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INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

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**JUVENILE DELINQUENCY AND JUVENILE LAWS IN
INDIA WITH SPECIAL REFERENCE TO JUVENILE
JUSTICE (CARE AND PROTECTION OF CHILDREN)
ACT, 2015**

Authored By-Anjana Baburaj

Introduction

In a developing country like India, juvenile delinquencies have become quite common. Juvenile crime, as the name implies, is a phrase used to describe when juveniles engage in criminal behavior. In India, youth wrongdoings are a harsh reality. The most terrible crimes, like as murder and gang rape, were committed by children. It's a terrible tendency, and such criminal behavior by children is upsetting to society as a whole. Individuals who are under the age of 18 are referred to as juveniles or minors. The definition of a child will be expanded upon and defined in this paper. In areas of investigation, trial, and correction, the juvenile justice system strives to treat juveniles differently than adults.

UNCRC has stated that the minimum age should not be lower than 12 years and that state parties must aim to increase it. India has failed on this front as the minimum age of criminal responsibility is seven years, much lower than the internationally prescribed standard of 12 years. The Juvenile Justice (Care and Protection of Children) Act, 2015 presented an opportunity to give clarity but it failed to do so. This article attempts to examine and study who is a juvenile, what juvenile delinquency entails, the reasons or causes for the rising of juvenile delinquency in India, t

o critically analyze if there are any violations of rights, and also to critically analyze the reduction of age from 18 to 16 years under The Juvenile Justice (Care and Protection of Children) Act,

2015 and if there is any violations under the present act.

Literature Review:

1. Theories: Numerous researchers have examined the behaviour of juveniles and discovered these theories, which cause a youth to choose the road of crime :-

Anomie theory: According to Robert Merton, the primary cause of juvenile delinquency is the lack of means to make oneself happy. They fail to examine wrong and exemplary ways and engage in actions against the law of the land to attain their goals. So, according to this theory, if people were not adequately socialized into society's shared norms and values, or if society was changing so rapidly that the shared models and values were unclear, deviation (and thus crime) was far more likely.

Rational choice theory: According to this theory, people are reasonable and make decisions carefully before acting out. Choice Theory assumes that youths are competent in making logical decisions to achieve the desired goal. This theory suggests that juvenile delinquents gather knowledge about a specific incident before committing any crime, then analyse and evaluate that information. They decide to conduct such an act after considering the advantages of doing so.

Subculture theory: Albert Cohen developed the subculture theory in 1955, a synthesis of numerous of his beliefs. Juveniles who do not fulfil societal standards seek affirmation from a subculture, according to the subculture theory. Other youths who do not fit the societal norms make up the subculture group. These groups then act in socially unacceptable ways, rebelling against socially acceptable standards. Juvenile delinquency, according to Cohen, is a product of society. Juveniles commit crimes like stealing because it is not socially acceptable, and they do it to fit in with their peer group. Subcultural theories are thus to be commended for their recognition that deviation in specific groups is widespread, but Cohen's approach has a significant flaw in its application to juvenile delinquency. Cohen's theory is empirically supported by studies of North American street gangs and adolescent gangs. Attempts to apply it to crime, in general, have failed since it is apparent that attributing any criminal behavior to the existence of male delinquent subcultures is preposterous. White-collar crimes and crimes committed by the middle class or, for example, women, cannot be explained.

Different opportunity theory: Cohen's view that juveniles become delinquent when they fail to satisfy society's standards is not entirely supported by the differential opportunity theory. The

differential opportunity theory, developed by Richard Cloward and Lloyd Ohlin in 1960, holds that chance plays a role in juvenile delinquency. So, according to Cloward and Ohlin's theory, if a juvenile has more possibilities to achieve, they will be less inclined to seek validation from subculture groups. Furthermore, the differential opportunity theory implies that a juvenile's delinquency can be influenced by causes other than social influences.

Social contract theory: Human beings are linked to society by connection, commitment, interactions, and belief, according to this theory. The greater the emotional bond, the less probable the child will commit crimes. Juveniles committed to their careers and participating in school are less likely to engage in criminal activity. According to numerous studies, children who have solid relationships with their parents and know the importance of "Values" and "Beliefs" are less likely to turn delinquent.

Case Laws Of Prime Relevance In The Given Matter:

Salil Bali v. Union of India¹: A juvenile was tried under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, for committing gang rape. It was argued in Salil Bali v. Union of India &nr that the current Juvenile Justice Act be amended to lower the age from 18 to 16 years and to alter the juvenile legislation so that minors who commit serious crimes such as rape and murder be prosecuted as adults. Mr. Bali argued that the legal circumstances prevailing in other parts of the world wherein the age of criminal responsibility had been fixed between ten to sixteen years, the provisions of section 15 and 16 of the Act needed to be reconsidered regarding the level of punishment in respect of heinous offences.

