



# The Role Of Judiciary In Child Delinquency: A Critical Analysis

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## ABSTRACT

“A child is a person who will carry on what you have started,” Abraham Lincoln declared more than a century ago. He'll sit where you're seated, and after you're gone, he'll take care of anything you believe is important. You are free to establish any policies you want, but how they are implemented is up to him. He'll move in and seize control of your churches, schools, universities, and businesses. He holds the future of humanity in his hands.” Children crimes are actions that are illegal and go against social norms. Child delinquency refers to children's criminal acts, and deviant behavior is the primary cause of juvenile crimes in India. Child delinquency is a global issue, and many laws have been enacted to address it in various ways. They also participated in various criminal behaviors, such as domestic abuse and impolite behavior toward women, based on their gender. The juvenile justice court gives children all of their constitutional rights, but in extreme circumstances, the juvenile justice system punishes them.

The rate of crime committed by youngsters under the age of 16 has risen in recent decades. The cause of the rising crime rate could be the child's rearing environment, economic difficulties, a lack of education, or parental care. These are some of the most important reasons. The most depressing aspect is that youngsters (especially those under the age of five to seven years) are now being used as tools for committing crimes because their minds are still relatively innocent at that age and can easily be misled.

**Keywords:** Child Delinquency, Crimes, Juvenile Justice, Judiciary

## INTRODUCTION

The functions of the High Courts and Supreme Courts dictate which aspects of juvenile justice and delinquency are addressed. Child delinquency is also dealt with by local courts at the outset of the children criminal cycle. Child criminality, on the other hand, is evolving in society in various forms on a daily basis. The judiciary's approach to child delinquency defines key points, such as a case involving a child who is in violation of the law, Supreme Court rulings, and High Court perspectives on child delinquency. This subject also explains the fundamentals of examining child delinquency. The juvenile justice board and the juvenile courts make decisions that affect children. Under the judicial measures of child delinquency, the decisions of the juvenile justice board and juvenile courts are addressed.

In the Indian court system, children have constitutional rights in cases where they are in confrontation with the law. After a thorough examination, the competent authority resolved the issue of a child delinquent and gave the child delinquents the opportunity to express their thoughts on the crime component. The juvenile courts allow the offender to define his or her juvenility before the court at the initial stages of the case. Children criminality is a global issue; Children's criminality was an issue in all developed countries. Children are involved in criminal acts in small towns, rural areas, and urban areas. To regulate the trouble of children offences, governments established juvenile courts, juvenile boards, and child welfare committees. The Indian Legislation has enacted a number of legislation to address the issues of minor delinquents.

In recent years, it has also been reported that the number of crimes committed by children aged 15-16 has increased dramatically. Early-life experiences, dominant masculinity, upbringing, economic chaoses, lack of education, and so on are the general inclination or psychology behind the commission of crime or the causes of crime. Children between the ages of 6 and 10 are nowadays utilized as instruments for carrying out unlawful or criminal activities, which is a source of shame. Because children's minds have a naive and manipulative nature, they can be enticed for a little cost.

## DIFFERENCE BETWEEN CHILD AND JUVENILE

A minor is a person who is under the age of full legal obligation and responsibility, or who is under the legal age of eighteen years. A kid accused of a crime is not tried as an adult and is

instead transferred to the Child Care Centre, whereas a juvenile is someone aged sixteen to eighteen. A juvenile offender is a minor who has been charged with a crime and is tried as an adult in court.

Both terms have the same meaning in general, but the distinction is in the context of legal ramifications. Minor denotes a child or a teen, whereas juvenile denotes an immature individual or a young criminal.

