

# A Survey of Juvenile Justice System to Protect Protecting Children's Rights

Neha Sara Alex<sup>1\*</sup>, Dr. Narendra Kumar Singh<sup>2</sup>

<sup>1</sup> PhD Student, Kalinga University, Raipur (CG)

<sup>2</sup> PhD Guide, Dept. of LAW, Kalinga University, Raipur (CG)

**Abstract-** The term "Juvenile Justice" is often heard. The only context in which it is used consistently is in reference to authorized methods of treatment and social reintegration. Juvenile is a derogatory phrase for a youngster under the legal age of criminal responsibility who has been accused or found guilty of committing an offence. With the goal of eliminating the negative connotation of the word "juvenile," the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2000 were enacted in India, marking the first time such an attempt had been undertaken. Juveniles formerly referred to as juvenile delinquents are now known as youth in conflict with the law, while minors previously referred to as youth in need of care and protection are now known as juveniles in need of care and protection.

**Keywords-** Juvenile Justice, Juvenile delinquency, juvenile offenders, India

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## INTRODUCTION

The phrase "Juvenile Justice" is often heard. The only context in which it is used consistently is when referring to authorized methods of treatment and social reintegration. Juvenile is a pejorative phrase for a minor (under a specific age limit) who has been accused or found guilty of committing a crime. The international agreement protecting children's rights has failed to eradicate this derogatory slur. Children accused of also appears in the United Nations Convention on the Rights of the Child (1989). With the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2000, an attempt was made for the first time in India to equate the word juvenile with the term kid or vice versa in order to remove the stigma linked to the term juvenile. Juvenile delinquents are now known as youth in conflict with the law, while minors who were formerly known as juveniles in need of care and protection are now known as youth in care. In the past, lawmakers have also attempted and failed to reframe what it means to be a juvenile. From 1920 until the Act of 2000 was passed, India's juvenile justice laws clearly distinguished between neglected children and juvenile offenders.<sup>1</sup>

From the time when juvenile offenders were first separated from adult offenders in jail, there has been a clear pattern of preferential treatment for juvenile offenders. This policy of segregation was developed to protect juvenile offenders from acquiring a hardened criminal mindset while serving their sentences in the

company of adult offenders. This "segregation" period, then, was the first in human history to provide young people preferential treatment. The second phase of differentiating treatment for juvenile offenders (now known as juveniles in conflict with the law) began with the implementation of the system of releasing them on parole and license while serving a jail term.

The final step in granting young criminals special consideration was to argue against a jail sentence. At this juncture, the need arose for specialized juvenile courts to deal with cases involving young offenders, apart from the traditional criminal courts that dealt with adults of the same age. This is the end goal of their social reintegration efforts.

Evidence suggests that the development of India's juvenile justice system has not been a steady progression motivated by a consistent commitment to protecting young people throughout its history. Instead of responding to the needs of children in the nation, changes elsewhere in the 1 globe have had a significant impact on the timing and substance of major improvements in the juvenile justice system. Others have argued that the Indian government's new juvenile justice laws are more about politicians trying to appease their own consciences than really improving the lives of children.

It's impossible to see the state or the law being able to provide the same level of nurturing and caring for children that parents provide. Despite this, all governments strive to assume the role of a mother in caring for and safeguarding its citizens' children. Concerns regarding the welfare of India's children,

<sup>1</sup> Dr. Ved. Kumari, The Juvenile Justice (Care and Protection of Children) Act 2015: Critical Analyses, Lexis Nexis Publication, 2017, Haryana.

and the State's role as their guardian or parent, are relevant here. There's no use in restating the obvious response to the first inquiry. What kids in India have gotten from the government thus far is the answer to the first question, which can be determined by solving the second. According to the data, the Indian government, its institutions (such as the court), and its linked civil-society partner consistently provide the following for the country's children:<sup>2</sup>

When a child is born, they are no longer considered the property of their parents or guardians; instead, they are recognized as a person who is entitled to certain inherent rights by virtue of their humanity.

