



# Juvenile Offenders Above 16 years: A Comprehensive Analysis of Rape and Murder Cases within the Indian Legal Framework

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## Abstract

The increasing trend in the occurrence of Juvenile Crimes under penal laws is a critical issue that demands an urgent attention. It is a significant issue for the nation and solutions to end the problem need to be sought very carefully. Indian legal system and judiciary has responded to these trends and has brought some amendments in the laws of juvenile justice in India. A new law named as The Juvenile Justice (Care and Protection of Children) Act, 2015<sup>1</sup> came into force on 15<sup>th</sup> January 2016 which defines new boundaries with regard to penalizing juveniles and providing children from impoverished backgrounds with the basic needs and facilities that they require to live. The Act has introduced a new era of juvenile justice in India by introducing the provision of transfer of 16-18 years delinquent to an adult criminal court. The juvenile justice boards have been given the responsibilities of age determination, to determine whether the offence is heinous, to conduct a preliminary assessment, and then to decide whether to transfer or not to transfer the child to the children's court. The children's court then must reassess if the child so transferred, should be tried as a child or as an adult. The primary objective of this paper is to analyze the concept of 'Age of Criminal Responsibility' in light of the relevant provisions of the Indian Penal Code. The paper also seeks to understand the requirements of the Juvenile Justice Act 2015, Causes of delinquent trajectories and International Jurisprudence on the issue of age. This paper will also focus on the juvenile delinquency, evolution of Juvenile Justice System in India, need for the JJ Act, 2015<sup>2</sup> and the role of judiciary. Further, an attempt would also be made to produce solutions to improve their situation in society.

## **Introduction**

In India, the legal treatment of juveniles is primarily governed by the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act defines a juvenile as a person who has not completed 18 years of age. The underlying

<sup>1</sup> Juvenile Justice (Care and Protection of Children) Act 2015

<sup>2</sup> Juvenile Justice (Care and Protection of Children) Act 2015

philosophy of the Act is based on the principle of rehabilitation and reformation, recognizing that juveniles may not have the same level of culpability as adults.

It is an important feature of all societies, be it simple or complex. It is one of the serious problems of deviation which the children of all the modern societies of the world are facing. It is non-conformist behavior on the part of the child, and it does manifest as a problem of personal disorganization but also a symptom of social breakdown. The phenomenon has been considered as a matter of great concern for every class of society down the ages in one or the other forms. According to Morrison, juvenile delinquency to be major social theme of the current period and he moralizes about the phenomena as “a peculiarly nasty product of the new freedom” involving teenage monsters of both sexes who take drugs, rob, riot, and kill “just for kicks.”<sup>3</sup> India is the home of more than one billion people, of whom one-third are children under 18 years of age. At approximately 440 million, not only does India have the world’s largest number of children, but also the largest number of vulnerable child population, of them forty-four million are in difficult circumstances. India has witnessed an increase both in crimes committed by children and those committed against them. The concept of juvenile delinquency is overly complex and varies from country to country and even in the various provinces of the same country. No single definition may suit all nations because sociologists, psychologists and legalists define ‘Juvenile Delinquency’ in their own way. It varies from nation to nation, for what is forbidden to do at one place is allowed in the other place. For example, defying parents’ authority, skipping from school are treated as delinquent acts in USA but in India, these acts are not treated as delinquent acts. Thus, Juvenile delinquency is a serious and multidimensional problem which is on the rise. Despite intensive rehabilitative measures and special procedures for tackling the problem of juvenile delinquency at the national and international levels, there is a growing tendency among youngsters to be violent and disobedient to the law. Keeping in view the magnitude of the problem it is necessary to deal with this problem with a multidimensional approach. For this we need to evaluate the working of the police, juvenile courts, and other segments of the social control machinery that influences juvenile delinquency.

### **Juvenile Crime: An Analysis**

In India, for example, a child must be 14 years old to be declared a criminal, with the maximum age of the same being 18 years. As a result, no general assumptions about the minimum and maximum ages of juvenile offenders exist. Child crime is clearly defined as a crime committed by minors under a certain age. “*Child in conflict with law*” has been defined under **Section 2 (13) of the Juvenile Justice (Care & Protection of Children) Act, 2015**<sup>4</sup> as a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence. Several minor and serious crimes, including theft, burglary, snatching, robbery, dacoity, murder, and rape, are perpetrated on a regular basis throughout India, and the awful fact is that all of these crimes are perpetrated by youngsters under the age of eighteen. There is also a trend among minors that

<sup>3</sup> William Douglas Morrison, *Juvenile Offenders* (D Appleton 1915) [Criminology series]

<sup>4</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 2(13)

those **between the ages of 16 and 18** are more likely to be involved in terrible criminal crimes. According to statistics from the **National Crime Records Bureau**, of the 43,506 offences perpetrated against children under the **Indian Penal Code (IPC), 1860**<sup>5</sup> and the **Special Local Law (SLL)** by juveniles in 2019, 28,830 were

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### Reasons Behind Juvenile Crimes In India

ily, the most important role is played by the parents, which is quite significant in determining a child's behavior.

