

# **Criminal Liability of a Juvenile in India: A Critical Analysis**

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## **I. INTRODUCTION**

“A nation’s children are its supremely important asset and nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow”

*Rabindra Nath Tagore*

Childhood is a universal human experience and has vital stakes. The future development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. At present time the child is considered as an important social unit and is held to be entitled to all that requires for healthy living, sufficient recreation, schooling adopted to his natural living methods, intelligent home care and the right to develop his abilities to their fullest extent.

The Supreme Court of India in *Bandhua Mukti Morcha v. Union of India and others* observed that: “A child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation developed or developing links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. The parents themselves live for them. Neglecting children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenry.”

“Children are the greatest gift that has been bestowed upon humanity as they are the pillars on which the foundation of tomorrow is laid as it constitutes the useful human resources that can lead to the progress and development of a country. A healthy and educated child of today is the active and intelligent citizen of tomorrow. Therefore, an important duty on the part of the State is to provide proper care and protection to children because the future of a nation depends on the physical and mental well-being of the children.

### **State of India’s Children:**

India has the largest population of street children as compared to any other country of the world. Majority of children are engaged in survival crimes, status offences and petty non-violent crimes. Many of them are first time offenders. Most children in conflict with law are street children. Large scale of migration of families from rural to urban areas has also resulted in extreme over-crowding, dehumanising working conditions, homelessness, deprivation of basic services and appalling living condition in most cities.

According to a report, in India 147 million children live in Kutcha houses, 72 million children between 5 to 14 years do not have access to basic education. For the purpose of fulfilling its commitment made at the World Summit, National Plans of Action for Children have been formulated by the Ministry of Human Resource Development, from time to time, the latest being in 2016; keeping in mind the needs, rights and aspirations of approximately 300 million children in the country.

A report of UNICEF in 2005 on the state of world’s children under the title ‘Child under Threat’, speaking regarding India, mentioned that millions of Indian children are deprived of their right of survival, health, nutrition, education and safe drinking water. That is what is happening to the most of the young children who are important for the future of the country.

### **Who is a Juvenile?**

The word 'juvenile' has been derived from the Latin word 'juvenis', which means young. Although the word 'child' and 'juvenile' have been used interchangeably as both fall in the same age group, yet in common parlance they are different. While the word 'child' relates to the image of 'simplicity', 'innocence' and 'need of care and protection', the word 'juvenile' is obdurate due to its relation with the Court and the offence. A juvenile is a child who is alleged to have committed or violated some law which declare the Act or omission on the part of the child as an offence.

Since long it has been universally accepted that a juvenile delinquent, in view of his level of maturity and age, cannot be equated with the grown up offender, and as such has to be treated in different manner from the adult offender. For this reason and requirement, various statutes have been passed by the legislature related to the juvenile delinquents. In India the age of juvenility is 18 years which has been fixed in view of India's international commitment. Juvenile offenders and neglected children are easier to study, at the same time, it is much easier, far more helpful and infinitely more urgent to reform, or at least seek to reform them. In this context, the problem of juvenile delinquency deserves serious attention and it requires scientific investigation.

It is the general thinking that the greatest problems of childhood are poverty, homelessness or disease. But delinquency is even worse problem or evil when compared to these. Majority of criminals commence their lawless behavior in their earlier years only, hence in order to control adult crime rate, one has to tackle the problem of juvenile delinquency.

Juvenile delinquency generally refers to a large variety of disapproved behaviours of children and adolescents which the society does not approve of, and for which some kind of admonishment, punishment or corrective measures is justified in the public interest.

States are to discharge the function of protecting the most important, yet vulnerable section of the society, by providing them with opportunities and facilities to grow and develop to their fullest potential and also by taking care that they do not mix up with criminal elements in the society and become delinquent.

Thus the children in India require double sided protection. On one hand they need to be provided with the basic necessities for their overall development making them physically strong, mentally alert, academically brilliant by affording them all, irrespective of their sex, family atmosphere for proper growing and grooming of the child. The other side requires prevention and treatment of a child who is termed to be a delinquent. The action is required on two fronts. Firstly, by preventing and arresting the raise in the juvenile delinquency, and secondly by giving due care to the delinquent child, or a child in need of care and protection.

### **The Juvenile Justice (Care and protection of Children) Act, 2015:**

Due to uproar created by the Nirbhaya gang rape case in New Delhi on 16<sup>th</sup> December 2012, the Juvenile Justice laws of the country came under public scrutiny. As the Juvenile rapist in the said case was left off with a lenient sentence of 3 years in a reform facility, while his adult co-accused were all given death sentences, which was confirmed by the High Court and upheld by the Supreme Court, the nation reacted very angrily and demanded that the juvenile too be tried as an adult and punished.

As a result the Juvenile Justice (Care and Protection of Children) Act 2015 was enacted repealing the 2000 Act.

### **Role of Higher Judiciary in Protecting the Rights of the Juveniles:**

The Supreme Court of India and various High Courts have played a sterling role in interpreting the laws relating to the juveniles in proper perspective, vis-à-vis the legislative development regarding the treatment to be imparted to them. Wherever there was any ambiguity with the law and it needed interpretation, the Courts adopted a protective attitude, care and concern towards delinquent children and issued series of directions to safeguard their interests. There was a development of humanistic jurisprudence for the juveniles with the proactive support extended by the judicial pronouncements of Courts. The various decisions given by Hon'ble Supreme Court have proven time and again that the court interpreted the juvenile law in its right perspective regarding the treatment to the juveniles and has always exhibited care, concern and protective attitude to the delinquent children.

