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Heinous Crimes Committed by the Juvenile against Women in India: With Special Reference to Juvenile Justice Act, 2015

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ABSTRACT

In our day to day life, we are coming across various news regarding the criminal act committed by the juveniles. Most prominent among these news were those which were related to the minor's committing heinous crime of the age group between 16 to 18 years old. There was a huge debate in the parliament as well as in whole country that if these minors are capable of committing such heinous crimes like rape and murder, then is it considerable to say that these minors don't have that mental capacity to understand that the crimes committed by them were of heinous nature? Finally a new amendment came in the year 2015 which was mainly in news because of the provision that talked about treating juvenile between the age group of 16 to 18 as an adult in case of heinous crime such as rape, murder, etc. committed by them.

Researcher has taken this topic to study the perception of common people regarding the new amendment made by the government in the laws related to juveniles & find out the problem faced by women because of the safeguard provided to juvenile under former juvenile justice statute.

The method adopted for the research is empirical research and primary data would be collected. To collect primary data snow-ball technique, a non-probability sample has been used by the researchers. The questionnaire has been prepared by the researcher and it is shared with the various people of the society, as well as the students, common people and faculty of different field of study to get their point of view on the respective matter.

Keywords: *Heinous crime, Juvenile, Children in conflict with law, Culpability, Liability.*

I. INTRODUCTION

Whether a juvenile can be charged for his/ her criminal conduct? From a long time back this question was unanswered by the legislative as well as by the judiciary. The reason behind this question of being unanswered was the former juvenile justice laws that was prevalent before

¹ Author is a student at University of Petroleum and Energy Studies, India.

2015². As per the Juvenile Justice (Care and Protection of Children) Act, 2000, no child was to be subjected to criminal responsibility of his criminal conduct. The basis behind this law was that, a child is not able to understand the intensity of the crime committed by him/her³. So, it is not appropriate to treat him as an adult, therefore a child committing heinous offence before the 2015 amendment act came was not subjected to criminal responsibility⁴. But, now this thinking that a child is not able to understand the intensity of crime has been changed and the legislature has come up with a new amendment in the said act which is now known as Juvenile Justice (Care and Protection of Children) Act, 2015⁵. This new act has brought a new era of juvenile justice in India. One of the salient feature of this amendment act is that, if a heinous offence has been committed by the juvenile between the age group of 16-18 years, then he may be tried as an adult in the children court and he may be made criminally liable for the heinous offence committed by him⁶. After introduction of this new provision in the juvenile justice act which talks about the trial of a juvenile as an adult, the responsibilities of the Juvenile Justice Board has increased. If any case comes before the Juvenile Justice board, then it is the responsibility of the board to first determine the age of the juvenile, then it has to determine that the offence is of which nature, if the offence is of heinous nature then in that case a preliminary assessment is conducted and then the most important decision is made whether the juvenile to be transferred to the child court and to be treated as an adult⁷. During this preliminary assessment, the board use to assess that whether the child is able to understand the level of crime committed by him or whether he is able to discriminate between right and wrong, most importantly it is tried to assess that whether child committing heinous offence between the age group of 16-18 years age is mentally able to understand the nature and intensity of the crime committed by him and depending on this assessment it is decided whether to treat the child as an adult⁸. This new amendment in the juvenile justice laws was being demanded by the society from a long time back but, this demand got its hype after the horrendous act of brutal

² Daisy Roy, *under what circumstances can a Juvenile be tried as an Adult*, IPLEADERS (March. 31, 2021, 04:41 PM), <https://blog.ipleaders.in/circumstances-can-juvenile-tried-adult/>.

³ The Wire Staff, *Very Basis of Juvenile Justice Amendment Is Unconstitutional*, THE WIRE (March. 31, 2021, 04:41 PM), <https://thewire.in/law/very-basis-of-juvenile-justice-amendment-is-unconstitutional>.

⁴ Anubhav Pandey, *Challenges to Juvenile Justice Laws in India*, IPLEADERS (March. 20, 2021, 03:35 PM), <https://blog.ipleaders.in/juvenile-justice-2/>.

⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (INDIA).

⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15(1) & § 18(3), No. 2, Acts of Parliament, 2016 (INDIA).

⁷ Poonam Agarwal, *The New Juvenile Justice Act Has Opened a Can of Worms*, THE QUINT (March. 20, 2021, 07:35 AM), <https://www.thequint.com/news/india/new-juvenile-justice-act-leads-to-fresh-problems>.

⁸ Diganth Raj Sehgal, *Preliminary assessment- reality of the Juvenile Justice (Care Protection of Children) Act, 2015*, IPLEADERS (March.21, 2021, 8:30PM), <https://blog.ipleaders.in/preliminary-assessment-reality-juvenile-justice-care-protection-children-act-2015/#:~:text=The%20Section%20of%20the,child%2C%20his%20mental%20and%20his>.

Nirbhaya rape case⁹.

It was not an easy task for the judiciary as well as for the legislatures to bring such kind of amendment in the juvenile justice laws which is totally opposite in nature than the former juvenile justice laws. This was the reason that it faced a lot of criticism from few part of the society¹⁰. The major reason behind the criticism of Juvenile Justice (Care and Protection) Act, 2015 was because of the new provision which talks about treating juvenile between the age group of 16 to 18 as an adult, if he has committed the heinous offence¹¹. Although it totally depends on the preliminary assessment conducted by the Juvenile Justice Board for the same. This new act has shifted the reformatory theory of punishment to the deterrent theory of punishment. Few part of the society was not able to digest this new provision which brought an exception to the theory of differential treatment of juvenile. They were of the view that child or we can say juveniles are not able to discriminate between right and wrong and they are also not able to understand the intensity of crime committed by them therefore there should be differential treatment of juvenile than the adult criminals¹². The reasoning given by them is absolutely perfect that the mental level of the juveniles are not up to that stage that they will understand the intensity of the crime committed by them and depending on this they should be differentially treated. But we need to understand that with the change in time, the society changes and the perception of the people and the laws of the state also need to evolve. Today when we go through the daily newspaper and the data shared by the NCRB, we would come across a very hurtful fact that, most of the heinous crimes are being committed by the Juvenile between the age group of 16-18 years old. Nirbhaya rape case is itself an example of the horrendous act committed by the juvenile who was just few months away from attaining the age of majority that is 18 years. The most disheartening thing that was there in this case was that because of the provision of the differential treatment of juvenile in the former juvenile justice laws, that accused was not treated as an adult and this gave the motivation to the juvenile offenders to commit such heinous crime because they knew that law of the state at that time was not stringent against them¹³. We need to think here that if such horrendous and heinous

⁹ Mohd Aqib Aslam, *Barbarous Rape Incident in India Nirbhaya Case*, LEGAL SERVICE INDIA (Feb.20, 2021, 07:35AM), <http://www.legalserviceindia.com/legal/article-1783-barbarous-rape-incident-in-india-nirbhaya-case.html>.

