

## CHILDREN IN CONFLICT WITH LAW

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*“According to UNICEF, Children in conflict with the law refers to anyone under the age of 18 years who comes into contact with the justice system as a result of being suspected or accused of committing an offence”<sup>1</sup>*

### INTRODUCTION

The word juvenile originated from the Latin word JUVENIS that means young i.e. a person who has not completed 18 years of age .

As it is rightly said, all children are a gift of god, they are born innocent. No child is born a criminal. However due to multiple factors, these children, around the world, indulge in wrong adopted behavior, reflect delinquency and anger and get caught up in acts of conflict with law , being arrested, beaten up by police, tried by courts and forced into adult formal justice practices irrespective of their socio- economic conditions. These children at times are tortured for petty or minor crimes like alcohol use, truancy, vagrancy, begging , petty thefts, emotional outbursts , violent or aggressive behavior etc. treating them like adults and strictly punishing them.

The reality of their lives mostly lies in denied education, extreme poverty, unavailable parents, hunger, ill socio-economic conditions, homelessness, abandonment, being forced to work, tortured , forced to beg and a responsibility to take care of their siblings, Such children are forced by adults to fall into traps of abuse, trafficking , drugs and robbery to be able to survive, face the reality and be able to provide for themselves as well as their family. At times, these children fall prey to the prejudice revolving around caste, religion, ethnicity, society, culture and economy which brings them face to face with the problem of conflict with law, at times with no crime committed on their part.

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<sup>1</sup> [https://www.unicef.org/chinese/protection/files/Conflict\\_with\\_the\\_Law.pdf](https://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf)

**CAUSES**

There are infinite reasons as to why these children fall into the clutches of such acts ranging from–

- Socio – environmental causes
- Migration
- Disabilities and biological difficulties
- Discrimination on the basis of caste, religion. Race, ethnicity, culture, etc.
- Family background
- Abandonment
- Homelessness
- Broken families
- Divorce of parents
- Lack of attachment and care
- Parent child relationships
- Alcohol abuse
- Economic conditions
- Mental disorders
- Peer pressure
- Greed
- Mental conflicts
- Deviant behavior
- Forced to work
- Exposure to bad media
- Lack of education

**CONSEQUENCES**

This results in harsh treatments by the legal authorities, punishments, torture, punitive measures and trial at courts which have severe impacts on their lives along with physical and mental well being,with life imprisonment, death penalty, corporal punishment or other severe forms of

punishments that damage the life of the child. These children lose their childhood and a chance at improving and learning from their mistakes. They are denied a normal life, education and family with no scope of rehabilitation or reintegration in the community due to stereotype and labels which term them as ‘criminals’ throughout their life which is neither justified nor required. This limits the future prospects of them being given the opportunity to have a fruitful life as rightful citizens and stakeholders of the development of a country.

### **CHILDREN’S JUSTICE**

Although many International policies and conventions lay down procedure to deal with such children, protect them from violence, exploitation and abuse and provide them with required care, education, rehabilitation and recreation, the results have not been satisfactory and the numbers tend to rise relating to such strong punishments to children in conflict with law. International human rights<sup>2</sup> standards have universally condemned life imprisonment without parole for children. In November 2012, the General Assembly urged States to take into consideration repealing all forms of life imprisonment for children. The Human Rights Council on the other hand has time and again called on States to prohibit life imprisonment of children in law and practice.

Children’s justice consists of 2 ultimate goals-

- 1) prevention : it focuses on the need to analyze the factors that lead to such behavior in children and provide solutions to prevent such acts being caused in future through training, counseling, effective measures and providing jobs.
- 2) protection : it focuses on the children who are already affected by the term children in conflict with law , to protect them from torture and severity of the consequences, being abused or exploited and to provide them with rehabilitation, reintegration with society , providing training and awareness programmes along with guiding them so that the children do not repeat those mistakes in future

Other goals are-

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<sup>2</sup> <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