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Crime loaded serials/ movies, Porn movies may lead a child to delinquent path. The role of internet as a modern form of mass media is noteworthy. Internet is like a spider's web and it's a trap. Everything is available online.

Kids don't know the repercussions'. There is hacking, greed, over-usage cyber - crimes, cyber bullying and

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### Judiciary's take on existing penalties for juvenile offenders

It was contended in the case of *Mukesh and Anr vs. State of NCT of Delhi & Ors* (2017),<sup>6</sup> also known as the Nirbhaya rape case, that the accused's age should not be used as a shield for the level of cruelty he perpetrated on the victim. He was found to have physically tortured the woman with an iron rod, hurled obscenities at her, and caused internal ruptures in her body. In the final decision, the juvenile was left free after completing his assigned term of imprisonment by the Court.

Advocate Shweta Kapoor filed a PIL in the Delhi High Court, demanding amendments to the Juvenile Justice (Care and Protection) Act, 2000, to deal with children who have reached the age of 16 and are involved in serious crime, owing to the ignorance of laws towards such heinous crimes committed by so-called "children". The PIL stated that "*juveniles who have reached the age of 16 and commit significant crimes have well-developed*

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<sup>5</sup> Indian Penal Code 1860

<sup>6</sup> *Mukesh & Anr v State for NCT of Delhi & Ors* AIR 2017 SC 2161

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*minds and do not require society's care and protection. Rather, society requires care and protection against them.”<sup>7</sup>*

The case of *State of Maharashtra vs. Vijay Mohan Jadhav & Ors*<sup>8</sup>(2021), often known as the Shakti Mills rape case, included a child accused of being involved in a horrible act of rape. A youngster was one of the alleged rapists in the case. In this incident, one of the primary accused was a juvenile who received just three years imprisonment in a detention facility, while the adult criminals were sentenced to death. The question that comes to mind is whether or not the existing punishment is sufficient to rectify a young person.

Another point that needs to be considered is the meaning of the word 'heinous.' A person of 16-18 years old must be charged with a terrible crime in order to be tried as an adult. Section 2(33) of the 2015 Act provides that “*those offences for which the minimum punishment under the IPC, 1860 or any other legislation for the time being in force is imprisonment for seven years or more,*” will be considered as heinous offences. Allowing a 16-18-year-old to be tried as an adult in some situations is undeniably a triumph for the Indian judicial system, nevertheless, the definition of heinous appears to be faulty. In the case of *Saurabh Jalinder Nangre vs. Maharashtra* (2018),<sup>9</sup>this was demonstrated. The Bombay High Court was hearing a writ petition in this case, which raised the question of whether the juvenile should be sent to children's court owing to the crime being attempted murder, which is punishable under Section 307 of the Indian Penal Code, 1860. The Court determined that “*in the present instance, all of the petitioners, despite being between the ages of 16 and 18, have not committed heinous crimes and, thus, their case is not covered under Section 15 of the 2015 Act and therefore the case cannot be moved to Children's Court. As a result, the Sangli Juvenile Justice Board will manage the investigation.*” The Court in this case chose to treat the 17-year-olds as minors and spare them from the penalty they deserved, despite the fact that they attempted to take someone's life and cause irreparable injury.

It is crucial to highlight that using such a definition makes crime appear to be the consequence of an age cycle, whereas in reality, crime is what a type causes you to do, and 16 years of age is sufficient for a person to be conscientious and consider what is right and wrong.

### **Stringent directions provided by the judiciary concerning juvenile offenders**

The offence of rape was ruled to constitute a breach of the Right to Life granted under Article 21 of the Indian Constitution in *Bodhisattwa Gautam v. Subhra Chakraborty* (1995). The Supreme Court of India had observed that fundamental rights have precedence over any other right protected by any other law. As a result, the blanket immunity provided to the juveniles was considered ultra vires to the Constitution.

<sup>7</sup> S Mishra, 'Socio-Economic Factors Contributing to Juvenile Delinquency in India' (2020) SSRN [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3791374](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791374) accessed 19 May 2024.