The apex court observed that, "There are, of course, exceptions where a child in the age group of 16 to 18 may have developed criminal propensities, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children into mainstream society rather than to allow them to develop into hardened criminals."

¹Salil Bali v. Union of India, 7 SCC 705 (2013).

The petition was rejected by the Supreme Court, which stated that the Juvenile Act is based on good principles and adheres to the Indian Constitution. Several international treaties, such as the Beijing Rules and the Riyadh Guidelines, recognize children's rights and establish separate juvenile justice systems. The Juvenile Justice Act, 2000 was “restorative” not “retributive,” even in the case of heinous crimes. It was significant for the author’s research in understanding the essence of the 2000 Act.²

Darga Ram v. State of Rajasthan:³ A 7-year-old Kamala (victim) was raped and killed by smashing her head with a stone in Darga Ram v. State of Rajasthan. Darga Ram, a deaf, dumb, and illiterate juvenile, was arrested when injuries were discovered on his private parts, as well as blood stains matching the victim's blood group (Kamala). The appellant was found guilty under sections 302 and 376 of the IPC and sentenced to life in prison by the Sessions Court and the High Court. On the last appeal, the appellant added the defense of juvenility at the time the offense was committed. Because the appellant was illiterate and without any documentary evidence, such as a school or other credential, the court ordered that he be medically examined at the Medical College in Jodhpur. Following the procedure, the appellant's age was determined to be between 33 and 36 years old.

The apex court submitted that there was enough explanation for the determination of age on the basis of medical examination as per Section 7A of the Juvenile Justice Act, 2000 which provides that whenever it is contended that the accused was a juvenile on the date of the commission of an offence, the court shall make an inquiry and take such evidence as may be necessary to determine the age of the child and Rule 12(3)(b) of the Juvenile Justice Rule 2007, which says in the absence of matriculation certificate, birth certificate from the school and birth certificate from the municipal corporation, medical report will be considered from the Medical Board to determine the age of the Juvenile. The lower court, on the other hand, imposed the appellant's life sentence, which he had already served for four years. Section 2(d)(iii) of the JJA, 2000, which protects physically and mentally challenged children, never applied to the appellant because of his hearing and speech problems. This case helped the author to understand the significance of

²Hirschfield, P. J. (2018), *The Role of Schools in Sustaining Juvenile Justice System Inequality*, THE FUTURE OF CHILDREN, 28(1), 11–36. <https://www.jstor.org/stable/26641545>.

³Darga Ram v. State of Rajasthan, AIR 2015 SC 1016 (2015).

raising the issue of why hearing and speech disability, as well as a lack of education until the age of seventeen, are not considered mitigating factors.⁴

Books and journals:

1. Gupta, S. Biddala and M. Dwivedi, (2015), they studied the socio-demographic reasons, features, and aggressiveness quotient of children in confrontation with the law who were housed in observation homes across India. The authors of the study discovered that the selected juvenile delinquents come from very poor socioeconomic backgrounds, have a negative familial background, and so on. According to the writers, determining a single motive for a juvenile crime is impossible. According to the author, the reasons for child criminality differ from one youngster to the next. The author has said that a mix of reasons such as a broken home, poor family situations, addicted parents, peer group pressure, or bad company of friends, among others, contribute to the rise in youth crime in India. Apart from that, academics have noted that children who have been afool of the law are more violent than other youngsters. To prevent children from engaging in anti-social activities, crime, harmful and unlawful behavior, and to execute an appropriate juvenile justice policy, the authors concluded that it is important to identify the reasons of children being in confrontation with the law. This was significant for the author's research topic.
2. Anubhav Pandey: ways to improve the juvenile justice system in India, everyone is equal, whether they are minors, adults, or others, as provided by Article 14 of the Indian Constitution. Children who commit these offenses are subject to this law's penalties. It states that rehabilitation facilities should be established where people may improve their lives and become better human beings. As a result, only a few sections were necessary for the author's study.
3. Nandini G Devarmani, Institutional treatments of juveniles in India, it is discussed how minors should be protected. What are the many responsibilities of the police in juvenile justice, as well as how shelter houses care for juveniles and what services they provide. Also, what are the many ways for preventing these crimes. This essay allows the author to comprehend the importance of juvenile protection in these facilities.

⁴Feld, Barry C. *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, CRIME AND JUSTICE, vol. 24, 1998, pp. 189–261, <http://www.jstor.org/stable/1147585>, Accessed 4 May 2022.

Who Is A Child?