¹⁰ Ritwik Tyagi, *The Juvenile Justice (Care and Protection of Children) Act, 2015 — Critical Analysis*, LEGAL JUMBLE (March. 25, 2021, 9:45 PM), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>.

¹¹ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15(1) & § 18(3), No. 2, Acts of Parliament, 2016 (INDIA).

¹² Sadaf Modaq, *Explained: When a juvenile is tried as an adult, when not*, THE INDIAN EXPRESS (March. 17, 2021, 5:45PM), <https://indianexpress.com/article/explained/when-a-juvenile-is-tried-as-an-adult-when-not-5840823/>.

¹³ Rohit Pradhan, *Critical Analysis: Juvenile Justice (Care and Protection of Children) Act 2015*, LEX FORTI

nature of crime is committed by the juvenile then his act of committing this heinous crime is itself a proof that he is able to understand the intensity of the crime committed by him and if here we give the safeguard to the juvenile by saying that he is not able to understand the intensity of the crime then in this case we are doing injustice to the victim of these kind of crimes because at last they will see their criminals set free on the road because of the safeguard provided to them by the statute just because of being a juvenile and this will also give them audacity to stand in front of the victim and see into their eyes¹⁴.

This was the reason that a need of change in the law arose and the legislature as well as the judiciary after learning from the Nirbhaya Rape case came up with the amendment in the Juvenile Justice laws and made a provision to treat juvenile committing heinous offence between the age group of 16-18 years old as an adult¹⁵. This amendment was an answer to the question that what is the age for criminal responsibility? And referring to this question it was stated that if a heinous offence has been committed by the juvenile between the age group of 16-18 years old then, in that case he may be treated as an adult and sent to the children court depending on the preliminary assessment conducted by the Juvenile Justice Board in that particular matter.

The researcher has taken this topic to study the perception of common people regarding the new amendment made by the government in the laws related to juveniles, researcher would also try to find the reason behind such behavior of juvenile delinquency. The researcher would also try to find out whether this amendment has decreased the rate of heinous crimes committed by the Juveniles. The researcher was so eager to find out the public perception regarding the latest amendment in the juvenile justice laws.

The objectives of this research paper are as follows:

- To find out the public perception regarding the new amendment made by the government in the laws related to juvenile justice.
- To find out the reason behind such behaviour of juvenile delinquency
- To find out the public perception regarding a question that Whether there is need to deal as an adult with the juvenile committing heinous offense between the age group of 16- 18 years old against women?

(March. 31. 2021, 07:27AM), <https://lexforti.com/legal-news/juvenile-justice-act-2015/>.

¹⁴ Shishank Shaw, *Decoding Juvenile Justice*, LEGAL SERVICES INDIA (Jan. 20, 2021, 05:47 PM), <http://www.legalserviceindia.com/legal/article-1680-decoding-juvenile-justice.html>.

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15(1) & § 18(3), No. 2, Acts of Parliament, 2016 (INDIA).

- To find out the problem faced by women because of the safeguard provided to juvenile under former juvenile justice statute.

The method adopted for the research is empirical research and primary data would be collected. To collect the primary data snow-ball technique, a non-probability sample has been used by the researchers. The questionnaire has been prepared by the researcher and it is shared with the various people of the society, as well as the students, common people, and faculty of different fields of study to get their point of view on the respective matter.

II. REASONS BEHIND THE DELINQUENT BEHAVIOUR OF JUVENILE

The term juvenile delinquency means a wrong done by an individual who has not attained the age of maturity. Here wrong doing refers to those acts which are against social order or we can say against the society and the same is prohibited under the law of the land¹⁶. Under delinquency behavior, an individual deviate from the social order and make his/her own unethical or illegal way. And when a juvenile deviate from his/her social order then that is known a juvenile delinquency¹⁷.

(A) Factors Responsible for Juvenile Delinquency

Juvenile delinquency is a major issue that has become a matter of concern for the whole of the world including India too. Most of the crimes committed by the juveniles are because of the delinquent behavior present in them. Juvenile delinquency is the active participation of a juvenile in any illegal activities¹⁸. When a juvenile between the age's group of 10 and 17 is indulged in any kind of illegal activities, then it is said that that particular juvenile has adopted a behavior of juvenile delinquency and because of this behavior he/she is committing such crimes¹⁹. In a literal sense, it means that when a person has deviated from the normal social life and has created his behavior which is opposite to the normal course of social life, then it is said that that person has adopted a delinquent behavior and when this particular behavior is adopted by a juvenile then that is termed as juvenile delinquency.

There could be many reasons behind juvenile delinquency but, some of the major reasons

¹⁶ Bharat, *Juvenile Delinquency*, LEGAL SERVICE INDIA (March. 31, 2021, 05:55 PM), <http://www.legalserviceindia.com/legal/article-1289-juvenile-delinquency.html>.

¹⁷Sagarika S Kanakannavar, *An Overview of Juvenile Delinquency and the Juvenile Justice System in India*, LAWSISTO (March. 29, 2021, 05:55 AM), <https://lawsisto.com/artcileread/NDU2/An-Overview-of-Juvenile-Delinquency-and-the-Juvenile-Justice-System-in-India>.

¹⁸ Anonymous, *Juvenile Delinquency: What Makes Teens Commit Crimes?*, SECURE TEEN (Jul. 23, 201, 04:55PM), <https://www.secureteen.com/juvenile-delinquency/juvenile-delinquency-what-makes-teens-commit-crimes/>

¹⁹ Forum IAS, *Juvenile Delinquency in India*, FORUM IAS (Oct. 26, 2018, 03:33PM), <https://blog.forumias.com/juvenile-delinquency-in-india/>.

behind juvenile delinquency are as follows:

- **School problem:** It is one of the causes of juvenile delinquency. When a child misses his school then he is not able to get the moral classes and disciplines that are taught in the school. Parents who are not interested in knowing that what are the things their children are learning in school can also be one of the factors behind juvenile delinquency. Parent must show their interest in observing that what their children are learning in their school and if they are careless in observing these little things then that could end up making their child a juvenile delinquent²⁰.

- **Economic problem:** This is one of the major reasons for delinquent behavior at any age of people. Even a major can also obtain this delinquent behavior if he/she is no able to fulfill their basic needs, and if any person is not able to fulfill their basic needs then, in that case, he might steal or indulge in criminal activity to fulfill his/ her basic needs. There is a high probability of adopting delinquent behavior in the child if he is not able to fulfill his basic needs because of the lack of economic resources²¹.

- **Family Factors:** This is also one of the major factors behind juvenile delinquency. When there is a lack of parental supervision, conflict in the family members, abuse of laws by the parent themselves, then that could lead the child in adopting delinquent behavior. If the family members themselves would not respect the laws of the country then their children can't respect the laws²².