### DEFINITION OF JUVENILE

Until the introduction of The Children Act, 1960, there was no consensus among Indian states about the minimum age at which a juvenile offender may be tried in court. Moreover, many states had different definitions of what constituted a "Child." In Haryana and Bombay, for instance, a juvenile is a male or female who is under the age of 16 or who is under the age of 18, respectively. When referring to an imprisoned kid in Andhra Pradesh, the word "Kid" encompasses youth up to the age of 14 who are moved to recognised schools, as well as those who reach 14 during their imprisonment but are not yet released. Those under the age of 16 are considered "Children" for the purposes of the U.P. Children Act. West Bengali law defined a "kid" as someone younger than fourteen.<sup>3</sup> An individual is considered a "Child" under the Juvenile Justice Act of 1986 if he or she is under the age of 16 or if she is under the age of 18 if she is a female. This law was abolished and replaced by The Juvenile Justice (Care and Protection of Children) Act, 2000 by India so that it could live up to its international commitments. This new legislation reduced the disparity in sentencing between juvenile males and females, and established that a juvenile whose activities are claimed to have broken the law of the nation must be under the age of 18 at the time of the alleged crime. However, the Juvenile Justice (Care and Protection of Children) Act of 2015 made significant changes to the earlier Act, and under this Act, a child between the ages of 16 and 18 whose actions are alleged to have violated the law of the land will be treated as an adult if those actions fall under the category of heinous offences, which are those offences that are punishable by imprisonment for 7 years or more and include, among others, robbery.

### CAUSES OF JUVENILE DELINQUENCY

Juvenile delinquency rates are on the increase for numerous causes in many regions of the globe. As

kids are what make the future, we all have to do all we can to give them the best start in life. Today's youth are unfortunately frequently complicit in a broad variety of heinous crimes, including rape, murder, robbery, theft, etc., and this is true all across the globe. Researchers have landed on a theory to explain the rise in adolescent delinquency, although there are numerous potential causes. Both individual biological and genetic elements and environmental influences have a role in the development of deviant behaviour, which may be further broken down into two categories:

- Environmental and societal causes
- Biological causes

### THE SALIENT FEATURE OF THE JUVENILE JUSTICE SYSTEM IN INDIA IS PRESENTED IN BRIEF AS UNDER

The terms "juvenile offender" and "delinquent juvenile" have been replaced by "juvenile in conflict with the law"; "neglected juveniles" have been replaced by "children in need of care and protection"; "arrest" has been replaced by "custody"; "remand" by "bail"; "trial" by "adjudication"; "police investigation" by "social investigation"; "child welfare officer" by "child welfare officer"

Juvenile justice has been an area of ongoing innovation, with laws being introduced, changed, repealed, and then reintroduced, and new schemes and programmes being developed and implemented. Also, beginning in 1995, the Supreme Court of India has been keeping tabs on how well the juvenile justice system is being implemented. Nevertheless, the central government and the state governments have failed to execute even the key provisions of the Juvenile Justice Acts [many important components of the Juvenile Justice Act (repealed) and Act 2000 are similar] till now, despite intervention by the Apex Court.

For more than nine decades, the juvenile justice system has undergone a steady stream of recommendations, reforms, and ideas meant to bring its enforcement and execution to a reasonable level.

As a result of the Sheela Barse case, the Supreme Court of India is now responsible for overseeing how well the Juvenile Justice Act of 1986 is being put into practise. In 1995, the court issued a ruling closing the case and outlining next steps. Again, in the case of Sampurna Behrua, the Supreme Court assumed (and maintains) oversight of the execution of key elements of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The federal government and the state governments have failed to execute the principal provisions of the Juvenile Justice Act, 1986 (repealed), and the

<sup>2</sup>Editorial, —It's time to amend juvenile justice Act||, Times of India, Apr.29,2013.

<sup>3</sup>Editorial,||Justice cannot follow a tough act||, The Hindu, Sept.24, 2013.

