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With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# **JUVENILE JUSTICE SYSTEM IN INDIA: APPROACH AND EFFECTS IN REFORM- AN EMPIRICAL STUDY**

AUTHORED BY - ANNANYA SINGHAL

## **CHAPTER I: INTRODUCTION**

### **Abstract**

*The Latin expression juveniles, which means youthful, is where the name juvenile first appeared. Furthermore, according to the juvenile justice Act, a youngster under the age of 18 is considered a juvenile. The Juvenile system was introduced in India to provide separate judicial system for the juveniles. The Juvenile system approaches towards the Reformation theory of Punishment. Its main objective states that the aggravating and the mitigating factors of the accused shall be considered while giving punishment. The approach of the Juvenile system in India is to reform the personality of the person and makes the person suitable to be a law-abiding citizen. The goal is to strengthen the laws corresponding with children maintained to have been determined to be in disagreement with the legislation and children who are in need of security.*

Keywords: Juvenile, Mental Age, Crime, JJ Act, 2015

### **Research Problem**

The Juvenile system was introduced in India to provide a chance to rehabilitate the young generations who committed an offence based on various factors but there lies a question about the efficiency of these laws helping them to reform and become a law-abiding citizen. The effects of these laws are true to their nature or not.

### **Relevance of the Study**

The Juvenile Justice approaches to eliminate the crime done by the juvenile. An analysis of the legislation guiding juvenile justice is incomplete without examining the factors and circumstances that might lead to juveniles committing crimes. In 2018, the educational and family background of juveniles who were apprehended was taken into record by the NCRB. The data revealed that a total

of 20,099 cases involved children who were either illiterate, or educated up to primary level only, or lived with their guardians or were homeless (National Crime Records Bureau 2018). Seeing the data it become essential to understand the effects of the reforms in India.

## **Objectives**

The objectives of this research paper are:

1. To understand the Juvenile Justice system in India.
2. To understand the effects of Juvenile Justice with respect to the crime rate.
3. To understand the shortcomings of the Juvenile System in India.

## **Hypothesis**

The Juvenile Justice system in India have tried to reform the Juveniles but the laws has not been much efficient as predictable at the time of implementation.

## **Research Methodology**

The research methodology used in this research is Empirical. The data is collected in the form of a Questionnaire through google forms.

## **Research Questions**

1. What is the role of the Juvenile system in India towards the reformation of the person?
2. What are the key effects of Juvenile system in India?
3. What are the shortcomings of the Juvenile system in India, if any?

## **CHAPTER II: OVERVIEW OF JUVENILE JUSTICE ACT, 2015**

The Juvenile Justice Act, 2015, in sections 10 to 26, outlines the procedures and processes for dealing with children who commit offences. Section 10, entitled “Apprehension of children in conflict with the law,” ensures that children who are suspected of committing a crime, but not yet proven guilty, are placed in safe custody rather than in jail, and are not treated roughly by police officials.<sup>1</sup>

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<sup>1</sup> Sahodar, “Juvenile Justice in India”, 29 November 2023



The Act classifies offences committed by children into three categories: petty offences, serious offences, and heinous offences. Section 2(45) defines petty offences as those with a maximum punishment of three years' imprisonment under the Indian Penal Code (IPC); serious offences have a punishment of three to seven years under the IPC; and heinous offences have a punishment of more than seven years under the IPC. The procedure for investigating these crimes and determining penalties is laid out in sections 14, 45, and 54 of the Act, respectively.

Section 15 of the Act provides for a preliminary assessment of the mental and physical capacity of a child above 16 years of age to commit a heinous crime. If the child is found to be capable of committing the crime, the case will be transferred to a Children's Court. If the child is under 16 years of age, the case will be discharged by the Juvenile Justice Board.<sup>2</sup>

The Act also lays out specific penalties for offences committed against children, such as cruelty (Section 75), buying or selling a child (Section 81), and employing children for begging (Section 76). Additionally, the Act provides penalties for failure to comply with its provisions such as failing to disclose information (Section 34), failure to register a child care institution (Section 42)<sup>3</sup>

As per the statistics of the data collected majority of the people in the country knows the meaning of Juvenile but are not well aware about the presence of the Juvenile Justice Act,2015 in India. Only 52% of the people knows about the presence of the Act so it is highly acceptable for the Act to be misused as the true nature of the Act is not known by everyone and the persons knowing it are using it for their own benefits.