- **Substance Abuse Factors:** In today's generation substance abuse has become one of the major concerns. Various child from the very elementary stage of his life is taking drugs which hamper their physical as well as mental capacity and lead to the destruction of their life. In various cases, it is seen that a child has committed the crime to get money for their drugs. This is one of the major reasons in our recent societies that lead a juvenile to adopt delinquent behavior²³.

- **Lack of moral guidance:** Parents are obliged to give moral guidance to their children and if the parent is not interested in giving moral guidance to their children that would lead

²⁰ Forum IAS, *Juvenile Delinquency in India*, FORUM IAS (Oct. 26, 2018, 03:33PM), <https://blog.forumias.com/juvenile-delinquency-in-india/>.

²¹ Tianyin Yu, *Tackle the Root Causes of Juvenile Delinquency: Family-Based Early Intervention*, EBP SOCIETY (Sep. 29, 2020, 04:44PM), <https://www.ebpsociety.org/blog/education/378-root-causes-of-juvenile-delinquency>.

²² K. M. Banham Bridges, *Factors Contributing to Juvenile Delinquency*, 17(4) J Cr. L & Cr 531,534 (1927).

²³ Forum IAS, *Juvenile Delinquency in India*, FORUM IAS (Oct. 26, 2018, 03:33PM), <https://blog.forumias.com/juvenile-delinquency-in-india/>.

their children to deviate from the normal course of social life and end up being a juvenile delinquent²⁴.

III. PROBLEMS FACED BY WOMEN BECAUSE OF THE SAFEGUARDS PROVIDED TO JUVENILES UNDER FORMER JUVENILE JUSTICE LAWS

There has been various problems which have been faced by the women in past because of the safeguard provided to the juvenile under the juvenile justice (Care and Protection of Children) Act, 2000. In the former juvenile justice laws, there were no such provision which talk about the criminal liability of a juvenile for his heinous crime committed against the women. The consequence of this safeguard was that, various juveniles actively started participating in the heinous crimes and because of the safeguard under the former statute they managed to escape from the criminal liability and this became the reason that they became fearless of the law and started becoming the repetitive offender of the heinous crime committed by them against the women.

This was the reason that women started not feeling safe from the juvenile. NCRB data on the heinous crime committed by the juveniles against women is an evidence that states that women were facing fear because of the delinquent juveniles.

The most disheartening thing in this incident was that women had to suffer and being victimized of the crime committed by the juveniles and when these juveniles were set free on the road just because of the safeguard provided to them, this victimized the women very seriously, because these women were not getting justice for the crime committed by the juvenile against these women.

(A) NCRB data for the rate of crimes by the juvenile in past years.

When an amendment in the Juvenile Justice (Care and Protection of Children) Act, 2000²⁵ was proposed in the lok sabha in 2014, then the government referred to the NCRB data for the rate of crimes by the juvenile in past years²⁶. The rate of crime by the juveniles was increasing day by day, it was also stated that women are feeling safe from the adults today but, they are in fear because of the crime committed by the juvenile in the state²⁷.

²⁴ Kiran Phogat, *Juvenile Delinquency in India Causes and Prevention*, 13(1) JASRAE 625, 627 (2017).

²⁵ Juvenile Justice (Care & Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (INDIA).

²⁶ PTI, *Bill to amend juvenile justice law introduced in Lok Sabha*, THE TIMES OF INDIA (March. 15, 2021, 02:07 PM), <https://timesofindia.indiatimes.com/india/bill-to-amend-juvenile-justice-law-introduced-in-lok-sabha/article/eshow/81508633.cms>.

²⁷ Aneesha Bedi, *Educated' juveniles committed crimes more than the 'illiterate' ones in 2017, says NCRB*, THE PRINT (Oct. 24, 2019, 5:33 PM), <https://theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/>

Following are the data provided by the NCRB for the rate of crimes committed by the juveniles in the past few years:

- According to the NCRB data, around 27,936 juveniles were charged for alleged involvement in the serious crime in the year 2012. These crimes included rape, murder, banditry and rioting. It was also stated in the same data that among those juveniles who faced the Juvenile Justice board in 2012, (66.6%) of them were between the age group of 16-18 years old, (30.9%) of them were aged between the age group of 12-16 years and old remaining (2.5%) were between the age group of 7-12 years old. This data showed the actual ground reality of the juvenile committed crimes to the administrations as well as to the legislatures²⁸.

- According to the NCRB data, there has been an increase of 143% in the number of rapes committed by the juveniles from the year 2002-2012. This data provided by the NCRB also exposed the reality that the murder committed by the juveniles has also increased by 87% from 2002-2012. It was also stated that there has been an increase of 500% in the number of kidnappings of women and girls by minors²⁹. It was quite clear from this data provided by the NCRB that rate of crime committed by the juveniles have been increasing day by day and this is happening just because of the safeguards provided to the juveniles in the former juvenile justice laws as because of this safeguard the delinquent juveniles were misusing this and were committing the crime without any fear. This data made us think about the need of shift from reformatory theory of punishment to the deterrent theory of punishment for the juveniles in some heinous cases.

- According to the data of NCRB for the year 2017, around 1,614 rapes and 1,456 other sexual assaults were committed by the juvenile in the country³⁰.

- Around 40,000 juvenile were caught across the country in relation to various offence. Out of which, 72% juveniles belonged to the age group of 16-18 years old³¹.

One thing we need to understand after going through the NCRB data is that rate of crime committed by the juveniles were increasing before the amendment came and this continued

²⁸ Astha Mishra, *Adult time for adult crime – The road to juvenile justice*, SCC ONLINE (March. 20, 2021, 05:25 PM), <https://www.scconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>.

²⁹ Rukmini S, *NCRB data shows spike in reported rape after 2012 Nirbhaya case has tapered off*, THE PRINT (Oct. 23, 2019, 02:46 PM), <https://theprint.in/opinion/ncrbs-crime-data-is-a-mix-of-fact-fiction-shame-and-honour/310008/>.

³⁰ PTI, *Over 40,000 juveniles caught in 2017, 72 per cent in 16-18 age group: NCRB data*, THE INDIAN EXPRESS (Oct. 22, 2019, 10:16 PM), <https://www.newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.html>.

³¹ PTI, *Over 40,000 juveniles caught in 2017, 72 per cent in 16-18 age group: NCRB data*, THE INDIAN EXPRESS (Oct. 22, 2019, 10:16 PM), <https://www.newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.html>.

even after the commencement of Juvenile Justice (Care and protection of Children) Act, 2015³². But the difference between both the scenario is that today the juveniles can't misuse the safeguard provided to them under the former law and if the juvenile commit heinous offence between the age group of 16-18 years of old then in this case they may be punished as an adult, this provision create fear in the mind of the delinquent juveniles and they have to think twice before committing such kind of crime.³³ This was the reason that there was need of shift from reformatory theory of punishment to the deterrent theory of punishment. However, this nowhere means that the amendment is brought to keep the juveniles in fear, the only motive behind this amendment is that the juveniles can't even think of misusing the safeguards provided to them and in case if any delinquent juvenile think so, then he may be punished as an adult and the justice could be served to the victim of that crime³⁴.

