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# A Critical Analysis: Juxtaposing the Juvenile Justice Systems in the United Kingdom, India, and the United States of America

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## ABSTRACT

*Juvenile delinquency or delinquent is a label awarded to those undertaking deviant activities which are frowned upon by the society. The age plays a vital role in defending the juveniles from stringent punishment. Recently, noticing the exponential rise in the brutal nature of the crime committed by juveniles, a few countries have decided to transition from the lenient and reformative principles to those that are austere, like the USA. While the UK and India refuse to give up on these juveniles, continuing to be faithful to the reformative and rehabilitative model. The diverse causes of Juvenile delinquency are deliberated upon, examining the genetic, psychological and biological theories are discussed. Further, certain unique and distinct forces and social institutions that correlate to juvenile delinquency are identified and elucidated. In addition to the various matters as discussed above, the author also looks into the legion of influences inciting delinquent behaviour of juveniles, such as peer groups, family and economic status, religion, school, media and other external and psychological triggers or motivators. This paper revolves around the rationale for the various approach adopted by the juvenile justice systems in India, USA and UK, and strives to highlight the lacuna in their criminal justice systems which is the inordinate priority or prominence given to the age factor while assessing and establishing the liability or culpability of a juvenile delinquent.*

**Keywords:** Juvenile, justice system, Reformation, Delinquent, Crime.

## I. INTRODUCTION

Ideally, it is believed that a child is pure and cherubic in nature. People strive to provide children with a bright, safe and joyous future. Each child has a right to bloom in a nurturing and safe surrounding that enables a better living. However, one of the biggest social evils which big down social development, even to this day, poverty. It renders many destitute and

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deprived of the necessities. It has been observed that children who grow up in such environments turn into juvenile delinquents. A delinquent is understood as a child who seems to have strayed from the normal and moral paths laid out. They are perceived to be wayward children who act out and are irresponsible, their behaviour is frowned upon by society and is deemed incorrigible. Often punishment and other such corrective measure are taken by others from society as a way to redeem them or rectify their behaviour. “Juvenile” is a word that finds its roots in the Latin term “juvenis” which refers to “young”.

When an adult does an act in contravention to the established law it is considered as an offence and charged with liability for the same. If the act is criminal in nature, the individual earns criminal liability and is punishable in the eyes of law. However, if we place a child in the position of the said offender, whose age is below a certain limit, that very act which was considered criminal would no longer be perceived as a criminal act, irrespective of the maturity and understanding of the child.

The juvenile justice is a law a system that was brought about with a notion to safeguard and protect the rights of young/children. This tributary of law primarily deals with matters related to under-aged or minors who have been neglected/abandoned or are accused of any offence. This system attempts to rehabilitate these children and help them mend their ways as it is a firm believer that children can be reformed. According to section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act 2015, a juvenile/ child is one whose age lies below the limit of 18 years. This legislation further divides the term “child” into 2 categories:

1. “A child in need of care and protection”
2. “A child in conflict with law”

Here, a child in need of care refers to a child as defined under section 14 of the JJ Act, those who are a victim of an offence, exploited, abused, abandoned, etc. While the juveniles who have been accused of offences fall under the category of “child in conflict with law”.<sup>2</sup>

Over the past few years, there has been a rise in the quantity of the crimes committed by juveniles or under-aged children. In a sociological and psychological perspective, one can say that the psychology behind such crimes or the factors that drive such acts may be those associated with life experiences, economic and educational deprivation, domestic abuse or unnecessary display of toxic masculinity, social upbringing, etc. the general understanding is that the minds of children are highly impressionable, innocent and can be effortlessly manipulated. Children are not ones who are directly endowed with such nature and

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

characteristics. It the surroundings and environment that shapes them into who they are and what they do. However, the utterly harrowing Nirbhaya incident that took place on 16th December 2012, has frightfully changed this perception. The fact that one of the key offenders who took part in one of the most gruesome rape cases in the country was minor, months away from attaining majority astounded the entire nation and many others. This case and the involvement of a minor in such a horrendous incident drove the parliament to establish an entire legislation dedicated juveniles, the Juvenile Justice (Care and Protection) Act, 2015. This statute brought about new laws and replaced the old juvenile laws that permitted the juvenile offenders to flout the law. One of the major provisions under this legislation was that juveniles within the age of 16-18, in heinous cases, will be tried just as an adult. This article will attempt at facilitating a better understanding of juvenile laws and compare the juvenile system of India with that of the UK and USA, and what may be the lacuna in the same.