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

Do you know who is a Juvenile?  
50 responses

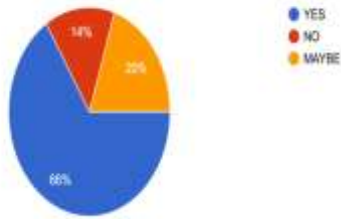


Figure No. 1

DO YOU KNOW ABOUT THE EXISTENCE OF JUVENILE JUSTICE(CARE AND PROTECTION OF CHILDREN) ACT, 2015?  
50 responses

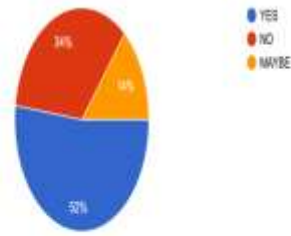
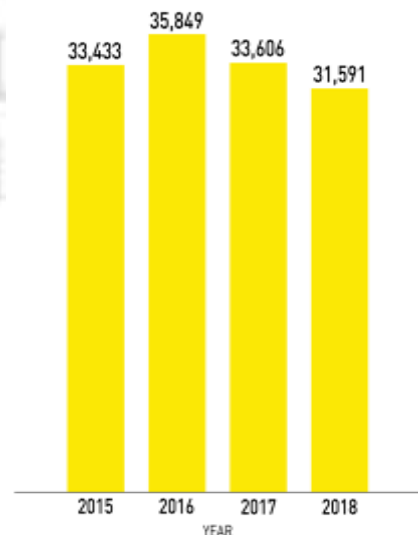


Figure No. 2

### CHAPTER III: REASONS DRIVING JUVENILES INTO CONFLICT OF LAW

An analysis of the legislation guiding juvenile justice is incomplete without examining the factors and circumstances that might lead to juveniles committing crimes. In 2018, the educational and family background of juveniles who were apprehended was taken into record by the NCRB. The data revealed that a total of 20,099 cases involved children who were either illiterate, or educated up to primary level only, or lived with their guardians or were homeless (National Crime Records Bureau 2018).

Illiterate	3,610
Upto Primary educated	10,666
Above Primary to above Higher Secondary Educated	23,980
Living with Parents	32,433
Living with guardians	3,432
Homeless	2,391
<i>Source: NCRB</i>	



Figures no. 3& 4

Research has proven that children often develop delinquent tendencies if they grow up in a hostile domestic environment or under ineffective parenting. Similarly, children belonging to broken or dysfunctional families also show a higher tendency of delinquency<sup>4</sup>. Conditions of substance abuse and psychiatric disorders can also lead to law-abiding behaviour. Specifically in the context of India, it has been noted that weak community ties with can result in delinquency, often beginning with acts of street brawls, hooliganism and petty thefts.<sup>5</sup>

During the debate in Lok Sabha regarding the Bill (now, Act), Congress MP Shashi Tharoor pointed out how “a majority of children in conflict with law come from illiterate and poor families. These are the ones that are being punished instead of being given education”. He also stated how the Bill violates the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 as well as the Beijing Rules which require a child or a young person accused of an offence to be treated differently from an adult.<sup>6</sup>

Thus, it is clear that a combination of social, environmental, economic and psychological parameters trigger delinquency among juveniles. It is for this reason that under the Act, as a preventive measure, a special category of ‘children in need for care and protection’ is included. This refers to children without a home, children living on streets, child laborers, children who are orphaned or have been abandoned, children who might be victims of abuse or trafficking, children suffering from any mental illness, among others, who might be especially vulnerable to commit crimes. While such positive measures are a clear recognition of the fact that at an adolescent age, children are more prone to recklessness and rebellious behaviour, at the same time, pushing for their incarceration into adult jails will only decrease their chances of reformation. Reformation and rehabilitation is not only important because it is a part of the existing law, but also because it reveals the underlying reasons for delinquency among children and seeks to resolve them through empathetic measures such as counselling.<sup>7</sup>