IV. NIRBHAYA RAPE CASE AND IT'S AFTER EFFECT

On 16th of December, 2012 a very disheartening incident of brutal rape case was committed by 6 people on a moving bus in Delhi. In this incident a paramedical student of 23 years old was brutally raped by these 6 people. This was a black day for whole nation as commission of this incident put a very serious question on the law order as well as on the humanity. Although all of the 6 accused of this brutal rape was arrested and one of these accused committed suicide while in jail and four of the accused were convicted for their criminal conduct and were hanged till death in march 2020³⁵. But, the most disheartening thing that happened in this case was that the 6th accused who was minor and was few months away from attaining majority at the time of commission of this crime, he was released free in year 2015 after serving 3 year in a reform facility³⁶. So, the problem arose here, whole of the nation was demanding that the 6th accused should also be treated as an adult as the crime committed by him was against the humanity. But, the problem which was faced by the judiciary while giving judgement for this case was

³² PTI, *Over 40k juveniles caught in 2017, 72 pc in 16-18 age group: NCRB*, OUTLOOK (Oct. 22, 2019, 09:40 PM), [https://www.outlookindia.com/newscroll/over-40k-juveniles-caught-in-2017-72-pc-in-1618-age-group-ncrb/1646536#:~:text=New%20Delhi%2C%20Oct%2022%20\(PTI,Crime%20Records%20Bureau%20\(NCRB\).&text=These%20cases%20accounted%20for%2029%2C194,2017%2C%22%20the%20NCRB%20said.](https://www.outlookindia.com/newscroll/over-40k-juveniles-caught-in-2017-72-pc-in-1618-age-group-ncrb/1646536#:~:text=New%20Delhi%2C%20Oct%2022%20(PTI,Crime%20Records%20Bureau%20(NCRB).&text=These%20cases%20accounted%20for%2029%2C194,2017%2C%22%20the%20NCRB%20said.)

³³ Chetana Arikatti, *Juvenile justice act, 2015: a major backward step in Juvenile Justice system*, LEGAL SERVICE INDIA (March. 24, 2021, 03:35 PM), <http://www.legalserviceindia.com/legal/article-1074-juvenile-justice-act-2015-a-major-backward-step-in-juvenile-justice-system.html>.

³⁴ Chetana Arikatti, *Juvenile justice act, 2015: a major backward step in Juvenile Justice system*, LEGAL SERVICE INDIA (March. 24, 2021, 03:35 PM), <http://www.legalserviceindia.com/legal/article-1074-juvenile-justice-act-2015-a-major-backward-step-in-juvenile-justice-system.html>.

³⁵ Anonymous, *Nirbhaya Rape Case: All you need to know*, MUMBAI MIRROR (March. 01, 2021, 12:45PM), <https://mumbaimirror.indiatimes.com/news/india/nirbhaya-rape-case-all-you-need-to-know/articleshow/74711253.cms>.

³⁶ Anonymous, *Profiles: Who were the Delhi gang rape convicts?*, BBC INDIA (Feb. 28, 2021, 04:35 PM), <https://www.bbc.com/news/world-asia-india-23434888>.

that there were no such law available in the statutes which could punish the juvenile as an adult even for their heinous crime³⁷. However, this incident ignited the demand for amending the juvenile justice laws and bringing some harsher law under which even a juvenile could be punished as an adult for their inhumane and heinous crimes. This was the case that made the judiciary think on a very important point that if the juveniles are able to commit such kind of brutal and heinous crimes then it is very important for the sake of humanity to treat them as an adult and punish them accordingly³⁸.

(A) Cases related to juveniles being charged for their heinous crimes against women, after the Juvenile Justice (Care and Protection of Children) Act, 2015:

After the amendment of the Juvenile Justice (Care and Protection) Act, 2015, various cases have been brought in the court of law in which the juveniles are not provided safeguards of not being treated as an adult and considering the intensity of the crime committed by the juvenile between the age group of 16-18 years, they have been treated as an adult and have been given punishment by the court.

(i) A girl of 6 years old was brutally raped by a juvenile aged 16 in Hisar. The 6-year-old daughter of a Dalit couple, who lived with her family in a roadside tent in Hisar's suburban town of Uklana, was kidnapped by the juvenile on the night of December 7, 2017. Her body was found in the empty quarters of the Bharat Sanchar Nigam Limited. About 24 cm long stick had been forcibly inserted in the private part of the girl, damaging her uterus and intestines. The post-mortem report stated, that *the victim died due to the torture perpetrated by inserting a wooden stick into her private parts*. A local court in Hisar awarded 20-year imprisonment to a youth who abducted, raped, and brutally murdered a six-year-old girl in Uklana town of the district. The court of additional district and sessions judge DR Chalia also imposed Rs 80,000 fine on the accused, who was minor when he committed the crime³⁹.

(ii) The 16-year-old juvenile killed a 7-year-old student studying in the second standard of his school to have exams postponed. 16 years old student of class 11 of Ryan International School, Bhondsi, slit the throat of a 7-year old student named Pradhyuman Thakur in the toilet of the school. The accused in the Ryan school murder case faced the trial as an adult ruled by

³⁷ Sneha Agrawal & Harish V Nair, *As Nirbhaya rapist is freed, Juvenile Justice Act remains stuck*, INDIA TODAY (Jan. 20, 2021, 05:25 AM), <https://www.indiatoday.in/mail-today/story/as-nirbhaya-rapist-is-freed-rajya-sabha-fails-nation-277969-2015-12-19>.

³⁸ Anonymous, *Nirbhaya case: Four Indian men executed for 2012 Delhi bus rape and murder*, BBC INDIA (March. 13. 2021, 07:47 PM), <https://www.bbc.com/news/world-asia-india-51969961>.

³⁹ Kumar Mukesh, *Juvenile gets 20-year jail for rape, murder of 6-year-old Hisar girl*, THE TIMES OF INDIA (Sep. 20, 2018, 04:45PM), <https://timesofindia.indiatimes.com/city/gurgaon/juvenile-gets-20-year-jail-for-rape-murder-of-6-year-old-hisar-girl/articleshow/65880274.cms>.

the Juvenile Justice Board (JJB). *This is noteworthy that as per Section 2(33) of the new Juvenile Justice Act, —heinous offenses include those in which the minimum punishment is imprisonment for seven years.* The Principal Magistrate Davender Singh while delivering the verdict for the board said, *The offense alleged committed by the accused was heinous. While transferring the case to the special children's court, Gurgaon, the board observed, the circumstances show that the teenager was mature enough ' to understand the consequences of his alleged act and to think of ways to escape from lawful punishment.* The board set aside the claim of defense that the alleged offense of 302 IPC (murder), which lead to a maximum punishment of 10 years, is not made out against the boy⁴⁰.

