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The Act of a Child under the Indian Penal Code: A Detailed Analysis

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ABSTRACT

Children, who lack the maturity to form their own opinions, are more prone to give in to temptations they should avoid due to an increase in crime rates around the world. As the future of the country, children require a special kind of protection to ensure a better and safe future of the children. The recent past has experienced a rise in the crime rates across the world. This recent trend has a detrimental impact on the children. This impact has given rise to the increase in the involvement of children in crimes which is termed as “Juvenile Delinquency” and it is a very significant issue for the country, and solutions must be carefully researched in order to put an end to the issue. The Indian legal system provides a special set of rules to deal with the acts done by children of the country so as protect them from the criminal liabilities. In the following research paper, the researcher has done detailed research to provide an analysis about the structure and the procedure of the legal system of the country on the acts committed by the Children as described under the Indian Penal Code. The paper also contains a detail study by the researcher about the recent amendments in the matter of “Juvenile Delinquency”.

Keywords: Criminal Liabilities, Children, Structure, Amendments, Juvenile.

I. INTRODUCTION

Every country's future is based on its children, who are its foundation. They develop into the nation's leaders, wealth-makers, and stewards of the local human population in the country where they were born and raised. Around the world, these kids grow and form diverse worldviews at varying rates. Their capacity for abstract thought grows as they do, and they form their own opinions on social and political matters. They become more adept at creating long-term goals and engaging in long-term planning. In addition, there is a propensity to compare oneself to others. They yearn to be independent from their parents and to have their own identity. At this age, acceptance from peers and peer pressure are crucial. However, these are typical changes, and generally speaking, there are no abnormalities. When these young people start to exhibit delinquent behaviours and have issues with law and order, difficulties start to surface.

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In any nation, juvenile delinquency is a serious crime that harms the social order. The number of juvenile offences is on the rise everywhere, and young people are becoming more and more involved in violent crimes. Similar tendencies of a rise in adolescents committing violent crimes may be seen in India. The prevalence of juvenile crimes makes them a critical worry in all the countries. “Juvenile³ refers to a child who has not yet reached the age at which they can think clearly and frequently grasp the repercussions of their actions.” Therefore, the child cannot be held accountable for his or her unlawful behaviour. A child who has broken a law, making his or her act of commission or omission an offence, may be considered a “Juvenile Delinquent.” But the “Juvenile Justice Act of 2000” replaced the term “delinquent juvenile” with “juvenile in conflict with law”, which is used for the person below 18 years who has committed an offence.⁴

“Under the Indian Laws, Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2015⁵ (referred generally as JJ Act) juvenile is a person who below 16 years. Prior to JJ Act of 2015, the age bar for juveniles was 18 years (during Juvenile Justice (Care and Protection of Children) Act of 2000, 2006 and 2012). The amendment in the age bar of Juveniles was done after it becoming a very controversial topic after the “*Nirbhaya case*”⁶ which happened in 2012. In fact, the age of the juvenile under the Indian legislations has taken variation in temporal and spatial perspectives. It varies from 14 to 18 years under different laws and different Indian states”.

II. DIFFERENT AGE GROUPS ACCORDING TO THE INDIAN PENAL CODE

Children across the country who are below the age of 18 years, who are categorised as Juvenile, are divided into different age groups for making the administration of the Juvenile Justice Act easier. These age groups are⁷:

- Under the age of Seven years- The law provides *complete immunity* to the children belonging to the age group of below seven years and grant them protection from criminal liabilities under the Section 82 of the Indian Penal Code⁸ and it stated that “Nothing is an offence which is done by a child up to seven years of age” and are termed as “*Doli Incapax*”.
- Between the age of 7-12 years- The law provides *qualified immunity* to the children

³ Juvenile Justice Act, 2015, Section 2(35)

⁴ KD Gaur, Indian Penal Code, 200, 6th edition, 2018

⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, Section 2(k)

⁶ Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

⁷ KD Gaur, Indian Penal Code, 192-193, 6th edition, 2018

⁸ India Penal Code, 1860, Section 82

belonging to the age group of 7-12 years because it is believed that these “children do not have the understanding to judge their act” as held in the case of “*Hiralal Mallick v. State of Bihar*”⁹. According to Section 83 of the Indian Penal Code¹⁰, the maturity of the child, his act, conduct and the behaviour of the child decides the criminal liability of the child.

- Between the age of 12-18 years- The law provides immunity to all the children of the country below the age of 18 years according to the Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000¹¹ and these children are not to be sentenced for death penalty or life imprisonment.

