A STUDY ON THE JUVENILE DELINQUENCY IN INDIA: SOCIOLOGICAL ASPECT AND JUDICIAL RESPONSE

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Abstract

Juvenile Delinquency is one of the crucial issues all across the globe. Children are the future of every country. If the children of the country face fatal and hazardous social conditions or circumstances which lead them into delinquency, it indicates a decay in the societal values. India has the second largest Juvenile population in the world. Juvenile Delinquency is one of the key issues faced by India. The Indian Legislature and Judiciary have shown sensitivity and responsiveness in safeguarding the rights of the Juveniles. The “Juvenile Justice Act, 2015” was enacted to ensure that the law related to Juveniles keep pace with the changing times. It was influenced by the Nirbhaya Gang Rape Case where one of the accused was a Juvenile and could not be tried as an adult under the “Indian Penal Code, 1860”. The new Act allows for a child over 16 years of age to be tried as an adult in case of heinous offences. The Amendment to the Act of 2015 also streamlined the procedure for adoption. In addition to this, the qualifications needed to be a member of the Juvenile Justice Board were enhanced and the mandatory requirements to continue with the membership were made more stringent. Despite all the measures, Juvenile Delinquency is still a major concern for India. The crimes have steadily risen over the years. Moreover, there have been several reports of abuse in Child Care Homes. Therefore, it is essential that appropriate measures should be taken to ameliorate the condition of the Juvenile Population in India. This paper examines the sociological facet related to Juvenile Delinquency in India and the judicial response to the same. The paper will explore the factors that are responsible for juvenile delinquency in India. There will be an analysis of the statistical data on juvenile delinquency from various Government portals and reports. Along with that, the paper will also discuss the latest amendments made in the “Juvenile Justice (Care and Protection of Children) Act, 2015”, in the year 2021. The author will also provide suggestions for enhancing and alleviating the conditions of Juveniles in India.

Keywords: Juvenile Delinquency, Psychological Depression, Societal Aspect, Economic and Educational Background, COVID-19, Child Care Homes, Juvenile Justice Board, Juvenile Justice System.

Introduction

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

-Nelson Mandela

It has been correctly said that the progress of a society can be traced by the way it treats its children. If the children lead a safe, blissful and prosperous childhood, they are bound to grow into motivated and socially responsible adults. However, if the children face lethal and perilous environment...
which directs them to turn to criminal activities, it becomes a cause of grave concern. The indulgence of children in criminal activities is known as “Juvenile Delinquency”.

Childhood is said to be the most beautiful phase of life where one can enjoy the joys of being alive without the additional responsibilities that come with adulthood. However, since times immemorial, the societal conditions have made certain children go astray at a young age and commit crimes. The commission of a crime by a child before attaining adulthood is known as ‘juvenile delinquency’. It has become a relevant issue in the recent times and if such issue is not resolved expeditiously, it has the potential to shake the foundation of any society. The term ‘Juvenile’ originates from the Latin term “Juvenis” which means young. The word ‘delinquency’ has its roots in the Latin word “Delinquer” which means to omit. William Coxton was the first one to use the word ‘Delinquent’ for a person found guilty. The term ‘juvenile delinquency’ is used to refer to commission of activities that are illegal and against the norms of the society. It mainly includes the persons who are juveniles and have committed offences. Ruth Shonle Calvan observed that, “irrespective of legal definition, a child might be regarded as delinquent when his anti-social conduct inflicts sufferings upon others or when his family finds him difficult to control so that he becomes a serious concern of the community.”

The term ‘juvenile delinquency’ has a considerably narrower definition in India. It is limited to the violation of penal statutes by persons who are defined as Juveniles. A Juvenile is a person who has not completed 18 years of age at the time of the commission of the offence in most cases. The “Juvenile Justice Act, 2015” has been recently enacted by the Indian Government in order to provide for a speedy mechanism to accord justice to Juveniles. It was amended in the aftermath of the controversial Nirbhaya Gang Rape case where one of the convicts in the case was a juvenile over the age of 16 years. There was a lot of hue and outcry over the convict getting away with miniscule punishment as compared to the gravity of the offence he had committed. He was released after spending three years in a reformation centre. There were call for changes in the law. The Act of 2015 allows for a child over the age of 16 years to be tried as an adult, in case he has committed a heinous offence.

There has been a steady increase in crimes committed by Juveniles over the last few years despite the promulgation of an update Juvenile Justice Act in the year 2015 by the Government of India. There were a number of issues in the “Juvenile Justice Act, 2015” which led the legislature to bring amendments in the existing Act in the year 2021. Some of the major issues included the lack of judicial scrutiny in adoption orders, delays in adoption, ineffective implementation of the Act, limited capacity of institutions set up under the Act and more. The Amendment Act sought to remedy all these lacunas by introducing suitable changes.

**Sociological Paradigm of Juvenile Delinquency**

Delinquency arises as a result of both the nature and the nurture of a person. The basic crime of theft can simply be due to a greed for an object as insignificant as a candy. The theft of a bicycle

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1 SK Chatterjee, Offences against children and juvenile justice, 338 (Central law publications, 2016).
4 Ibid.
can also be the consequence of an adventurous streak. More than 170 potential causes have been enumerated by Burt, which transforms a pure young mind into a delinquent. He has stated that, “Crime cannot be assigned to a single, two or three universal sources but it springs from a wide variety, and usually from innumerable alternative and converging influences. The concurrence of subversive factors results in the development of violent behavior, as may easily be conceived is present almost everywhere: it needs many coats of pitch to paint a thing thoroughly black.”

