

## Justice and Delinquency: Legal and Policy Issues in Youth Crime

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**Abstract:** Juvenile justice and delinquency are issues of growing concern in our society, as evidenced by the increasing number of youth-related crimes worldwide. This paper offers a thorough examination of the legal and policy concerns about juvenile justice and delinquency, with a great emphasis on two recent cases: the murder of Arushi Talwar and the gang rape of Nirbhaya. Data was acquired via papers, interviews, court records, news articles, and other sources as part of the analytical research methodology. The data was then assessed to identify the primary problems that gave rise to the instances and the elements that needed to be addressed. The data on juvenile justice and delinquency were also analyzed using an empirical methodology. The pertinent literature on the legal and policy concerns relating to juvenile justice and delinquency was also examined. The analysis of the data and the literature review revealed several problems that require immediate attention, including the dearth of juvenile offenders' rehabilitation programs, the neglect of victims' rights, the need for a greater public understanding, and the absence of systems that can ensure juveniles' safety. The analysis also offered a variety of recommendations for modifying the system, including creating efficient programs for rehabilitation and reintegration, making sure victims' rights and privacy are properly protected, and raising public awareness of juvenile justice and delinquency. We must substantially change the legal and policy structures that govern juvenile justice and delinquency, to sum up. In pursuit of improved outcomes for juvenile crime victims, this study has identified a variety of areas that require attention and made recommendations for enhancement. Making a difference in the lives of juveniles and young offenders is feasible with the correct support and resources.

**Keywords:** *Juvenile Justice, Delinquency, Deterrence, Social Welfare, Exploitation, Personal gains, Remedy, Immunity.*

### 1. Introduction

Since time immemorial, crime has always been an inevitable part of the society i.e., as long as societies existed, crime also existed as an integral part of the society. In primitive societies, crime was less organized and was rather scarce, as it involved petty crimes like theft and small-scale violence, but as societies grew and developed, crimes became more complex and severely detrimental. At its most fundamental, interactions between people and their

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social environments result in crime. Individuals may turn to criminal activity to survive or to get resources that they might not otherwise be able to receive as a result of social injustice, poverty, and lack of opportunity.

As crime grew in complex societies, it created a feeling of insecurity and fear in the minds of the people. Slowly and gradually, the need for the establishment of a criminal justice system was felt to create deterrence in society. The establishment of an institutionalized justice system was influenced by several factors. Early legal systems were significantly influenced by religion, with religious leaders frequently acting as arbitrators of disputes and interpreters of the law and by political considerations, such as the consolidation of state authority and the establishment of centralized legal systems, as rulers looked upon the rule of law to uphold social order and established their legitimacy. As legal systems became more structured, crimes and wrongdoings were divided into two parts, i.e., one that was committed by an “adult” and one that was committed by a child or “juvenile”. One of the main reasons for this differentiation was that juveniles were less mature and less responsible for their actions than adults. In contrast to nations in the far west, India has given juvenile criminals a lot of immunity in the interest of reconciliation and renewal. The Juvenile Justice (Care and Protection of Children) Act of 2015<sup>1</sup> principally codifies the legal framework that dictates how juvenile offenders are treated. Juveniles who commit crimes are not subject to the same legal procedures as adults under this law. Juvenile Justice Boards<sup>2</sup> (JJBs), are specially designed courts that only deal with juvenile offenders, and therefore, all juvenile offenders are tried under the same. While deliberating on the best course of action, the JJBs are supposed to adopt a child-friendly attitude and take the juvenile offender's age, maturity, and mental and physical capacity into consideration. In India, the juvenile justice system places more of an emphasis on reforming and rehabilitating young offenders than it does on punishing them. However, India as a country has faced several setbacks in the past as a result of an extremely lenient and free Juvenile Justice System, and one such example is the infamous, Nirbhaya Gang Rape case in 2012. It was a horrifying crime wherein a group of six men, one of whom was a minor at the time, viciously attacked and raped the victim, a 23-year-old student of physiotherapy. It shocked the entire country that in-turn brought huge masses to the streets of the national capital- New Delhi, demanding a reform in the existing laws to ensure public safety and security. The case revealed the shortcomings of India's juvenile justice system and spurred a nationwide discussion regarding how effectively it handles youth crime.

