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Indian Juvenile Justice System: Child Conflict with the Law

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ABSTRACT

The unfortunate Nirbhaya incident occurred in 2012, which shocked the entire nation and called urgent need to amend the present law, where juveniles 16-18 years of age may be tried as an adult if they are charged with a heinous crime. This article starts with the evolution of norms and procedure as regards with juvenile justice. It further delves into the historical background starting from pre-independence era to post-independence era and to the current scenario. Further, it also shows that the increasing trend in the incidence of juvenile crime is a matter of concern. Then, it covers 3 models of juvenile justice system which are used across the world to deal with juveniles in conflict with law. Lastly, the article discusses about the adolescent brain development and further analyses the level of maturity, decision making and self control of juvenile. In the end, the article raises few important questions which the current laws need to address.

I. INTRODUCTION

India has one of the significant proportions of population in the younger age groups in the world. India is home to 305 million children aged 6-18 years, which constitute almost 43 per cent of the nation's population.²

Our constitution under Article 39(f) directs the state to provide for the healthy development and protection of children.

But unfortunately, India is home to numerous child workers, homeless children, migrant children, runaways, orphans and abandoned children and to the victims of

Age Group	Male	Female	Total	Percent
6 -11 years	6,86,46,416	6,27,46,028	13,13,92,444	43%
11-14 years	4,01,52,669	3,67,24,719	7,68,77,388	25%
14-16 years	2,68,96,788	2,42,45,557	5,11,42,345	17%
16-18 years	2,43,69,667	2,14,25,355	4,57,95,022	15%
	16,00,65,540	14,51,41,659	30,52,07,199	
Percent	52%	48%		

¹ Author is a PhD Scholar at Lovely Professional University, India.

² Mhrd.gov.in, available at: https://mhrd.gov.in/sites/upload_files/mhrd/files/statistics-new/Population2011.pdf (last visited on June 19, 2020)

sexual and other child abuse which violates Article 39(f) of the Constitution of India.

Youth is a source of immense energy and motivation. This energy is not only wasteful but also sometimes devastating for society, if not properly harnessed and used. The result of this failure is the involvement of youth in crime and social abuse such as drug addiction.

National Crime Record Bureau provides separate statistics for age-wise segregation of juvenile criminals involved in serious crime like murder, dacoity, theft etc.³ According to the National Crime Records Bureau, the crime rate per lakh children

Article 39(f) Constitution of India State shall direct its policy towards ensuring 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.

population has increased by 3 percent from 28.9 in 2017 to 31.8 in 2018.⁴ The majority of juveniles in conflict with law apprehended under IPC & SLL crimes were aged 16 to 18 years (75.3 per cent, 6397 out of 8490) in 2018.⁵

While the majority of the crimes are committed by youth due to high level of physical energy and impulsivity, however, children who in conflict with the law are a group that needs attention and intervention to move them away from the criminal world and to place them back as responsible citizens in society. “A child is an uncut diamond” how to shape an uncut diamond depends upon the nation.

Definitions

All juvenile justice systems are based on a similar notion; that children should be treated differently from adults in the criminal justice process, in particular with regard to sentencing and sentencing procedures. Under Article 1 of UNCRC⁶ (United Nation’s Convention on the Rights of the Child), “A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

As per India Juvenile Justice Act, “Child” means a person who has not completed eighteen years of age⁷ and “Juvenile” means a child below the age of eighteen years.⁸ This means that a

³Crime in India, “National Crime Records Bureau”404(2018), available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf> (last visited on June 19, 2020)

⁴ Ibid. at Xii

⁵ Ibid.

⁶ UNCRC (United Nation’s Convention on the Rights of the Child), adopted by the UN General Assembly in 1990, is the widely accepted UN instrument ratified by most of the developed as well as developing countries, including India. The convention provides standards to be adhered to by all State Parties in securing the best interest of the child and outlines the fundamental rights of children.

⁷ Juvenile Justice Act, 2015, Section 2(12)

⁸ Ibid., Section 2(35)

child who is not enough to be considered as an adult may be termed as a juvenile.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, define a juvenile as "A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult."⁹ The minimum age of criminal responsibility "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."¹⁰ Therefore, Juveniles in institutions shall be kept separate from adult and shall be a detained in separate institution. However, the criteria for determining a juvenile under law may vary from jurisdiction to jurisdiction.

II. MINIMUM AGE OF CRIMINAL RESPONSIBILITY

*A child under the minimum age of criminal responsibility [MACR] cannot commit a crime. That is why they are immune from criminal proceedings and cannot be formally charged with an offence by the authorities. The MACR set by majority of countries range from 6 to 18 years. The median age of worldwide criminal responsibility is 12.*¹¹

"Doli Incapax" is a Latin term that means "incapable of harming" and the concept is used to establish the presumption of innocence for children in criminal law. The basis of the assumption in Doli incapax lies in the theory of criminal responsibility. The theory has been build upon the opinion that a person should be held criminally responsible only for acts he intends to commit.