There are multiple factors which lead to delinquency. These factors range from biological, social, psychological, physical and most importantly to emotional disorder. The indirect contributors are the geographical and environmental conditions. R.K. Bhattacharya has highlighted the conditions which effects juvenile delinquency and stressed on the need to find a solution. He says, “there is much to do... to remove growing poverty, to mend broken and disorganized homes, to abolish slums with their worsen situation and to alleviate miseries of the millions of refugees. At the other end, paradoxically, there is seen better clothes, and food, better entertainment facilities, earlier physical and sexual maturity and economic independence for some favored few. The young people do not get adequate guidance or good example from the grow-ups. In an atomic age, an age of violence, when robber nations care little for humanity, with ethics shattered and ideals fallen, immediate gratification is sought, leaving tomorrow to take care of itself. One must not however, cease to hope and do one’s best.” Some of the factors leading to delinquent behaviour in Juveniles have been discussed in detail.

Factors Responsible For Delinquent Behaviour in Juveniles
There are a number of factors which are responsible for the delinquent behaviour of the juveniles in India. One of the major factors influencing Juvenile Delinquency in India is the poor school attendance. Schools are institutions which inculcate the values of education and discipline. They teach children the necessary skills and values required to integrate into the society as a positively and empathically driven members of the society, contributing in the society’s growth. If the children are unable to attend schools, they can be forced to work, trafficked or exploited. This renders them vulnerable to being recruited by criminal groups. It may also cause them to commit criminal acts on their own. They do not learn how to live in the society following its norms which enhances the possibility of them turning into delinquents.

The incompetent educational standards also play a role in the conversion of children to criminals. The schools which do not have adequate funding, infrastructure and staff often suffer from lack of discipline and order. This often leads to chaotic situations in the schools and do not allow for the comprehensive development of the children. It can be further compounded by the lack of the involvement of parents in the school work of the children. It has been found that positive parental involvement enhances the ability of the child to perform well in school and social surroundings.

Bullying during school time can also lead to Delinquency. The child develops the view that there is no one to protect him and there are several instances where the parents and the school authorities ignore the incidents. The child may experience feelings of rage, loss of hope and helplessness. In

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such a scenario, the child may take the matter in his own hands and indulge in delinquent behaviour against the bullies. All this can accelerate emotional instability, personality disorder, social anxiety, antipathy, annoyance and resentfulness in his conduct. It can also have a devastating impact on his academic performance. This leaves room for further possible delinquent behaviour during adulthood.

The other crucial factor that contributes to delinquency is the prevalence of domestic violence in homes. The children visualise violence at homes and normalise the behaviour of lashing out at others. This increases the tendency of the teens to follow up with their fears and frustrations. The violence in the neighbourhood also has the same effect since the children learn to view violence and delinquency as a survival process.

Substance Abuse is one of the most common contributors to the Juvenile Delinquency cases. There has been a rapid increase in the substance abuse by Juveniles in the recent times. The tendency to consume drugs at a younger age has increased manifold. This has a grave impact on the minds of the children which further effectuates them in committing crimes under its influence. In addition to this, once the person is dependent on such addiction, they will need it necessarily for their survival. Therefore, substance abuse encourages the Juvenile population to take any measure in order to obtain it. This can lead to self-sabotage and they may indulge in harmful and illegal activities.\(^7\)

Poverty is another major driving force behind the growth in Juvenile Delinquency. A significant number of delinquents belong to poor households who are denied the quintessential faculties of life. The desperation to fulfill basic needs often drives them to commit crimes for the purpose of their survival. They do not hesitate in joining criminal consortium or performing dangerous tasks in order to earn money.\(^8\)

Media is also one of the major factors that influence the growth of criminal tendencies in children. The criminals are often portrayed as ‘cool’ and ‘heroic’. For example, Money Heist showed criminal behaviour in a positive light and caught the attention of younger generation. Similarly, the Fast and Furious franchise also showcased the main stars performing criminal activities. Such cinematographic production can influence the young minds in a very detrimental and pernicious manner.

There are also some personal factors which can provoke Juvenile Delinquency. Mental instability and emotional disorder in children can also effectuate the practices which impairs their cognitive faculties from differentiating between right and wrong. There is a possibility that the children are not aware about the implications and consequences of their actions. Moreover, there is a chance that such children are lured by gangsters and used for criminal purposes.\(^9\) There are multiple biopsychosocial reasons that are pointed out by experts that lead minors to indulge into delinquent

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\(^7\) Juvenile delinquency, Legal Service India, http://www.legalservicesindia.com/article/626/Juvenile-delinquency.html#:~:text=not%20beyond%20repair


behaviour. The genetic factors, adverse familial environment, social conditioning, peer influence and fluctuating hormones during puberty are the major contributing elements. Conduct disorder and attention deficit hyperactivity disorder (ADHD) are a few common psychological issues observed in children who eventually indulge in anti-social activities.

