

k) A heinous violation of natural justice is also found in **Section 15**¹³ of the act of 2015. This section prescribes the JJB to conduct an assessment of the capacity of the juvenile to commit a crime. It is essential to understand that the language of this section presumes the child to be guilty from the beginning, regardless of whether he/she committed the crime or not. This appears to be a case of sentencing before guilt and is against the test of procedural fairness, which is an integral part of due process¹⁴ as it **introduces a bias against the child from the start**. It is in *contravention of the principle(s) of presumption of innocence and best*

¹¹ **Justice Verma panel against reducing Juvenile Offender’s Age,**
<https://timesofindia.indiatimes.com/india/Justice-Verma-panel-against-reducing-juvenile-offenders-age/articleshow/18158335.cms>, (31-07-19, 00:48)

¹² **264th Report, Parliamentary Standing Committee on Human Resource Development, 25th February, 2015**

¹³ Preliminary assessment into heinous offences by Board - In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment about his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence

¹⁴ Maneka Gandhi v. Union of India



interests which must be followed in the administration of the Act.

1) The government's decision to amend the 2000 act can also be critically seen as the Supreme Court in *Salil Bali v. Union of India*¹⁵ and *Subramaniam Swamy v. Raju*, had upheld the constitutionality of the Act, mandating that all children in conflict with the law be dealt with equally irrespective of the gravity of their offense.

(9) RIGHT TO BE REFORMED

(9.1) REFORMATORY APPROACH

The juveniles who are alleged and found committed an offense shall be reformed by restorative justice, deserving rehabilitation and social reintegration rather than punitive and retributive punishments. Awarding punitive and retributive punishments to children prevents society from moving on. Children are presumed innocent and immature to understand the consequences of crimes. Therefore, they must not take responsibility for criminalization. The traditional objective of criminal justice, retribution, and repression must be given away.

The reformatory approach to punishment should be the object of criminal law, to promote rehabilitation without offending communal conscience and to secure social justice.

(9.2) REHABILITATION

The jurisdiction in the case of juveniles - Any offense not punishable with death or imprisonment for a life committed by any person who at the date when appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any court specially empowered under the Children Act, 1960 or any other law for the time being in force providing for the treatment, training, and rehabilitation of youthful offenders.

The juvenile who is addicted to alcohol or drugs which leads to behavioral change in a person shall be referred to an Integrated Rehabilitation Centre for Addicts or Similar centers maintained by the State Government for mentally ill persons for the period required for in-patient treatment of such juveniles. Section 34 and 35 of Juvenile Justice Rules 2016 defines how health and medical facilities are to be provided.

Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment, or any other assistance, helpful and practical, to facilitate the rehabilitative process.¹⁶

(9.3) OPPORTUNITY

In *Gaurav Jain vs. Union of India*, the Delhi High Court held that the law should not discriminate against juvenile offenders based on the nature of the crime. The court held that every juvenile offender should be given an opportunity for rehabilitation and reintegration, regardless of the severity of the crime¹⁷.

10) REMEDIES THAT CAN BE SORTED TO

The need of the hour is to improve the juvenile system in the country. The Juvenile Justice (Care and Protection of Children) Act, 2015 does not serve as an answer to the puzzle. Enabling a process wherein the juveniles are tried as adults and penalized accordingly would destroy their lives and not allow them to reform for the mistakes committed as naïve children. India's justice system has always been reformatory in the sense that it strives to restore criminals to society, not as fringe elements in society but as good citizens. It is necessary to understand how the transformation of children into the world of crime can be stopped at the grassroots. This is where the role of juvenile homes becomes even more important.

(a) Juvenile homes must have facilities to help delinquents tune back into the rest of society. They must have opportunities to reform and to get an education to plunge back into civilized society and live an honorable life. The process of rehabilitation involves a multi-faceted psychological approach towards confidence building and employability, at the end of which the juveniles are ready to face the challenges of everyday life¹⁸.