The age of criminal liability has been set by the Indian Penal Code at twelve years considering, the parameters of a child's physical and mental growth. Whereas the Juvenile Justice Act has set the age of criminal responsibility is eighteen years.

The special provisions have been made to tackle child offenders who have committed heinous offences in the 16-18 years age groups.¹² Doli incapax finds its importance in Section 82 and 83 of the Indian Penal Code and the Juvenile Justice Act in India.

Section 82 Indian Penal Code, says nothing is an offence which is done by a child under seven years age.
Section 83 Indian Penal Code, says 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 the nature and consequences of his conduct on that occasion.

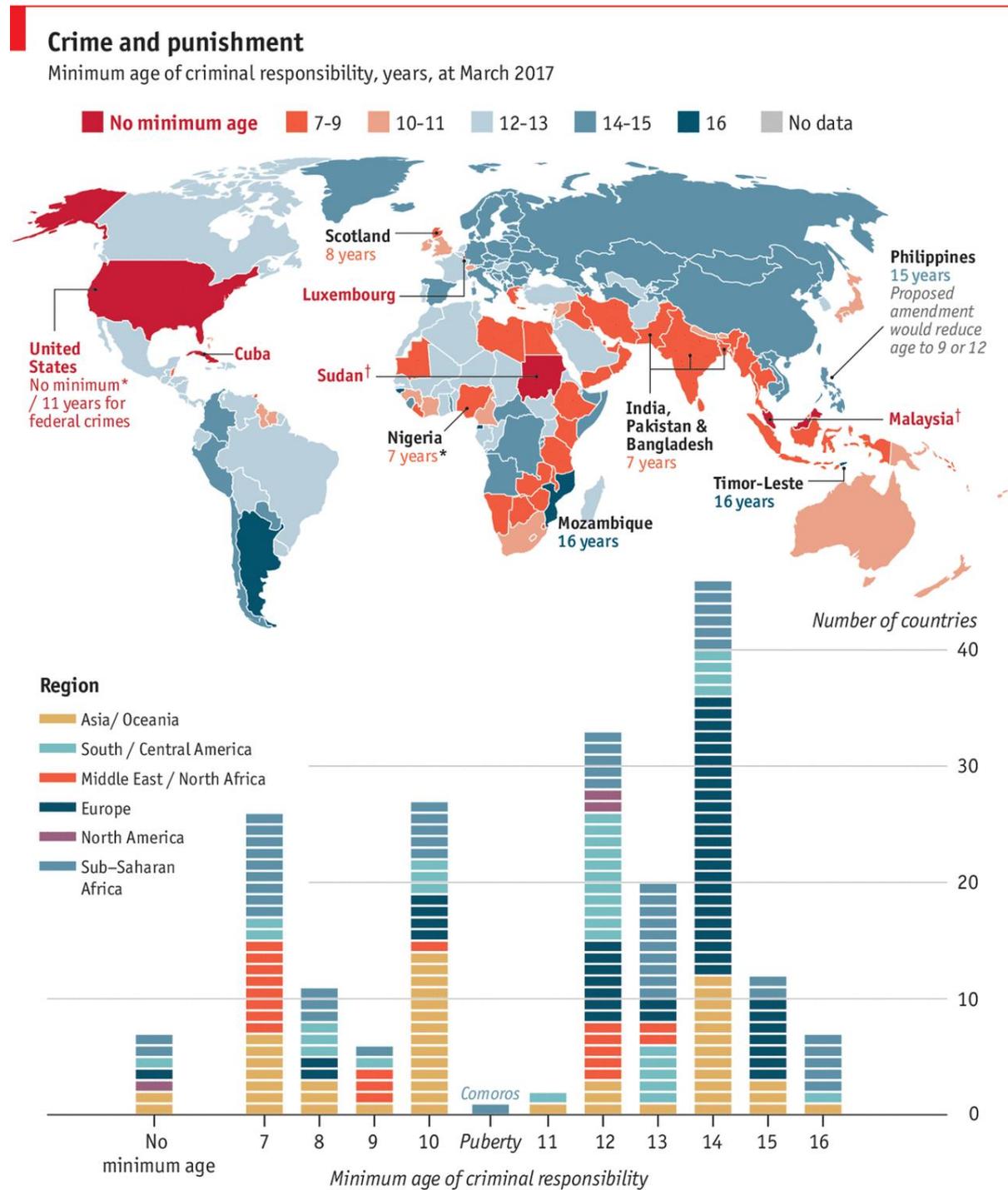
⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 2.2

¹⁰ Ibid., Rule 4

¹¹ Penal Reform International, "The Minimum Age of Criminal Responsibility" 1 (February 2013)

¹² Supra note 6, Section 15

Figure 1



Source: Child Rights International Network

*Varies by state †For selected crimes

Economist.com

The minimum age of criminal responsibility continues to divide opinion, The Economist, March 15th 2017

Figure 1 provides an overview of the minimum age of criminal responsibility (MACR) across the world.