The advent of internet and technology and its increased use by the children also contributes to Juvenile Delinquency. The children often seek refuge in the virtual world. They prefer to play on mobile phones, Play Stations, Virtual Reality Headsets and more. The games they play are often violent and can involve delinquent activities which negatively impacts their brain. All this has led to reduction in the social interaction among the young population of the country. Moreover, the Covid-19 Pandemic also had an adverse impact on the already dwindling real life interactions which further makes them vulnerable to delinquent behaviour.

**Juvenile Delinquency in India**

“Juvenile Justice (Care and Protection of Children) Act, 2015” was in effect due to the earlier amendment which was brought in consequence of the Nirbhaya Gang Rape Case where one of the accused was a juvenile who was to attain the age of 18 within a couple of months. This order was criticised by many and the need for an amendment turned out to be inevitable. The amendment of the Juvenile Justice Act was made soon after to allow for a child aged above 16 years to be tried as an adult. However, the amendment cannot be applied retrospectively. The amendment was brought as the Juvenile Convict had the mature understanding of the act he had committed, but could not be tried as an adult. The amendment classified the crimes by a juvenile into 3 categories, viz., “heinous, serious and petty offence.” The children of 16 to 18 years of age who have committed heinous offences are to be treated as adults and be tried in the ordinary courts.

As per the crime report released by the NCRB in 2018, 38,256 juveniles were being arrested across the nation in 31,591 registered cases. Amongst the classification of crime, IPC crimes were the most registered cases against which the juveniles have been arrested. As per the data revealed, Maharashtra accounted for highest number of cases (5879 cases), which was followed by Madhya Pradesh (5232 cases) and Delhi with 2727 cases. Out of this data, Maharashtra has the highest number of IPC cases registered with total of 1673 incidence and the same is followed up with Delhi having 1372 cases and Odisha having 795 cases. The data also reveals that the juveniles were also found to be accused for the heinous offences like outraging the modesty of women, rape, sexual assault, etc.
Table: Incidences by Juvenile reported during 2008-2018 and % change based on previous year\(^{10}\)

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Graph: % change in total incidences based on previous year\(^{11}\)

As per the above mentioned graph and table, it can be deduced that in 2018, juvenile delinquency has been reduced by 6 percent. From 2011-2014 cases have gained peak, however, 2015 has been marked with the sudden drop in juvenile offences. After 2014, there was increase in the cases by 7.23 percent in 2016. Since that, there is drop in the juvenile cases. However, the total number of cases in comparison to 2008 has been increased only.

There has been an increase of the number of children arrested in India from the year 2009 to 2019 by 15%. There were 33,642 children arrested in 2009 which rose to 36,585 in the year 2019. The majority of the children arrested were in the age group of 16-18 years as shown by the graph below.

**Juveniles Arrested by Age Groups**

![Juveniles Arrested by Age Groups](image)

Source: NCRB

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\(^{11}\) Ibid.
The most common crime committed by Juveniles is theft followed by hurt and burglary. The graph below shows the types of offences committed by Juvenile and their growth or decline in the last decade.

**The type of crimes committed by Juveniles under IPC**

![Graph showing types of crimes committed by Juveniles under IPC]

**Source:**

The increase in the number of theft cases can be attributed to a rise in the levels of poverty over the recent years. The growth of heinous offences like rape, murder and kidnapping is an alarming sign as it indicates moral decay and virtuous degradation in the younger generation of the society.

There has also been an increase in the pendency of cases related to juveniles. The number has increased from 43% in 2009 to 51% in 2019. There has been a decrease in the number of convictions from 52% in 2009 to 43% in 2019. The rate of acquittal has constantly remained below 10%. The graph below shows the data related to the disposal of cases filed against children.

**Status of Disposal of Cases against children who are in conflict with the law**

![Graph showing status of disposal of cases against children]

**Source:** NCRB

The increase of the pendency of cases before the Courts is not a good sign since it indicates a delay in the justice delivery system for Juveniles. The authorities must work at a faster pace in order to provide justice to the Juveniles accused of crimes since delayed trials can adversely affect their childhood.

**Culture of Abuse at Juvenile Care Homes**

The “Juvenile Justice Act, 2015” and the “Juvenile Justice Act, 2000” both provided opportunities for rehabilitation of children. It was based on the view that children are worthy of love, dignity and opportunities to rehabilitate irrespective of the fact that they are the victims or perpetrators of a crime. The law mandates the creation of childcare homes in every district across

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India. They house both the “Children in Need of Care and Protection” (CNCP) — “who might have been rescued from being lost, homeless, or trafficked” — and “Children in Conflict with the Law” (CICL) “who have been accused of crime”. The primary aim behind their development was the reintegration of children into the society and provide them with the chance to start their life afresh.

However, the sad reality is that the Juvenile Homes themselves have emerged as a dangerous, vulnerable and unsafe place for the children. The research undertaken in different Indian states over the recent years has revealed shocking and eye-opening facts. A large number of children in such juvenile care homes have been physically assaulted and exploited. The assault ranges from whipping by belts to being beaten into false confessions. In addition to this, there have been numerous instances where the staff itself has trafficked children into labour and prostitution. Some incidents of sexual assault by the staff have also been reported. “Tata Institute of Social Sciences” conducted an audit for the girls in a childcare home in Bihar. The results were astonishing as well as disheartening. The audit uncovered incidents of beating, molesting, drugging and rape in the child care facility in Bihar. This horror had been further compounded by a long period of public silence and apathy. The residents close to the home had heard the cries of torture at night and the details of the abuse had been known to several staff members. However, none of them chose to stand up against the brutality and violence since they were scared of the “might of the system.”