## 2. Current Issues

1. The concept of Juvenile Justice is essential because it recognizes that children and teenagers should not be treated the same as adults in the criminal justice system since they vary from them in many ways, i.e., mentally,

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

<sup>2</sup> Juvenile Justice Board 2002

2. and physically. However, is the Juvenile Justice system addressing issues related to juvenile delinquency, or is the system as a whole being exploited to provide unreasonable assistance to criminals-to-be in the future? The author seeks to look into the fundamental flaws in the Juvenile Justice system in India with special reference to the Nirbhaya Gang Rape case and the infamous Arushi Talwar Murder case as case studies.

This would help the readers understand how the system has been exploited for personal gains.

3. Are there some changes that need to be brought into the Juvenile Justice Act? What are some psychological evidence to prove that?

The author seeks to look into various psychological tests and analyses that show that children as young as 13, have a deep understanding of crimes and related activities and how changes can be brought about to reform the existing Act, that provides immunity to the wrongdoers to a large extent.

### 3. Juvenile Justice and Delinquency

The concept of Juvenile Justice is essential because it recognizes that children and teenagers should not be treated the same as adults in the criminal justice system since they vary from them in many ways, i.e., mentally, and physically. However, is the Juvenile Justice system addressing issues related to juvenile delinquency, or is the system as a whole being exploited to provide unreasonable assistance to criminals-to-be in the future?

#### 3.1 The Concept of Juvenile Justice and Delinquency:

**3.1.1 Juvenile Justice:** It is a specialized court system that handles cases involving minors who have been charged with committing criminal offenses. These acts can include less serious crimes like truancy and vandalism as well as more serious ones like theft, assault, and even murder. In the late 19th century, there was a sudden increase in concerns about the exploitation and abuse of children in the criminal court system, which led to the idea of a distinct legal system for juveniles. This prompted the establishment of the first juvenile court in the United States in 1899, which was intended to provide minor offenders with a more humane and rehabilitative approach. Concerning India as a country, it has undergone drastic changes in recent years, with the introduction of the Juvenile Justice (Care and Protection of Children) Act<sup>3</sup> in 2015. The Act seeks to provide a more rehabilitative and lenient approach to juvenile justice, emphasizing the welfare and best interests of the minor. However, it has been thoroughly exploited especially in India, for personal gains.

**3.1.2 Juvenile Delinquency:** This refers to the conduct of minors who commit theft, vandalism, drug misuse, aggression, and other wrongdoings that are illegal or criminal. In other terms, it refers to the act of committing a

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<sup>3</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

crime by a person who is younger than the age of majority, which is typically 18 in most nations. According to various studies, several factors are causing juvenile delinquency such as poverty, family problems, drug abuse, mental health issues, etc. It can hurt society in several ways, such as by raising crime rates, causing property damage, and lowering standards of living. As a result, community members may feel scared and insecure. It is important to emphasize that delinquent behavior is not always induced by these characteristics; in fact, some teenagers may act delinquent for reasons specific to their situations. However, in the humble opinion of the author, the concept of juvenile delinquency and immunity given to minor offenders may have a detrimental impact on society. This is because, juvenile offenders who are released back into society without adequate rehabilitation or support may be more likely to commit crimes again, thereby endangering the community. Public confidence in the legal system could be eroded by the notion that juvenile offenders are getting away with severe crimes, which would weaken trust in law enforcement and the courts. It's critical to strike a balance between holding young offenders accountable for their acts and giving them the assistance and resources, they require to contribute positively to society. The primary goal should be to make sure that the juvenile justice system is successful in helping young offenders get stabilized while simultaneously offering the necessary safeguards to keep society safe.

