

# JUVENILE JUSTICE SYSTEM IN INDIA AND CONTEMPORARY CHALLENGES

## INTRODUCTION

The supreme asset of a State which are recognized worldwide are Children. The state lies within the hands of the Children for the longer term. The indifferences of our society and because of all the odd spheres, these future stake holders aren't moulded properly which results in their delinquency. Children need to be the topic of prime focus of development. The child is the national asset of the nation as held in the case Sheela Barse v. Union of India ,AIR 1981<sup>1</sup>. Their care is our responsibility. Therefore, it is important for us to uplift children. Children are forever innocent and they are not aware of good and bad. . They are not physically, emotionally and mentally fit than adults. So the children are to be treated physically and mentally in a whole instance for their better growth and development as the growth of any civilization depends upon its growth and development of children considering them as the future. On the other hand, there are juvenile delinquents<sup>2</sup> since the beginning of human civilization and in every time-phase it was decided to treat the cause of any situations and not the symptoms, that is, to help the juvenile delinquents to help them through rehabilitative process rather than penalising them and that's why we have incorporated juvenile welfare laws in India. In the last few decades, the crime rate by the children under the age of 16 years has increased rapidly. The reason of increasing crime rate is due to the upbringing environment of the child, family and economic conditions, lack of education, peer pressure, bad company and the parental care and in the poor section the main cause of the crime between the children is poverty. These are the some of the basic reasons. And the most disappointing part is that, children (especially under the age group of 5 to 7

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<sup>1</sup> <https://indiankanoon.org> , Sheela Barse v. Union of India & ors 1986

<sup>2</sup> <https://legaldictionary.net/juvenile-delinquency>

years) now a days are used as tool for committing the crime as at that this stage their mind is very innocent and can easily be manipulated. The basic roots of development and growth are spoiled here .

The frightful and appalling incident of *Nirbhaya Delhi Gang Rape Case* on December 16, 2012<sup>3</sup> shocked the whole nation and many debates were started among legal fraternity as well as socialists. The main reason and issue of the debates was the involvement of accused, who was just six months short to attain the age of 18 years. The involvement of the accused in such a heinous crime of rape forced the Indian Legislature to introduce a new law and thus, Indian Parliament came up with a new law which is known as “ Juvenile Justice ( Care and Protection), 2015<sup>4</sup>.

The Introduction of the Act has replaced the existing juvenile laws and has introduced some remarkable changes. One of the remarkable changes is juvenile under the age group of 16 to 18 years should be tried as an adult. This change . The term juvenile almost abolished. The Juvenile Justice ( Care and Protection), 2015 has heralded a new era of Juvenile Justice in India.

## HISTORICAL BACKGROUND

*For the first time the change was noticed in United Nations. In this The UN Declaration of the rights of child 1958<sup>5</sup> started for securing the rights of the child, regarding the special treatment and care to the child. With this on the other hand UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985(The Beijing Rules)<sup>6</sup> started to work on accountability of exercise of discretion relating to children.*

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<sup>3</sup> <https://indiankanoon.org>

<sup>4</sup> <https://www.advocatekhoj.com>

<sup>5</sup> <https://unicef.org>

<sup>6</sup> [www.oxfordreference.com](http://www.oxfordreference.com)

*The first legislation on juvenile justice in India came in 1850 with the Apprentices Act 1850<sup>7</sup> which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This act was resettled by the Reformatory Schools Act, 1897 subsequently provided that children up to age of 15 may be sent to reformatory cell, and later the Juvenile Justice Act 1986<sup>8</sup> provided a uniform mechanism of Juvenile Justice. This act was replaced by Juvenile Justice (Care and Protection) Act, 2000<sup>9</sup>.*

*The Act was in force in most of the States, especially in those States where Children Acts were in operation. The Act has since been repealed by the Apprentices Act, 1961.*

## **DIFFERENT LEGISLATIONS**

### **#CONSTITUTIONAL REVIEW**

There are certain provisions in the Indian constitution which firmly deals with the children as to their rights which are mentioned in certain articles such as Article 15, 21, 21(a), 23, 24, 39(e), 39(f) etc , all these deals with the protection and care of the children or juveniles.

ARTICLE 15<sup>10</sup> talks about Prohibition and Discrimination in Indian Constitution – Article 15(3) empowers the state to make special provisions for women and children .

ARTICLE 21<sup>11</sup> talks about Protection of Life and Personal Liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law. LIFE in Article 21 of the Constitution is not merely the physical act of breathing.

ARTICLE 21A<sup>12</sup> in the constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

ARTICLE 23<sup>13</sup> Prohibition of traffic in human beings and forced labour- prohibits the traffic in human beings and forced labour such as beggar. The Human Trafficking is the illegal trade in human beings for the purposes for the commercial sexual exploitation , prostitution or forced labour.