The statistics shows that there had been no significant amount of reduction in the no. of cases and this

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<sup>4</sup> Agarwal, 2018

<sup>5</sup> Brandt, Chung, and Steinberg, 2006

<sup>6</sup> FP Staff, 2015

<sup>7</sup> Prasad, 2020

had been misused over a period of time as the blame is shifted to a Juvenile so that the punishment can be reduced or be given the punishment as a Juvenile. The effects and approaches of the Juvenile Justice(Protection and Care of Children) Act, 2015 had not been the same as expected and had various repercussions over the same.

As per the data collected 92% people feels that in todays era Youth crime had become a major problem and that the impact of the Act had not been much significant since its inception.

DO YOU THINK YOUTH CRIME IS A MAJOR ISSUE IN TODAY'S SOCIETY?  
50 responses

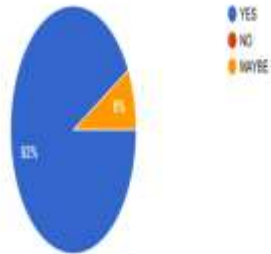


Fig No. 5

DO YOU THINK THE JUVENILE SYSTEM HAD POSITIVE IMPACT ON THE SOCIETY?  
50 responses

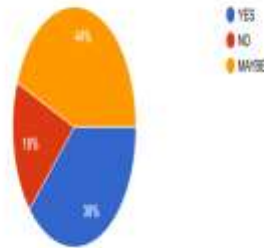


Fig No. 6

### CHAPTER III: LOOPHOLES IN THE PRESENT ACT

The Act does not taken into account the special needs and requirements of certain sub- groups among juveniles in conflict with law. For instance, it fails to stipulate guidelines or policy directions for dealing with juvenile sex offenders, recidivists, female juveniles and child or other victims of juvenile crime.<sup>8</sup>

- a) **Juvenile sex offenders:** "Adolescence is a time of dramatic change. It is a time of awakened sexual interest, and for many youth, a willingness to engage in rule- breaking behaviour that will not persist into adulthood<sup>9</sup>." However, young people do commit serious and violent

<sup>8</sup> Arlene Manoharan and Swagata Raha, "The Juvenile Justice System in India and Children who commit serious offences – Reflections on the Way Forward"

<sup>9</sup> Miner et al, "Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders, Sexual Offender Treatments, Volume 1 (2006), Issue 3

sexual crime. Research indicates that juveniles who sexually offend are a diverse population with complex treatment needs; sexual arousal is dynamic and not “fixed” in the majority of cases; those who sexually offend are responsive to treatment interventions and such juveniles are more similar than different to other delinquent youth<sup>10</sup>. Provisions relating to management, reformation or treatment of juvenile sex offenders are however conspicuous by their absence in the JJ Act and Rules.<sup>11</sup>

**b) Juvenile Recidivists:** Our experience has shown that there are some young adolescents who are trapped in a cycle of crime and frequently re-enter the proverbial revolving door of the JJ system. These children are most often those with complex unmet needs, and pose enormous challenges to the staff, the judicial officers handling the case, and also to the community. Here again, provisions concerning how functionaries and the JJB need to deal with juvenile recidivists do not feature anywhere in the legal framework – a serious flaw that prevents effective remedies for this group.<sup>12</sup>

**c) Girls who commit serious crime:** While boys and girls entering the system may share many common characteristics, research confirms that girls overwhelmingly have childhood histories of trauma and abuse, mental health disorders, and family separation. In addition, girls are more likely to be involved in prostitution or prostitution-related offenses<sup>13</sup>. Though only 6% of all juveniles apprehended in the year 2011 were girls<sup>14</sup>, they face much graver battles in their journey towards rehabilitation and re-integration into the community. The law is largely silent on girl juveniles, though there are rules providing for segregation based on sex in the OH/SH<sup>15</sup>, and for re-integration into society through customized after care programmes<sup>16</sup>. There are no legal standards however, for specific kind of services that are to be provided to girls in Special Homes resulting in statutory functionaries and civil society actors finding it extremely