(b) The changes in the law regarding the age of juveniles have been introduced out of fear that

¹⁶ *Narottam Singh v. State of Punjab* (AIR 1978 SC 1542)

¹⁷ *Gaurav Jain v. Union of India* (AIR 1997 SC 3021)

¹⁸ *Smita Nair, Justice League: An Attempt to Institutionalise Juvenile Reform and Rehabilitation*

¹⁵ (2013) 7 SCC 705



the increasing crime rates by juveniles would hamper the growth of society.

(c) These unfounded perceptions have made the legislators take a tough stance on the law for juveniles.

(d) Juveniles only make up for a small portion of the total crimes in society and there has not been a large increase over the years in these numbers.

(e) The focus should not be on tougher laws, but rather on proper implementation of the existing ones.

(f) The infrastructure currently in place is not enough for carrying out proper implementation and there is a severe dearth of resources.

(g) Instead of acting upon public uproar, the government should have ascertained its responsibility and dealt with the crumbling juvenile frameworks.

(h) While it cannot be disputed that incidences of gruesome crime at the hands of children are on the rise, the solution does not lie in jailing these children, but in educating and rehabilitating them.

(10.1) BORSTAL SCHOOLS – A Better Implementation

Borstal Schools are a type of youth detention center in India that is used exclusively for the imprisonment of minors or juveniles. They are maintained and organized uniquely since their primary objective is to ensure the welfare and rehabilitation of young offenders in an environment suitable for children.

Juveniles who are found guilty of committing crimes are detained in Borstal Schools and are provided various educational facilities under the guidance of trained teachers. Education is oriented towards training and moral influence conducive to their reformation and prevention of crime. Vocational education and skills training are also concentrated on. This is because most children who end up in Borstal Schools come from economically weaker backgrounds. Training them for semi-skilled employment is an effective way to prevent them from committing crimes to earn money.

Nine states in India, namely, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu, and Telangana have borstal schools in their respective jurisdictions. Tamil Nadu had the highest capacity for keeping 678 inmates. Himachal Pradesh and Kerala are the only states that can lodge female inmates in 2 of their Borstal Schools.

However, Borstal Schools are non-existent in some of the most populous states like Uttar Pradesh and all Union Territories.

Borstal schools have generated both praise and criticism in society. Proponents of this system claim that it is required to create deterrence against committing crime along with creating a system conducive to reformation. However, opponents say that Borstal Schools are still a **form of incarceration that does more harm than good to inmates**. Moreover, the environment in a Borstal School can resemble that of prison due to the occurrence of violence, discrimination, and sexual abuse.

The Borstal School system in India has seen poor implementation. The environment is not that friendly and does not help the inmate juveniles in a required manner. Coupled with this, the frequency with which unregistered homes are mushrooming in the country worsens the overall situation for children. The Borstal Schools do not see a proper watch by central or state government. These schools if properly seen through and administered can be a very important step to retreat the juveniles and bring them back to normal society and be a part of it.

11) CONCLUSION

Child welfare is the Supreme welfare for a nation. For those children who commit crimes is very obvious that their mental state is different from that of an adult. Juvenile crimes are increasing and that needs to be focused. We have laws and still amendments going on but the major issue is not the law but the loopholes in the law and proper implementation of it. Awareness acts as the main key to it. Social division is a very big hamper in this scenario but it goes with everywhere as division and conflict theory exists. Not the government but every person needs to understand



this. From very basic units like family is the major cause of increasing Juvenile crimes. A stable environment is necessary. So, it is the parent's responsibility too.

Transferring children to the adult court under clause 19(3) violates their right to be heard by a Juvenile Justice Board that is child-friendly and multidisciplinary, as well as their right to privacy. It also goes against the best interest standard established by the JJ Act 2000, Model Rules 2007, and the JJ Act 2015 itself.

Those who are orphan needs to be in a good place. Only an established system won't work but a working system will. New laws should be introduced to strictly follow this and present should not be taken lightly as we have to punish the crime, not the criminal.

Juvenile Justice (Care and Protection) Act 2015 was passed in light of the failure of Child protection. Yet at the same time, there exists a similar circumstance due to the absence of duty and commitment, coordination between different partners in Child Protection, and due to the absence of experienced and logical social work experts in the usage of ICPS at state to grass-root level. Child protection should go under a single organization followed by a positive, adequate, and proficient hierarchical structure which should be rooted till the village level.

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