## **II. LITERATURE REVIEW**

A case of juvenile delinquency or juvenile crime is an extremely arduous social phenomenon as it involves children. The complexity arises due to the impact of society, families, legal inquiry procedure, balancing the interests of the child as well as justice to the victims, etc. The topic of juvenile justice and delinquency is a popular field with diverse literature from varied perspectives. Scholars and researchers all over the world have strived to contribute to this subject matter by conducting studies on the different components influencing criminal activity such as family, communities, society, age, mental state of children, the juvenile system and the procedure adopted in juvenile cases, and other theoretical aspects. Back in the days, around the 18th century, juveniles and children who indulged in criminal activity were not treated or punished differently considering their age and mental capacity. There was no distinction between an adult criminal and a juvenile offender, penalties and punishments awarded were the same, at times even the death sentence. However, this process drastically changed around the 19th century, when certain countries started taking into account the varied needs of a juvenile, the mental capacity as well as their age. The legal system often tipped the scales of justice in favour of the juvenile or child offenders and adopting a lenient and rehabilitative approach. This culminated in the establishment of juvenile welfare homes, reformatory schools, welfare policies and systems to cater to the needs and requirements of children. Educational institutions were given importance as a means to inculcate morals, values and shape the behaviour of children by educating them. They started to differentiate adults and children.

In the year 1970, Knudsen and Schafter looked into juvenile delinquency and adduced 5 causes or factors of delinquency<sup>3</sup>.

a) Personal factors

b) Behaviour which frowned upon or condemned by the community such as rebellious actions, fighting, disobedience, etc.

c) Childhood abuse, harassment, socio-economic status, external influences and broken households.

d) The undertaking of heinous crimes and actions which are explicitly prohibited by the written laws such as rape, murder, etc.

e) Lastly, Expression anger, defiance, hate, etc towards society, its restraints and other dominating figures.

Coming to the legal aspect of what would constitute as 'delinquency', in the year 1960, The Second United Nations World Congress on Prevention of Crime restricted the scope of juvenile delinquency, it suggested that the meaning and definition of juvenile delinquency "should be limited to only violation of criminal laws." As delinquency is a term awarded to those who behaviour and conduct are not in conformity with the established law.

### **(A) Theoretical Perspectives**

There have been various theories pertaining to the matter of juvenile delinquency as well as a crime which have been articulated by innumerable philosophers and theorists in their literature. They lay down diverse social phenomena and cultural constructs which reflect the causes delinquency facilitating better comprehension of the same. The theories and concepts initially originated from the historical school and the classical school where they predominantly focused on the concept of "free will" to explain the commission of crimes. As individuals were permitted to act as they so desired, people realised the need to establish laws to control the actions of the people. They focused on individuals rather than society as a whole and its requirements. Following the classical school of thought, the positivist or scientific school came about. Where they enunciated the relevance and importance of science and introduced scientific methods to comprehend crime. They adopted a broader perspective on studying crimes rather than an individual approach. They asserted the need to understand criminal behaviour and its causes. They suggested that those who are born possessing certain abnormalities or defects in them either genetically or physically paves way for indulgence in

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3 Ahuja, Ram (2000): social problems in India, Jaipur, Rawat publications, pp.342.

criminal activities. This theory was however disproved or contradicted when an experiment was conducted on a certain group of prisoners where it was found that not all criminals possessed such deformities or defects. They stated that emotional factor plays a vital role in determining the conduct of an individual as well, hence any imbalance or emotional turmoil may result in criminal actions as well.<sup>4</sup>

Psychological theories to crime emanated from this ideology where they weighed in other external factors that contribute to criminal behaviour and thought process. They put forth the idea that an individual, as well as a juvenile's behaviour and personality, are highly influenced by their environment, familial relationships, external or social relations, communication with other members of society, their experiences in the community, etc. they suggested that juvenile delinquents or child offenders commit crimes as a means of expressing themselves because they are confused and lack the self-control. It was further deduced that juveniles who took part in crimes usually belong to the lower class or lived in poverty, the economic and social conditions being quite severe, unable to meet their everyday requirements to survive, lack of opportunities, etc drove these juveniles to indulge in unlawful and criminal activities as a means to access the desired resources. They indulge in crimes or actions that are explicitly against the law for this very purpose. Hence, it is imperative that reformatory and rehabilitative measures are adopted on such matters to facilitate their improvements, such as therapeutic measures or counselling.