#### **4. Nirbhaya Gang Rape Case, 2012**

The Nirbhaya gang rape<sup>4</sup> case served as a sharp reminder of the widespread violence and discrimination against women in India. This heinous crime, that occurred on December 16, 2012, shook the country and sparked a surge of demonstrations and demands for justice. The brutal rape and murder of the young victim brought to light the pervasive misogyny and gender-based violence that women encounter every day.

##### **4.1 Facts of the case:**

- Six males, later identified as Mukesh Singh, Akshay Thakur, Vinay Sharma, Pawan Gupta, Ram Singh, and a juvenile, attacked the woman and her male friend when they were traveling a bus in Delhi.
- The victim and her male friend were beaten and the victim was gang-raped by the perpetrators, who inserted a metal rod into her private parts, causing severe internal injuries, especially in the intestines.
- After being pushed out of the moving bus onto a deserted road by her male friend, the victim was treated at a hospital in Delhi, but her injuries were so critical that she passed away on December 29, 2012.
- The other four adult defendants received execution by hanging sentences in 2013, *whereas the juvenile offender obtained a sentence of three years in a reform facility*. One of the adult offenders, Ram Singh, committed suicide in jail, and the others appealed their convictions and penalties multiple times.

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<sup>4</sup> *Mukesh & Anr v State for NCT Oof Delhi & Ors* (2017) Criminal Appeal Nos. 607-608/2017

- After several years of unsuccessful appeals, all four of the adult offenders were executed in Delhi's Tihar jail in 2020.

#### 4.1.2 Aftermath:

Several protests took place across India in response to the case, calling for the victim's justice and stricter laws to safeguard women against sexual assault. Women's rights activists played a big role in organizing the protests, which were endorsed by people from all walks of life, including politicians, celebrities, and regular people.

#### 4.1.3 Issues that arise out of the case

Regardless of how serious the act they had committed was, under the Indian Juvenile Justice Act of 2000, minors could not get a death sentence or a sentence of more than three years in prison. As a result, the minor in the Nirbhaya case was tried independently from the other five offenders and obtained the maximum term allowed by law, which was three years in a rehabilitation center.

Several people expressed their anger at this lenient sentence, perceiving it to be insufficient considering the gravity of the crime.

#### 4.1.4 How this particular case is a perfect example of the exploitation of the Juvenile Justice machinery?

The Juvenile Justice (Care and Protection of Children) Act, 2015 was used in the trial and sentencing of the minor accused in the Arushi Talwar Murder case. The following sections of the Act were applied specifically to the juvenile defendant:

A. **Section 16:** It safeguards juveniles from being tried as adults and punished for their offenses<sup>5</sup>. *The juvenile accused in the murder of Arushi Talwar was tried, given a sentence, and transferred to a juvenile home for rehabilitation under the juvenile justice system.*

In the humble opinion of the author, juveniles who commit major crimes can avoid the required punishment by using this part of the Juvenile Justice Act. That in cases of heinous crimes, offenders should be tried and sentenced as adults regardless of their age, and that the age of the offender should not be the only factor in determining punishment. The Juvenile Justice Act recognizes the differences between juveniles and adults and seeks to rehabilitate them rather than punish juveniles, which in turn reduces the faith of the public in the judiciary of the country.

B. **Section 15:** It grants the Juvenile Justice Board the power to assess a juvenile offender's character and the circumstances of the offense to decide whether the juvenile should be released on probation or committed to a place of safety<sup>6</sup>. *The juvenile defendant was sentenced to three in a rehabilitation centre by the Juvenile Justice Board*

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<sup>5</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 16

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 15

using this section. Because the juvenile was not a seasoned criminal and had a chance of changing his ways through rehabilitation, the board opted to send the accused child to a rehabilitation facility.

In the humble opinion of the author, the employment of Section 15, in this case, was inappropriate, and given the gravity of the offence, the juvenile defendant should have been prosecuted as an adult and punished accordingly. The juvenile accused was sentenced to a rehabilitation centre by the Juvenile Justice Board, which was a lenient punishment that did not adequately reflect the magnitude of the offence.

