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# Juvenile Delinquency and Evolution of Juvenile Justice in India

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## ABSTRACT

*The level of maturity, physical and mental competence and experiences of an individual is something that differentiates a child from an adult. Children are highly vulnerable to fall a prey to temptations by groups to embark on the track of delinquency. When these young minds follow the wrong direction, they can hamper the social command of our organized society and lead to destruction of morals. Various observations have shown that there exist dynamic factors that influence a child's mind during their upbringing. Factors like poverty, lack of education, drug abuse, discrimination by the society etc can act as an inspiration for them to choose the path of criminality. The recent past has shown a significant increase in juvenile offences all around the globe and has raised major concerns. When we look at juvenile psychology, there is a need for care, correct counselling and rehabilitation for juvenile offenders and the same can be done with the help of various legal provisions and actions taken by the government. Through this article the author tries to explain how Juvenile Delinquency has now become a serious issue for the society and an important aspect in criminology. The same is done by highlighting various factors influencing juvenile crimes and important legal provisions governing Juvenile Delinquency in India.*

**Keywords:** Juvenile, Delinquency, Social Factors, Psychological Factors, Biological Factors, Juvenile Justice Act, Juvenile Justice System.

## I. INTRODUCTION

The idea of strong feelings, love, aggression, sadness, demand for identity and self-worth is prevalent and is considered as a normal positive change in adolescent life but the issue arises when they develop delinquent tendencies, and try to break laws. There is a fundamental relation which exists between deviance and age of an individual, as per Hirschi and Gottfredson (1983) the age- crime relationship is universal. The general study says that delinquency is high in teens and reduces with increasing age and this pattern has been constant in all historical aspects. But criminal tendencies are becoming a widespread phenomenon in teens, youth and young adults that they raise a serious apprehension in any nation. Before moving forward, we need to

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understand what does the world juvenile and delinquency mean.

### **(A) Definition of a Juvenile**

A juvenile is defined as a child who has committed an offence, doesn't resemble an adult and hasn't completed a specific age as stated in any law of the respective nation. The term juvenile and minor are not interchangeable in nature. The term juvenile is used to refer to young criminal offenders whereas the term minor is used in reference to the legal capacity of a person.<sup>2</sup>

In India there was no uniformity in relation to the age factor of juvenile delinquent until the passing of the Children Act, 1960. As per the Bombay Children Act 1948 a child is defined as a boy who is under the age of 16 or hasn't completed the age of 16 years whereas a girl who is under the age of 18 or hasn't completed the age of 18 years.<sup>3</sup>

According to the Juvenile Justice (Care and Protection) Act, 2000 "a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of said offence"<sup>4</sup>. And under the Juvenile Justice (Care and Protection) Act 2015 juvenile defined under section.2 (35), "juvenile means a child below the age of eighteen years"<sup>5</sup>.

### **(B) Definitions of Delinquency**

Delinquency can be termed as an omission, commission or a behaviour of a juvenile which is not accepted by the society. The actions of a child may be seen as something childish but can cause some serious concern. Hence, a child's behaviour against the actions of other person should be taken into consideration while categorizing the child's act to be a bona fide one or that of delinquency. There is a fine line which exists between a delinquent and a normal child. Thus, his behavioural acumen is the deciding factor.

Normally there exists a greater degree of confusion encompassing the term delinquency and words can't describe it to the fullest. It can be interpreted differently by different people thus making it subjective in nature.<sup>6</sup>

India abides by the recommendations of U.N. Congress. The Children Act, 1960 defines a delinquent child as the one who is found committing an offence. It also defines what a child means. As per the act a child means a boy under the age of 16 years and a girl under the age of 18 years. However, the government changed the age band of juveniles with the Juvenile Justice

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<sup>2</sup> Deepshikha Agarwal, *Juvenile Delinquency In India- Latest Trends And Entailing Amendments In Juvenile Justice Act*, People: int. j. soc., at 1365, 1366 (2018).

<sup>3</sup> The Bombay Children Act, 1948, Bombay Act No. 71 of 1948.

<sup>4</sup> Juvenile Justice (Care and Protection) Act 2000, No. 56, Acts of Parliament, 2000.

<sup>5</sup> Juvenile Justice (Care and Protection) Act 2015, No. 2, Acts of Parliament, 2016.

<sup>6</sup> Priyanka Yadav, *Juvenile Delinquency as a Behavioural Problem*, 76 Int J Indian Psychol. 294, 294-295 (2016).

(Care and Protection) Act 2000 fixing it to 18 years for both boys and girls in order to fulfil its commitments to the United Nations declaration.<sup>7</sup> India also ratified the CRC in the year 1992 and has brought the relevant changes in its legislation. The Juvenile Justice Act is one such legislation which deals with the protection of child rights and juvenile delinquency in India.