One may say that crimes exist as a result of incompetency on the part of the society and the state to provide adequately for all the members of society. Here, the sociologic theories step into the picture. They propose that crime is not to be studied from the perspective of the action perform of the individual, instead to look beyond, at the entire society. The social constructs and practices followed contribute to crime. An example for the same would be class differentiation and marginalization of different groups of people within the society. Therefore, criminals are the final product manufactured by society, deviance is the solace the members or juveniles turn to when society disregards and neglects them. This was further explained in the anomie theory by Merton, where he proposes that society imposes certain restrictions, qualifications, expectations and goals upon the people but fails to implement the concept of equality. Such stress and pressure burdens the individuals, unrealistic standards and the inability to achieve them turns them to crime.<sup>5</sup> The sub-culture theory finds its roots

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<sup>4</sup> Shoemaker, D.J. 1984. *Theories of delinquency*. UK: Oxford University Press and Giddens, A., & Griffiths, S. (2008). *Sociology*. Cambridge, UK: Polity Press.

<sup>5</sup> Black, Pamela, 2014, 'Subculture Theories of Crime'.

from the theory suggested by Merton<sup>6</sup>, it explains that those juveniles of members of the society who are neglected and marginalized by the society form groups or gangs of their own and part-take in activities against the society which turned their backs on them as a signal of defiance. They form an entire culture and society of their own, establishing their own goals, rules and regulations as per their comfort. Hence, it has been stated that “Criminal behaviour has thus been viewed as a consequence or outcome of social disorganization, anomie and other systemic conditions”. The differential association theory propounded by Sutherland can be considered as one of the most relevant contributions to understand crime and the subject of criminology. He professed that criminal activities are a result of “social disorganisation” and that deviant behaviour which is contrary to the laws in place are a result of behaviour inculcated from experiences and the environment and from associations. They are learnt from what is seen, observed, experienced and social interactions rather than mental illness or emotional turmoil.<sup>7</sup>

When an individual is greatly exposed or left of associate with those who disregard the system and support criminal activities, possibly even indulge in a few themselves, especially a child is bound to pick up on those ideologies, values, traits and exhibit the same via his/her conduct. However, it also necessary to keep in mind that mere association and interaction with outlaws do not result in delinquency, individuals tend to bend towards the life of crime mostly when they consider it required and concurring with their desires.

The above-mentioned literature on the matter accentuates the need for an integrated approach to understanding juvenile crime. It brings into focus the various factors that play an integral part in the creation of a juvenile delinquent. Such as the community, environment, family, societal constructs etc that influence human behaviour. There are multiple facets to truly comprehending juvenile crime, these theories have made an attempt at trying to factor in all these dimensions and produce a comprehensive and structured school of thought. Even though no specific theory can cover all the components and dimensions to crime and juvenile delinquency, out the various schools explained, the sociological school seems to have been the most relatable in the present context. Further drawing attention to the complex nature and intricacy of the concept of crime. It may pose as a herculean task to bring the concept of juvenile offenders and crime under a specific theory. Just one theory may be inadequate to study theses crime encapsulate the diverse factors associated. It is essential to adopt a theoretically integrated method to fathom juvenile delinquency.

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<sup>6</sup> Wolfgang, M. E., & Ferracuti, F.(1967), *The Subculture of Violence*. London: Tavistock.

<sup>7</sup> Sutherland, E. H. (1939). *Principles of criminology*. Chicago, Philadelphia: J.B. Lippincott Company.

### III. JUVENILE JUSTICE SYSTEM

A general presumption all over the world by society is that children/juveniles haven't matured enough to entirely comprehend the repercussions of their acts/crimes they might have committed. People believed that these juveniles must be pardoned or given lenience while punishing as they are not aware of what they are doing. Everybody understands that children are not very capable of handling their emotions and often act out aggressively without thinking. In order to safeguard such young persons the Latin principle of '*doli incapax*' is applied. According to this, children/juveniles are incapable of criminal acts and hence can't attract criminal liability for offences. Although, now it has become clear that a child aged between 7-12 years may also be convicted for an offence providing substantial proof and evidence was advanced to say that the juvenile had sufficient maturity and knowledge to acknowledge the consequences of the act and the crime was one that was heinous in nature.