Juvenile Justice (Care and Protection of Children) Act, 2000, despite intervention from the Apex Court.

The Ministry of Women and Child Development and the National Commission for the Protection of Child Rights both acknowledge, in numerous publications available on their websites, the persistent failure of the juvenile justice system. The bleak picture of the juvenile justice system's application is reflected in cases like that of Sheela Barse and Sampurna Behrua.

It can no longer be disputed that India's juvenile justice system is broken. As a result, the investigator came to the conclusion that the juvenile justice system in India may have additional flaws beyond those already known to be the reason of its failure.<sup>4</sup>

### JUVENILE JUSTICE PERSPECTIVES

One of three perspectives has often been the subject of international discourse on juvenile justice: I define juvenile justice as social justice for all children and young people, (ii) minors in need of care and protection who are in confrontation with the law, or (iii) convicted minors. Despite the fact that the formal juvenile justice system sometimes places a greater emphasis on action taken after the onset of delinquency, a thorough effort to avoid the circumstances and causes that lead to delinquency is equally important. There are now three primary perspectives on juvenile justice: I the "due process model," which places emphasis on preserving the substantive and procedural rights of young people involved in legal proceedings; (ii) the "parens patriae" or "welfare mode," which seeks to bring about justice for young people primarily through state interventions and to advance their wellbeing as they come under the purview of the legal system; and (iii) the "participatory model," which encourages young people to actively participate in the legal process. Yet, these models needed to be integrated since they were inadequate on their own. The United Nations' Standard Minimum Rules offer a solution to the conflict between rights and needs that arises depending on the seriousness of the offence and the degree of conflict with society a juvenile is experiencing when the juvenile justice system is integrated into the comprehensive approach to protecting the rights of the child. Even the effectiveness and efficiency of juvenile justice rely on the measures taken to ensure the safety of children in the neighbourhood. This is very clearly stated in the 1985-approved Basic Minimum Guidelines for the Management of the Juvenile Justice System of the United Nations (commonly known as the "Beijing Regulations"). The fundamental viewpoints advocated therein state, among other things, that adequate attention must be paid to positive measures to involve the full mobilisation of all available resources, including the family, volunteers, and other community groups, as well as the schools and community institutions, for the purpose of promoting the well-being of the juvenile and

<sup>4</sup> The Juvenile Justice Care and Protection of Children Act, 2000.

reducing the need for legal intervention, as well as to effectively, fairly, and humanely deal with the juvenile's issues. The Beijing Rules are a symbol of the global community's commitment to creating a unique juvenile justice system. In addition, it is openly acknowledged that the juvenile justice system cannot alone fix the greater socioeconomic system's abnormality.<sup>5</sup>

### Origin of Juvenile Justice in India

The plight of children was mostly ignored by the general public until around the middle of the nineteenth century. This was mostly due to the fact that the kid's identity was not recognized by society at large, save within the context of the family or group to which the child belonged. Children under such an arrangement would be expected to contribute to the family's trade, profession, or vocation in accordance with their age and maturity. Even children were not spared the heavy weight of familial and caste ties. Restrictive techniques of management were commonly favored for deviant and mischievous youngsters. Nonetheless, in spite of these challenges and rejection, the youngster looked to be more a part of the family and the community. This explains why reports of children running away or acting strangely were less common. For children, things changed dramatically as the capitalist method of production led to industrialization and urbanization. The breakdown of the family unit and the subsequent need for government involvement in child rearing are direct results of the deterioration of family ties. There was overt and covert interference from the state. For sectors and businesses where voluntary child labour was difficult to get, the government stepped in with laws like the Apprentices Act, 1850, which authorized the courts to compel impoverished and destitute children to serve as apprentices. For the most part, the Act was in effect throughout the country, particularly in jurisdictions with their own Children's Acts. The Apprentices Act of 1961 replaced this law and made it obsolete.<sup>6</sup>

### RATIONALE FOR DIFFERENTIAL SENTENCING TO CHILD OFFENDER:-

Especially now, when there is a heightened inclination to remove minors from the purview of juvenile justice protection, which the legislature has partially succeeded in doing, an appreciation of the justification for such separation between adult offenders and juvenile offenders is important. The severity of a juvenile offenders crimes is often proportional to how old they are. Nevertheless, as shown by the Transfer System for Research and Development in Psychology, this method of

<sup>5</sup> Dr. Mohammed Saheb Hussain and Clement Mashamba, ||Protection of the rights of children in conflict with the law; A human right prospective.||(2012) 3 SCC 1.

