

## Reformatory Theory a Bane

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### Abstract

In the present scenario it is to be seen that the definition of child is very vital as it is this definition which states as to how to treat the offenders that are children. A child is treated as *doli incapax* that is having *mens rea*. The reason behind this word is that the child is not capable of understanding the result of the actions that he/she did. However, on the contrary it is to be seen that the way children are enhancing their power to understand and grasp the current issues is far unforeseeable. The involvement of the juveniles in heinous offences such as murder, kidnapping and theft shook the conscience of the public. After the Nirbhaya rape case many discussions that emerged out highlighted the lenient and softer approach of Juvenile Justice System to heinous offences. Through research and data collected it is found out that the youngsters can be as violent as the adults, it is this violence that has made people to ponder on this issue and to re-improve the definition and approach to juvenile delinquents in India. This paper will try to cover the vital aspects that are from the prism of the topics few of them are enlisted as follows-

- Reason for Juvenile Crimes.
- Constitutional Provision.
- Evolution of Juvenile Justice Legislations.
- International Aid in Bringing The Legislation in India.
- Juvenile Delinquency in India- Current Trends.
- NCRB DATA (Encapsulating the increase in crime rate).

The afore mentioned topics will try to exhibit and show that how Reformatory theory acts as a bane in the present scenario and how the juveniles are taking this leniency as a leverage for them committing crime. The research paper in the most lucid way will try to explain as to how the incorporation of the Juvenile Act came into existence and how this act is providing a platform for the Juveniles to commit crime.

**Keywords:** Juvenile Delinquency; Reformatory Theory.

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### Introduction

Children are considered as the future of this nation and it imperative for the society to focus on the upbringing of the children. It is to be seen that the definition of child is very vital as it is this definition which states as to how to treat the offenders that

are children. A child is treated as *doli incapax* that is having *mens rea*. The meaning that this word tries to deliver is that the child is not capable of understanding the result of the actions that he/she did.

There are various statues that define child/ juvenile and try to bring out a uniform mechanism

which deals with lesser punishment as that compared with the adults.

According to Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act 2015,<sup>1</sup> juvenile is a person who is below 16 years of age. Prior to JJ Act of 2015, the age bar for juveniles was 18 years (Juvenile Justice (Care and Protection of Children) Act, 2000).

According to the Children Act 1960,<sup>2</sup> defines Delinquent as “A child who has committed an offence”.

According to the Section 2 (e) of the Juvenile Justice Act, 1986<sup>3</sup> defines a delinquent juvenile as “juvenile who have been found to commit an offence”.

The above mentioned definitions try to dig out a lucid definition for children that are naïve and are not capable of knowing the repercussions of the actions which they indulge in.

### Reason for Juvenile Crimes

Studies on the juvenile delinquency reveal that behavioral change that occurs in the teenagers is due to the hormonal change that is caused because of the growth of these teenagers and hence reaching those to the age of puberty. The below listed are several factors that make juvenile to commit crimes.

#### *Social factor*

This factor is solely depended upon the social environment which causes impact on the societal development of the juvenile. The neighboring places, peripheral area and social organization play a vital role in determining the delinquent behavior in juveniles. If the neighboring areas are socially and economically backward and are having stigmatic rites and rituals then in such cases the upbringing of the child will be entirely different. We can take instances in places where people in order to grow economically steal, commit theft then in such cases what the child perceives is what the child inculcates in himself. In cases where there is not proper parenting, association of the youth with bad company such as deviant peers also lead to the delinquency in juveniles.

In societies where there is cultural deprivation then there is more probability of delinquency in juveniles the reasons can be due to peer pressure or any societal pressure.