The constitutional backing for the juvenile justice act lies in the mandate provided under Article 15 under the Indian constitution that asks the state to establish special provision for promoting and protecting the interests of women and children.<sup>8</sup> It is also based upon other constitutional mandates such as the right to life, personal liberty and right against exploitation as established under articles 14, 15, 16, 21, 23 and 24 of the constitution.

### IV. JUVENILE DELINQUENCY

The word 'Delinquency' has been derived from the Latin word 'Delinquer' which translates to 'to omit'. In 1484, William Coxson used this word to refer to a person who was found guilty of an offence. In layman's terms, delinquency refers to a type of misbehaviour or deviation from general conduct accepted by society on the part of adolescents or children. If such behaviour persists, that child may potentially turn into a future offender.

As per the definition of 'Juvenile Delinquency' in the Children Act, 1960. It refers to 'a child who has been found to have committed an offence'. And according to the Juvenile Justice (Care and Protection of Children) Act, 2000, a 'delinquent juvenile' is one whose conduct results in an offence from a social and legal perspective. As we can see that the concept and definition of whom a juvenile delinquent varies, various legal scholars and sociologists have stated their ideas. This is one of the problem areas in juvenile laws. The language of the law and perceptions are quite subjective, uncertain and vague. There is ambiguity in what can be

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<sup>8</sup> Bajpai, G.S. (2006), Making it Work: Juvenile Justice in India', <http://www.forensic.to/webhome/dragsbajpai/lcwseminar.pdf>

ascertained as juvenile crime and what cannot.<sup>9</sup> This issue of juvenile delinquency is a grave matter that warrants serious consideration. It has been observed that the rate and seriousness of crimes have escalated to a level of gruesome, vicious and ravenous in nature.

## V. FACTORS OF JUVENILE DELINQUENCY

Some of the predominant factors that give rise to juvenile delinquency are as explained below:

**Poverty:** poverty takes centre stage when it comes to factors resulting in juvenile delinquency. A child gets overwhelmed with emotions and often does not understand how to control or manage their thoughts and actions. It is natural that when one who is economically, educationally and financially deprived of many things when they see other experiencing and having all that they lack, it is only human to feel vexed and envious of their situation. These emotions incite a sense of desperation to try and get the same one way or another. Thievery is the first place they start on their journey to becoming a juvenile delinquent.

**Hostile or brusque Home atmosphere:** When the environment at home is unsettling and discourteous, it gravely influences the behaviour and characteristics of the child. The behaviour of parents and treatment of child at home plays a major role in the shaping of the juvenile's mind and psyche. The upbringing and virtues taught to the child at the very inception are quite important in determining the future conduct of the child.

**Environment and surroundings:** sociologists have studied that environmental and other surrounding factors also affect the behaviour of a child. The type of experiences and environment they are exposed to shapes them and their personality. Such as the neighbourhood, school, and other such factors.

**Individual factors:** A juvenile's feelings/ thoughts/ desires also drive their actions. Their psychological and other sociological factors. At a certain age, they often desired the need to be their own captain and take their own decisions and rebel as a statement of freedom. During puberty and other changes, they tend to act out.

**Association with others in society:** once a child starts meeting other people of society and associating with them, coming in contact with other sections of society, all ages and genders. A child has a very impressionable mind and picks up on everything he sees, hears, and cultures. In case a child falls in with a group who are bad influences, he will start to imitate

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<sup>9</sup> Elizabeth S Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*; the journal of criminal law and criminology (1973)

and behave like them.<sup>10</sup>

According to the National Crime Records Bureau statistics, the researchers have studied that the number of cases related to juveniles who have gotten in conflict with the law has intensified. The quantity of IPC cases registered against children/juveniles in India has grown from 2005 to 2015. Additionally, it was also observed that boy juvenile offenders were exponentially higher when compared to girls, out of 41,385 offenders in total, 917 were girls while 40,468 were boys<sup>11</sup>