A "child" is generally defined as someone who has not reached the age of 18 and is not mature enough to grasp what is right and wrong. Most countries' penal laws have embraced the notion of 'doliincapax' in the modern period, which entails understanding that the conduct they are committing is a crime. Only children aged seven to twelve can be convicted under the criminal laws, provided that the conduct they have committed is a terrible crime and they have knowledge of and have achieved sufficient knowledge of the repercussions of their act. A "child" is defined as a person who has not reached the age of eighteen, according to sub-section 12 of Section 2 of "The Juvenile (Care and Protection) Act, 2015."¹ The term "child" is divided into two categories by the Act:⁵ –

- “child in conflict with law”, and
- “child in need of care and protection”.

A "child in conflict with law" is someone who has committed an offence and is under the age of 18 at the time of the offence. A "child in need of care and protection," as defined by Section 14⁶ of the Act, is the second subcategory.”

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Juvenile Justice (Care And Protection Of Children) Act, 2015:

The Child Justice (Care and Protection of Children) Act of 2000⁷ was designed to ensure that juveniles' rights are protected, and it lays out procedures to follow when dealing with a juvenile who has broken the law. The future of the person and the nation is the guiding force behind the law dealing with juveniles, since they are considered the nation's building blocks, carriers of humanity, and so on. A coin, however, always has two sides. On one hand, there is the innocence or lack of maturity concerned with the age in issue in order to make their own decision, and on the other hand, there is the painful reality that juvenile delinquents commit horrible crimes no less than adults, and they do so in the ugliest form possible. The heinous Delhi gang rape case of

⁵ S.2, The Juvenile Justice (Care and Protection of Children) Act, Act No. 23 of 2021(2021).

⁶ Juvenile Justice (Care and Protection) Amendment Bill, 2021, accessed on 04th May 2021, <https://prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-amendment-bill-2021>.

⁷ S.12, The Juvenile Justice (Care and Protection of Children) Act, Act No. 23 of 2021(2021).

2012, as well as the Shakti Mills gang rape case⁸, are enough to give anyone goosebumps. According to current statistics from the National Crime Record Bureau, the number of juvenile rape cases increased by 60% between 2012-2013.⁹

The goal of the Juvenile Justice (Care and Protection of Children) Act, 2015 is to consolidate and alter the law dealing with children alleged and found to be in conflict with the law, as well as children in need of care and protection (CNCP), by meeting their fundamental needs. The Act violates not only the Constitution but also the United Nations Convention on the Rights of the Child (UNCRC) by permitting children aged 16 to 18 to be prosecuted and sentenced as adults for allegedly committing terrible crimes punishable by imprisonment for seven years or more.⁹

The current Legislation said that the experience formed in societies showed that minors between the ages of 16 and 18 who commit "heinous crimes" should not be protected by the act. According to the Ministry of Women and Children's Development, a stay in a reformatory home does not always result in behavioral change. While it is unclear which developed nation saw a reduction in juvenile crime through exposing adolescents to the criminal justice system, studying the experiences of the United States and the United Kingdom, which both theoretically qualify as developed countries, may be illuminating. The new Act violated so many provisions like Clause 25 of the Act, Clauses 7, 15(3), 16(1), 19(3), 20, 21, 22, provisos to 25(1) and 25(2), and 102(2)(a) of the Juvenile Justice (Care and Protection of the Children), 2015. And also, its controversies to the various international Conventions like Article 2, Article 6, Article 37(b), Article 40(2)(a), (b) (i), Article 37(b), (c) of the UN Convention on the Rights of the Child, and Universal Declaration of Human Right, etc.¹⁰ The previous juvenile justice system in India followed the rehabilitation model, but India is now taking a retributive approach¹¹ to grave offences committed by adolescents aged 16 to 18. The current Act needs to clarify a few ideas, such as what constitutes a child, what constitutes a heinous crime, what constitutes a

⁸Amandeep Kaur, *Shakti Mills Gang Rape Case*, IPLEADERS, accessed on 03rd May 2021, <https://blog.ipleaders.in/shakti-mills-rape-case/>

⁹ NCRB Statistical data, <https://ncrb.gov.in/sites/default/files/Statistics/Statistics-2013.pdf>

¹⁰Serpas, Ronal W., and Taryn A. Merkl, *Improve Juvenile Justice: Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, BRENMAN CENTER FOR JUSTICE, 2020, pp. 15–18, <http://www.jstor.org/stable/resrep28414.7> (2022).