## JUVENILE JUSTICE AND CONSTITUTION OF INDIA

The Indian Constitution is regarded as the country's fundamental law. Citizens' rights and responsibilities are outlined in the Constitution. It also includes provisions for the proper operation of government machinery. Part III of the Constitution establishes Fundamental Rights for citizens, while Part IV establishes Directive Principles of State Policies (DPSP), which serve as general principles in the formulation of government policies. Some basic rights and provisions, particularly for the welfare of children, are enshrined in the Constitution. Like: –

- 1.Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A)
- 2.Right to be protected from any hazardous employment under the age of fourteen years. (Article 24)
- 3.Right to be protected from being abused in any form by an adult. (Article 39(e)).
- 4.Right to be protected from human trafficking and forced bonded labor system. (Article 39)
- 5.Right to be provided with good nutrition and proper standard of living. (Article 47)
- 6.Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

The Constitution of India is considered the country's fundamental law. The Constitution spells forth citizens' rights and responsibilities. It also includes provisions to ensure that government machinery runs smoothly. Part III of the Constitution defines citizens' Fundamental Rights, whereas Part IV creates Directive Principles of State Policies (DPSP), which serve as broad guidelines for government policymaking. The Constitution contains several essential rights and provisions, primarily for the welfare of children.

### WHAT IS THE DOCTRINE OF “Doli Incapax”

The idea of 'Doli Incapax,' which enunciates the criminal culpability of the child, is one of the most essential principles of Criminal Jurisprudence. When this idea is applied and construed in the context of Indian law, the outcome is that no juvenile under the age of seven should be tried for committing a crime.

The idea of 'Doli Incapax' refers to a person's inability to commit a crime. It is based on article 40 (3) (a) of the United Nations Convention on the Rights of the Child, which specifies that every country shall specify the

minimum age for children who should be exempted from criminal accountability due to their inability to comprehend the nature and consequences of their actions.

For juveniles aged 8 to 14, the prosecution is responsible for proving the offence committed by the kid in question.

The main aims of this doctrine can be elucidated in the following points:

- A child should be shielded from the severity of punishment meted out for his actions. To help the child overcome his paranoia, a reformatory strategy should be used.
- A kid under the age of seven does not have the mental capacity to understand the consequences of his actions; he or she may lack the knowledge as well as the desire to conduct a crime, and simply "actus reus" cannot be used as a basis for prosecution unless it is accompanied by "mens rea."

### **Penal provisions and related judgments:**

- Sections 82 and 83 of the Indian Penal Code, 1860, deal explicitly with juveniles' immunity from prosecution.
- In the case of **Kakoo v. State of Himachal Pradesh**, the Supreme Court reduced the sentence of a 13-year-old boy who had raped a 2-year-old girl. The court considered sections 83 and 84 of the IPC, which state that juveniles cannot be treated as adults. As a result, it is well-established law that the court should consider reformatory and humanitarian techniques while dealing with juveniles.
- However, in the case of **Heeralal v. State of Bihar**, a kid threatened an adult by chopping him up, and the child then stabbed a person to death. The trial court condemned him, finding that the boy was mature enough to grasp the consequences of his actions. The petition was likewise dismissed by the Supreme Court.

### **THE POLICY PLAYS A VITAL ROLE**

In the Juvenile Justice System, police officers are known as gatekeepers, meaning they have the authority to make initial choices about how a case will be handled. The gatekeepers have a great deal of discretion, so just a few cases emerge from the multiplicity of activities committed, which is another source of embarrassment.

If a police officer receives information, it is a requirement that they be placed in special homes rather than lockups or jails. The situation will be handled by a child welfare officer, who will report to the Juvenile Justice

Board. In some occasions, it has been noted that the police officer may give bail to the juvenile based on prima facie facts and circumstances.

The fundamental rationale for the employment of a child welfare officer is that several studies have shown that interactions between police and young people are frequently marked by high levels of fear, dominance, mistrust, dissatisfaction, and other negative emotions. On the other side, police officers can be abrasive and obstinate, which can lead to poor perceptions.

Both sides' belligerent, nasty, abusive, and uncooperative behavior creates an impasse in and of itself.