Various eminent personalities such as

sociologists, jurists like Richard Cloward and Ohlin have stated that the surroundings that are available to juvenile help to determine the delinquent tendency. For example the youth may become criminal if they have an opportunity to adopt or to indulge in illegal activities. Other study also shows that other social factor like poverty and lack of education also play a vital role in juvenile developing the delinquent tendencies.<sup>4</sup>

Poverty is considered as one of the core reasons that force children to indulge in the illegal/criminal activities. Majority of the delinquent juveniles are from poor and lower caste families. In Poverty stricken houses it is to be seen that both the parents are working and hence spend most of their time outside home busy earning money due to which their children are not looked after properly and the parents are not able to take care properly of the children as they are not able to spare much time. Due to lack of supervision by parents on their child often leads to children becoming a part of the bad companies and thus become delinquent.<sup>5</sup>

#### *Psychological Factor*

Psychological factor can be seen from the perspective of the concept as laid down by Sigmund Freud of Id, Ego, Super ego which helps to understand the psychology behind delinquency in juveniles. In a case when the Id becomes too strong and super ego become weak then it results into anti social personality. So it is to be seen that whenever there is an imbalance between Id, Ego, Super ego then this leads to psychological imbalance.<sup>6</sup>

#### *Biological Factor*

Biological factor is also seen to have been a vital factor in determining the behavior of the juvenile. It can be seen that genetic makeup do adds up to the biological change in behavior of the children. In the adolescent period a juvenile is going through various hormonal changes and biological changes which quite responsible for the juvenile inclined rebellious and impulsive behavior.<sup>7</sup>

### Other Causes of Juvenile Delinquency

- Urbanization
- Family and environment
- Lack of discipline
- Criminalization of families
- Media and Movies

- Adolescent Instability
- Stigmatic Labeling
- Gang subculture
- Poverty, and unemployment
- Malnutrition, Hunger
- Lack of recreation
- Lack of Education
- Uncongenial homes
- Substance abuse
- Addiction to drugs

### Constitutional Provision

The visionary Constitution makers of the constitution of India had realized that the Children being vulnerable are in need of special protective treatment and the greatest social care. In order to achieve this constitution maker made Special Constitutional Provisions for specifically for children include the following:

*Article 15(3):* This Article provides enabling state to make special provision for women and children.<sup>8</sup>

*Article 21A:* This Article directs the state to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may determine by law.<sup>9</sup>

*Article 24:* This Article bars/prohibits employment of children below the age of fourteen years in factories, mines, or any other hazardous occupation.<sup>10</sup>

*Article 39(e):* This Article directs the state to make policy that ensure the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.<sup>11</sup>

### Remedies for Juvenile delinquency<sup>12</sup>

Two methods have been suggested in order to tackle the problem of delinquency in juveniles

- Preventive method.
- Rehabilitative or curative method.

In order to curb the issue of the juvenile delinquency the following other methods that have been suggested are as follows:-<sup>13</sup>

1. Guidance clinic for children in order to impart apt training to the children who are

in conflict with law.

2. To create awareness and educate the members of the family in order to facilitate the parent to give importance and proper guidance to their children.
3. To provide proper assistance to the under privilege children who belonging from socially backward classes.
4. Spotting the potential delinquent children by conducting predictive test in school and giving the proper and appropriate treatment to such children.
5. Proper and adequate training should be given to the staff and member of the all organization who is concerned with delinquency control.<sup>14</sup>

### Evolution of Juvenile Justice Legislations

During the British rule a need was felt for the inclusion of Juvenile justice laws. The laws that were passed during that tenure are as follows:

- The Apprentice Act (1850),
- The Indian Penal Code (1860, Section 82),
- The Criminal Procedure Code (1861),
- The reformatory School Act (1897),
- Madras Act (1920),
- The Child Act (1960),

These afore mentioned legislations have helped in bringing forth an act know as the Juvenile justice Act, 2000.

The apprentice Act dealt with the working of children as apprentice for businessman.

In the Indian penal code Section 82 recognized and had set the *age bar limit* of children pertaining to their maturity.