<sup>6</sup> Devdutta Mukherjee, —Juvenile justice system in India: Do we really care?|| available at [www.mightylaw.in](http://www.mightylaw.in) (accessed on 11/11/2013).

measuring a child's maturity is based on an inaccurate criterion: the severity of the crime committed. Cognitive talents and social psychological capacities make up what psychologists call the "two halves" of the human brain. According to studies in neuroscience, by the time a kid reaches the age of 16, his or her mental ability has caught up to that of an adult, but his or her emotional development has not. A child's capacity to comprehend choices improves as his cognitive skills mature and he is better equipped to engage in multidimensional, careful, and hypothetical thought. Children's sense of right and wrong grows along with their cognitive abilities; a six-year-old could know that it's bad to murder, but he wouldn't grasp what killing is or why it's wrong. On the other hand, developing sound judgment requires the integration of knowledge and experience.<sup>7</sup> Yet, children's emotional and social development lags behind that of adults, according to psychological outbursts. It is important to address the individual's second half of the brain initially in order to get insight into the child's mental health since adolescents older than 16 only exhibit the former; the later is not there. Emotions, and by extension the ability to manage them via either punishment or reward, are within the purview of the psychosocial talents. With this region of the brain, an individual is able to rein in impulsive behaviors and instead let logic and consideration of potential outcomes direct their actions. Study after study demonstrates that young people are more likely than adults to let their emotions, such as worry and wrath, guide their decision-making, rather than their intellect. Because of this specific motivation, young people are more likely to engage in dangerous behavior with little payoff. Studies show that when making choices, young people tend to prioritize immediate benefits above those that may arise further down the road<sup>14</sup>. The experiments also showed that the likelihood that a child's emotions, rather than their reason, would guide their decision-making increased under stressful settings. According to studies, this region of the brain goes through significant upheaval and development throughout childhood, which may help explain why kids engage in behaviours that give them a rush. Teenagers and young adults between the ages of 16 and 18 often make risky decisions without fully considering the consequences. Only under duress does the role of the emotion become more prominent. Thus, children who have not yet reached a sufficient level of psychosocial maturity are more susceptible to the influence of emotional and social factors and less able to successfully utilize their cognitive abilities.<sup>8</sup>

#### CATEGORIES OF CHILDREN UNDER THE JUVENILE JUSTICE SYSTEM IN INDIA

<sup>7</sup> Salil Bali vs. Union of India & Anr., Writ Petition (C) No 10 of 2013, Date of judgment Jul 17, 2013.

<sup>8</sup> Yogesh Snehi, —State and Child Justice: Stories of Delinquent Juveniles|| in Economic and Political Weekly, Vol. 39, No. 41, 9 October 2004, pp. 4512-4515.