V. ANALYSIS OF PUBLIC PERCEPTION OF HEINOUS CRIMES AND CULPABILITY OF JUVENILES

The researcher conducted an empirical study wherein a questionnaire was prepared dealing with the issues as to whether there was a need to treat juvenile committing heinous offense between the age group of 16-18 as an adult so that they couldn't misuse the safeguard provided to them under the juvenile justice act? And based on the responses collected from the various people, an analysis has been drawn of each question in the questionnaire.

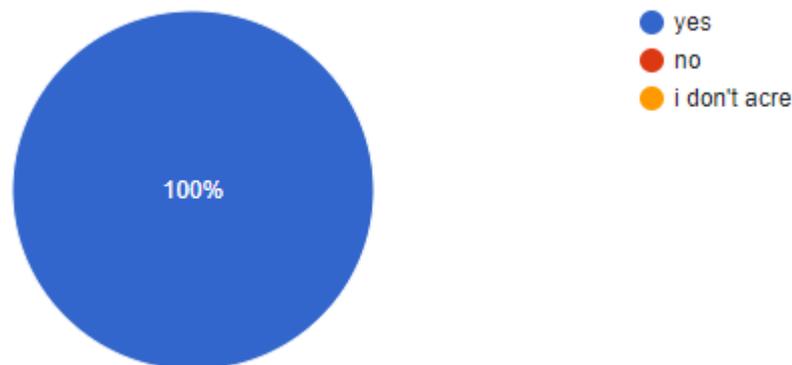
1. Do you know that juveniles committing a heinous crime such as rape, murder, etc could be treated as an adult?

A citizen must be aware of the laws prevailing in his/her state. To fight against any kind of injustice done to us, we must know about the proper forum for reporting such injustice and along with this knowledge, it is also necessary that we know about the latest prevailing laws for that injustice. As after the amendment of 2015 in the Juvenile Justice (Care and Protection) Act, 2000⁴¹ a juvenile committing a heinous offense between the age group of 16-18 years may be treated as an adult subject to the decision taken by the Juvenile Justice Board in analyzing whether that juvenile capable of understanding the intensity and nature of the heinous crime committed by him/her⁴². Views which the researcher has gathered in this respect are as follows:

⁴⁰ PTI, *Ryan school murder case: Class 11 student confessed he killed Pradyuman Thakur, says CBI*, LIVE MINT (Nov. 09, 2017, 05:33PM), <https://www.livemint.com/Politics/acQQwygFhJcUqOdo2VkrbM/Ryan-School-murder-Accused-Class-XI-student-admits-killing.html>.

⁴¹ Juvenile Justice(Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (INDIA).

⁴² Juvenile Justice(Care and Protection of Children) Act, 2015, § 15(1), No. 2, Acts of Parliament, 2016 (INDIA).



The researcher has received about 136 responses which provide that 100 percent of people are aware that juveniles committing a heinous crime such as rape, murder, etc could be treated as an adult. This is a good sign that people are aware of the laws of the nation.

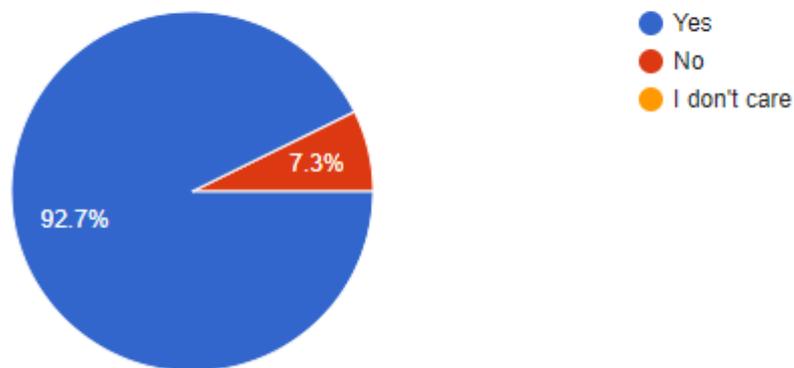
2. Do you think that the Nirbhaya Rape Case changed the perspective of society and judiciary towards the heinous crimes committed by juveniles between the age group of 16- 18 years?

There was a continuous debate in the society as well as in the judiciary regarding the safeguard provided to one of the Juvenile accused in the Nirbhaya Rape Case⁴³ because this juvenile accused was just 6 months short to attain his majority that is the age of 18 years and he committed this kind of heinous crime and was getting safeguard just because of the earlier juvenile justice legislation that was prevailing at that time⁴⁴. Hence, there was a huge debate that whether the earlier concept of safeguarding juveniles from harsher punishment to be changed and an amendment to be brought to cover the juvenile committing heinous crime between the group of 16-18 years and to treat them as an adult so that the juvenile can't misuse the safeguards provided to them and most important is that no person suffers just because of the heinous act committed by the juvenile. Therefore, yes it can be clearly said that the perspective of society and judiciary changed after the Nirbhaya rape case as after this case an amendment was brought, which talked about treating those juveniles as an adult who is committing heinous crime between the age of 16-18 years. Before this case, no one thought of providing harsher punishment to the juvenile or for treating them as an adult in few cases, but with time, the perspective of society and judiciary have changed and because of this change

⁴³ Mukesh and Anrs. Vs NCT Delhi, (2017) 6 SCC 1.

⁴⁴ Shubhomoy Sikdar, *Juveniles may be tried as adults for 'heinous' crime*, THE HINDU (April. 09, 2016, 04:30PM), <https://www.thehindu.com/news/cities/Delhi/juveniles-may-be-tried-as-adults-for-heinous-crime/article8453562.ece>.

the juvenile justice system has evolved⁴⁵. There are different views which the researcher has gathered in this respect which are as follows:



From 136 responses received, it can be clearly stated that around 7.3 % people believe that the Nirbhaya rape case has not changed the perspective of the society and the judiciary while 92.7% of people still believe that the perspective of the judiciary and society has changed towards the heinous crime committed by the juvenile between the age group of 16-18 years.

3. Do you think that earlier, delinquent juveniles used to misuse the safeguard provided to them from being treated as an adult for the crime committed by them?