III. EVOLUTION OF JUVENILE JUSTICE IN INDIA

Historically, India has provided separate treatment for juvenile offenders. The development of juvenile justice in India can be divided into six phases by reference to the treatment of children, legislative development, judicial intervention and other governmental policies.¹³ These six phases can be further divided into two Indian scenarios i.e Pre-Independence Era and Post-Independence Era.

Pre-Independence Era

The East India Company dominated a large part of India from 1773 to 1849, which began as a trading company in 1608. After the failure of the company, the crown took over the rules, through the Governor-General. It was the period when the momentum of the reforms began to gain pace, and the impact was also visible. Colonial exploitation has ruined the agrarian economy, forcing the deprived class to live in a slum

Year	Pre-Independence Era Law
1773-1849	Regulating Act
1850	Apprentices Act
1897 and was amended 1957	Reformatory School Act
1919-1920	Jail Committee
1920-1924	Madras Children's Act Bengal Children's Act Bombay Children's Act

or the outskirts of the city. This increased destitution and delinquency among children.¹⁴ During the colonial regime, in 1843, Lord Cornwallis established the first centre for children called the "Ragged School". The aim was to reform the child delinquent who had been arrested, by encouraging them to work through apprenticeship and industrial training, which provide the basis for passing Apprentices Act 1850.

In 1850, the Apprentices Act was adopted as the first juvenile legislation in India to deal with children. Under this act, children who were vagrants and committed petty offences between the ages 10-18 years were made to undergo vocational training as part of their rehabilitation process. Subsequently, the Indian Penal Code, 1860 (IPC) fixed the minimum age limit of criminal responsibility of juvenile's under section 82 & 83 of the code. The Code of Criminal Procedure 1861 and 1898 in three Sections 298, 399 & 562 – prescribed a separate trial for a person's below 15 years of age and required that they confined in reformatories rather than adult prisons.¹⁵ That changed the approach and treatment of juvenile from punishment to reformation.

¹³ Kethineni Sesha & Braithwaite Jeremy (eds.), *Towards a Compliance Model: The Indian Supreme Court and the Attempted Revolution in Child Rights* 306 (Sage Publications, New Delhi, 2013)

¹⁴ Ibid.

¹⁵ Clayton Hartjen & Sesha Kethineni, *Comparative Delinquency: India and the United States* 35-55 (Garland Publishing, New York, 1st Edition, 1996)

The Reformatory School Act, 1876 was the next landmark in dealing with juvenile delinquents. The act empowered the local government to establish the reformatory school, which provided that the boys below the aged 15 years who imprisoned or transported should be placed in the reformatories¹⁶, and under the Indian Penal Code, 1860, exempted all children below the aged 12 years from all criminal liability. The detention period of juveniles in reformatory school varied from two to seven years, but after they had attained the age of 18 years, the court would not keep them in such school.¹⁷ However, youth in reformatories could leave such schools if they found gainful employment. The Code of Criminal Procedure Code, 1898 extended imprisonment at the reformatory schools for the juveniles until they completed the age of 18 years and then have them placed on probation until their 21st Birthday.¹⁸

The Indian Jail Committee was established in 1919-1920 under the British rule and submitted a detailed report on the establishment of separate institutions and separate trials for juveniles.¹⁹ The committee condemned the practice of sending juveniles to adult court and recommended that separate children's courts should be established for hearing cases which were dealing with children and young offenders.²⁰ Following the recommendation made by the Indian Jail Committee, the various Indian states had adopted their own Children's Act. The Madras Children Act, 1920 was the first Children Act to be enacted, closely followed by Bengal and Bombay in 1922 and 1924, respectively. All these acts were closely related to the Children Act, 1908 of England.²¹ Apart from the Madras, Bengal and Bombay, other provinces of India did not have any separate legislation for dealing with children.

Post-Independence Era

From 1948-59, there were minors amendments in the Children's Act, but the significant change came in 1960. In 1960, the issue discussed at the second United Nation Congress on the Prevention of Crime

Years	Post-Independence Era Law
1948-59	The Children's Act has all been amended.
1960	Children's Act
1986	Juvenile Justice Act
2000	Juvenile Justice (Care and Protection of Children) Act
2015	Juvenile Justice (Care and Protection of Children) Act

¹⁶ Saibaba Anuradha, "Juvenile Justice: Critically Juxtaposing the Models in India and Singapore" 28 *ALI* (September 2012)

¹⁷ *Supra* note 14

¹⁸ Tapan Chakreborty, "Juvenile Delinquency and Juvenile Justice in India" in John A. Winterdyk, *Juvenile Justice Systems: International Perspectives* 265-296 (Canadian Scholars' Press, 2nd Edition, 2002)

¹⁹ *Supra* note 14

²⁰ *Supra* note 17

²¹ Ms. Maharukh Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 13 (Childline India Foundation, Mumbai)

and Treatment of offenders at London, and some therapeutic recommendation was adopted.