This has an adverse effect on both the mental and physical well-being of the children. Moreover, the condition of the homes is also appalling. They are often overcrowded and corporal punishment is a customary practice. The children are deprived of both food and sleep. This has led to increased incidents of anxiety, depression and in some cases even suicide. A study undertaken in Juvenile Justice Homes in New Delhi showed that nearly 40% of the boys residing in the homes had experienced sexual abuse. The signs of suicide were exhibited by 5% of the boys, according to the findings of the research.

In the first ever national audit of shelter homes had been commissioned by the “National Commission for Protection of Child Rights.” The audit revealed that almost 40% of the centres

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16 Ibid.
17 Durgesh Jha, Overcrowding, poor infrastructure plague state-run children’s homes, HAQ Centre for Child Rights, Jan 30th 2012.
did not have sufficient measures for the prevention of physical or sexual abuse of children. The study was conducted as a response to the news of the mass sexual abuse of girls at state-funded shelter homes in Muzaffarpur (Bihar) and Deoria (Uttar Pradesh), run by NGOs, in 2018. The report further revealed that, “there are 7,163 child care institutions in India out of which a whopping 6,299 or nearly 88% are run by NGOs or trusts while the government runs only 864 centres, mainly observation homes where juveniles in conflict with law are kept.”

**Juveniles in India**

![Image of child care institutions]

**Source: The New Indian Express**

Rule 76(1) of Juvenile Justice Model Rules, 2016, provides that “every child care institution shall evolve a system of ensuring that there is no abuse, neglect and maltreatment; shall include staff who is aware of what constitutes abuse, neglect and maltreatment, and their early indication; and how to respond to these abuses.”

A senior NCPCR official observed that, “in nearly 40% of the shelter homes, staff members were not properly trained to the need to understand or raise alarm if kids are abused and also, the required infrastructure and mechanism to ensure proper physical and emotional well-being of the children was not in place.”

This shows that the condition of the children in childcare homes stand on the same footing as that of the prisoners lodged inside Indian Prisons. They both suffer from the issues of overcrowding, custodial torture and much more. The majority of the children in the Juvenile Care Homes come from poor and marginalised backgrounds. Therefore, there is a lack of societal attention towards their needs and requirements. This furthers their misery. In addition to this, the Government and
other institutions want such horrendous, revolting and shameful incidents to remain camouflaged. This has led them to prevent an efficient country-wide analysis of the issue.\textsuperscript{20}

### Juvenile Delinquency and Covid-19 Crisis IN INDIA

#### Challenges Faced By Juveniles Lodged In Special Homes And Child Care Institutions

The Covid-19 Pandemic had a significant impact on the juveniles lodged across observation homes throughout the country. They were susceptible to contracting Covid-19 and were also vulnerable to other dangers inside the homes during the pandemic. As per the Government data, 132 children lodged in childcare institutions had contracted Covid-19. This influenced the decision of the Supreme Court which gave directions to the Child Welfare Committees and Juvenile Justice Boards across the nation to mitigate the impact of Covid-19 on the children in childcare institutions. This was to be done by devising a method that could suggest whether the children should be kept inside the institutions or not. Some of the covered children were also ordered into foster care.

The overall implication of the pandemic on the juveniles was very severe and brutal. The schools were shut down and they were forced to stay inside their homes. This caused them to spend an increased amount of time on the internet which led to social isolation and mental health issues. The Juveniles lodged in care homes were under the extreme fear and mental anxiety of contracting Covid-19. It resulted in increased anxious responses to daily life situations which further affected their well-being. Moreover, they also suffered from the threat of being abused and violated by the caretakers and the staff at the reformation homes. Therefore, a very dire situation was created for the juveniles during the pandemic. Therefore, the authorities were forced to take action to protect them from such incidents.

A total of 5,155 juvenile delinquents out of a total of 8,614 had been sent home during the Pandemic. This translates into nearly 60\% of the total number of Juvenile Delinquents lodged in special homes across India. Moreover, once the orders of the Supreme Court had been passed 64\% of the children in childcare institutions were sent back home.\textsuperscript{21} This shows expediency shown by the Courts and the governments in ensuring that the juveniles do not suffer the worst of the Pandemic and are able to survive in their own homes.