**Significance of separate Justice System for Juveniles:**

The concept of separate Courts, institutions and procedures for juvenile offenders and their differential treatment is quite a recent development. Earlier children were tried for their offences in ordinary criminal Courts and punished at par with adult offenders. It was only when the new penology based on reformative and rehabilitative ideals, came to be applied, it was realized that Courts, procedures and prisons meant for adult offenders cannot serve the interests of juvenile offenders. If children are kept in jails and are allowed to mingle with adult offenders, it would have the effect of exposing them to harmful influences of hardened criminals.

Friedman observes, "A revolution of far greater proportion has, during the last generation, taken place in the treatment of juvenile offenders. Almost universally today, in civilized countries, the juvenile offender (usually a person between the age eight to eighteen) who not so long ago used to be subjected to the harshest penalties and thrown together with hardened criminals is now subjected to a special procedure". Children are the easy victims of the unlawful activities be it the petty offences or something as serious as trafficking or war crimes. Perhaps this is because of their innocence or their vulnerability, it is important to recognize that children are not born into crime; they may be led into it. They are innocent and therefore need to be protected and safeguarded. They need redirection and channellisation of their spirits and energies. This requires a sensitive heart and a proactive mind that could counsel them.

A change in the perception of the causes of delinquency at the late 19<sup>th</sup> century emerged which was grounded in the newly emerging sciences of sociology, criminology, psychology and psychiatry. Children often become delinquent by force of circumstances and not by their choice. Therefore, they cannot be considered as criminals and it would be undesirable to try them under regular criminal justice system on par with adult criminals. Hence a justice system of juveniles has to be evolved laying emphasis not on punishing the juvenile delinquent but to reform, educate and rehabilitate him. Thus, it came to be realized that the juvenile justice jurisprudence has to orient itself towards the social welfare and reformation of the juvenile and not to decide his guilt or innocence or punish him in response to a crime.

Children in India are continuously being blessed by the State, its policies, its laws, its institutions including judiciary and the society as a whole. There is a sea-change in the status of children across the world including India. Now it appears that the role of the State as a parent or guardian has been limited only in terms of providing philosophical languages of love, best interests, care, protection, training, rehabilitation, health, survival and development along with abstract or negative enforceable civil and political rights and due process rights. Firstly, they have acquired the status of being a human entity capable of owning certain inalienable rights by birth without owning any disadvantages or duties. Secondly, they have become the subject matter of human rights concept that is concern for all, leading to general awareness among the masses about their rights of not being exploited, abused, tortured, treated cruelly or inhumanly arrested by police.

**Importance of the Study:**

The most important matter in respect of juveniles which has attracted attention is the administration of criminal justice. This aspect may be broadly divided into two categories, first- the offences committed by juveniles and second- the offences committed against juveniles. In view of the constitutional imperative, the juvenile offenders cannot be treated on the equal footing by applying the general norms and procedure of the criminal justice, therefore the juvenile offenders require special and separate treatment in different aspects of criminal justice. This issue involves many questions, for example - determination of age of juvenile and the relevant data for this purpose, liberalization of bail provisions and the custody of juvenile prisoners, prevention of their abuse. The penology and sentencing laws adopted a liberal attitude towards juveniles and the reformative theory of punishment prevailed. In this respect the punishment to be given to a juvenile after he is adjudged guilty is special treatment and not imprisonment like adult offenders.

There were two important elements in the development of institutional concern for children : one was concerned with the physical abuse and other with moral contamination. The recognition of the stigmatizing effects on children resulting from their association with the penal system led to a concern to keep children out of ordinary criminal Courts and their hearing systems. In theory it was then recognized that it is desirable to treat children according to their underlying needs and not in response to specific acts.

**Objectives of the Present Study:**

The present study is intended to critically evaluate the problem of juvenile delinquency in India, the need for effective laws and their implementation so that the new Act which is a beneficial piece of legislation achieves its purpose in letter and spirit. Thus the objectives of the study include:

- To emphasise the importance of children in the society and country.
- To study the causes of juvenile delinquency and the existing legal framework to fight the problem.
- To identify the rights available to juveniles under International laws and Indian statutes.
- To trace out the evolution of juvenile justice laws in India and India's commitment to international norms pertaining to juvenile justice
- To study the reasons for failure of the various acts pertaining to juvenile justice in the country and assess the circumstances which led to the passing of the recent legislation on the subject.
- To analyse the decisions of the higher judiciary on the subject of juvenile justice and to assess its role in protecting juveniles.
- To study the provisions of the new law applicable to juveniles in India particularly with reference to the criminal liability of the juveniles between 16 to 18 years of age.

**II. CONCLUSION**

The criminal responsibility of juvenile in India became a hot issue for debate due to the alarming rate at which juvenile crimes were increasing. Juvenile crimes were increasing in percentage to total crimes even though the quantum of crimes i.e., the number of crimes committed by juveniles as compared to adults is negligible. It remains an ethical and moral problem of law, justice and society rather than a legal problem. The law so far as benevolent towards the 'children in conflict with law' but a question is being raised whether the child deserved any leniency at all. As a result the Juvenile Justice (Care and Protection of Children) Act 2015 was enacted repealing the 2000 Act. Now the mental maturity of juvenile falling in the age group of 16 to 18 years, alleged to have committed a heinous offence has to be first assessed and decision taken whether he is to be tried as a 'child' or as an 'adult'. It endeavours to give suggestions to strengthen the juvenile justice legislation in India and its implementation. It is hoped that they will contribute for robust and efficient child care legislations which not only aim at rehabilitating the children in conflict with law, but also contain an element of deterrence so as to provide safety and security for all sections of the society.

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