The resulted in Union Government enacting

The Children Act 1960 for the protection and care of children in the Union Territories. Although after independence, all states and union territories had their own children act to address the problem of delinquent youth, it found that no minimum standard of basic needs, living conditions and medical services were provided under these acts. Therefore, uniform legislation was needed, which could provide for all this and more. This gave rise to the Juvenile Justice Act, 1986.

The Juvenile Justice Act, 1986 was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juvenile.²² The juvenile justice policy in India is mostly based on Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Indian Constitution. At the same time, juvenile justice policy of India incorporates several International Covenants such as the UN Convention on the rights of the child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice, commonly known as Beijing Rules.

IV. UNIFORM LAW ON JUVENILE JUSTICE

The Supreme Court judgment in *Sheela Barse's Case*, played an important role in passing the uniform law on juvenile justice. The judgment stated that children in jails are entitled to special treatment. It also recommended that the parliament must enact a uniform law which is applicable throughout the country.²³

To bring the juvenile justice system into operation in the

Constitution Guarantees : Specially for Children	
Article 21A	Right to free and compulsory elementary education for all children in the 6-14 years age group
Article 24	Right to be protected from any hazardous employment till the age of 14 years
Article 39(e)	Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength
Article 39(f)	Right to equal opportunities and facilities to be develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment.
Article 45	Right to early childhood care and education to all children until they complete the age of six years

²² Supra note 17

²³ *Sheela Barse & Anr. v. Union of India & Ors.* 1986 AIR 1986 SC 1773

country, in accordance with U.N standards minimum rule for administration of juvenile justice, parliament exercised its power under Article 250 of the constitution read with entry 14 of the Union List to make law for India as a whole to fulfill international obligations.

Child also have rights as equal citizens of India, just as any other adult male or female	
Article 14 A	Right to equality
Article 15	Right against discrimination
Article 21	Right to personal liberty and due process
Article 23	Right to being protected from being trafficked and forced into bounded labour
Article 29	Right of minorities for protection of their interest

The Act formulated separate procedures for juvenile delinquents and neglected juveniles by establishing separate juvenile and juvenile welfare courts. Juvenile courts handled the offences committed by girls aged less than eighteen years and the boys aged less than sixteen years.²⁴ The main objective of the 1986 Act was to bring domestic law into conformity with the UN standard of 1985. However, this objective was not completely achieved, hence which required the drafting and adoption of a new law in 2000.

The Juvenile Justice (Care and Protection of children) Act, 2000 brought in standards of child rights convention 1989, after India signed and ratified child rights convention (CRC), 1989 on 11th December, 1992.²⁵ The upper age limit of the boy juvenile was increased to 18 years by Juvenile Justice Act, 2000 mainly to bring juvenile legislation into conformity with the CRC.

International Legal Instruments	Year
The Convention on the Rights of the Child	1989
UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)	1985
The United Nations Guidelines on the Prevention of Delinquency (the Riyadh Guidelines)	1990
UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)	1990
Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines)	1997

²⁴ Ibid.

²⁵ UN General Assembly, *Chapter IV Human Right: 11. Convention on the Rights of the Child*, GA Res 44/25 Forty-fourth Session, Supplement No. 49 (A/44/49), p. 166 (20th November 1989), available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en

The International Covenant on Civil and Political Rights	1976
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In 2000 the term Juvenile in Conflict with the Law was used to describe “a child who is alleged to have committed an offence and has not completed the eighteenth year of age as on the date of commission of such offence”²⁶

V. LANDMARK JUDGMENTS ON JUVENILE AGE DETERMINATION

Cases	Judge Bench	Held
Arnit Das v. State of Bihar, AIR 2000, SC 2264	The two Judge Bench of the Supreme Court	Held that the relevant date at which juvenility was to be determined was the date on which the juvenile produced before the competent authority i.e the JJB
Umesh Chandra v. State of Rajasthan, AIR 1982 SC 1057	The three Judge Bench of the Supreme Court	Held that the relevant date for the applicability of the Act is the date on which the offence takes place and not the date of trial.
Pratap Singh v. State of Jharkhand AIR 2005 SC 2731	The five Judge Bench of the Supreme Court	Held that the reckoning date for the determination of the age of juvenile is the date of the offence and not the date when he is produced before the authority or in the court.