#### Crime Rate By Juveniles In 2020

There has been 7.8\% decrease in the crimes committed by Juveniles in 2020 compared to 2019. The total number of cases registered against the Juveniles in 2020 have been 29,768 compared to 32,369 cases registered in the year 2019. The total number of juveniles apprehended in the year 2020 are 35,352 out of which 31,618 juveniles were apprehended under cases of Indian Penal Code, 1860 and 3,734 juveniles were apprehended under cases of Special and Local Laws during 2020. 26,954 of the 35,352 juveniles convicted under Indian Penal Code, 1860 and Special and Local Laws crimes were between the age group of 16 to 18 years. This indicates that with the increase in age, the tendency to commit an offence also increases. The provisions under Criminal


Law which allow for the trial of Juveniles over the age of 16 years as adults in case of criminal offences are further justified by these statistics.\textsuperscript{22}

There has been a decrease in the total number of offences committed by Juveniles year on year till 2020. However, the statistics pertaining to specific cities show a different story. As per the NCRB data, there was an increase of 24\% in the offences committed by Juveniles in the city of Ludhiana. The total number of Juveniles booked under criminal cases rose to 59 in 2020 from 36 in 2019. The cases included grave offences like murder, drug peddling, molestation and abduction. The reason behind this rise has been primarily identified by the police as the loss of jobs and the need to make quick money. One of the cases involved a murder of an 18-year-old by his childhood friend whom he had slapped over a petty issue six months ago.\textsuperscript{23} Moreover, the involvement of children in cases of abduction, sexual offences, drug peddling and more is alarming since the Pandemic is bound to continue and the youth of the country is resorting to such activities to make ends meet. Therefore, there is a need not only at the national level but also at the state and district level to enforce welfare schemes that enable the people to fulfill their basic needs.

\textbf{Crimes committed by Juveniles in Ludhiana, 2020}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Category} & \textbf{Cases} \\
\hline
MURDER & 3 \\
Attempted murder & 2 \\
Molestation & 2 \\
Abduction & 1 \\
Preparation for dacoity & 3 \\
Theft & 2 \\
Burglaries & 2 \\
Buying stolen things & 3 \\
Criminal Trespass & 3 \\
POCSO & 6 \\
Unlawful activities & 1 \\
Drug peddling & 1 \\
Other & 13 \\
Total & 36 \\
\hline
\end{tabular}
\caption{In a nutshell}
\end{table}

\begin{table}[h]
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\begin{tabular}{|c|c|}
\hline
\textbf{Education Qualifications} & \textbf{Cases} \\
\hline
Illiterate & 2 \\
Up to primary & 1 \\
Metric & 56 \\
\hline
\end{tabular}
\caption{Education Qualifications}
\end{table}

\begin{table}[h]
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\begin{tabular}{|c|c|}
\hline
\textbf{Family Background} & \textbf{Cases} \\
\hline
Living with parents & 42 \\
Living with guardians & 10 \\
Homeless & 7 \\
\hline
\end{tabular}
\caption{Family Background}
\end{table}

\textbf{Source: Hindustan Times}

The city of Kochi which had been showing a decline in the crimes committed by minors over the last four years, also witnessed an increase in crime. In the first five months of 2020, the number of crimes by minors were reported to be at 15. This figure was 19 in the whole year 2019. The most prevalent crimes were ordinary and vehicular theft cases which was followed by offences under the “Narcotic Drugs and Psychotropic Substances Act, 1985”. The reason for the rise in crimes under NDPS has been explained by “Arun B Nair, Assistant Professor of psychiatry at Government Medical College Hospital, Thiruvananthapuram”. He states that, “\textit{There has also been a trend in}

\begin{footnotesize}

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which children are exploited by the drug mafia to peddle narcotics. More often, the reward for peddling is not money but a packet of cannabis. That is how they are pushed into becoming both criminals and addicts.”

This situation is alarming as the crime groups are taking advantage of the desperate situation created by the pandemic to engage minors in the commission of offences. This can adversely impact their development and further lead to the increase of criminal elements in the society.

Legal Framework For Juvenile Delinquency in India

Indian Penal Code, 1860

Section 82 of the Code provides that, “Nothing is an offence which is done by a child under seven years of age.” It presumes that a child under the age of seven is doli incapax. This means the child does not have the capability of committing a crime and cannot be held guilty of an offence. It works on the presumption that the mental faculty of the child has not been sufficiently developed in order to distinguish right from wrong. This means that there is no concept of the development of mens rea which is a necessary ingredient for the commission of a criminal offence. Therefore, the child under this section is absolved of any liability. A child cannot be arrested under Section 82 in any circumstance.

Section 83 of the code provides that, “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.” This section works on the assumption that a child is doli capax. This means that there is a possibility that a child can be capable of committing a crime, depending upon the maturity of his understanding the consequences of his conduct. This presumption is not absolute and the prosecution must prove beyond doubt that the child had both the actus reus and the mens rea. In addition to this, the child must be aware that his conduct had been wrong. The primary question dealt with is the degree of maturity and understanding of the child with regards to the offence he has committed. If the defence is unable to prove that the child lacked the requisite reasoning and acumen regarding the consequences of his actions, the court will presume that the child had intended to do what he did.

It was held in Emperor v. Dhondya Dudya that, “once the court comes to the conclusion that the concerned child has not attained sufficient maturity of understanding, then the immunity conferred by Section 83 is as absolute as conferred by Section 82.” The maxim starts losing the force as the age of child increases since it is dependent upon the intellect of the child.