III. JUVENILE JUSTICE SYSTEM IN INDIA

(A) Juvenile Justice Act (JJ Act):

The Juvenile justice system of India has undergone many stages of evolution after the nation got independence from the Britishers. The Indian legal system recognised the need of developing separate justice system for the juvenile in the 18th century as a movement started which led the general assembly of UN Convention of Rights of Child. Before this time, the offences done by juveniles were treated same as the rest of the offences. So, to protect the rights of the children, Juvenile Justice Act, 1986¹² was passed by the central government and its main objective was to create a social law with the intention of providing neglected and delinquent children with care, protection, treatment, and rehabilitation. Additionally, it examined how juvenile cases were decided. Juvenile welfare boards were established for children who had not committed crimes or been neglected, while juvenile courts were established for those who had. In the case of “*Sheela Barse v. Union of India*”¹³, it was held that there is a need of setting up of special juvenile homes in the jails which should look after the education, health and other essentials for the children. The Supreme Court, in the case of “*Sheela Barse v. Secretary Children Aid Society*”¹⁴, came forward to protect the rights of the children those were in the observation homes.

(B) Juvenile Justice (Care and Protection of Children) Act:

Then in the year 2000, the government passed the “Juvenile Justice (Care and Protection of

⁹ *Hiralal Mallick v. State of Bihar*, 1977 AIR 2236 1978 SCR (1) 301 1977 SCC (4) 44

¹⁰ Indian Penal Code, 1860, Section 83

¹¹ Juvenile Justice (Care and Protection of Children) Act, 2000, Section 16

¹² Juvenile Justice Act, 1986

¹³ *Sheela Barse v. Union of India*, 1986 SCC (3) 596

¹⁴ *Sheela Barse v. Secretary Children Aid Society* 1987 AIR 656, 1987 SCR (1) 870

Children) Act¹⁵” was passed. It made possible a unified system of justice across the nation. The new Act’s principal goal was to prevent any juvenile (those under the age of 18) offender from being jailed. The Act also included provisions for the equipment and infrastructure needed to care for, protect, and rehabilitate children. In both 2006 and 2010, the Act underwent additional amendments. It allows the Juvenile Justice Board, formerly known as Juvenile Court, to conduct investigations using a multidisciplinary approach. To address the needs of young children in need, the Child Welfare Committee was established in accordance with the Act. The Juvenile Justice (Care and Protection of Children) Act¹⁶ was the latest amendment which was passed in 2015. The “*Nirbhaya case*”¹⁷ which took place in 2012 was a major reason that the amendment to this act was done in 2015 as in the case one of the accused was 6 months short from attaining the age of 18 years and the topic became a major controversy in the country.

The major amendments which took place in 2015 were:

- The crimes committed by juveniles were divided into 3 categories; petty offences¹⁸, serious offences¹⁹, and heinous offences²⁰
- In the case of heinous offence (rape, murder), juvenile can be tried as an adult
- The Juvenile Justice Board was setup in every district of the country
- A Juvenile Justice Board composed of psychologists and sociologists will be able to decide whether or not a juvenile offender between the ages of 16 and 18 should be tried as an adult under the Act.
- According to Section 21 of the Act, juveniles cannot receive life sentences or the death penalty.²¹
- From the previous one month, every minor who is discovered committing any offence will now have a preliminary evaluation for a duration of three months
- The biological parents of any child who has been abandoned by them because of unavoidable circumstances will not be seen as wilfully giving up the child
- Instead of the current 30 days, abandoned children discovered by childcare providers will henceforth be held for 60 days before being placed in foster care or up for adoption.

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2000

¹⁶ Juvenile Justice (Care and Protection of Children) Act, 2015

¹⁷ Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

¹⁸ Below 3 years of imprisonment

¹⁹ 3 to 7 years of imprisonment

²⁰ Minimum 7 years of imprisonment

²¹ Section 21, Juvenile Justice (Care and Protection of Children) Act, 2015

In 2021, the Juvenile Justice (Care and Protection of Children) Act of 2015 underwent an amendment. A number of significant changes were made to the law in the Amendment Act of 2021, including adoption, the classification of crimes, the designation of courts, and the requirements for members of Child Welfare Committees (CWCs) to be eligible. It included:

- Inclusion of offences whose punishment is more than 7 years without any minimum period in the category of serious offences which earlier used to consist of offences whose punishment is between 3 to 7 years.
- The amendment changed the offences with a punishment period of 3 to 7 years from being cognizable to non- cognizable.