The amendment in juvenile justice act²⁷ has put an end to the debate on the relevant date on which juvenility is to be determined. Since, there were few grey areas where the new act was silent and not expressive in dealing with certain issues most important to determine the age of the juvenile offender. The courts, including the Supreme Court, had continuously held that the date of offence was the relevant date. The Supreme Court examined this issue in various cases and, finally, after the *Pratap Singh v State of Jharkhand*²⁸ the legislature through the 2006 amendment removed all the doubts in respect to determining the age of the juvenile offenders.²⁹ Further, the Supreme Court also cleared the confusion whether the provision of the 2000 Act

²⁶ The Juvenile Justice (Care and Protection) Act, 2000 Section 2(1)

²⁷ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006)[Brought into effect from 22nd August, 2006]

²⁸ (2005) SC 2731

²⁹ Supra note 20 at 22

would apply to a person who had committed an offence before this act came into force. In the same, *Pratap Singh v. State of Jharkhand*³⁰, Supreme Court scrutinized this issue and held that 2000 Act governs all persons who had not completed eighteen years of age on the date of offence irrespective of when the crime committed. The Juvenile Justice Act 2000 is a retrospective legislation.³¹

VI. JUVENILE JUSTICE ACT, 2015

History of juvenile justice legislation changed with the controversy that arose after the unfortunate rape and murder of a young woman (who had come to be known as Nirbhaya) in 2012. That shook the entire nation and brought forward the existing lacuna in the present juvenile justice act. It was because of this incidence that the existing juvenile law was criticized not only in India but globally for its helplessness and powerlessness against crime wherein juvenile especially between the ages 16-18 years, are involved in heinous crime such as rape and murder. Due to this case there was an urgent need to amend the present law where 16-18 years of age may be tried as an adult.

In the light of the above incident, the Juvenile Justice (Care and Protection of Children) Act, 2015 was passed by the parliament.

The new bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country

Section 15 and 38 of the Juvenile Justice Act, 2015 deals with children who are legally free for adoption and provides a platform for adoption of children across all religions.

Adoption, 1993.³² While the Juvenile Justice Act promotes a ‘child-friendly’ approach to juvenile justice through ‘proper care, protection, development, treatment and social re-integration’, it also provides to treat juvenile aged 16-18 years as an adult if they are charged for the commission of heinous crime³³, that is any crime that carries a sentence of seven years or more.³⁴ Juvenile justice board conducts a preliminary inquiry to determine whether a child can be tried as an adult, after assessing the child’s mental and physical capacity as well as their ability to understand the offence and consequences of their actions.³⁵ As per law, the board has to complete the inquiry within three month. The board can also take into

³⁰ Supra note 27

³¹ Supra note 20 at 23

³² The Hague Convention on Protection of children and Co-operation in Respect of Inter-country Adoption (or Hague Adoption Convention), 29th May 1993, Article 23

³³ Juvenile Justice (Care and Protection of Children) 2015 Act, Section 19(1)(i)

³⁴ Ibid. Section 15

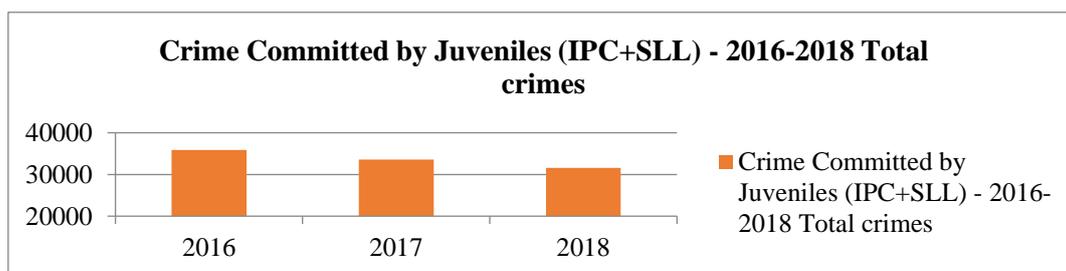
³⁵ Ibid.

consideration the views of social workers and psychologist.³⁶ This assessment will decide whether a child remains under the jurisdiction of the children's court or moved to an adult court i.e court of sessions.³⁷ This term is known as and introduced in this act as "Judicial Waiver System". A recent example of this provision in practice includes the case of Khan v. State of Maharashtra & Shaikh³⁸, wherein a seventeen years old allegedly murdered a three years old, remained within the juvenile justice system, whereas a sixteen years old was charged with the murder of a seven years old but was found to have a capacity to be charged as an adult.³⁹

This new act deals with two categories of children, those who are in conflict with the law (CICL) and those who need care and protection (CNCP).

VII. CHILDREN IN CONFLICT WITH LAW (CICL)

A child who is alleged or found to have committed an offence and who has not completed the eighteenth year of age on the date of commission of such offence is considered a "Child in Conflict with Law".⁴⁰ The act discusses different types of offences committed by children in conflict with the law, which are divided into three categories, i.e. petty offences, serious offences, and heinous offences. The National Crime Record Bureau (NCRB) is the only available national resource to understand the magnitudes of juvenile delinquency in India. In India, cases are registered in various sections of IPC and crimes under Special and Local Laws (SLL). Table 1 represents the total crime committed by juvenile in both IPC and SLL from 2016 to 2018.



Source: National Crime Record Bureau

Table-1

Table 2 represents the overall crime committed by the juvenile and the rate of conviction of the juvenile. The percentage of juvenile convicted in 2018 is 87%.