Furthermore, The criminal procedure code brought in the provision for *separate trial* for persons younger than age of 15 and for them *reformatory practice* was there rather than just putting juvenile children in jails. Moreover there were also provisions pertaining to *probation* of young offenders.

Then, the Reformatory School act came which helped provide a platform for the juvenile justice act as this act talked of putting juvenile delinquents in reformatory school as the mode of punishment/negative reinforcement. But as soon as the juvenile delinquents became adult (18 years old) they were

to be shifted jails.

There were many cities such as Bombay, Madras that made their own legislation to deal with the offences committed by juveniles. Hence the Madras Act talked of separate juvenile court and their residential institution. Then the parliament enacted the first separate legislation the Child Act which talked of separate adjudicatory bodies.

### International Aid in Bringing the Legislation in India

It is with the help of plethora of International Covenants such as the-



It is with the help of these afore mentioned International Covenants, India was able to come up with a law pertaining to delinquent children and thus passed- *Central Child's Act (1960)* which prohibited barred incarceration of children. Furthermore, it declared children's courts.

And juvenile welfare board as the two most important bodies that would be dealing with children having committed offences.

Finally in the year 1986 the central government of India passed a legislature known as the Juvenile Justice Act of 1986. This legislation's objectives and aims were to provide care, safety, rehabilitation and protection to delinquent children. This act was also made in order to entertain and adjudicate matters pertaining to juveniles that is this act helped create or establish:

- *Firstly*, the Juvenile Courts.
- *Secondly*, Juvenile Welfare Boards.

In the year 2000, the juvenile Justice (Care and Protection of Children) Act was passed which. The main aim of this Act was to make sure that no juvenile delinquent is sent to jail or is imprisoned.

The main objective to inculcate this act was for the care, safety, protection and most importantly the rehabilitation of juvenile offenders. The Juvenile Justice Act, also has provided a platform for child

friendly adjudication of matters pertaining to juvenile offenders.

Furthermore, In the year 2015 there were inclusion of more provisions and there were certain amendments made to the old act.

Moreover it is to be seen in the present scenario a juvenile justice bill, 2018 is pending in the parliament which is trying to bring certain imperative improvements that are required in the old act.

### Juvenile Delinquency in India: Current Trends

In the present scenario it is to be seen that the definition of child is very vital as it is this definition which states as to how to treat the offenders that are children. As a juvenile or a minor cannot and should not be tried like that of as an adult offender is. A child is treated as *doli incapax*, that is having mens rea. The reason behind this word is that the child is not capable of understanding the result of the actions that he/she did.

Keeping this sole concept and idea in mind the legislature passed this act and that the children are dealt under juvenile justice system, and as adult. These juvenile offenders cannot be given a heinous punishment such as death penalty or imprisonment for life.

In Indian legal system, Art. 40 (3) (a) requires State Parties to promote establishment of minimum age for child. Age of criminal responsibility is held to be 7 years as per the section 82 of IPC, 1860 below this no child can be considered as child in conflict with law. As per Section 83 of IPC, 1860 no overt act will be considered as an offence which is done by a child aged between 7 and 12 years, to which there is a presupposed notion that the child has not attained sufficient maturity to judge the nature and consequences of his/ her act, and is unaware as to what wrong he/she was doing.

However, it is to be seen that juvenile delinquency has been increasing drastically in Delhi as well as other metro, non-metropolitan cities. The involvement of the juveniles in heinous offences such as murder, kidnapping and theft has shook the conscience of the public. After the Nirbhaya rape case many discussions that emerged out highlighted the lenient and softer approach of Juvenile Justice System to heinous offences.

Through research and data collected it is found

out that the youngsters can be as violent as the adults, it is this violence that has made people to ponder on this issue and to re-improve the definition and approach to juvenile delinquents in India.

The National Crime Records Bureau (NCRB) data clearly indicates that there has been a drastic increase in crimes committed by juveniles, especially by those in the age bracket of 16–18 years.