ARTICLE 24<sup>14</sup> Prohibition of employment of children in factories etc. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

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<sup>7</sup> <https://indiankanoon.org>

<sup>8</sup> [www.indianrailways.gov.in](http://www.indianrailways.gov.in)

<sup>9</sup> <https://www.advocatekhaj.com>

<sup>10</sup> <https://indiankanoon.org>

<sup>11</sup> <https://indiankanoon.org>

<sup>12</sup> <https://indiankanoon.org>

<sup>13</sup> <https://indiankanoon.org>

ARTICLE 39 (e)<sup>15</sup> says that the health and strength of workers , men and women ,tender age of children are not abused and the citizens and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

ARTICLE 39 (f)<sup>16</sup> says 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.

#### # THE JUVENILE JUSTICE ( CARE AND PROTECTION OF CHILDREN ) ACT,2000

The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000<sup>17</sup> says that the act was enacted with an object to incorporate the standards prescribed in the United Nations Convention on the Rights of the Child 1989<sup>18</sup>, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985, the United Nations Rules for the Protection of Juveniles deprived of their Liberty 1990<sup>19</sup> and all other relevant international instruments. According to Supreme Court of India this Act has been enacted to deal those offences which are committed by the juveniles and where the law applicability on them is different from those of adults.

#### # THE JUVENILE JUSTICE ( CARE AND PROTECTION OF CHILDREN) ACT,2015

The increase in the crimes particularly rapes forced to bring up a new legislation i.e. The Juvenile Justice (care and protection) act 2015<sup>20</sup>. The definition of child in need of care and protection also expanded. The key purpose of this legislation was to make sure that the children's court makes the child found guilty of the heinous crimes committed by them and they are under the safe protection until the age of 21 years and after that to the jail. The bill faced a lot of criticism for its features related to age of juvenile specially after the nationwide shocking rape case and one of its accused who was just six months older to attain the age of 18 years.

#### # THE UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD

It is the basis of all the UNICEF'S work. It is the most **widely** ratified treaty in history for human rights. This convention includes 54 articles that covers all the aspects of a child's life and bring out all the civil ,social, economical, political , cultural rights of children for which they are

<sup>14</sup> <https://indiankanoon.org>

<sup>15</sup> <https://indiankanoon.org>

<sup>16</sup> <https://indiankanoon.org>

<sup>17</sup> [www.legalservicesindia.com](http://www.legalservicesindia.com)

<sup>18</sup> <https://www.unicef.org>

<sup>19</sup> [www.childlineindia.org.in](http://www.childlineindia.org.in)

<sup>20</sup> <https://www.advocatekhoj.com>

entitled to .This treaty has been accepted by non-state entities too such as Sudan People's Liberation Army . Except the United States all the UN members has ratified the convention and it came into force in 1992 in UK. The four articles in the convention are the highlighters , they are called as General Principles of the convention as they helps to interpret all the other articles. They are such as : Article 2<sup>21</sup> Non- Discrimination , Article 3<sup>22</sup> Best interest of the child , Article 6<sup>23</sup> Right to life survival and development , Article 12<sup>24</sup> Right to be heard .

## # NATIONAL FRONT

*On the National front as many acts has been passed from certain era or time , but after the famous NIRBHAYA case which shocked the whole nation and brought revolution in the country as well as many major amendments has been done in the Indian law. The Juvenile Justice (Care and Protection of Children) Act, 2014 replace existing Indian juvenile delinquency law i.e. Juvenile Justice (Care and Protection of Children) Act, 2000, so that juvenile criminals in the age group of 16–18 can be tried as adults for serious and heinous crimes. It was passed on 7 May 2015 by the Lok Sabha<sup>25</sup> unanimously and it is now pending in the Rajya Sabha<sup>26</sup>. Juvenile Justice (Care and Protection of Children) Act, 2014 will allow a Juvenile Justice Board, which would include special psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 should tried as an adult or not according to their mental condition and ability. The bill introduced concepts from the Hague Convention on Protection of Children. The bill also seeks to make the adoption process of orphaned, abandoned and surrendered children more efficiently. The objectives of juvenile justice (care and protection) Act, 2014<sup>27</sup> are to ensure that each and every child enjoys his rights, the protection and care of children without facing any harassment or abuse, to streamlining the central adoption agency and to ensure briskly and productively resettling or we should say reintegrated into the society in case any child found to be in conflict with law.*

The debates arised in the Nirbhaya case were on the matter of the age of one of the convicts who was also involved in such a heinous crime who was just six months short to attain the age of 18 years. Offcourse he should also be punished the same like others as he also committed the same crime and sometimes in some situations giving punishment is necessary to make them realize their wrong doings and if they get away it will become their habit which will carry on till the later part of their life, they should know the consequences of their actions . Giving punishment is a positive thing so that they should receive this understanding and improve their upbringing , growth and development itself and positively. This process should be done as sooner as it can be when their minds are at developing stage and can be moulded with good and positive habits and attitude towards life .