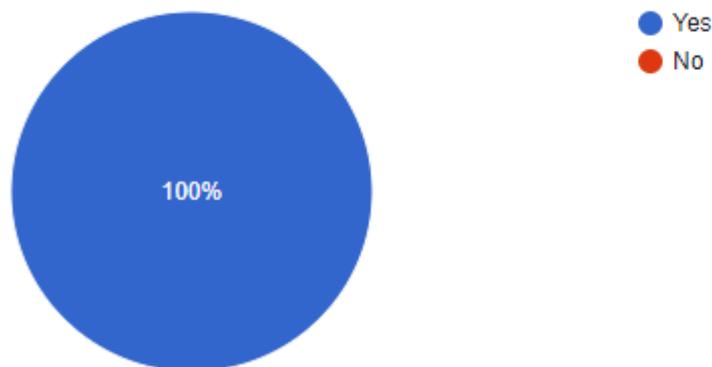
The major basis of bringing a new amendment in the Juvenile Justice (Care and Protection) Act, 2000 was to prevent the juvenile between the age group of 16-18 years from misusing the safeguards provided to them from being treated as an adult for the crime committed by them⁴⁶. When Juvenile Justice (Care and Protection) bill, 2014 was introduced in the parliament then the government presented the data of NCRB which clearly stated a fact that juvenile between the age group of 16-18 years were actively participating in the heinous crime committed by them⁴⁷ and the most disheartening for the victims of their crime was that these juveniles were set free just because of the safeguards provided to them by the earlier Juvenile Justice (Care and Protection) Act, 2000 which never talked about treating a juvenile committing a heinous offense as an adult. So, yes earlier, delinquent juveniles used to misuse the safeguard provided

⁴⁵ Shubhomoy Sikdar, *Juveniles may be tried as adults for 'heinous' crime*, THE HINDU (April. 09, 2016, 04:30PM), <https://www.thehindu.com/news/cities/Delhi/juveniles-may-be-tried-as-adults-for-heinous-crime/article8453562.ece>.

⁴⁶ ⁴⁶ PTI, *Juvenile Justice Bill passed by Parliament: Minors aged 16 years to be tried as adult*, FINANCIAL EXPRESS (DEC. 22, 2015, 10:30PM), <https://www.financialexpress.com/india-news/juvenile-justice-bill-passed-by-parliament-minors-aged-16-years-to-be-tried-as-adult/182737/>.

⁴⁷ *Id.*

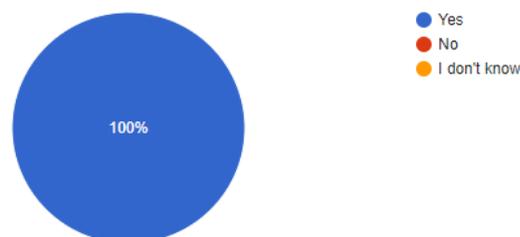
to them from being treated as an adult for the crime committed by them. Views which the researcher has gathered in this respect are as follows:



From all of the 136 responses received it can be clearly stated that 100 % of the people believe that earlier, juveniles were misusing the safeguards provided to them from being treated as an adult.

4. Do you think there was a need to amend the juvenile justice laws of India after the Nirbhaya rape case?

The disheartening incident of Nirbhaya rape case was like an eye opener for the the jurists as well as for the government , this incident shocked the whole nation and forced us to think about a law that could give punishment to the juvenile too⁴⁸. The major issue behind this thinking was that if a juvenile can comitt a heinous crime then he could be mentally able to understand that what he has committed is wrong, and when he is able to differentiate between the right and wrong then he must be given punishemnet as an adult for the adult crime committed by him/her⁴⁹. The increasing incidence of crime committed by the juvenile made us think that there is a need to amend the juvenile justice laws of India after the Nirbhaya ape case. Views which the researcher has gathered in this respect are as follows:



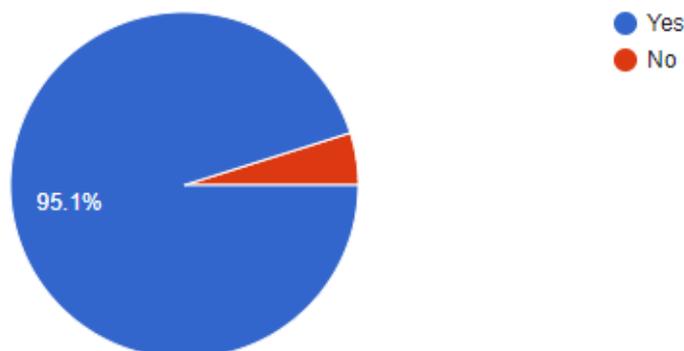
⁴⁸ The Hindu Net Desk, *After Nirbhaya: the rape cases that shook the nation*, THE HINDU (May 07, 2017, 17:20), <https://www.thehindu.com/news/national/after-nirbhaya-the-rape-cases-that-shook-india/article18404268.ece>

⁴⁹ Shubhomoy Sikdar, *Juveniles may be tried as adults for 'heinous' crime*, THE HINDU (April. 09, 2016, 04:30PM), <https://www.thehindu.com/news/cities/Delhi/juveniles-may-be-tried-as-adults-for-heinous-crime/article8453562.ece>.

From all of the 136 responses received it can be clearly stated that 100 % of the people believe that there was a need to amend the juvenile justice laws of India after the Nirbhaya rape case.

5. Do you think that a juvenile committing a heinous offense such as murder and rape can understand the intensity of the crime committed by him/her?

When a juvenile commits heinous offenses such as rape and murder then these crimes are itself a witness to the mental capacity of the juvenile. What the researcher means from this statement is that these heinous crimes are of such a brutal nature that committing this kind of crime is self-explanatory to the court that if a juvenile can commit this kind of crime it is quite clear that he is also able to understand the intensity of the crime committed by him/her. There are different views which the researcher has gathered in this respect which are as follows:



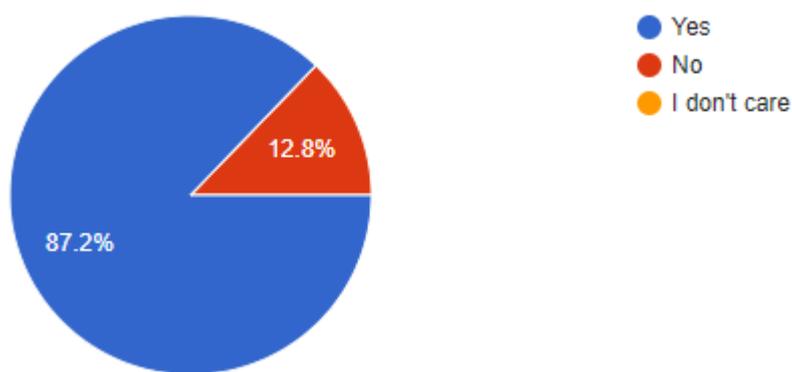
From 136 responses received, it can be clearly stated that around 95.1 % of believing that the juvenile committing a heinous offense such as murder and rape can understand the intensity of crime committed by them, however, 4.9% of people believe the opposite of this and they don't believe that juvenile committing such crime can understand the intensity of crime committed by them.

6. Do you think that the latest amendment in the juvenile justice laws in India will create a deterrent impact on the juveniles committing heinous offenses?