### NCRB Data given below Exhibits the Trends of Juvenile Offences in India

It is very much clear from Table 1 that there is a hike in the number of cases registered against juveniles in conflict with law. It can be seen that crime rate in-

- *Year 2005:* for the category of cases against juveniles in conflict with law is- 18939.

- *Year 2015:* for the category of cases against juveniles in conflict with law is- 31396.

What we gather from this data collected is that with the passage of 10 years down the line there has been increase in the crime rate as done by the juveniles. Now in the other category what we see is that-

- *Year 2005:* for the category of total cognizable IPC crimes is- 1822602.
- *Year 2015:* for the category of total cognizable IPC crimes is- 2949499.

So what we see is there has been a pretty hike in this category also.

Table 2 exhibits the various crimes committed by juvenile all over India. These figures are startling as these figures are in great numbers.

Table 3 shows the figures for Juveniles Apprehended under IPC and SLL Crimes by Age

**Table 1:** Cases registered against Juvenile in conflict with Law and crime rate under indian penal code.<sup>15</sup>

Year	Cases Registered		Percentage Cass of Juvenile in conflict with law to total Cognizable Crimes	
	Against Juveniles in Conflict with Law	Under Total Cognizable IPC Crimes		
2005	18939	1822602	1.0	1.7
2006	21088	1878293	1.1	1.9
2007	22865	1989673	1.1	2.0
2008	24535	2093379	1.2	2.1
2009	23926	2121345	1.1	2.0
2010	22740	2224831	1.0	1.9
2011	25125	2325575	1.1	2.1
2012	27936	2387188	1.2	2.3
2013	31725	2647722	1.2	2.6
2014	33526	2851563	1.2	2.7
2015	31396	2949499	1.1	2.5

**Table 2:** Cases registered in India against Juvenile in conflict with law under different crime, 2016.<sup>16</sup>

S. No.	Types of crime	No. of cases
1	Murder (Section 302 IPC)	892
2	Attempt to murder (Section 307 IPC)	933
3	Culpable Homicide not amounting to murder (Section 304 IPC)	45
4	Attempt to commit Culpable Homicide (Section 308 IPC)	53
5	Rape (Section 376 IPC)	1903
6	Kidnapping and Abduction	1538
7	Dacoity	218
8	Robbery	1276
9	Criminal Trespass/Burglary	2747
10	Theft	7717