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<sup>21</sup> <https://www.unicef.org.uk>

<sup>22</sup> <https://www.unicef.org.uk>

<sup>23</sup> <https://www.unicef.org.uk>

<sup>24</sup> <https://www.unicef.org.uk>

<sup>25</sup> <https://loksabha.nic.in>

<sup>26</sup> <https://rajyasabha.nic.in>

<sup>27</sup> <https://www.advocatekhoj.com>

Another issue which arised that the age of a juvenile should be 16 or 18 so as to treat them adults. As per The (NCRB) National Crime Record Bureau report in the year 2011, 64 percent of the crimes has been committed by juveniles between the age of 16 and 18. At this age many heinous crimes are committed as this age is highly unstable and inflammatory. Despite several comprehensive and effective beneficial schemes for children the implementation of such schemes are defective. The appropriate kind of training is not there , the police officers at their are brutal towards the juveniles and treat them very badly by abusing and beating them with no mercy. The government should take necessary actions and steps before its too late to improve the things .

### **JUDICIAL TRENDS**

As from time to time many trends had been made over the juvenile justice system in india as by different judgement by various courts and legislations and some of that are such as

*\*The Nirbhaya case led to the change in the Juvenile Justice Act. On 16th December, 2012, a brutal case of gang rape & murder shook the nation. A 23-year-old girl was assaulted and raped in a bus. The criminals then threw her lifeless body onto the road. There were 6 people involved, 5 adults and a juvenile, aged 17. The adults were sentenced to 10 years in prison, while one of them was found dead in his jail cell during the course of the trial. The juvenile was sent to correctional facility for 3 years. But brutal acts in this case had shocked people beyond belief. There were protests to try him as an adult. This subsequently led to the replacement of our Juvenile Justice Act, 2000<sup>28</sup>. The age bar to be tried as an adult was lowered from 18 to 16 years.*

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<sup>28</sup> [www.childlineindia.org.in](http://www.childlineindia.org.in)

\* *The Mathura rape case*<sup>29</sup> is about On the night of 26th March, 1972, Mathura, a tribal girl, was called to the police station on account of her brother lodging a complaint against her boyfriend. The officers at the thana raped her and then asked her to go. Mathura file a rape case against the constables.

The Supreme Court, however, ruled in favour of the policemen assuming it was 'peaceful or consensual', stating that there were no signs of struggle on Mathura's body and that she did not raise any alarm. But Mathura said that they had threatened her into submission. There was a huge public havoc and the case finally forced an amendment in the Criminal Law Act 1983<sup>30</sup>. The amendment meant that custodial rape was a punishable offence and the method to deal with 'consent' was henceforth included under India's rape laws.

\* *In Laxmikant Pandey v. State*<sup>31</sup> the Hon'ble Court of India observed that every juvenile has a right to proper care and assistance and affection and of morality and proper security as well as protection and this is only possible when the juveniles will be brought up in proper family and good environment.

\* *In Sampurna Behrua v. Union Of India & ors*<sup>32</sup> the Hon'ble Supreme Court held with the suggestions for both state and central government for improving the condition on juvenile justice system.

## CONCLUSION

Before closing its necessary to debate on the solutions and ways to understand the reasons and circumstances behind the delinquent behaviour of juveniles. The law of the juvenile justice act like a system of opportunity which can be taken easily to any instance and can be mould in any way possible. The graph of juvenile crime rate is increasing day by day which is decreasing their growth and development. Under Juvenile Justice Section 16<sup>33</sup> of the Act lays down provisions for orders that may be passed regarding a juvenile wherein the maximum penalty of a juvenile that he/she has to pay is to remain in the observation home for three years or till he/she attains the age of twenty one.. The children are indulging into a lot of criminal activities such as theft, drugs, rapes, murders, conspiracies, kidnappings etc and we can also say that they are used as a tool by manipulation and brain washing them as it is obvious that in this phase the young age can be easily manipulated and misled. Several researches have encouraged and promoted a positive youth development and addressed the need of youth who might be at the risk or on the stage of

<sup>29</sup> [www.doccentre.net](http://www.doccentre.net)

<sup>30</sup> [www.lawyerscollective.org](http://www.lawyerscollective.org)

<sup>31</sup> [www.legalserviceindia.com](http://www.legalserviceindia.com)

<sup>32</sup> <https://indiankanoon.org>

<sup>33</sup> <https://www.legalcrystal.com>

entering the juvenile justice system. In light of the research, we know that the better and more effective place to stop the 'cradle to prison pipeline'<sup>34</sup> is a close to the beginning of that line. Many past approaches have accused on remediating longstanding turbulent behaviour and researches has proved that early involvement and preventions are way more effective than anything else.

The researchers feel that there is an urgent need for us to fight against all this is degrading and humiliating our society today and our future too. We have to provide our children with something for fight. The need of hour is to identify the venerable group, create awareness among people specially juveniles and to educate the young population of India. The educated need to aware the uneducated, for the lack of awareness. The knowledge is a major challenge and need of the situation and time for a better today and better future. The researchers have tried to address the issues subsequently and find out the cures, strategies and solutions to deal with situations and eradicating the problems, issues and challenges of juvenile crime rate from its roots.



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<sup>34</sup> [www.nea.org](http://www.nea.org)