³⁶ Ibid.

³⁷ Ibid. Section 19

³⁸ Mumtaz Ahmed Nasir Khan v. The State of Maharashtra on 15 July, 2019, Criminal Appeal no. 1153.

³⁹ Asha Bajpai, "The Juvenile Justice(Care and Protection of Children) Act 2015: An Analysis" 2 ILR 191,201 (2018)

⁴⁰ The Juvenile Justice Act, 2015, Section 2(13)

S.No	Description	Disposal of Juveniles Arrested and Sent To Courts (IPC & SLL) - 2018 (All India)
1	Number of Juveniles whose cases pending disposal at the beginning of the year	37929
2	Juvenile apprehended during the year	38256
3	Total no. of juvenile apprehended (Row 1+ Row 2)	76185
4	Juveniles released as cases unocurred/quashed/ discharged by court	5144
5	Juveniles sent home after advice or admonition	13987
6	Juveniles sent to special home	8660
7	Juveniles dealt with fine	2393
8	Juveniles awarded imprisonment	482
9	Juveniles acquitted or discharged	3810
10	Percentage of juveniles held guilty Row (5+6+7+8) / Row (5+6+7+8+9)*100	87%
11	Pending disposal Row 3 - Row (4+5+6+7+8+9)	41709

Source: National Crime Record Bureau

Table-2

In Table-3 below, children were apprehended under different acts of India in 2018. Some of these acts were Children related Acts, Arms Act, Narcotic Drugs & Psychotropic Substances, Foreigner & Passport Act, SC/ST (Prevention of Atrocities) Act, Environment & Pollution related Acts, Information Technology Act, 2000 etc. This provides an overall picture of the various crimes committed by children in India.

According to the Office for juvenile justice and prevention of delinquency (OJJDR), there are three kinds of juvenile delinquency which are as follows.

1. Violent crimes resulting in bodily injuries such as assault, rape, murder;
2. Property crime committed when juveniles use force or threat of force to obtain property from others; and
3. Drug-related crime involves the possession or sale of illegal narcotics.

Children Apprehended Under Different Categories of Indian Acts														
S.No.	Crime Head	Cases reported	Below 12 yrs			12 to 16 yrs			16 to 18 yrs			Grand Total		
			Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
1	Offences Affecting the	119				316		321	105		106	1387	13	1400
		35	116	2	118	6	47	3	96	82	78	8	1	9

	Human Body (Total)													
2	Offences against Public Tranquility (Total)	118 1	5	0	5	306	6	312	154 1	20	156 1	1852	26	1878
3	Offences against property (Total)	119 01	154	5	159	380 4	16	382 0	107 99	31	108 30	1475 7	52	1480 9
4	Offences Relating to Documents & Property Marks (Total)	136	1	0	1	23	0	23	131	0	131	155	0	155
5	Miscellaneous IPC Crimes (Total)	239 1	48	0	48	528	12	540	216 0	20	218 0	2736	32	2768
6	Total Cognizable IPC crimes	290 24	340	7	347	833 5	82	841 7	264 51	16 5	266 16	3512 6	25 4	3538 0
7	Children Related – Acts	117 6	21	0	21	382	4	386	908	3	911	1311	7	1318
8	Scheduled Castes and Scheduled Tribes – Related Acts	5	0	0	0	2	0	2	4	0	4	6	0	6
9	Offences against State - Related Acts	53	0	0	0	9	0	9	58	0	58	67	0	67
10	Arms/Explosive - Related Acts	203	3	0	3	22	0	22	194	0	194	219	0	219
11	Information Technology/Intellectual Property – Related Acts	42	1	0	1	11	0	11	40	0	40	52	0	52
12	Finance & Economic Acts	20	0	0	0	0	0	0	20	0	20	20	0	20
13	Liquor & Narcotic Drugs – Related Acts	691	3	1	4	83	1	84	648	2	650	734	4	738
14	Environment & Pollution– Related Acts	20	0	0	0	1	0	1	19	0	19	20	0	20
15	Railways – Related Acts	3	0	0	0	4	0	4	2	0	2	6	0	6
16	Foreigner & Passport – Related Acts	20	1	1	2	13	2	15	12	2	14	26	5	31
17	Food, Drugs and Essential Commodities Acts	1	0	0	0	0	0	0	1	0	1	1	0	1
18	Other Regulatory & Enforcement – Acts	194	1	0	1	28	1	29	204	0	204	233	1	234
19	Total	256	33	2	35	582	8	590	224	8	225	2858	18	2876

Cognizable SLL Crimes	7							3		1			
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Source: National Crime Record Bureau

Table 3

Table-4 represents the education and family backgrounds of juvenile apprehended in 2018. Also, Bridges KB⁴¹ noted that these above factors can be classified under six general headings: physical, mental, home, school, neighbourhood, and occupational conditions.