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<sup>10</sup> Prescott, David (2006), Reitzel, L., Carbonell, J. (2006) and Rich, S.A. (1998); as cited by Kecia Rongen, DSHS Juvenile Rehabilitation Administration 2011

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Marsha L. Levick and Francine T. Sherman, “When Individual Differences Demand Equal Treatment: An Equal Rights Approach to the Special Needs of Girls in the Juvenile Justice System”, Boston College of Law, Legal Studies Research Paper Series, vol 18:9, Jan 1st 2003, pg 12

<sup>14</sup> National Crime Records Bureau, Crime in India -2011, Chapter 10, Juvenile Delinquency

<sup>15</sup> Rule 16 (1) and 40 (a) (i), (b) (i) of the JJ Model Rules 2007

<sup>16</sup> Rule 17 (9) and (13) of the JJ Model Rules 2007

challenging to deal with this special group of children. The JJ team's experience in handling one such girl, who, having apparently earlier got trapped into prostitution herself, and later apprehended and charged as a co-accused with eight adults, and finally found guilty for a series of crimes including those that are punishable with life imprisonment if committed by an adult, is a vivid case in point.<sup>17</sup>

**d) Victims of serious crimes committed by juveniles:** The juvenile justice system does not reflect an understanding of the plight or the rights of victims of juvenile crime. Restorative Justice programmes that enable victim – offender reconciliation is increasingly gaining ground around the world (even in cases of juveniles who commit serious/violent crime), attempting to balance ‘competency development, accountability and public safety goals in an effort to restore victims, communities and offenders, and restore broken relationships<sup>18</sup>.’ The JJ team has painfully experienced the unique challenges that emerge when a juvenile is found to have committed a serious offence against another child. There are little or no services or systems in place to ensure that the needs and rights of victims of juvenile offences are respected and realized. Victims and their families who have had to navigate through the system without any legal, psycho-social, or financial assistance or support end up disillusioned and embittered by the process as well as the outcome of JJB proceedings. This contributes to a negative perception of the juvenile justice system.<sup>19</sup>

The data collected also states that the Juvenile system had helped in the reformation of the individuals but the people believing so are even 50% which means that the Juvenile Act had not left a deep impact on the individuals thinking in the way of the reformation theory of the punishment whereas majority agrees that they have witnessed the crime that are being committed by the Juvenile which states that the Act for which it was implemented had not been able to achieve the same goal.

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<sup>17</sup> Ibid

<sup>18</sup> Balanced and Restorative Justice for Juveniles, A Framework for Juvenile Justice in the 21st Century, Office of Juvenile Justice and Delinquency Prevention, Balanced and Restorative Justice Project, University of Minnesota, 1997, page ii

<sup>19</sup> Ibid

DO YOU THINK THE JUVENILE SYSTEM HAD HELPED IN REFORMATION OF CERTAIN INDIVIDUALS?  
50 responses

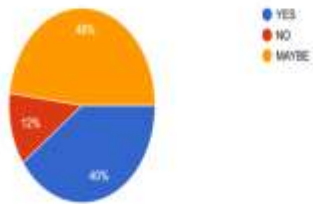


Fig No. 7

HAVE YOU SEEN ANY PERSON BELOW THE AGE OF 18 YEARS WHO HAS COMMITTED AN OFFENCE ?  
50 responses

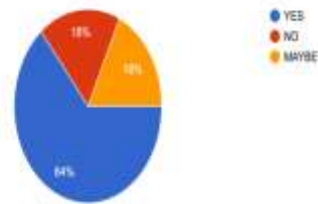


Fig No. 8

DO YOU THINK THE ACT IS BEING MISUSED?  
50 responses



Fig No. 9

## CHAPTER IV: REASONS FOR THE COMMISSION OF THE CRIME BY THE YOUTHS

As already stated by the data and the statistics collected that the Youth crime had become a major concern in India as the Juveniles whether male or female are indulged in the commission of the crime ranging from the petty offences like Theft to that of the heinous crimes like murder or rape. On of the most significant example of the same is the Nirbhaya case where one of the Juvenile was also involved. The aftermaths of the Nirbhaya case lead to the debate that whether the mental or the legal age of the Juvenile should be considered while punishing the person. All the mitigating as well as the aggravating factors needs to be considered while punishing the Juveniles.