**Table 3:** Juveniles Apprehended (Crime Head, Age Group and Gender- wise) – 2016.<sup>17</sup>

S. No	Crime Head	Below 12 Years			12 Years to 16 Years		
		Boys	Girls	Total	Boys	Girls	Total
1	2	3	4	5	6	7	8
<i>IPC – Cases</i>							
1.	Murder	12	1	13	253	10	263
2.	Culpable Homicide not Amounting to Murder	5	0	5	26	0	26
3.	Causing Death by Negligence	5	0	5	65	0	65
4.	Attempt to Commit Murder	4	0	4	231	8	239
5.	Attempt to Commit Culpable Homicide	0	0	0	15	0	15
6.	Grievous Hurt	12	3	15	301	12	313
7.	Causing injuries under Rash Driving	7	0	7	282	3	285
8.	Unlawful Assembly	2	0	2	53	1	54
9.	Rioting	10	0	10	309	16	325
10.	Assault on Women with intent to Outrage her Modesty	10	0	10	309	4	329
11.	Insult to Modesty of Women	1	0	1	28	0	28
12.	Kidnapping & Abduction	3	1	4	160	2	162
13.	Human Trafficking	0	0	0	0	0	0
14.	Rape	27	2	29	463	1	464
15.	Attempt to Commit Rape	2	0	2	18	0	18
16.	Unnatural Offences	8	0	8	92	0	92
17.	Theft	207	15	222	2888	47	2935
18.	Criminal Trespass/ Burglary	78	0	78	1260	8	1268
19.	Robbery	10	0	10	430	3	433
20.	Dacoity	0	0	0	49	5	54
21.	Extortion	0	0	0	10	0	10
22.	Cheating	0	0	0	24	1	25
23.	Arson	2	0	2	18	0	18
24.	Forgery	0	0	0	2	0	2
25.	Counterfeiting	0	0	0	2	1	3
26.	Other IPC Cases	174	12	186	2735	186	2921
<b>Total Cognizable IPC Crimes</b>		<b>579</b>	<b>34</b>	<b>613</b>	<b>10039</b>	<b>308</b>	<b>10347</b>
<i>SLL Cases</i>							
1.	Juvenile Justice (Care and Protection of Children) Act, 2000	0	0	0	223	0	223
2.	Arms Act, 1999	2	0	2	32	0	32
3.	Excise Act, 1944	0	0	0	53	2	55
4.	Gambling Act, 1867	0	0	0	52	0	52
5.	Prohibition Act (State)	0	0	0	20	1	21
6.	Narcotic Drugs & Psychotropic Substance Act, 1985	0	0	0	31	3	34
7.	Information Technology Act, 2000	0	0	0	5	0	5
8.	SC/ST (Prevention of Atrocities Act, 1989)	9	0	9	2	1	3
9.	Explosives and Explosive Substance Act	0	0	0	1	0	1
10.	Indian Railways Act, 1989	0	0	0	1	0	1
11.	Unlawful Activities (Prevention) Act, 1967	0	0	0	0	0	0
12.	Other SLL Crimes	12	1	13	176	7	183
<b>Total Cognizable SLL Crimes</b>		<b>23</b>	<b>1</b>	<b>24</b>	<b>596</b>	<b>14</b>	<b>610</b>
<b>Grand Total (IPC + SLL)</b>		<b>602</b>	<b>35</b>	<b>637</b>	<b>10635</b>	<b>322</b>	<b>10957</b>
<b>Percentage Share of Age-Group on Total</b>				<b>1.4</b>			<b>24.8</b>

Groups and Sex during 2015 under different age categories. It is very much clear from the statistical data that children between the age group of 16–18 have a high possibility of committing crimes.

Few reasons for this rise in juvenile delinquency are as follows:-

It is believed by psychiatrists and various social activists that easy access to pornography and changing food routine can be factors that can cause a change in behaviour of juveniles, especially those that are seen to commit offences that are sexual in nature.

Moreover there also emerged an issue that the youngsters are not able to control and balance the biological change that the hormones are bringing in the body and hence leading to commission of such offence.

### Conclusion

The Juvenile Justice Act is to be seen as a positive and progressive legislation as it is to be seen that amendments are brought forth in this legislation as soon as a change or deterrence in the crime rate is not seen.

The Justice Verma Committee objected to the fact of lowering down the age limit for juveniles as they contended that “An attempt to reduce the age of juveniles or the exclusion of certain children from being tried as juveniles under the JJ Act on the ground of the nature of offence and age, will not only tantamount to violation of the constitution of India but also the Intentional conventions such as the United nation convention of Right of the Child (UNCRC).”

On the contrary Supreme Court stated that the age bar of 18 years was set with the expert opinion of the psychologist and hence with the rise in trend of the crime rate and in order to reform the children by not sending them back again to the society to become an habitual offender. So in order to protect these juveniles as not to indulge in the crime and to prevent re-integration of these offenders with the world of crime the Supreme court took a contrary stand.

Hence it is apt to see the age and nature of offence as the gravity if offence is of utmost importance and the Indian courts should also amend the juvenile justice policy as that of foreign countries

such as UK and US have. In US there was a change in the juvenile justice policy from restorative to retributive. Similarly in UK a juvenile offender can be sent from youth court to Crown Court.

Hence in India also it is imperative to bring in such stringent policies otherwise the rise in crimes would take place and the children under the garb of this Juvenile Justice Act extract the benefit of less punishment for a heinous crime.

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