Children in India are not provided with the resources and opportunities necessary for their full development and growth, as shown by the facts given in Part II. It is difficult to adequately prepare for the issue provided since the statistics does not reflect the full scope of such denial. Based on the statistics, it is clear that there is a sizable population of juvenile offenders, and that there is a wide variety of situations in which juveniles in either category need state action. Kids need facilities and chances for their complete and healthy development, including a secure place to give birth and stay healthy, opportunity for play and learning, security against exploitation and abuse, and more.<sup>9</sup> While the state has taken action in some form on each of these areas, not all of them have been brought within the purview of statute. For instance, starting with the Apprentices Act 1850 and continuing through the era of various Children Acts passed by states, all the way up to the Judicial Conference of the United States (1999), the statutory law providing for care, treatment, and rehabilitation of children in difficult circumstances has been separate from the state's various health care and welfare schemes, such as those relating to prenatal, natal, and post natal care, vaccination, safe drinking water, hygiene and sanitation, and education. Historically, these laws have mostly applied to minors who have been convicted of a crime, as well as those who have been discovered living on the streets or in other dangerous situations. Several lawmakers raised concerns about lumping "delinquent" and "neglected" children into the same category during debate on the Children Bill in 1959. They worried that the neglected youngsters would be stigmatised by being associated with the delinquent youth. According to K. L. Shrimali, who at the time served as minister of education and introduced the Children Bill 1959, the inclusion of neglected children in a law addressing juvenile delinquency was warranted by the minister's own views.

A concern for the welfare of neglected children is shown in this justification for exclusion. Conversely, it reveals the pervasive stigma attached to juvenile offenders. Notwithstanding the JJS's promotion as a measure for the care and protection of both delinquent and neglected children, such a move would be disastrous for the rehabilitation of children who have committed serious offences and are subject to significant social stigma. The JJS's refusal to accept children who have been neglected is a sign of the estrangement felt by delinquent youth and the fear that a stricter regime for these youth is necessary. It also goes against the idea that kids aren't entirely to blame for their own criminality because of the pressures they face at home.<sup>10</sup>

<sup>9</sup> Dr. Ved Kumari, The Juvenile Justice (Care and Protection) Act 2015: Critical Analyses, 2017, Lexis Nexis Publication, Gurgaon Haryana.

<sup>10</sup> David S Thanenhaus, —Juvenile Justice in the making||, Oxford University Press, New York. 2004.

## REVIEW OF LITERATURE

**Mr. Atul s. Jaybhaye (2017)**<sup>11</sup> Children are a country's future, therefore it's important to give them a head start. Juvenile courts exist to protect the legal rights of minors. Putting more focus on prevention than retribution and reserving custody as a measure of last resort, the violent gang rape that happened in Delhi on December 16th, 2012 was the landmark case that reshaped the current legislation of the juvenile justice system. Several social workers and ngos campaigning for the rights of the young person condemned the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 in response to public outcry over the release of the juvenile offender in state v. Ram singh & ors. This article discusses the pros and cons of the Juvenile Justice (Care and Protection of Children) Act of 2015.

**Venudhar routiya (2015)**<sup>12</sup> the primary motivation for selecting this issue for in-depth investigation was a curiosity about the current situation of juvenile justice studies in India. This study provides useful context for individuals concerned with the details of child rights protection. The widespread nature of adolescent delinquency was a driving factor in the development of the juvenile justice system. Kids this age have trouble making sense of the world when they're thrust into abnormal circumstances. They do not conform readily to the norms of criminal procedure. Thus, the only function of the juvenile justice system is to aid adolescents who have found themselves in legal problems. The primary focus of the juvenile justice system has always been on giving young people options for treatment in the hopes of preventing further behavioral problems.

**Shivangi tiwari (2015)**<sup>13</sup> the future of every country rests in its children. The fate of mankind rests in their hands, and it is they who will carry the torch into the future. Young people are the key to maintaining humanity as a civilized species in the future. When young people start committing serious crimes, it's not hard to see a dark future for the country as a whole. Recent years have seen a huge increase in the number of crimes committed by young people in several countries, India included. In India, the crime rate among young people is increasing at an alarming rate that is both depressing and fatalistic for the interest of society, hence it is crucial that we find effective strategies to combat this problem. This article examines, with the use of official data, topics such, "Who is a juvenile?" and "What does juvenile delinquency mean?" and "What are the reasons or

causes for the increasing rates of juvenile delinquency?" with a particular emphasis on India. The booklet also contains a number of Indian legislation and regulations that deal with juvenile delinquency.