(C) Provisions Under IPC and CrPC:

Section 82 of the Indian Penal Code²², sets age limit of 7 years which should be excluded from criminal liabilities and Section 83 of the Indian Penal Code²³, provides some qualified protection from the criminal liability to age group of 7-12 years because they were considered to be mature enough to comprehend the purpose of their behaviour in specific situations. In accordance with the Code of Criminal Procedure, 1973, juveniles under the age of 15 should undergo separate trials and get treatment in reformatories as opposed to prisons. It also set up guidelines for young offenders' probation. Such endeavours served as a marker for the state's shifting attitude toward young offenders and its shift away from a punitive to a reformative ideology.

(D) Juvenile Justice Board (JJB):

The "Juvenile Justice (Care and Protection of Children) Act, 2015" enacted the establishment of the Juvenile Justice Board across the country and in every district with an objective to inquire/assess the mental and physical ability of the child who is accused of committing a crime. Based on the assessments of these Juvenile Justice Boards, decision was taken whether the trial should be done by the children's court or by the adult court.

IV. INCREASE IN THE CRIME RATES BY JUVENILES

According to the reports of National Crimes Record Bureau (NCRB), there has been increase in the number of crimes committed by the juvenile in India over the years. The average crimes committed by "*juvenile in conflict to law*"²⁴ was 16277 in the years 2000-2004 but in the year

²² Indian Penal Code, 1860, Section 82

²³ Indian Penal Code, 1860, Section 83

²⁴ Any person under the age of 18 who interacts with the legal system as a result of being suspected or charged with committing crimes is referred to as a "Juvenile in Conflict with Law."

2005 alone total number raised to 18939²⁵. Then over the years, in the year 2015 these numbers raised to 31396²⁶ and in the year 2016 the numbers raised to 33697²⁷ and in year 2019, 29126²⁸ cases were reported.

In India, there are numerous petty and major crimes committed on a regular basis, including theft, snatching, robbery, robbery with a weapon, murder, and rape. What's even more horrifying is that all of these crimes are committed by minors under the age of 18. Additionally, there is a tendency for teenagers between the ages of 16 and 18 to be more involved in heinous criminal offences. The reasons for the increase in the crimes committed by the juveniles in India can be divided into two categories:

1. Social factors:

- Household- A child learns majority of the lessons from its home only. If the atmosphere of the household around himself is not suitable it effects the mentality of the child which can lead him/her to delinquent behaviour.
- Poverty- In India most of the population lives in poverty and to earn their livelihoods parents cannot take care of their children. Due to lack of attention and care, these children join gangs and due to bad company they start getting involve in the crimes. These children who belong to poor homes believes that doing crimes is the only to earn livelihood and meet their desires.

2. Personal factors/ Individual factors:

- Mental deficiency- Numerous delinquents have been found to have mental disabilities. Studies have shown that children have a higher proportion of mental disabilities. It is very reasonable to believe that dull, mentally challenged, or defective teenagers lack the awareness to distinguish between “proper” and “deviant” tactics and behaviour. Such children are frequently employed by the more intellectual gang members or by adults for their criminal ends.
- Emotional problems- Delinquency is strongly influenced by psychological issues and emotional maladjustments. Children that engage in delinquent

²⁵ Juvenile delinquency in 2005 over the years from 2000 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010.2_2005.pdf

²⁶ Juvenile delinquency from 2005-2015 under IPC https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010.1_2015.pdf

²⁷ Juvenile in conflict with law in the year 2016 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%205A.2.pdf

²⁸ Juvenile in conflict with law in the year 2019 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%205A.2_2.pdf

behaviour frequently struggle with feelings of inadequacy and jealousy.

3. Biological factors:

- The biological theories imply that a person's biological and genetic make-up influence them. Although they are not strictly the product of biological design, it does make these people more prone to criminal behaviour. The impulsive and rebellious behaviour of juveniles is caused by hormonal changes in their bodies. Environmental, ecological, and economic factors can serve as significant stressors in the lives of young people. But typically, a scenario of juvenile delinquency is the result of a mix of these causes.

The other reasons why adolescent crimes are on the rise in India are because of the deteriorating social bonds between communities, within peers, and within families. Due to reduced parental supervision over children in metropolitan regions, the family as the fundamental unit of human society is specifically becoming weaker. Individual members' involvement in affairs and networking within the community has also dwindled. As youth spend more time indoors watching television or playing games on their phones or computers, peer groups are becoming less active. The violent themes and other elements present in the games teach young players that violence is normal. Young people's minds are places where a lot of information is constantly collecting. This material cannot be filtered in a way that would indicate to young people what information is reliable and what is not. Teenage violence results from the fact that children today have less opportunities for expressing their anger and negativity. Bad company, adolescent instability and urges, early sex experience, mental conflicts, excessive social suggestibility, a desire of adventure, a movie, inadequate recreation, street life, job discontent, a spontaneous impulse, and other physical conditions are among the causes of the increase in the crimes.