- C. **Section 3:** Lays out the fundamental principles of juvenile justice, such as safeguarding the child's best interests, encouraging the child's recovery and reintegration into society, and avoiding stigmatization and unnecessary involvement in the child's life<sup>7</sup>.

In the humble opinion of the author, the alleged juvenile executed a terrible, planned crime that claimed the lives of innocent people, and applying Section 3 to protect the accused was improper and unfair since he shouldn't have been tried and convicted as an adult. as a way to avoid the issue of accountability for the accused juvenile's actions. They argue that the focus should be on ensuring that justice is served for the victims and their families, rather than on protecting the interests of the accused juvenile.

A comprehensive strategy that addresses the underlying causes of juvenile crime and ensures that young offenders obtain suitable punishment and rehabilitation is needed to reform the juvenile justice system.

## 5. Why should change be brought in the Juvenile Justice Act

*“The juvenile justice system has to be strengthened by the implementation of a comprehensive strategy that targets the root causes of juvenile crime and guarantees that young offenders receive appropriate punishment and rehabilitation. This may mean tightening regulations governing how juvenile offenders are dealt with by the criminal justice system and strengthening at-risk children’s availability to support services like healthcare and education”*

1. **Protection of Victims:** Victims' rights are secondary to protecting young offenders' rights and interests under the present Juvenile Justice Act. However, it is equally essential to ensure that the rights of juvenile crime victims are adequately safeguarded. To make sure that it offers victims of juvenile crime adequate protection and support, the act's provisions need to be evaluated. A total of 30,831 cases involving minors were filed in India in 2019 under the Special & Local Laws (SLL) Acts and the Indian Criminal Code (IPC). Compared to 2018, when 28,145 cases were reported, this was an increase. According to this, there were 24,212 teenagers arrested for offenses in 2019 compared to 22,327 in 2018.
2. **Accountability:** The fact that the contemporary juvenile justice system does not effectively hold

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<sup>7</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 3

juvenile offenders accountable for their acts is one of the main criticisms leveled at it. There is a belief that the existing system is unjustly and unnecessarily lenient and does not sufficiently punish major offenders. To ensure that juvenile offenders are held responsible for their acts and that the penalty matches the offense, we must reinforce the Juvenile Justice Act's requirements. The National Crime Records Bureau (NCRB) data from 2019 indicates that India's conviction rate for juveniles who had violated the law was only 18.3 percent. This indicates that more than 80% of young offenders were declared not guilty. The report also highlighted that a large fraction of adolescent offenders were repeat offenders. About 39 percent of the adolescents detained for criminal offenses in 2019 had previously been detained for a criminal offence.

- 3. Deterrence in society:** The legal system seeks to deter crimes in the future by punishing offenders and delivering a signal to prospective offenders, deterrence is one of its primary objectives. For young criminals, the present juvenile justice system regularly fails to establish deterrence. Young offenders might not completely comprehend the ramifications of their conduct, which is one explanation for this. They might not be entirely capable of making decisions or comprehending the long-term effects of their

choices. Because of this, traditional punitive measures like imprisonment or fines may be less effective at avoiding future crimes. To establish deterrence, a restorative justice strategy that emphasizes reconciliation and treating the underlying causes of adolescent offending may be more successful. It can help prevent future crimes by fostering healing and lowering the chance of reoffending by treating the root reasons for juvenile crime, such as trauma, addiction, or issues with mental health.

Overall, a system needs to be created that restores the faith of the people in the Indian Judiciary and promotes deterrence.