WHAT COULD BE THE MAJOR REASONS FOR YOUTH TO COMMIT A CRIME?  
50 responses



Fig No. 10

As per the data collected from the people majority people believes that the main reason for the youth to commit the crime is the person's company surrounding him. At various stages it had also been seen that the individual after getting release from the Juvenile shelter homes indulges into various drug trafficking circles whereas some others believes that the environmental factors and poverty are other reasons for the commission of the crime by the Juveniles.

## **CHAPTER V: SUGGESTIONS AND RECOMMENDATIONS**

There had always been a debate whether the mental or the physical age of the individuals should be considered while deciding the punishment for the Juvenile for the offence that the individual had committed. Despite the child-friendly features of the 2015 Act, it has been deemed regressive due to the transfer of children between the ages of 16 to 18 years, involved in cases of heinous offences, to the adult justice system. In fact, the very introduction of the category of heinous crimes has been deemed to be a departure from a rehabilitative justice system for children. Apprehending a juvenile after he or she attains the age of 21 years for offences committed when at a younger age has also been criticised for being retributive in nature but the majority opinions based on the data collected stated that the Juvenile should be treated as adult based on the situations means taking into considerations the crime that the individual had committed. 58% of the people believes that the mental age of the individual needs to be considered rather than the legal age in the crimes like Rape, Murder, Grievous Hurt.<sup>20</sup>

Various other changes and amendments needs to be made for the proper implementation of the Act like:

- Health promotion of the Juvenile
- Protection to Female Juveniles from sexual assaults
- Increase funding by the government
- Strengthen Monitoring
- Immediate Investigations.

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<sup>20</sup> Teena Thomas. "The Juvenile Justice System in India: A Brief Overview"



DO YOU THINK THAT JUVENILE COMMITTING SERIOUS OFFENCES SHOULD BE TRIED AS AN ADULT?  
50 responses

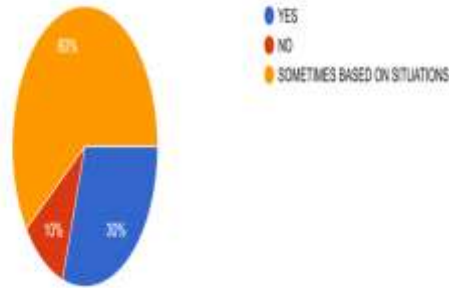


Fig No. 11

DO YOU THINK FOR WHAT CRIME THE MENTAL AGE OF THE INDIVIDUAL COULD BE CONSIDERED RATHER THAN THE LEGAL AGE?  
50 responses

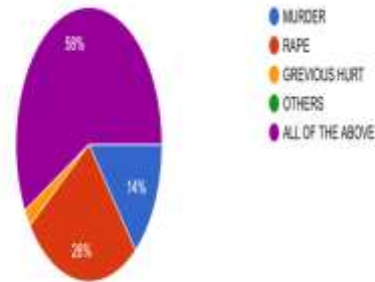


Fig No. 12

## CHAPTER VI: CONCLUSION

The Juvenile Justice system implies that the children are more amenable to reforms compared to adults, they should be given a chance to re-start and re-orient their life with a clean state instead of being pushed into a potential cycle of crime and incarceration. Thus, a careful balance between punishment, deterrence and rehabilitation must be established at the core of India's juvenile justice framework. Ultimately, as stated by the Justice Verma Committee Report, *to ensure that the constitution of the Child Welfare Committee, Juvenile Justice Board, the infrastructural facilities in a home, the quality of food, the quality of counselling and psychotherapy required for a child to wipe out the scars of abuse and deprivation in early childhood and to mainstream him/her in society and to educate him/her fully, requires a deeper and profound engagement of the State and civil society.* Proper measures and certain amendments to the Act will result in the proper implementation of the Act.

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