- Ensuring the best interests of the child as the primary consideration
- Protection from abuse ,violence and exploitation
- Dignity and compassion for every child
- Respect to legal guarantees and safeguards
- Using deprivation of liberty only as a measure of last resort and for the shortest period of time
- Making children's issues mainstream in all rule of law efforts
- Focusing on The right of the child to express his or her views freely and to be heard
- Guarantee of fair and equal treatment of every child
- Preventing conflict with the law<sup>3</sup>

## INDIAN CONTEXT

The Juvenile Justice System in India assumes that a child offender is a product of unfavorable environment and is entitled to a fresh chance to begin his life. The offences may have been committed without any criminal intent on certain occasions. This theory is based on the legal principle of 'DOLI INCAPAX' which means that a child does not have capacity to form criminal intention. It is accepted that a child offender should not be given punishment based on the kind of offence that has been committed but should be given an individual treatment which is reformative in nature and which is based on h the need, psychological and social background.<sup>4</sup>

The Indian scenario can be traced back from the past -<sup>5 6</sup>

- The Code of Hammurabi in 1790 BC advocated for differential treatment for children where the responsibility for their supervision and maintenance of the child was applicable only on the family.

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<sup>3</sup>[https://www.unicef.org/protection/RoL\\_Guidance\\_Note\\_UN\\_Approach\\_Justice\\_for\\_Children\\_FINAL.pdf](https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf)

<sup>4</sup> <https://vikaspedia.in/social-welfare/women-and-child-development/child-development-1/children-in-conflict-with-law>

<sup>5</sup> <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1595255>

<sup>6</sup> <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

- 1843 brought in the first center for those children called “Ragged School” that was established by Lord Cornwallis.
- It was required by The Apprentices Act, 1850 that children between the ages of 10-18 who were convicted in Courts were to be provided vocational training
- The Indian Penal Code (1960) Children under the age of seven years were exempted from criminal responsibility. It also exempted children between the ages of seven to twelve years, as they had not attained sufficient maturity of understanding to consequences of their actions.
- One of the landmark legislation was the Reformatory School Act, 1876 and 1897.
- The Act of Criminal Procedure, 1898 provided special treatment for juvenile offenders.
- Then Indian Children Act came from the Indian Jail Committee (1919-1920).
- After Independence , the Juvenile Justice policy in India is structured around the Constitutional mandate prescribed in Articles 15 (3), 21, 24, 39 (e) and (f), 45 and 47, as well as several international Covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).
- The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, that repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention ,1989 in the year 1992 which was later amended in the year 2006 and then in 2010. The Act provides a special framework for the protection, treatment and rehabilitation of children under the umbrella of the Juvenile Justice System. It had established the Child Welfare Committee to address the needs of the children in need of care and the Juvenile Justice Board to deal with these children.
- A Special Juvenile Police Unit was set up in every police station. The Act established Observation Homes and Special Homes for the “Children in need of care and protection”, and Comprehensive Children’s Homes. <sup>7</sup>
- According to Section 2 (13) of Juvenile Justice (Care and Protection of Children) Act, 2015 , child in conflict with law means a child who is alleged or found to have committed

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<sup>7</sup> <http://thelawbrigade.com/criminal-law/juvenile-justice-in-india/>

an offence and who has not completed eighteen years of age on the date of commission of the offence.

- Section 53 of talks about various rehabilitation and reintegration services to be provided in institutions for these children which includes basic requirements such as food and shelter; appropriate education including supplementary education;, mental health interventions ,skill development recreational facilities, , etc.
- Under Section 8 and section 30 of the Act, the Juvenile Justice Board and Child Welfare Committee have to conduct at least one inspection visit every month of residential facilities for children in conflict with law and every fortnight recommend action for improvement in quality of services to the District Child Protection Unit .
- The State Governments have to appoint Inspection Committees, under section 54, to assess the basic facilities and infrastructure of the Institution to meet the necessary standards prescribed
- Section 41 explains that the registration of institutions has been made mandatory with penalty if there is a case of non-compliance.
- Juvenile Justice (Care and Protection of Children) Act, 2015 , on a closer inspection with its provisions has created a group of juvenile offenders who may be tried as an adult for offences which are considered to be grave and heinous in nature .  
eg. : Section-19. Powers of Children’s Court.—