## **ANALYSIS OF THE ISSUE**

Based on socio-economic and psychological aspects, analysis suggests that the number of elements for neglect and delinquency are largely common and interrelated, given the extent of the problem and difficulties involved. Poverty, broken homes, family tensions, emotional abuse, rural-urban migration, the breakdown of social values and the joint family system, atrocities and abuses by parents or guardians, a faulty educational system, media influence, and other factors all contribute to the phenomenon of child delinquency. Children's neglect by their parents, families, society, and nation has a negative impact on their physical, mental, and overall development. Needless to say, most of the variables that lead to delinquency are abundant in India, and any effort to prevent and manage them can be beneficial to society. After all, the children represent the country and the country's future. Even international agreements such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, and the United Nations Convention on the Rights of the Child, 1989, are notable for articulating a global consensus on giving special attention to children who come into conflict with the law. In light of the foregoing, this article aims to emphasize the growth and development of India's juvenile justice system, as well as a brief examination of constitutional provisions, the Juvenile Justice Act of 2000, and the level of delinquency in the country.

According to the National Crime Record Bureau report 2007, the problem of juvenile neglect and delinquency in a developing country like India is relatively low but increasingly increasing. What's more concerning is that the proportion of juveniles involved in crimes reported in the country has risen in the last three years.

## ROLE OF THE JUDICIARY

The judiciary in India plays very important role and has passed many significant judgments in favor of child rights.

- In the case of **Sheela Barse v Union of India**, the Supreme Court directed the state government to establish required observation homes where minors accused of crimes might be held pending investigation and prosecution by juvenile courts.

The Supreme Court commented in **Sheela Barse v. Secretary, Children Aid Society** on the establishment of dedicated juvenile courts and special juvenile court officials, as well as the proper care and safety of children in observation homes.

- In **Vishal Jeet v Union of India**, the Supreme Court issued suitable orders to state governments and all Union Territories on a PIL for eradicating the evil of child prostitution and developing programmes for the care, protection, treatment, development, and rehabilitation of juvenile victims.

- In **M.C. Mehta v State of Tamil Nadu**, the Supreme Court ruled on the constitutionality of child labour abolition and offered proper guidelines to the Indian government on obligatory education, health, and nutrition for child labourers.

- In **Sakshi v Union of India**, the Supreme Court ordered the government and the Law Commission to do research and produce a report on how to prevent child abuse.

## JURISDICTION OF THE JUVENILE COURT

The High Court held in **Om Prakash vs. State** that a juvenile court has jurisdiction to resolve a juvenile matter on reasonable grounds if the juvenile court is unable to specify the age of the accused. The person's age was certified by the High Court; he is not a child, so he is sentenced as an adult.

Section 20 of the Juvenile Justice Act establishes the specific provisions of children's matters, the regulations for pending cases, and the legal characteristics of children cases as a result of a matter being pending in the juvenile court. The Minor Act clarifies a children pending case in juvenile court or any other court if he or she is in violation of the law. The term "any court" refers to all criminal courts; when a person is considered a "juvenile" under the Act, their case is not heard in criminal courts.

## BAIL OF THE CHILD

Under the Juvenile Court's reasonable points, the child is entitled to bail. The bail details are defined under the Juvenile Justice Act. The bail is denied by the Juvenile Board for a specified cause. The NDPS Act is a statute that deals with certain offences that are considered a social threat. As a result, the legislature has demonstrated its wisdom by enacting special laws to deal with such circumstances and to alter the course of the case while granting bail.

In **Gopi Ram v/s State of Haryana**, the Hon'ble Court upheld the view that if the court has a reasonable feeling or is of the opinion that the accused may be innocent and has not committed the crime, the court has the authority to issue bail. Further, the court stated that if the accused has a change of heart and believes that he will not commit a similar crime in the future if bail is granted to him, the court should immediately issue release to that individual.

When comparing the provisions of Section 437 of the Cr.P.C. and Section 37 of the NDPS Act, the burden of proof is on the pursuit to prove the presence of specified grounds that show the incriminated is guilty. The burden of proof is on the accused to establish the presence of certain grounds demonstrating that the accused is not guilty. The bail terms are tight and stringent since the NDPS Act is strict and the offences under it are significant.

The discretionary power is argued under section 439 of the Cr.P.C., and it is also subject to Section 37 of the NDPS Act. They have flipped the situation regarding bail under the NDPS Act, making bail denial a rule and bail granting an omission.

There is no provision for the advantages of anticipatory bail to be extended to the accused. So, in that scenario, some special courts have specific powers to accept what we call an application for anticipatory bail under section 438 of the Criminal Procedure Code, as well as to dispose of such petitions for anticipatory bail. Pre-arrest bail is another name for anticipatory bail.