V. ROLE OF JUDICIARY IN JUVENILE DELINQUENCY

The Supreme Court and different High Courts are crucial to the development of India's juvenile justice system. The lower courts handle juvenile delinquent cases in the primary stage, but because their decisions are not final, they cannot have an impact on policy. Therefore, the judgments of the Hon'ble Supreme Court and other high courts that represent trends in the judicial response to a "juvenile in conflict with the law" are being analysed. The juvenile justice board and courts have a legal and constitutional obligation to handle juvenile offenders who are produced or brought before them. When deciding cases, the competent authority must conduct adequate research and give juveniles every opportunity to present their case, not only during the

investigation into the alleged offence but also at the beginning of the case when the issue of determining the juvenile's age is brought up before the court or Board in question. Child delinquency is a significant issue that both "developed and developing nations" must deal with, and it is growing rapidly. The issue is spreading quickly, even in tiny urban and rural regions, and if preventive and corrective actions are not done, it will ruin "the child," the nation's future. The governments have set up numerous courts and boards to implement the various laws passed by legislation in order to address and deal with the issue. By interpreting numerous legislative measures passed for the benefit of young offenders, the courts have made significant contributions to the fields of juvenile justice. Setting up of these courts by the government have helped the judiciary to provide justice to the juveniles in the country. It was held in the case of "*Smt. Prabhati v. Emperor*"²⁹, that children of younger age should be provided immunity and should be left with the parents or guardians for protecting the future.

VI. SUGGESTIONS

Many people in the community are currently calling for the treatment of minors between the ages of 16 and 18 as adults when it comes to their convictions for terrible crimes like rape, gang rape, murder, dacoity, etc. The reason is that it has been discovered that adolescents in the 16–18 age range are involved in major crimes and are committing such criminal activities with full knowledge and maturity in several of the recent occurrences as detailed above. Youngster's levels of maturity have changed from 10 to 20 years ago; today's sociocultural milieu, influenced by the Internet and social media, causes children to reach mental maturity earlier. Therefore, it is crucial that such perpetrators in the age range of 16 to 18 be punished as adults in order to have a deterrent impact and ensure that victims also receive justice. Additionally, this viewpoint contends that society bears some of the blame for the child's heinous crimes, as well as for the society's inability to give the child a happy and healthy childhood, as well as for the social and economic injustices that led to the child being forced to commit crimes. It also questions why the State failed to provide care and protection for the child. It is crucial to involve the community in discussions on juvenile delinquency and raise awareness of the issue. The administration of juvenile justice places a high priority on prevention. In order to do this, society as a whole can play a significant part in rehabilitation if individuals are made aware of the concerns with neglected children and kids who live in challenging circumstances. Young people who engage in aberrant behaviour or whose behaviour cannot be adequately managed by their parents can be reported to some informal bodies, such as registered Residential Associations in

²⁹ *Smt. Prabhati v. Emperor*, AIR 1921 (Oudh) 190

various areas.

At every police station, there are facilities for a Special Police team to deal with juveniles. These unique units aren't actually operational. As a result, the police department is unable to handle incidents of juvenile delinquency or neglected children when they are reported to them. The police officers are not particularly sympathetic to the problems that arise. Monitoring the operation of Observation Homes and Shelter Homes is also crucial. These unique locations designed for juvenile/child reformation frequently serve as breeding grounds for new offences. Instead of solving the issue and providing convicts with counselling, these facilities foster the resocialization of young people into the criminal world.

Although the Indian government has made significant attempts to address the issue and has taken innovative and daring moves in this area, more effective implementation strategies are needed.

VII. CONCLUSION

Issues relating to adolescent misbehaviour have plagued all civilizations, but they are particularly severe in developing countries.. The development process has left behind a sociocultural upheaval that has an impact on the long-standing traditional ways of life in the friendly rural environment. Conditions are changing, which has a negative impact on juveniles. The conventional social control structure, which acted as a deterrent to any bad behaviour, is also steadily disintegrating. As a result, the issue of juvenile deviance and antisocial tendencies is becoming more evident and needs to be addressed. Every type of crime requires a different set of guidelines. For example, those found guilty of theft, smuggling, or any other low-level crime should be sent to a rehabilitation centre for grooming, whereas significant attacks like savage rape require a different approach. Because of the severity of the crime, an exemption could possibly be created so that they get the same punishment as adults for this particular offence.