<sup>8</sup> *State of Maharashtra v Vijay Mohan Jadhav & Ors* [2021]

<sup>9</sup> *Saurabh Jalinder Nangre & Ors v The State of Maharashtra* CRIMES 253 (2019)

The Supreme Court ruled in *Ram Prasad Sahu v. State of Bihar* (1979), that a minor criminal can be convicted of both rapes and attempted rape. If a youngster is not eligible for punishment but is capable of committing rape or murder, granting him blanket immunity violates the principles of fairness and proportionality of punishment.

Juveniles have been involved in a number of recent crimes committed against women, including sexual harassment, rape, acid attacks, and violent killings. To combat this threat, Section 18(3) of the Juvenile Justice Act, 2015 provides that if the juvenile is found to have committed a heinous crime and is over the age of 16, the Juvenile Board may transfer the case to a Children's Court where they may send him to a place of safety and after a preliminary assessment with regard to their mental and physical capacity to commit such offence, ability to understand the consequences of the offence, and the circumstances in which they allegedly committed the offence, the Juvenile Board may transfer the case to a Children's Court, which may sentence them to jail.

### **Research Objectives**

The objectives of the research are as follows: -

- 1) To study the classification of juveniles (under IPC and SLL crimes) by different attributes during 2003-2015
- 2) To study the number of cases registered against Juveniles in conflict with the Law during 2013-2015

### **Research Methodology**

To analyze the rising trend of juvenile delinquency in criminology and the influencing factor the method opted for research is the Quantitative method.

Data for the research is collected from various government sites [www.ncrb.gov.in](http://www.ncrb.gov.in), [www.data.gov.in](http://www.data.gov.in) and through articles from the newspaper i.e., The Times of India.

The present research is done on the analysis of data collected for the period of 2003-2013.

Year	Cases Registered			
	Against juveniles in conflict with the law	Under total cognizable IPC crimes	% cases of juveniles in conflict with law to total cognizable crime	Rate of crime under cases of juveniles in conflict with the Law.

2003	17819	1716120	1	1.7
2004	19229	1832015	1	1.8
2005	18939	1822602	1	1.7
2006	21088	1878293	1.1	1.9
2007	22865	1989673	1.1	2
2008	24535	2093379	1.2	2.1
2009	23926	2121345	1.1	2
2010	22740	2224831	1	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	2949400	1.1	2.5

Recently attention has been drawn towards one more vital fact and it is the birth proof of juveniles. The Delhi High Court has ordered linking the birth registration system with the juvenile justice administration to ensure that they get permanent birth certificates. The order once implemented could ensure that age inquiries conducted by Juvenile Justice Boards and Child Welfare Committees were treated as birth records. This would have twin benefits. Firstly, the police would not put children in jails meant for adults and, secondly, repeat offenders would not be able to take advantage of the loophole in the J.J. Act that prescribes a fresh inquiry every time an accused claimed to be a minor. The High Court converted a letter by Advocate Anant Asthana in a PIL which cited information received under RTI showing that in Central Jail Nos. 7, 114 persons were shifted out to observation homes after found to be underage. It was alleged that police had failed to find out the age of the accused at the time of arrest and in many cases, it had deliberately ignored the evidence and acted only after age inquiry was conducted and it was found ultimately that the accused persons were juveniles. The Delhi Legal Services Authority too said that once the police have access to age declaration in their data base they could verify if an arrested person

was a major or minor removing the current large-scale reliance on bone ossification medical tests which in any case had inbuilt ambiguity of two years.