The Section 20 of the TADA Act is primarily concerned with the plans outlined in Section 37 of the NDPS Act. If the court takes a liberal approach to bail, it believes he is not guilty. Before granting bail to a person charged with violating the NDPS Act, certain requirements must be met. The following are the conditions set forth by the legislature: -

i. The court must have reasonable grounds to think that the incriminated is not guilty of such offences under the NDPS Act, but is instead being held captive by someone for personal gain or hatred, and that the incriminated is not guilty of such offences under the NDPS Act.

ii. Secondly, the court is also of the opinion that it is possible that the person who is charged may not commit any offence while he is on bail. In a very historic case **Jitendra Singh vs. State of U.P** observed that "The accurate reasons are requirement for the acceptance of the bail in the Juvenile Court. The bail is rejected if there are no reasonable grounds.

### **Salient features of Juvenile Justice (Care and Protection of Children) Act, 2000**

- In compliance with the United Nations Convention on the Rights of the Child, the minimum age for boys and girls has been raised to 18 years. It divides children into two categories: "kid in need of care and protection" and "children in confrontation with the law."
- Children who are located in challenging situations for many reasons and are in risk of survival and growth are referred to as "children in need of care and protection." Children's accused of breaking the law are referred to as "children in confrontation with the law." Separate treatment is provided in the areas of institutional care, legal adjudication, and case disposition under the Act.
- The Child Welfare Committee is the competent authority in the case of a "child in need of care and protection," and the Juvenile Justice Board is the competent authority in the case of a "juvenile in conflict with the law."
- The members of the Board's Committee have been given magisterial authority.
- Social workers and representatives from non-governmental organizations (NGOs) who meet the Act's requirements can now join the Competent Authority.
- The Act envisions the establishment of Observation Homes and Special Homes for children who are in confrontation with the law.
- Comprehensive Children's Homes have been established for "children in need of care and safety." The Shelter Home and After-Care Organizations, on the other hand, may be set up for juveniles or children. The Shelter Home will be entirely established and run by the voluntary sector, with government aid. All additional homes can be built or run by the government in collaboration with non-profit groups.
- New dispositional alternatives for juveniles, such as counseling and community services, have been introduced in accordance with Beijing Rule, and representatives of voluntary groups and social workers can become members of the Advisory Committee.
- Adoption, foster care, and sponsorship have all been added to the chapter on rehabilitation and social reintegration.



•In accordance with Beijing Rules, the police have been assigned a specialized function. Every police station will have a Special Juvenile Police Unit (SJPU). A police officer with a rank of Assistant Sub-Inspector or higher.

- The Child Welfare Officer will be an Inspector (ASI).
- Two local volunteer social workers will support him.
- In compliance with Beijing Rules, a new idea of Social Audit has been introduced.
- In addition to the police, social workers and volunteer organizations play a role in bringing children before the Child Welfare Committee.
- A youngster can appear in front of the Competent Authority and seek his or her rights.
- Every six months, the Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall assess the status of the Board's cases and may require the Board to increase the frequency of its sittings or to form additional Boards.
- A juvenile or child cannot be detained at a police station or jail.
- Every effort must be made to have the youngster released on bail or probation.
- Unless the JJB/CWC extends the period, the inquiry must be finished within four months of its start date, unless the period is extended by the JJB/CWC, in which case the explanation must be recorded.
- The state governments are directly accountable for the Act's implementation (under section 68 of the Act).

### **Juvenile Justice (Care and Protection of Children) Act in 2015**

The enactment of the Juvenile Justice (Care and Protection of Children) Act in 2015 signifies a significant transformation in the approach towards addressing child offenders within the nation. The primary objective of the Act is to prioritise the rehabilitation and social reintegration of child offenders. There is a significant focus on the development of a justice system that prioritises the needs of children and incorporates an understanding of the distinct needs and vulnerabilities of young individuals involved in criminal activities. The Juvenile Justice Act categorises child offenders based on their age, establishing a differentiation between individuals referred to as "children in conflict with the law" and those referred to as "children in need of care and protection." The legislation promotes the engagement of delinquent children in alternative programming and diverse rehabilitation activities as an alternative to conventional punitive measures.