In the previous juvenile justice laws, there was no such concept of providing harsher punishment to the children or juvenile or there was no such concept of providing deterrent punishment to the juvenile⁵⁰. But with time, the perception of people changed and juveniles started actively participating in heinous crimes, because of this, a new amendment was brought in the juvenile justice system which talks about treating juveniles committing heinous crime

⁵⁰ Puru Vyas, An Analytical Study of Juvenile Justice System in India, Ipleaders (Apr. 24, 2018, 04:26PM), <https://blog.ipleaders.in/juvenile-justice-system-india/>.

between the age group of 16-18 years as an adult⁵¹. It was brought so that these delinquent juveniles couldn't escape from the punishment for their crime. One of the major points before this amendment is that the judiciary and the lawmakers wanted to create a deterrent impact in the juvenile committing such crime so that they couldn't think of repeating such kind of crime and other delinquent juveniles think twice before committing such crimes. So, yes this latest amendment in the juvenile justice laws in India will create a deterrent impact on the juveniles committing heinous offenses. There are different views which the researcher has gathered in this respect which are as follows:



On the analysis of 136 responses in the survey, it can be clearly stated that about 87.2% of people believe that this latest amendment in the juvenile justice laws in India will create a deterrent impact on the juveniles committing heinous offenses, while 12.8% of people believe that it is not going to create any deterrent impact on the juvenile committing heinous offenses.

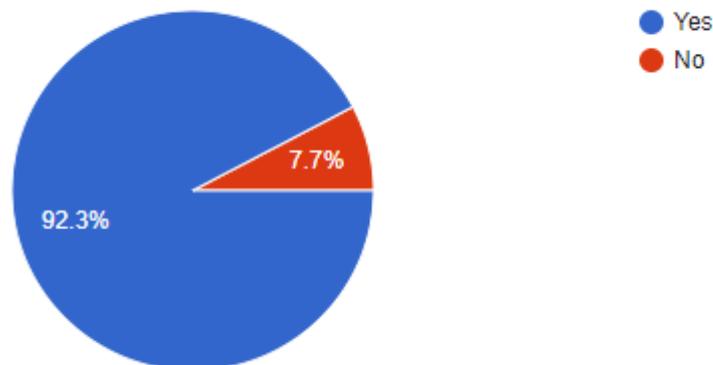
7. Do you think that the deterrent effect is necessary to reduce the rate of the heinous crime committed by juveniles?

There are various views regarding this particular question, some jurists have their opinion that deterrent effect is very much necessary for a democratic state as because of the deterrent effect people use to be in their limit and obey the laws of the state, but there are few jurists who are against the concept of deterrent effect and according to them, a chance should be given to the convict for reparation and rehabilitation⁵². However, the researcher is of the view that the deterrent effect is very much necessary for those class of delinquent who doesn't have fear

⁵¹ Juvenile Justice(Care and Protection of Children) Act, 2015, § 15(1), No. 2, Acts of Parliament, 2016 (INDIA).

⁵² Arlene Manoharan, Swagata Raha, AMP & Shruthi Ramakrishnan, *Juveniles need reform, not prison*, THE HINDU (Jun. 15, 2016, 10:02PM), <https://www.thehindu.com/opinion/op-ed/juveniles-need-reform-not-prison/article7134888.ece>.

from the laws of the state and who don't respect the laws. There are different views which the researcher has gathered in this respect which are as follows:

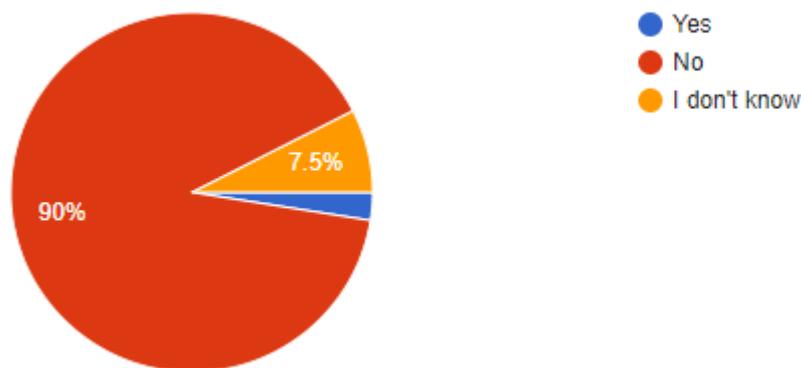


On the analysis of the responses that the researcher has got in his survey, 92.3 % of the people believe that deterrent effect is very much necessary to reduce the rate of heinous crime committed by the juveniles, however, there are 7.7% of people who believe that deterrent effect is not a solution to the problem.

8. Do you think that the rate of crime committed by juveniles has reduced after the latest amendment in the juvenile justice laws?

After the enactment of the amendment of 2015 in Juvenile Justice laws, one question that was in everyone's mind is whether the crime committed by the juvenile will reduce after this latest amendment? But according to the data reported by the NCRB, around 33,433 juveniles were apprehended in the year 2015, around 35,849 juveniles were apprehended in the year 2016 and around 40,000 juveniles were caught in the year 2017⁵³. So after going through the data of the NCRB, it can't be said that the rate of crime committed by juveniles has reduced after the latest amendment in the juvenile justice laws. However, it doesn't mean that the judiciary and lawmakers will not take action against the heinous crimes committed by the juveniles. Before this amendment also, the crime rate was increasing every year, so the reformatory theory was also not helping in controlling the rate of crime committed by juveniles. There are different views which the researcher has gathered in this respect which are as follows:

⁵³ PTI, *Over 40k juveniles caught in 2017, 72 pc in 16-18 age group: NCRB*, OUTLOOK (Oct. 22, 2019, 04:44PM), <https://www.outlookindia.com/newscroll/over-40k-juveniles-caught-in-2017-72-pc-in-1618-age-group-ncrb/1646536>.

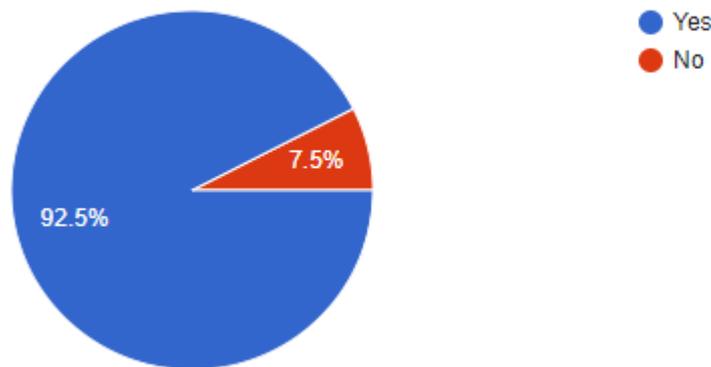


On the analysis of responses that researcher has got in his survey 90% of the people believe that the rate of crime committed by juveniles has not reduced after the latest amendment in the juvenile justice laws, while 2.4 % of people are there who believes that the rate of crime has reduced. However, 7.5% of people are there who don't know regarding this issue.