The immunity does not extend beyond the age of 12 years. In the case of Kalka Prasad v. State of Uttar Pradesh, it was held that, “A child does not escape criminal liability after turning 12 even if the offender is a person of underdeveloped understanding and incapable of understanding the

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24 Minors’ dark side out in lockdown, The New Indian Express, 
27 Emperor v. Dhondya Dudya, AIR 1919 Bom 173.
nature and consequences of his act.” However, it does not become completely irrelevant and will be factored into consideration when the court is passing the sentence for conviction.\textsuperscript{29}

Section 82 and Section 83 of the Indian Penal Code, 1860 provide immunity to child offenders from criminal liability. These sections are backed by the Articles 15(3) and 39(e) and 39(f) of the Indian Constitution.\textsuperscript{30} Article 15(3) allows the state to make special provisions for women and children. Article 39(e) provides that, “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.” Article 39(f) provides that, “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.” These Articles empower the preferential treatment to be given to children who commit offences since their mental capacity is not sufficiently developed to understand the implications of their actions. If they are punished harshly, it can impact their development as a child and further push them towards delinquency during adulthood. Therefore, the law treats them with due care in order to protect their future.

Juvenile Justice (Care and Protection of Children) Act, 2015

This Act now governs the treatment of all the juveniles up to the age of 18 years. The enactment of this act led to the repeal of the Juvenile Justice Act, 2000. The act has been specifically dedicated to children and prevails over the IPC in case of any inconsistency. This was held by the Supreme Court in the case of Independent Thought v. Union of India.\textsuperscript{31}

The understanding of this Act is important in order to completely comprehend the law relating to the criminal liability of the children in India. It not only deals with the juveniles who are in conflict with the law but also provides for the care, protection, treatment and rehabilitation of both “juveniles in conflict with law” and “children in need of care and protection.” Section 2(12) of the Act defines a child and juvenile as “a child who has not completed 18 years of age.” Section 21 of the Act provides that, “No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.”

Section 18 of the Act provides exhaustive remedies to deal with a child below the age of 18 “who has been proved to have committed a petty offence or a serious offence or a child below the age of 16 years has committed a heinous offence”. It allows the board to consider the facts and circumstances brought forth by the social investigation report and the past conduct of the child and make any of the following decisions:

“(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
(b) direct the child to participate in group counselling and similar activities;

\textsuperscript{29} Hiralal Malick v. State of Bihar, AIR 1977 SC 2236.
\textsuperscript{30} Gopinath Ghosh v. State of West Bengal, AIR 1984 SC 237.
\textsuperscript{31} Independent Thought v. Union of India, (2017) 10 SCC 800.
(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child’s well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child’s well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.”

A child who has been convicted under this Act is not subject to disqualification that take place due to such convictions under Section 24 of the Act.

Section 12 of the Act provides that a juvenile arrested under the Act under any bailable or non-bailable offence is to be released on bail with or without surety. The child cannot be put in a police station or jail under any circumstances. In case the child is susceptible to exposure to any moral, physical or psychological danger and their release would adversely affect justice, the reasons shall be recorded by the Board. In this situation, the child can be placed in an Observation home. It is necessary to inform the parent or guardian in such a case.

A juvenile is not to be tried with the other co-accused of the offence before a normal court under CrPC under Section 23 of the Act. It provides for separate trials for the juvenile and the adult accused. The enquiry related to whether an offence has been committed by a juvenile or not is to be done by the Juvenile Justice Board which has been constituted under the Act as per Section 14.

Section 15 empowers the board to determine if the child is to be treated as an adult for the commission of a heinous offence. If the board is of the view that the child has to be tried as an adult, it transfers the trial of the case to the Children’s Court having jurisdiction to try such offences under Section 18(3) of the Act. This section was included in the Juvenile Justice Act, 2015 after the infamous Nirbhaya Gang Rape case where one of the offenders was of the age of 17 years.

There was massive outcry and objections over the fact that the accused would not be tried as an adult. A Public Interest Litigation had also been filed by Advocate Shweta Kapoor in the Delhi High Court which stated that, “Minds of juveniles who have attained the age of 16 and commit
serious crimes are well developed and they do not need care and protection of the society. Rather, the society needs care and protection against them.” The amendment was proposed in its aftermath and was not allowed to be applied to the case retrospectively. However, it was included in the Juvenile Justice Act, 2015 so that it could be applied in cases related to heinous offences.

**Juvenile Justice (Care and Protection of Children) Amendment Act, 2021**

In order to further strengthen the “Juvenile Justice (Care and Protection of Children Act), 2015”, an Amendment Act has been introduced in the year 2021. It empowers the District Magistrates, including Additional District Magistrates to issue adoption orders under **Section 61 of the Act**. This will increase the speed of the disposal of cases. It will also lead to an enhancement in accountability. The process of adoption before the amendment was under the purview of the Courts. This led to a huge backlog of cases with every case taking a number of years. This will allow for faster adoption mechanism.

It also provided categorisation of the offences where the maximum sentence was over seven years of imprisonment but no minimum sentence or a minimum sentence of less than seven years has been provided as “serious offences” under the “Juvenile Justice Act, 2015”. Serious Offences now include offences for which the punishment under the “Indian Penal Code, 1860” is imprisonment between three and seven years.

It has also changed the minimum qualification that is needed to be a member of the child welfare committee. It provides that, “No person shall be appointed as a member unless he or she has been actively involved in health, education or welfare activities pertaining to children for seven years or was a practising professional with a degree in child psychology, psychiatry, law, social work, sociology or human development.”