(1) After the receipt of preliminary assessment from the Board under section 15, the Children’s Court may decide that—

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.<sup>8</sup>

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<https://books.google.co.in/books?id=zZ9MDwAAQBAJ&pg=PT471&lpg=PT471&dq=%22Powers+of+Children’s+Cou>

- It<sup>9</sup> also reintroduced the concept of life imprisonment as a possibility for children who commit serious offenses aged 16 or above. The Act specifically prohibits sentencing anyone to life imprisonment without the possibility of parole for an offence committed while under the age of 18
- It<sup>10</sup> also states that no child under the age of 18 shall be given life imprisonment.
- Thus many other laws pertaining to and contained in this act are for the benefit of the juvenile but if any other law benefits the child, that law can override the provisions of this act to provide for a better life to the child

Although India has several laws to protect children, legislation should be enacted to ensure that no child is tried or sentenced as an adult and to ensure that the prohibition on life imprisonment for children is re-enacted and that no one may be sentenced to corporal punishment for an offence committed while under the age of 18<sup>11</sup>. This step is need to ensure the protection of children and their future , to endure their growth, development and participation as a rightful citizen in a country's progress, to break open the barriers, to give them better opportunities to learn from their mistakes and teach them values to be a better person.<sup>12</sup>

But on the other hand after the brutal situation of NIRBHAYA GANG RAPE CASE , there have been many questions pointing to the excessive blanket of protection provided to a child as in the case itself, who committed a heinous crime like rape and murder. The convict just spent 3 years in reformation and was sent home by the Juvenile Justice board despite accusations of being the most brutal out of the six and attacking the victim severely with an iron rod ,although the allegations were brushed away by the Juvenial

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(1)+After+the+receipt+of+preliminary+assessment+from+the+Board+under+section+15,+the+Children's+Court+may+decide+that—%22&source=bl&ots=qVnsgaStBX&sig=ACfU3U01R-i0VJQK5RSPUqoCpqzFqPJ74w&hl=en&sa=X&ved=2ahUKewj7to697f7oAhXO6XMBHQIbBcYQ6AEwAHoECAUQAQ#v=onepage&q=%22Powers%20of%20Children's%20Court.—

(1)%20After%20the%20receipt%20of%20preliminary%20assessment%20from%20the%20Board%20under%20section%2015%2C%20the%20Children's%20Court%20may%20decide%20that—%22&f=false

<sup>9</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>10</sup> section 21 , The Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>11</sup> [https://archive.crin.org/sites/default/files/inhuman\\_sentencing\\_children\\_india\\_2016.pdf](https://archive.crin.org/sites/default/files/inhuman_sentencing_children_india_2016.pdf)

<sup>12</sup> [https://archive.crin.org/sites/default/files/inhuman\\_sentencing\\_children\\_india\\_2016.pdf](https://archive.crin.org/sites/default/files/inhuman_sentencing_children_india_2016.pdf)

Justice board. There were numerous debates and outrageous protests as to conduct the trial of the juvenile as that of an adult due to the seriousness of the nature of the crime. Consequently THE JUVENILE JUSTICE ACT 2015 was passed which allowed in certain cases for juveniles to be treated as adults. The opinions related to the matter are till date divided and controversial. Even the legal systems have no clear cut answer to the matter.

## CONCLUSION

Children are the future of the country, They need care, protection , guidance and opportunities to develop themselves, grow and take a step forward. Most of these children are not even aware of the future repercussions of their actions or consequences of their doings, thus making honest and innocent mistakes without any criminal intent on the path of learning and growing. Children are the greatest national resource. They represent the nation and are referred to as the future of the country. Parents, teachers, community, law and schools, all need to come together to prevent JUVENILE CRIME and behavioral issues preceding them and protect the children from the chains of crime before they fall prey to the negative side. There is a need for proper care and rehabilitation to bring the children back on track and help them overcome the effects of juvenile crime and move towards ideals of child justice mechanism.

‘A child is an uncut diamond ,it depends on the society how to shape it.’

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