¹¹ HARVARD UNI., *Report of the committee on amendments to criminal law*, CARE CENTER FOR HUMAN RIGHTS POLICY, <https://projects.iq.harvard.edu/violenceagainstwomen/publications/report-committee-amendments-criminal-law-2013>, accessed on 14th June 2021.

heinous crime, and what constitutes "full contribution to the society." A few words were not explained by the Act.¹²

Difference Between The Juvenile Justice (Care And Protection Of Children) Act, 2015 And Juvenile Justice Act, 2000:

The New Act¹¹ is rehabilitative in nature, while the Children and Old Act¹² is retributive in nature. It infringes on both constitutional and international provisions. The Act's main goal is to "consolidate and amend the law relating to children alleged to be in conflict with the law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, and social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes." According to the Act's preamble, none of these goals can be achieved by sending children who have been accused of breaking the law and proven to be in violation of the law to a safe haven or the adult criminal justice system. Transferring these minors to adult jail will deprive them of not only protection and treatment, but also of their right to physical and sexual assault by adult defendants and prisoners, leaving them with no choice but to continue a criminal career. Also, there is no clear definition of the term "child" or how to treat it as an adult.¹³

Justice Verma Committee Report On Juvenile Justice Laws In India:

"The Juvenile Justice Act has failed utterly to protect the children in the country," according to the Justice Verma Committee report on "Amendments to Criminal Law."¹³ We cannot hold the

¹²UNICEF, *The convention on the rights of the child: The child's version*, <https://www.unicef.org/child-rights-convention/convention-text-childrens-version>, accessed on 4th March 2021.

¹³Mohd. Kumail Haider, *Expounding juvenile capability: Muddling between heinous and serious crimes*, <https://criminallawstudiesnluj.wordpress.com/2020/09/11/expounding-juvenile-culpability-muddling-between-heinous-and-serious-crimes/#%3A~%3Atext%3D%27Heinous%20offences%27%20have%20been%20defined%2Cbetween%2016%20to%2018%20years>, accessed on 7th March 2021.

child responsible for a crime before providing to him/her the basic rights given to them by the Indian Constitution¹⁴.” The research looked into the children's homes in depth and discovered that they lacked basic infrastructure, forcing them to grow and become subject to "sexual offences." The juvenile facilities are unable to provide the children with the essential constitutional rights guaranteed by the Indian Constitution. Because their dietary, emotional, and mental needs are so minimal, individuals are frequently unable to cope and contribute to society.

Suggestions:

The following suggestions are provided with all due regard for the existing law:

- Instead of taking a punitive approach to child delinquency, the court should use a reformatory approach. The state should make an effort to create such an environment in order to reintegrate delinquents into society.
- The state should not be given too much power to establish laws related to the Juvenile Justice Act; instead, more power should be given to international conventions and the CrPc, so that the JJA's goal can be achieved.¹⁵
- Because the Juvenile Justice Board is so important, a unique training program in child psychology for JJB members, including the Magistrate, should be conducted.
- In order to conclude the investigation within four months, the Magistrate should not be involved in any other work besides juvenile matters.
- Both "children in conflict with law" and "children in need for care and affection" are admitted to Children Homes. Not just on paper, but also on the ground level, it is critical to separate homes for both kinds of children.
- The board's inspection process, as well as surprise visits, should be facilitated by CCTV surveillance of children's homes.¹⁶

¹⁴ art. 21, INDIA CONSTI. (1950).

¹⁵Kumari, Ved. *Current Issues in Juvenile Justice in India*, JOURNAL OF THE INDIAN LAW INSTITUTE, vol. 41, no. 3/4, 1999, pp. 392–404, <http://www.jstor.org/stable/43953338>, Accessed 4 May 2022.

¹⁶Fox, Sanford J. , *Juvenile Justice Reform: An Historical Perspective*, STANFORD LAW REVIEW, vol. 22, no. 6,

Conclusion:

The study primarily focused on India's juvenile justice system. Since the colonial era, juvenile delinquency has been a social problem. Juvenile offenders were subjected to the same penalties as adults during this time. Delinquents confront a number of obstacles, including the possibility of jail, school dropout, drug usage, and an increased risk of adult criminality. Several programs aim to prevent delinquency and rehabilitate delinquents, but the majority of them fail to achieve crime since how people think and live impacts the general social decency of the next generation. Every year, millions of youths are arrested for delinquency, and even more engage in or are at danger of engaging in delinquent behavior. The Juvenile Justice (Care & Protection) Act, 2015 proposes lowering the age of juvenile delinquents from 18 to 16 years. This is not a viable approach. It is commendable that the Indian legislature has attempted to fulfil the obligations outlined in the Convention; however, the government should work to properly implement the Act, as well as take a reformative approach by attempting to engage juveniles in skilled work so that they can live a peaceful life afterward. Although the causes that lead a child to commit a crime are unavoidable, their lives can be altered via suitable reformative techniques.