This comprehensive legislation has been formulated with the intention of achieving several significant objectives. The approach prioritises the child's welfare, endeavors to facilitate the child's reintegration into society, and establishes a juvenile justice system tailored to the needs of young individuals.

The Juvenile Justice Act of 2015 implemented a legal structure that prioritises the utilization of restorative methods over punitive measures. This entails placing a substantial emphasis on the process of rehabilitation, as well as the successful reintegration of individuals who were previously incarcerated, into the broader fabric of society. The Act recognizes that individuals who commit offences during their juvenile years are in a crucial phase of growth and maturation, during which appropriate guidance and corrective measures can greatly enhance their overall well-being.

## **PROBLEMS IN ADMINISTRATION OF JUSTICE**

There are a number of issues that arise in the successful administration of justice when it comes to child delinquency. First, as mandated by the Juvenile Justice Act of 2000, most states have failed to establish juvenile courts that serve all districts. As a result, other authorities who may not have specialized expertise of child psychology and welfare are exercising the powers of such courts. Even if this provision is legally sound, it may be in conflict with the spirit of the law. Honorary social workers must be on the panel of juvenile courts, and measures should be made to ensure that magistrates assigned to juvenile courts have specific expertise of child psychology and child welfare, as required by the Act. The second issue is that the entities involved in the system use a punitive rather than a social or reformatory approach, which goes against the best interests of the kid hypothesis.

## **PREVENTING CHILD DELIQUENCY**

Early intervention is largely regarded as the most effective method for preventing juvenile criminality. Individual, social, and organizational actions are all needed to keep teenagers from breaching the law. Some focus on punitive prevention, seeking to intimidate potential offenders by making sure they realize the risk of harsh punishment, as well as conveying the bad parts of an offence to a delinquent and reconciling offenders and their victims. Development programmes with income-generating opportunities, professional training, and vocational education are all ways in which the economic sector can assist and avoid adolescent involvement in delinquent actions. Participation of NGOs and the local community can also aid in the prevention of adolescent gang delinquency.

## **CONCLUSION**

The rising rates of youth crime in India are a serious worry that must be addressed. Although the government has enacted different laws and regulations to reduce juvenile crime, the current laws on juveniles do not have a deterrent effect on juveniles, and hence the results are ineffective and the legislative objective is not being fulfilled.

Juvenile justice, on the other hand, deals with the reformative needs of juveniles and is not related to retributive justice. When law is enforced and implemented in all areas of society, it is used to provide justice to all. For teens, the Act of 2015 is the most important guideline of care and safety. The juvenile justice system is established to reduce the difficulty of juvenile misbehavior and to specify reformation strategies for the re-establishment of juveniles as an alternative punishment system. If the community provides appropriate opportunities and care for the children, they will become educated, well-trained, and loyal citizens, and they will participate in the country's creation if they have the necessary knowledge, awareness, and guidance. Our task is to decrease the societal evils that prevent us from becoming the best morally grounded family possible. This can be accomplished through learning ethical and spiritual principles and reading literature about how to interact with children, as well as learning about the legal aspects of child development. It is critical for parents to be aware of their children's psyches in order to regulate their children in a peaceful manner. The judiciary makes specific declarations on child care, but the care must be provided at the local level of social life.

The purpose of providing these statistics is to highlight the deterioration of figures, the motivations for adhering to social norms, and the breakdown of social ties and social bonds. Despite anti-delinquency legislation, the problem of delinquency persists. As a result, it is critical that children be the centre of growth. Because they only get one chance to grow and develop, the mistreatment of a child is considered delinquent. Although a formal juvenile justice system may be justified to some extent, it must be accompanied by a concrete and thorough action plan. It should be developed for the well-being and welfare of all youngsters who are completely alienated or left out of the social stream due to various situational compulsions. Individuals, groups, communities, and civil society as a whole must also work together to build an adequate policy framework for the protection, care, and development of neglected children.

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