During the seventh United Nation congress on the prevention of crime and the treatment of offenders, these three approaches to juvenile justice were defined. These approaches were i) due process model, ii) the welfare or parens patriae model and iii) participatory model.⁴²

Education & Family Background of Juveniles Apprehended – 2018		
Education	Illiterate	3610
	Primary	10666
	Primary to Matric	17024
	Matric to Higher Secondary	5914
	Above Higher Secondary	1042
	Total	38256
Family Background	Living with Parents	32433
	Living with guardian	3432
	Homeless	2391
	Total	38256
Source: National Crime Record Bureau Table-4		

VIII. THREE MODELS OF JUVENILE JUSTICE SYSTEM

Welfare or Parens Patriae Model	Due process Model	Participatory Model
The child's well-being and protection takes priority	Stresses the application of the law on the treatment of juveniles, emphasizing when and how the law is applied when a juvenile is involved.	Emphasizes the constructive engagement of government organizations and citizens in efforts to control harmful youth behavior. This also uses alternate dispute resolution methods in criminal justice systems, such as mediation, conciliation, and arbitration, instead of going to trial on or before the court

IX. JUVENILE JUSTICE AND ADOLESCENT DEVELOPMENT

Juvenile Justice as a “global concept” was influenced by international law. In last two decades, international laws/ conventions have paid more attention to the “child-welfare” based model, which focuses on education, rehabilitation and reconciliation and a clear separation between adult and juvenile offenders.

⁴¹ K.M. Banham Bridges “Factors Contributing to Juvenile Delinquency” 17 JCLC 531-580 (1927)

⁴² Department of international Economic and Social Affairs, “7th UN Congress on Prevention of Crime and the Treatment of Offenders” (26th August-6th September, 1985)

Many countries follow a more punitive, punishment-based model with deterrence, retribution and incarceration and juvenile offenders often fall under the same procedures as adults through the concept of “judicial waiver”. For instance, USA has one of the most complex juvenile justice systems in the world. Within US there are 50 different juvenile justice systems. However, at the state level, 33 states do not have a minimum age of criminal responsibility.⁴³

But in the recent past, the USA Supreme Court has changed legal responses to juvenile offenders. They have abolished the death penalty for crime committed during adolescent, and made compulsory imprisonment without parole for murder, and eliminated life imprisonment without-parole sentence for crime less than murder.

The understanding of adolescent brain development was a significant part of the argument for these decisions by the Supreme Court of the USA. Figure 1 explains the growth of grey matter in humans is show below. The development of grey matter indicates the maturity level and hence decision making and self control of the adolescent.

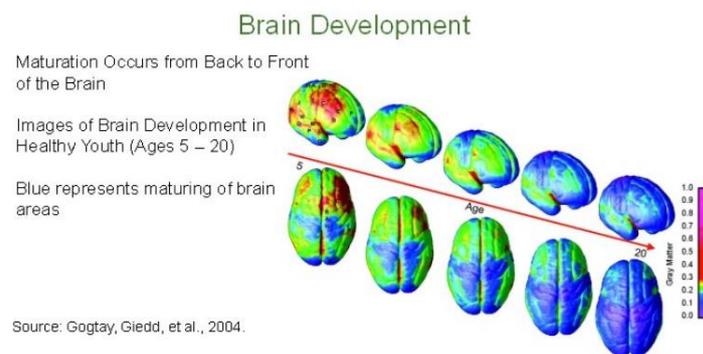


Figure-1

Figure -2 represents the last part of the brain to develop, which is the frontal cortex, and the frontal lobe. This part of the brain is responsible for executing decision-making.

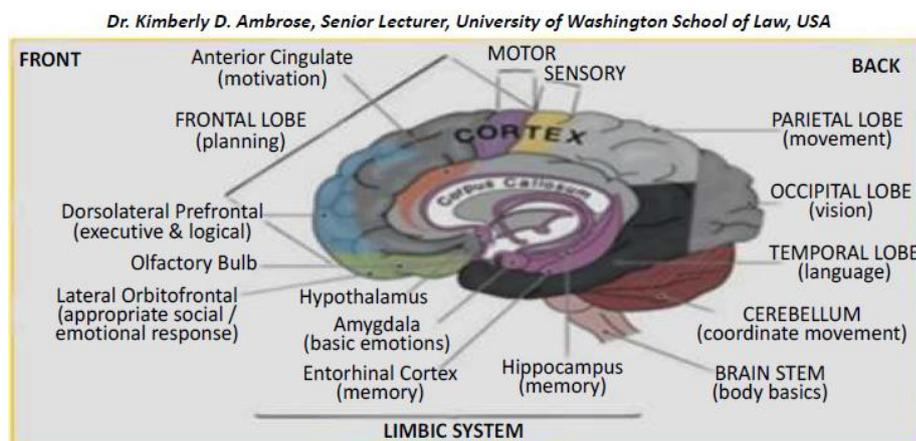


Figure-2

⁴³ Don Cipriani, “Children’s Right and the Minimum Age of Criminal Responsibility: A Global Perspectives” 221-222 (Ashgate Publisher, UK, June 2009)

Figure-3 highlights that the adolescent is more impulsive, they take more risk and are unable to determine the consequences of their behaviour.