## II. THE THREE FACTORS

### (A) Social Factors

There have been instances where the juveniles develop a delinquent behaviour because of societal deficiencies. They influence others and others influence them and if this mutual understanding is not in accordance with morals, they end up developing delinquent tendencies.<sup>8</sup>

According to Walter B. Miller (1958), kids belonging to the lower-class are exposed to behaviours which are generally unacceptable by the society but are in parallelism to their culture. Thus, their minds are shaped accordingly and they indulge in things that excite them without considering the pros and cons of their action. Certain studies reflect that social factors like financial problems, poverty and lack of proper education can lead to delinquent tendencies in children<sup>9</sup>. According to the world youth report kids who live in dysfunctional family settings have higher tendencies of involving in delinquent behaviour.<sup>10</sup>

### (B) Psychological Factors

Let's understand the Psychological factors with the help of Freudian concepts of id, ego and super-ego. When the instinctive element of a person's personality known as 'id' becomes very strong and the socially inbuilt element of the person's personality (super ego) becomes weak the ego evolves into an anti-social individual.<sup>11</sup>

When the self-control of a person becomes weak the individual develops delinquent tendencies. Hence, there is a link between psychological factors and development of delinquent tendencies in individuals.<sup>12</sup>

### (C) Biological Factors

The biological and genetic make-up of an individual has an influence on the persons tendencies. It is not exactly about the genetic designing and combination of chromosomes but it is more

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<sup>7</sup> Clayton A. Hartjen, *Legal Change and Juvenile Justice in India*, 5 Int'l Crim. 1, 4-5 (1995).

<sup>8</sup> K. Kusum, *Juvenile Delinquency- A Socio-legal Study*, 28-29, (1979).

<sup>9</sup> John Onyango Omboto et al, *Factors Influencing Youth Crime and Juvenile Delinquency*, Vol. 1, No.2, IJRSS. 18, 19-20 (2013).

<sup>10</sup> World Youth Report, 2003.

<sup>11</sup> Abdolreza Farhadian, *Study of Factors Affecting Delinquency of Children*, 2 Int. j. humanit, 1900, 1905-1907 (2016).

<sup>12</sup> Joseph S., *Sociology of Crime* 39-45 (Joseph S. Roucek, ed.) (1961).

about the hormonal changes that a teen goes through, which leads to mood swings, temper, sudden provocation, strong emotional feelings, rebellious nature and impulsive tendencies.

Environmental, political and economic restrictions also play a noteworthy role in the life of the juveniles. But a combination of all social biological economical and psychological factors sums up to juvenile delinquency.<sup>13</sup>

### III. THE EVOLUTION OF JUVENILE JUSTICE IN INDIA.

Some eminent authors and writers have scrutinised the source of Juvenile Justice in India and how it has evolved. Before the British rule, control over the acts of juveniles were regulated by the Hindu and Muslim laws. Parents were liable for the acts of their children and a need for specific regulations to govern the juvenile acts was felt later.<sup>14</sup> As a result of the need some explicit laws and regulations were passed between 1850 and 1919.<sup>15</sup>

Under the Apprentice Act (1850), it was said that the offenders between the age limit of ten years to eighteen years should be dealt specially and that children were required to work as trainees for entrepreneurs and people conducting business.

The Section 82 of the Indian Penal Code (1860) sets an Age band thus excluding kids under the age of 7 from culpability.<sup>16</sup>

The Code of Criminal Procedure of (1861) said that there should be separate trials for persons falling under the age of fifteen and if held guilty should be sent to reformatories rather than prisons and also led down a set of guidelines of probation for the young offenders.

In relation to this the Reformation School Act 1876 & 1897 was also enacted which specified the duration of the juvenile delinquents in reformation centres from two years to seven. After attaining a maturity age that is considered as 18 years the offenders were shifted to adult camps. Provision for treatment and rehabilitation were also led down in the year 1897.<sup>17</sup>

After the independence, the Juvenile Justice policy in India got more organised under several Articles of the Indian Constitution (Article 15 (3), 21, 24, 39 (e) and (f), 45 & 47). Not just the Indian Constitution but also some international Covenants like the UN Convention for Rights of Child (CRC), or UN Standard Minimum Rules for Administration of Juvenile Justice also

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<sup>13</sup> Agarwal, *supra* note 1, at 1369.

<sup>14</sup> Mukesh Yadav & Pooja Rastogi, *Age of Criminal Responsibility of Juvenile in India vis-a-vis Global Scenario: A Critical Review*, 35 J Indian Acad Forensic Med. 262, 263-267 (2013).

<sup>15</sup> Clayton A. Hartjen, *Legal Change and Juvenile Justice in India*; 5 Int'l Crim. Just. Rev. 1-16 (1995).

<sup>16</sup> Agarwal, *supra* note 1, at 1365-1383.

<sup>17</sup> R. S. Rastogi, *Prevention and Treatment of Juvenile Delinquency in India*, 2 Canadian J. Corrections 324, 325 (1959).

reflect the policies in India. In the year 1986 the Indian Government passed the Juvenile Justice Act which is a social legislation which aims at providing treatment, care and adjudication for delinquent children.