**Antej du bois-pedai (2010)**<sup>14</sup> focuses on how the limitations and restrictions, in addition to any penalties or jail time, have an effect on a sexual offender. Furthermore, he claims that the lack of review means that the notification requirements to limitations on certain types of employment, goods, services, and leisure activities is a disproportionate interference with a convicted offender's right to private life under article 8 of the European Convention on Human Right and declared sec. 82 to be incompatible with the convention. In the same vein, he expresses worry for the safety of potential victims from repeat perpetrators.

**Yogesh snehi (2004)**<sup>15</sup> makes the point that the Juvenile Justice (Care and Protection of Children) Act of 2000 does not provide a preventative framework to guarantee the rights of neglected children, but rather only a legal infrastructure. After conducting interviews with seven adolescent offenders, he compiles their stories into a single volume. From the adolescent's perspective and knowledge of government policies and programmes, he draws the conclusion that there are significant breaks in the strategy for safeguarding children's development. He continues, saying it's inappropriate to develop child rights policies by including them into family welfare initiatives.

**Devdutta mukherjee, (2013)**<sup>16</sup> draws attention to the differences between strict and lenient approaches to juvenile justice. Even while she acknowledges the need of addressing the underlying issues that lead to juvenile delinquency, her discussion of these issues suggests that she favours the idea of juvenile welfare and rehabilitation. Notwithstanding constitutional safeguards and various child-centric legislation and civic rights, she was saddened to hear that some Indian children still faced pervasive discrimination and suffering.

**Dr. Ved kumari (2015)**<sup>17</sup> has summarized and explained all the crucial provisions of the Juvenile Justice Act of 2015. She has organized the laws thematically and written them in simple Language to make them accessible to individuals who lack a legal training. Judges, district court officers, judicial educators, public defenders, prosecutors, and childcare workers who are responsible for

<sup>11</sup> Mr. Atul s. Jaybhaye (2017) on "critical analysis of juvenile justice system in india" bharati law review, oct. Dec., 2017 103 assistant professor, government institute of forensic science, Aurangabad. Published in articles section of www.manupatra.com

<sup>12</sup> Venudhar routiya (2015) on "a critical study of juvenile justice system in india" man in india, 97 (11) : 49-66 © serials publications

<sup>13</sup> Shivangi tiwari (2015) on "analytical study of juvenile delinquency in India" issn 2455-4782 101 | page journal of law volume 5 issue 6.

<sup>14</sup> Antej du bois-pedai (2010) once a sex offender, always a reoffending risk, cambridge law journal 428.

<sup>15</sup> Yogesh snehi (2004 ) state and child justice: stories of delinquent juveniles in economic and political weekly, vol. 39, no. 41, 9 October 2004, pp. 4512-4515

<sup>16</sup> Devdutta mukherjee (2013) juvenile justice system in India: do us really care! available at www.mightylaw.in (accessed on 11/11/2013).

<sup>17</sup> Dr. Ved kumari (2017) the juvenile justice (care and protection) act 2015: critical analyses, 2017, lexis nexis publication, gorgan Haryana.

interpreting and implementing the Juvenile Justice and Delinquency Prevention Act will find this book to be a useful resource.

## CONCLUSION

With the goal of eliminating the negative connotation of the word "juvenile," the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2000 were enacted in India, marking the first time such an attempt had been undertaken. Juveniles formerly referred to as juvenile delinquents are now known as youth in conflict with the law, while minors previously referred to as youth in need of care and protection are now known as juveniles in need of care and protection. To reevaluate the statutes governing juvenile detention in light of the new circumstances are the subjects of my study. Not only that, but it also provides a literature review. Children accused of also appears in the United Nations Convention on the Rights of the Child (1989). There is no arrest, there is custody; there is no remand, there is bail; there is no trial, there is adjudication; there is no police investigation, there is social intervention; and there is no juvenile offender or delinquent juvenile, there is juvenile in conflict with law.

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## Corresponding Author

**Neha Sara Alex\***

PhD Student, Kalinga University, Raipur (CG)