## **6. What changes can be brought in the Juvenile Justice Act**

There are several ways by which it can be made sure that juvenile delinquents are punished fairly and held accountable for their crimes. Among the potential adjustments are:

- 1. Improving transfer provisions:** The juvenile justice statute currently contains transfer provisions that permit some cases to be transferred to the adult criminal court system, however, these provisions are frequently not utilized. It may be possible to prevent dangerous and violent juvenile criminals from being spared just punishment by strengthening these restrictions. This can be accomplished by creating precise and unbiased guidelines for deciding when to move a juvenile offender into the adult justice system, such as the gravity of the offence, the offender's age, and the offender's previous criminal history.
- 2. Assuring that trials are quick and effective:** One criticism of the juvenile justice system is that it can take

a while for trials to be completed, which can delay victims of crimes and put offenders in limbo. It may be possible to guarantee that young offenders are swiftly held accountable by improving the efficacy of the juvenile justice system. Delays in juvenile cases can result in more stress and trauma for victims and their families as well as more expenditures and resources for the judicial framework. Juvenile offenders can assume accountability for their misdeeds and receive the proper penalty and rehabilitation programs with the aid of timely trials. Juveniles, who could be more receptive to rehabilitation attempts than adults, can benefit significantly from this. Juvenile criminals can change their lives and avoid committing crimes again by acquiring early assistance and the appropriate repercussions.

3. **Increasing accountability and transparency:** The juvenile justice system has the potential to become more accountable and transparent by publishing regular reports on its operations and findings, putting in place independent oversight advisory boards, and making sure that victims are kept apprised of the state of their cases. Establishing specific guidelines and requirements for the handling of juvenile offenders, as well as providing training and tools for law enforcement, court staff, and other specialists who work with children, helps promote accountability. Through this approach, it will be possible to ensure that juvenile offenders are handled with respect and dignity and that their rights are respected throughout the legal process. In general, improving transparency and responsibility can help foster a culture of trust in the juvenile justice system and can ensure that young offenders are held justly and equitably accountable for their conduct.
4. **Clear rules and standards:** The juvenile justice system needs to have guidelines and requirements that are administered consistently in all circumstances. This can reduce the probability that the system will be misused for partisan or individual benefit. In addition to guaranteeing that juvenile offenders receive adequate care and rehabilitation, clear standards and guidelines can also encourage accountability, protect the liberties of juvenile offenders, and enhance public confidence in the juvenile justice system. In the end, a juvenile justice system that is more effective and just will be accomplished through having clear standards and regulations.

Clear rules and guidelines can promote accountability, safeguard juvenile offenders' rights, and increase public confidence in the juvenile justice system.

## 1. Conclusion

Delinquency and juvenile justice are significant issues that have had a long-term effect on society as a whole. India's criminal justice system has been criticized for being unaccountable and ineffective in dealing with juvenile criminals. The murder of Arushi Talwar and the gang rape of Nirbhaya have brought attention to the legal and policy problems with juvenile crime in India. To ensure that justice is served and the public's faith is maintained,



reforms must always be made to the juvenile justice system. Strengthening the provisions for transfer to the adult criminal justice system is one approach to this. The existing regulations have come under fire for being lax and giving young criminals immunity. This has raised worries that some criminals are getting away with their offenses and committing more of them. Another critical aspect of the juvenile justice system that requires attention is ensuring prompt and effective trials. There have been reports of prolonged delays in the trial process, which has left people disillusioned and losing faith in the system. To guarantee that cases are processed efficiently and justice is delivered quickly, clear schedules and procedures must be established. How to stop the juvenile justice system from being manipulated is a crucial issue that has to be addressed. Due to the leniency of the current system, some offenders might continue committing crimes without receiving appropriate cause. It is crucial to establish a strong system that recognizes such instances, handles them, and punishes offenders as required.

To ensure that justice is served and the public's trust is upheld, it is imperative to make reforms to the juvenile justice system. One method to do this is to strengthen the mechanisms for transfer to the adult criminal justice system, ensure swift and efficient trials, increase transparency and accountability, and have clear standards and regulations. By doing this, we can develop a juvenile justice system that is more efficient and just, contribute to the reduction of juvenile crime, and defend the rights of juvenile offenders. To make the juvenile justice system more effective and equitable for all, it is time to act and reform it.