Later, in the year 2000 The juvenile Justice (Care and Protection of Children) Act<sup>18</sup> was passed. Whose main objective was to ensure that no child under the age of 18 is in the jail. It enables the Juvenile Court now known as Juvenile Justice Board in taking a multi- disciplinary tactics while conducting inquires. It also talks about the establishment of child welfare Committees for vulnerable kids.

As per the Juvenile Justice Act, 2000, under section 2 (I) states that a juvenile in conflict with the prevailing laws and regulations of the country who is suspected to have committed an offensive act and is under the age of 18 years and above 10 on the date of commission of crime. As per the Indian Laws and regulations there is no agreement as to the definition of who can be considered as a juvenile.

The JJ Act includes two categories of children, those who have committed some offence and those who are prone to committing some crime.

These two categories are treated differently by different establishments. The offenders are treated under the Juvenile Justice Board and those likely to deviate towards criminal activities are dealt under the Child Welfare Committee.

The Juvenile Justice Board comprises of the following-

1. Metropolitan judge, or judicial magistrate of first class
2. Two social workers in which at least one of whom should be a woman.

In addition to this the act also contains certain provisions relating to Police Units at Police stations and training of the personals in child psychology present at these units.

If a child commits an offence under the supervision or is part of a conspiracy along with an adult then a joint trial cannot be initiated. The act provides provisions for bail to the offenders irrespective of the nature of the act. Moreover, the trials are conducted in an affable manner with procedures which are flexible in nature to make it child friendly manner and after the trial the convicts are kept in observation and special homes.

#### **IV. THE CURRENT SITUATION**

Considering the crimes records of 2018, the state of Maharashtra accounted to 18.6% followed

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<sup>18</sup> Malvika Tyagi, *Analysis of Juvenile Crime*, 51 Econ and Polit Wkly, 172 (2016).

by Madhya Pradesh which accounted to 16.6% of the total share of crimes by juveniles in India.<sup>19</sup>

Children are incapable of understanding the nature of the act, considering the concept of Doli Incapax and no mens rea, they are dealt with in Juvenile Justice Courts and cannot be given death penalties.

As per the Section 83 of IPC, 1860 nothing can be considered as an if committed by children between the age group of seven and twelve years. But when we consider the current trends in our country, engrossment of adolescents in grave criminal offences has raised major concerns in the nation.

The December 2012 Gang rape case (Nirbhaya case) has initiated many debates and deliberations pointing out the lenient approach of Juvenile Justice System. Juveniles can have a criminal mind and can understand the nature of the acts in the same sense as that of an adult.<sup>20</sup>

The JJ Act of 2015 formulated a new legal provision which says that children of and above the age of 16 if commits a crime, a primary assumption would be made and his actions would be analysed in accordance to his mental capabilities. The Juvenile Justice bill was introduced in the Lok Sabha in 2014 after the Nirbhaya case and actions has been taken specially for acts committed by juvenile between the age of 16 to 18.

The new bill closed the issues of the previous act. It presented ideas and notions from Hague Convention on Protection of Children & Cooperation in Respect of Inter-Country Adoption 1993.

The new Act sought the problems of adoption of children. With the help of it, foster care was taken into view, where families can take responsibilities of juveniles in their conflict with law, or the orphaned or abandoned children. It had helped in formulating rules for all the states and establishment of juvenile justice board.

The Act made it compulsory for all states to establish the Juvenile Justice Board and Child Welfare Committee, it also made it compulsory to send children for preliminary assessment to check capacity to commit crime.<sup>21</sup>

## **V. CONCLUSIONS**

Not just India but a similar fashion appeared in The United States and The United Kingdom as

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<sup>19</sup> National Crime Record Bureau, Crime in India Statistics Volume-I, 403-404 (2018).

<sup>20</sup> National Crime Records Bureau, Crime in India (2014).

<sup>21</sup> The Juvenile Justice Care and Protection Act, 2015, No. 2, Acts of Parliament, 2016.

well, there was a spike in juvenile offences, most of them being individuals falling in the age band of 16 years to 18 years of age. In order to deal with the same US modified and shifted its policies to more of a retributive method. The same was followed in the UK where juvenile offenders were dealt with in the special juvenile court and in cases of heinous crimes, the matter can be transferred to crown court.

In order to achieve the objectives of the Juvenile Justice Act 2016 there is a need for rigid regulation and effective implementation of the provisions of the act. Government should ensure proper training of members of the Juvenile Justice Board and those present in the Special Police Units in child psychology.

On the other hand, it is also important to keep a close check on the observation house to ensure that they are in a proper condition to deal with probation.

Parental control is becoming weak and it is very important to remember that any changes taking place in the society should be in sync with the changes in the legal system. The government is trying to take measures for prevention and rehabilitation of juveniles rather than punishment. They want to give a fair chance to the young offenders to improve their lives and thus is in correspondence with juvenile jurisprudence.

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