The JJ Act of 2015 has the provisions for bail also to a person who is a child. Such a person can be released on bail provided there does not appear reasonable ground for believing that the release is likely to bring that person into association with any known criminal or expose him to moral, physical, or psychological danger. If such a person is not released on bail, then he is to be sent to an observation home or a place of safety. Juvenile offenders are entitled to the same set of constitutional guarantees that an adult is entitled to, such as fair trial. But very often adult offenders are able to secure bail faster than a juvenile. Merely because the juvenile is not punished it can in no way take away his/her constitutional guarantee of liberty. The only difference is that unlike adult offenders the State is required to protect them and rehabilitate them. But protection cannot become custody. When a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry which is to be completed within four months and further a preliminary assessment in case of heinous offences shall be disposed of by the Board within three months. Cases of petty offences shall be disposed of through summary proceedings. Inquiry of serious offences shall be disposed of by trial in summons cases. Inquiry of heinous offences differs according to the age of the child which has been categorized into two, one is the child below the age of sixteen years and second, the child above the age of sixteen years. It is totally misplaced to say that categorization of offences into heinous and non-heinous is not proper. Criminals around the world are categorized on this basis, and accordingly provision for graded punishment depending on the seriousness of the offence is an established phenomenon, which is recognized under the J.J. Act also. Further, the analysis of the crime committed by juveniles, when it comes to heinous offences, particularly in the context of the violent crimes against women is certainly high. That is why juvenile criminality much depends upon the type of crime committed. In case of heinous offence, the preliminary assessment is conducted by the Board with the purpose to find out the child's mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. Where a Board is satisfied on inquiry that a child, though has committed an offence but is below the age of sixteen years, it can pass any of the order like allow the child to go home after advice or direct the child to participate in group counselling; order the child to perform community service; direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person; direct the child to be sent to a special home for providing reformatory services including education, skill development, counselling, behavior modification therapy and psychiatric support. In addition, the Board may pass orders like attending school or a vocational training center or a therapeutic Centre or prohibit the child from visiting, frequenting, or appearing at a specified place or to undergo a de-addiction programme. The Board may order the transfer of the trial of the case to the children's Court if after preliminary assessment it is of the view that there is need for trial of the said child as an adult who is above the age of sixteen years and has committed a heinous offence. The children's court may further decide whether there is a need for such a trial or not. The Court shall ensure that the final order with regard to a child in conflict with law shall

include an individual care plan for the rehabilitation of child including follow up by the probation officer or the district child protection unit or a social worker. The Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty one years and thereafter shall be transferred to a jail provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy and psychiatric support shall be provided to the child during the period of his stay in the place of safety. The duty of the Court does not end here. It has to ensure that there is a periodic follow up report every year by the probation officer or the district child protection unit or social workers as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill treatment to the child in any form. As regards child who has attained age of twenty one years and yet to complete prescribed term of stay in place of safety the children's court shall after getting the evaluation report whether the child has undergone reformatory changes and can be now a contributing member of the society may decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay or decide that the child shall complete the remainder of his term in a jail provided that each State Government shall maintain a list of monitoring authorities and monitoring procedure as may be prescribed. An important provision of this Act is that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release for any such offence either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

## Conclusion

The new Juvenile law is not at all an enemy of child rights, there are detailed provisions for the children in conflict with law as well as for children in need of care and protection. The Act of 2015 has novel positive features for care, correction and rehabilitation of children which were missing in the previous Acts. Just as parents cannot be lenient on all types of misbehavior of their children for the latter's betterment, State too as *Parens Patriae* cannot take a noninterventionist approach towards the misgivings and mischief of their most important segment. It has an obligation to do all reprimand, punish, correct, rehabilitate, and reintegrate the prodigal children back into the social mainstream for they are its tangible future, wealth, and strength. And the State has done its job by enacting the Juvenile Justice (Care and Protection of Children) Act, 2015 which maintains the balance between the demand of the society (keeping in view the victim and her family's grief) and the corrective measures for juvenile offenders. The Constitution of India through several provisions grants important rights to children of the country. It also lays down duties for the State to ensure that their needs are met, and rights safeguarded. While Article 15 (3) provides for special provisions to be made for children by the State. Article 39 (e) states that the State shall direct its policy toward ensuring that the tender age of children is not abused. Moreover, opportunities and facilities are to be provided to children so that they may develop in a healthy manne. in conditions of dignity and freedom and protected against exploitation, moral and material abandonment. The U. onvention on the Rights of the Child requires States to recognize the right of every child accused of a crime to be treated in a manner consistent with the



promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. India, being a signatory to this and those other International Conventions, has taken into consideration the norms set in these Conventions while framing the law for juveniles. To some extent it can be said that the J.J. Act, 2015, reflects the intent of the people of India, expressed through the legislature, who have in their own wisdom come out with the wonderful legislation. It also cannot be doubted that the law is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society. But here it needs to be emphasized that there can never be a last word in wisdom, as the wisdom in legislative enactments is dynamic in nature, the dynamism of which depends upon the changing demands of the society, dictated by new fact and requirements in the social milieu.

### Recommendations

- Children should be given proper education, to avoid delinquency among them.
- School dropouts should be given proper guidance regarding anti-social behaviour
- Proper Rehabilitation centers need to be opened with the motive of transforming the delinquent into better human.
- The person looking after those delinquents shall provide them with a healthy atmosphere.
- Parents should look after their child properly and they need to create lovable surroundings at home.

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