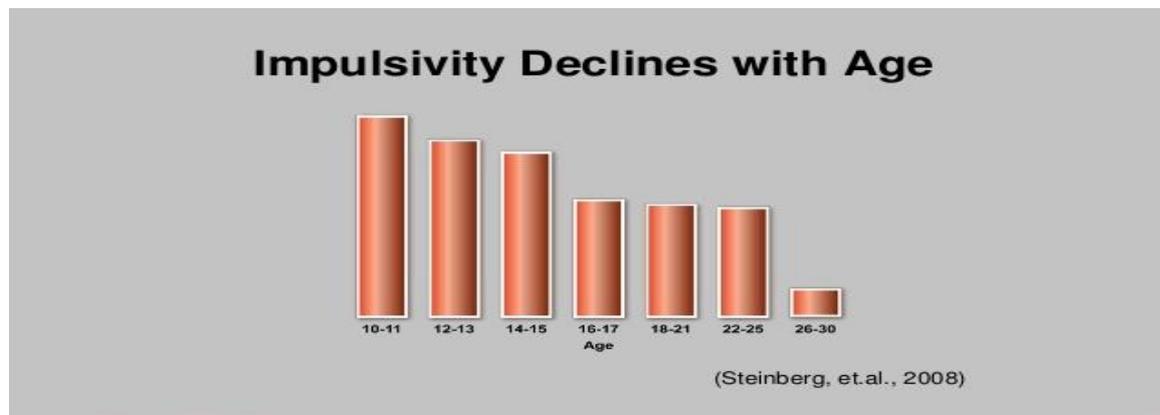


Figure-3

From above the discussion, we can say that the development stage of the adolescent can be divided into three parts, early (12-14), middle (15-17), and last (18-25). According to Joe Luniewicz, BA, RYT, Director TI at NDRI⁴⁴, the adolescents between the ages 16-17 years are more likely to be impulsive, aggressive, emotionally volatile, likely to take risk, reactive to stress, vulnerable to peer pressure than an adult.

X. CONCLUSION

We can say that juveniles who are involved in the crime are not criminals, in fact, they are victims of society. The Supreme Court, while hearing the cases related to juvenile delinquency observed that for a crime like rape and murder, it is hard to conceive that the juvenile is not aware of the consequences. For instance, a boy of seventeen years of age has killed the father of another boy of seventeen years of age, then whose rights are we talking about, a perpetrator or the victim. It is clear that the victim has the right to “Right to Justice”.

No doubt, the present legislature has the provision for those juvenile aged 16-18 years and having committed a heinous crime may be tried as an adult. But the final decision to consider a juvenile aged 16-18 years as an adult depends on the juvenile justice board and the children’s court. The parameters on which juvenile justice board and children’s court take a decision are not well-defined in the legislation. A case in point is *Khan vs State of Maharashtra*.

Another area of concern is the high pendency of cases before the juvenile justice board. As per the data available, at the end of 2018, around 41709 were pending with juveniles justice board.

⁴⁴ Joe Luniewicz, BA, RYT, Director TI at NDRI, “Brain Research and Developmental issues for adolescents in Juvenile Drugs Court”, 2015, <https://slideplayer.com/slide/3969512/>

Hence, we are over legislated but under enforced country as far as Juvenile Justice is concerned. Another issue in juvenile crime is most of the cases are from substance abuse. A majority of them are between the ages of 15 and 18, belonging to lower socio-economic classes, and are dropouts from schools. The most commonly used narcotics are alcohol, heroin, cannabis and inhalants. Peer pressure is the most common cause of indulging into drugs. Nearly half of the boys began taking drugs when they were between the ages of 10 and 14, and more than half were involved in anti-social activities to meet drug expenses.⁴⁵

Many psychologists now feel that the children are grown-ups by the age of 14 years, and are responsible for their actions. Besides, in the last few decades, the maturity level of child has increased significantly and now a 16 year old juvenile can easily comprehend their actions and its consequences. It means there is an advancement of maturity among the children today. Also, if we look at NCRB data, around 56,031 boys aged between 16-18 years were convicted for crime under IPC and SLL whereas conviction rate for girls between the same age group was only 333. So, on the basis of above data, one of the reforms required in the current law can be reducing boy's juvenility age to 16 years.⁴⁶ Also, the parameters on the basis of which juvenile justice board decides, whether the juvenile can be treated as an adult or not, need to more crystallized. This will ensure more objectivity in the working of juvenile justice board.

⁴⁵ Mridula seth, "Empowering Drug-Abusing Juveniles in Conflict with Law" CLA 1

⁴⁶ Supra note 2