**Section 4** of the amended Juvenile Justice Act, 2015 provides that the member of a committee can be terminated in case they fail to attend the proceedings of the Child Welfare Committee consecutively for three months without a valid reason. It also provides for their termination in case they fail to attend less than three-fourth of sittings in a year.

**Section 4(4)** also lays down the conditions under which a person will not be eligible for selection as a member of the Board. A person will be ineligible to be a member of the Board in case he:

“(i) has any past record of violation of human rights or child rights;

(ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

(iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;

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(iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.”

These provisions have been incorporated in order to further strengthen the provisions of the Juvenile Justice Act, 2015. The legislature has attempted to plug the loopholes in order to provide justice to the children. The steps have been taken with the intent to expedite the proceedings related to adoption, provide clarification over the term “serious offences” and appointment of experts for the welfare of Juveniles. Moreover, the members have also been made more accountable for their actions. This is indicative of a positive development for the children of India.

**Judicial Trends On Juvenile Delinquency In India**

The determination of the age of the accused is one of the key issues that has to be decided by the adjudicating authority when dealing with cases related to Juvenile Delinquency. The courts have primarily faced three major issues when dealing with the cases related to juveniles:

- The question related to the date which should be considered while determining the age – The courts have to deal with the question that if the date of commission of the crime is to be considered or the date on which the accused had been brought before a competent authority.
- The evidence that is needed to prove the age of the child.
- The stage at which the plea that the accused is a child can be taken.

A three-judge bench of the Supreme Court clarified in the case of *Umesh Chandra v. State of Rajasthan*[^33] that, “the relevant date for the applicability of the Act so far as the age of the accused who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.” A two-judge bench of the Supreme Court in the case of *Amrit Das v. State of Bihar* gave a different decision and held the date of the trial as the relevant date. This created inconsistency between the two decisions of the Supreme Court.

The law in *Umesh Chandra* case was upheld by a five-judge bench of the Supreme Court in the case of *Pratap Singh v. State of Jharkhand*.[^34] The court stated that the date of commission of the offence is the relevant age when dealing with the age of the child and affirmed that “the law laid down” in the *Umesh Chandra* case was the “correct law.” This has clarified the question regarding the date that needs to be considered while determining the age.

With respect to the evidence regarding the age, the Supreme Court has taken the view that it does not need to adopt a hyper-technical approach when determining the age of the accused for finding a Juvenile. In the case of *Bhoop Ram v. State of Uttar Pradesh*,[^35] the court had to deal with the conflict between the age of the accused as shown in the medical certificate and the school certificate. The medical certificate had the accused at over 16 years of age and the school certificate at under 16 years of age. The Apex Court took the view that a medical procedure can have the possibility of an error and there was no material that would throw doubts on the authenticity of the school certificate. In this case, the benefit of the doubt was given to the accused and he was tried

as a child. However, in the case of *Om Prakash v. State of Rajasthan*\(^3\^\)\(^6\), it was held that in case the records are doubtful and their validity is questionable, the medical evidence which is based upon scientific evidence would take precedence.

A plea that the accused is a minor can be raised at any time during the proceedings. This was held by the Supreme Court in the case of *Gopinath Ghosh v. State of West Bengal*.\(^3\)\(^7\) The court took the same view on the case of *Bhola Bhagat v. State of Bihar*\(^3\)\(^8\) as well. The reasoning behind the decisions was that the Indian Constitution puts an obligation on the state to act for the welfare of the children. The legislations related to child offenders are intended for their benefit so that they can be provided with a better life. Therefore, it would not be appropriate if a court rejects the plea related to the age of the accused solely on the ground that the plea had been raised at a later stage. This clarifies that a plea regarding the age of the accused can be raised at any time during the trial proceedings.

In the case of *Sunil s/o Budiya Parmar (Juvenile) through guardian (Father) Budiya s/o Kidiya Parmar v. The State of Madhya Pradesh*\(^3\)\(^9\), bail was denied by the MP High Court to a 15-year-old rape accused. The court refused to entertain the argument of the probationary officer that rape can be committed due to ignorance. The court stated that the provision under Section 15 of the Juvenile Justice Act, 2015 effectively provided a free hand to those under 16 years to commit heinous offences. The court acknowledged that in accordance with the law, the accused will be tried as a Juvenile. However, it observed that, “*Apparently, the resent law to deal with such cases is totally inadequate and ill-equipped and this Court really wonders as to how many more Nirbhaya's sacrifices would be required to shake the conscious of the lawmakers of this Country.*”

While hearing the bail application the court stated that, “*The conduct of the petitioner clearly reveals that he committed the aforesaid offence with full consciousness and it cannot be said that it was committed in ignorance.*” The court lamented that the accused will be sent back under the care and custody of his parents as he enjoys the protection of the Juvenile Justice Act, 2015. It stated that there is every possibility that the girls of tender age are not safe around him.

This shows that the courts have taken a progressive view when it comes to the determination of various factors of offences related to Juveniles. They have interpreted the provisions favourably in order to provide maximum benefits to the Juveniles and allow them to avail the benefits provided to them by the Constitution and the Legislature.