9. Do you think that the juvenile committing heinous offense between the age group of 16-18 years, clearly know the difference between right and wrong, and if they are old enough to commit the adult offense, then they should be punished like an adult?

It is the most debated topic that whether a juvenile committing heinous offense between the age group of 16-18 years, clearly know the difference between right and wrong? This new amendment has been brought on this basis only, when there is a case in which a juvenile has committed a heinous offence between the age group of 16-18 years then Juvenile Justice Board will analyze that whether the juvenile is having that mental capacity to know about the crime committed by him and whether he/ she can differentiate between right and wrong, and based on this analysis the Juvenile Justice board decide whether the juvenile is to be treated as an adult or not⁵⁴. However, there are few crimes which itself is the witness of the mental capacity of the juvenile. For an example, if a juvenile has committed an offense of rape or murder then in that case the intensity of his/ her crime itself states that the juvenile can understand his conduct and it is concluded that when he/she is able to commit the adult offense, then he could be tried as an adult also. There are different views which the researcher has gathered in this respect which are as follows:

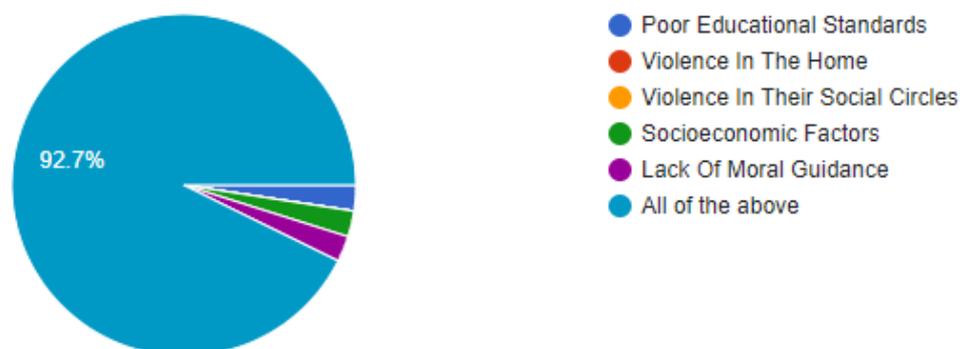
⁵⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, § 15(1), No. 2, Acts of Parliament, 2016 (INDIA).



On the analysis of responses that the researcher has got in his survey 92.5% of people believe that juvenile committing heinous offense between the age group of 16-18 years, clearly know the difference between right and wrong, and if they are old enough to commit the adult offense, then they should be punished like an adult, while 7.5 % of people believe that these juveniles are not able to differentiate between right and wrong and they should not be treated as an adult.

10. What could be the major reasons behind juvenile delinquency?

There are various reasons behind juvenile delinquency such as school factors, family factors, poor educational standards, violence in the home, violence in their social circles, socioeconomic actors, lack of moral guidance, etc⁵⁵. There are different views which the researcher has gathered in this respect which are as follows:



On the analysis of responses that the researcher has got in his survey 92.9 % of people believe that all the above-discussed reasons are behind juvenile delinquency, 2.4% percent of people

⁵⁵ Ivrita Gogua, *Juvenile Delinquency – Causes, Prevention, and the Ways of Rehabilitation*, PENAL REFORM (Jun. 23, 2020), <https://www.penalreform.org/blog/juvenile-delinquency-causes-prevention-and-the-ways-of/>.

believe that lack of moral guidance is the major factor behind juvenile delinquency, 2.4 % of people believe that socio-economic factor is the major reason behind it, while 2.4% people believe.

VI. SUGGESTION

After conducting the survey and doing research on this topic, the researcher would like to give a few personal suggestions to prevent the crime committed by the juveniles, which are as follows:

- It can't be said that we can control the crime rate but instead of questioning the latest amendment on the ground that even after the deterrent effect introduced in this latest amendment we are not able to control the rate of crime committed by the juveniles, we can do one thing that we can have faith on the law and promote the law, rather than pulling the legs of the government to fulfill their political agenda.

- The upbringing of the child is one the major factor that plays an important role in the crime committed by the juvenile, to prevent the crime committed by the juvenile, their parents need to give a good upbringing to their child and they should teach him/her that what is wrong for him and what is right for him/her.

- It is very necessary that to prevent the crime committed by the juveniles, their parents show interest in their children and if they observe that their child is deviating from the normal course of social life, then they should take care of that and teach him what is right for him.

- Another important suggestion which the researcher would like to give is that the parents themselves first need to respect laws of the state then only their child can respect it too, otherwise, if their parents themselves will no respect the laws and abuse the laws, then the child will also learn the same.

- Because of the increasing rate of crime committed by juveniles, it is very much necessary to create a deterrent effect in the mind of delinquent juveniles, so that they should think twice before indulging in any illegal activities.

- Earlier, laws related to juvenile justice use to have the only reparative form of punishment but now, the time has come when the judiciary need to take strict actions against the juvenile offender committing a heinous offense such as rape, murder, etc. because juvenile commits the crime and the victims of those crimes have to suffer. It doesn't matter that the heinous crime is committed by a juvenile or an adult, when such kind of crime is committed then the victim is the only party who has to suffer and when these offenders are set free on-

road just because of the safeguards provided to them then that is very disheartening for the victims of those crimes.

VII. CONCLUSION

With every passage of time, the laws related to juvenile justice has evolved and has led to a various amendment in juvenile justice laws. It is not hidden from us that, today juveniles are very actively participating in criminal activities. But the most disheartening for the victims of these crimes is that because of the lack of proper and adequate laws, the juveniles escape from punishment for their criminal activities. The reason behind the escape of juveniles from the punishment for their criminal activities is the juvenile justice laws which give a safeguard to the juveniles from the punishment for their crime⁵⁶. This is the reason that juvenile delinquents are misusing this safeguard provided to them by the law and are actively participating in heinous crimes such as rape against women. This leads the government and the judiciary to think about the amendment in the laws regarding the Juvenile Justice Act.

In my opinion, crime is a crime whether it is done by adults or teenagers. If they have done such heinous crimes, they must have much more criminal thoughts. They should be punished no matter how so that it will create a threat to their age group. Here creating a threat to their age group doesn't mean to make the juveniles live in a fearful environment but the delinquent juvenile must know the fact that if they will commit any heinous offenses then they would also be punished, they would be treated as an adult, most important is that they would not be able to escape from the law after committing a heinous offense, just because of being a juvenile.

⁵⁶ Manisha Shashtri, *Juvenile Justice In India: Questions That Need To Be Asked*, THE CITIZEN (Oct. 31, 2016, 09:47PM), <https://www.thecitizen.in/index.php/en/NewsDetail/index/8/9078/Juvenile-Justice-In-India-Questions-That-Need-To-Be-Asked>.