**Conclusion: A WAY FORWARD**

The mistreatment of children in the Juvenile Homes is one of the key concerns in the Juvenile Justice System. The system has been developed in order to protect the future of the children in India. The lack of support in the care homes and the incidents of mistreatment and abuse are detrimental to the motive of the Act. The inadequate infrastructure and lack of support has also contributed to the decline. The incidents often see involvement of influential personalities which

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\(^3\)\(^7\) Gopinath Ghosh v. State of West Bengal, AIR 1984 SC 237.

\(^3\)\(^8\) Bhola Bhagat v. State of Bihar, AIR 1998 SC 236.

\(^3\)\(^9\) Sunil s/o Budiya Parmar (Juvenile) through guardian (Father) Budiya s/o Kidiya Parmar v. The State of Madhya Pradesh, Criminal Revision No.853/2021.
deter their subordinates and the general public from speaking up against the abuse. This causes immense harm to the large population of juvenile delinquents in the child care homes. Therefore, the need of the hour is to develop a holistic mechanism that endeavours for the child rights and social activists to take up initiatives for the reformation of the juvenile population in India.

The Covid-19 Pandemic has also affected the rate of Juvenile Delinquency. While there has been a net decline in the crime rate, the tendency to commit crimes has increased due to increase in poverty. The Juveniles are more prone to being lured by Criminal Rings to carry out illegal activities since they are in desperate need of hush money. This is one factor that the State machinery needs to address urgently in order to prevent more Juveniles from taking up criminal activities.

There has been substantial efforts forwarded by the legislature and the courts in order to provide for a legal machinery that can protect the rights of the Juveniles. The legislature has been proactive and has constantly updated the law related to Juveniles in order to fill up the lacunae in the law and keep pace with the changing times. The Courts have also interpreted the provisions beneficially in favour of the children. They have taken a liberal interpretation of the law and allowed for maximum flexibility when it comes to protecting the interest of the Juveniles. The legislature also showed consideration for the potential issues that can be brought by the Act. In the Juvenile Justice Act, 2015, it has allowed children aged over 16 to be tried as adults when they are involved in heinous offences. The amendment was necessitated due to the fact that children were soft targets for criminal groups. They had developed a *modus operandi* that involved the recruitment of children as a part of their nexus. This led to the conversion of a large number of children into delinquents. It also shows acknowledgment of the fact that at the age of 16, if a child is able to commit a heinous offence, the mental capacity is developed enough to understand the implications and consequences of the actions.

The Amendment Act passed in 2021 further attempted to fill up the loopholes in the Juvenile Justice Act, 2015. It provided clarity related to the definition of Serious Offences. In addition to this, it also streamlined the process for adoption so that the process of rehabilitation of children becomes faster and easier. The minimum qualifications for members were also enhanced to ensure that only experts deal with Juveniles. It also puts an obligation on the experts to attend the sessions regularly so that the Juveniles do not suffer on account of institutionalised insufficiency. This shows that there have been considerable efforts undertaken by the Government to ameliorate the deplorable and odious conditions of the Juveniles. At the same time, it is important that apart from legislation, a wide range of stakeholders and reform agents need to be brought together, including relevant groups outside the legal, judicial and human rights area to jointly address this issue in a strategic way. However, there is still room for improvements and therefore, the measures mentioned in the paper require special attention and implementation for protecting the juvenile population of our country.

**Suggestions**

The following suggestions can be implemented to improve the Juvenile Justice System in India:

- The abuse and mistreatment in the Child Care Homes must be stopped. There should be the formation of voluntary committees from the members of the general public who can pay
surprise visits to these centres to assess their condition. If it is found that the condition of the centre is not up to the mark, Penal Action should be taken against the person responsible.

- There should be counselling sessions for parents where they are told about the steps, they can adopt during the parenting of the child so that they do not become susceptible to delinquent tendencies. It has been shown that right parenting can positively affect the mindset of the children and contribute positively towards their growth.

- The Government should make sure the welfare schemes like Sarv Shiksha Abhiyan, Mid-Day Meal Scheme and more are adequately implemented. The aim of the schemes is often positive. However, the lack of execution deprives the children from their benefits more often than not.

- The cases related to Juveniles should be disposed off in a speedier manner. The staff working for the Children can be technologically enhanced and equipped so that the matters are dealt expeditiously.

- There must be substantial efforts to make the internet a safer place for children. The social networking websites and the cyber security cell of the government should work hand in hand to ensure that children are not exposed to explicit and harmful content which could invoke delinquent tendencies.

- The Educational Institutions must realise their responsibility and ensure that the children are educated through the correct technique and methodology which allow them to positively contribute towards the society. The incidents of bullying, violence and substance abuse should not be taken lightly. It is essential that the children involved in such activities, receive appropriate counselling and are able to understand the implications of their actions. This will help in the reduction of delinquent behaviour in the future.

- The children should be imparted with appropriate sex education at an earlier stage of their life, so that they can comprehend the meaning of free consent and can differentiate between good touch and bad touch. This will be useful in reducing the number of sexual offences committed by Juveniles.

- The Government should work towards reducing poverty and inflation. The welfare schemes should be well thought of and must be in the favour of the general public. This will help in the reduction in the crime rate since people would not have to resort to the commission of offences in order to fulfil their daily needs.

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