## **VI. ROLE OF AGE FACTOR IN JUVENILE CASES:**

The word “adolescence” refers to the age of 13-17, the phase of life where children are growing into young adults preparing for their adulthood. At this point, these juveniles neither possess the required level of maturity and mental capacity to judge their actions nor are they innocent. Studies show that juvenile offenders are usually around the age 18-15, rarely those below this range indulge in criminal activity. During this phase of life, theorists, researchers, psychologists and other scholars believe that there is immense pressure and stress imposed on these juveniles who may not be well equipped to cope with such emotions. Next, in case any abuse or traumatic event due to circumstances during such a phase culminates in an internal struggle for the juvenile. This has been elucidated in the psychoanalytical theory put forth by Freud. Where he says that this period of life brings about a war between the ‘ego’, ‘Id’ and ‘superego’ of the child possibly due to sexual impulses or any other reason. This collision between these factors gives rise to anxiety, stress and other emotional issues which tend to overpower and dictate the actions of the juveniles.<sup>12</sup>

It has also been studied that the behaviour of family members, personality and behaviour of parents ardently reflects in the actions of a child. Child and juveniles are exposed to a higher level of risk for developing anxiety or personality disorders if they come from a broken, abusive home, exposed to stringent punishments by their parents, etc. the ideology advanced by may claiming that juveniles who exhibit antisocial characteristics or anxious behaviour may go on to pursue a life as a delinquent.<sup>13</sup> This argument raised is one of the fundamental reasons in favour of adopting the rehabilitative and reformative models to shape the juvenile and restore his life to normalcy.

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<sup>10</sup> Prakash Haveripet, “Causes and Consequences of Juvenile Delinquency in India”, *Recent Research in Science and Technology* 2013,

<sup>11</sup> Crime in India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India

<sup>12</sup> Ved Kumari, *The Juvenile Justice System in India -From Welfare to Rights*, 2004, Oxford University Press, 2004.

<sup>13</sup> Dr. S. Guruswamy, *Juvenile Delinquency: Occurrence, Care and Cure*, 32 *Social Defence*, 1993 and <http://family.jrank.org/pages/1006/Juvenile-Delinquency-FamilyStructure.html>.

**(A) Culpability based on adolescence:**

It was enunciated in an article that it would be erroneous to automatically presume that a juvenile whose age is less than 18 years are incapable of formulating and possessing mens rea. As popularly believed, children or adolescents aren't always naïve and ineligible for culpability.<sup>14</sup> The blameworthiness of a juvenile must be determined based on facts and circumstances unique to the case, and cannot be absolved of such penalty solely by virtue of their age. It may be argued by some that imposition of such liability upon a young mind, mostly ignorant and unaware, lacking comprehension would be insensitive. They said that it is vital to realise that, even though juveniles may be capable enough to acknowledge that their actions are wrong, there are unable to truly fathom the rationale behind why such an action is condemned. It is accepted that these juveniles are very-well capable of the most heinous of crimes but it is necessary to understand the psychology behind the intensity of the crime, the elements that might have driven the individual to commit such an act. The influencing forces are often a reflection of the past familial or societal experiences. This side of the story goes untold or neglected in the face of the brutality exhibited. The basic reason for why courts and the justice system bends in favours of juveniles or strives to render lenient penalties for young offenders despite proof of recidivous nature of crime is not because the severity of the crime is belittled instead it is due to the fact that these juveniles are inept and incapable of effectively resisting their urges, thoughts and impulses. Such instances further validate the contentions made by various scholars that it proves crucial to adopt rehabilitative as well as retributive approaches to reform juvenile delinquents.

**(B) Ambiguity in Determination of Age**

In the juvenile justice system, age plays a vital role in a case. Quite a few cases have been brought before the court of law due to ambiguity in determining the age of the juvenile in the case.<sup>15</sup> As per Indian laws, a juvenile is one who has not yet attained the age of majority, 18 years. All children below the age of 7 years are completely safe and are given blanket immunity from criminal liability for their acts. In certain exceptional cases, children aged between 7-12 have also been tried under the legislation when sufficient proof of comprehension and maturity was disclosed. While a few other countries have extended the bar till the age of 14 years. Such concessions and leniency were given to children keeping in mind that children are young and can be reformed instead of being tried as adults. Sections 82 and 83 in the IPC speaks of infancy and about liability for children below and above the age

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<sup>14</sup> Richards, M. 1997. *Criminal Children, Law and Philosophy*.

<sup>15</sup> Arnit Das v. State of Bihar (2000)5SCC488.

of 7<sup>16</sup>. The discretionary power is conferred to a competent authority to determine whether or not a person is a juvenile under section 49(1) of the Juvenile Justice Act, 2000<sup>17</sup>. The best way to determine the age of an accused is via medical documents and other documentary evidence. In *Bhoop Ram vs. the State of U.P.*, there was a conflict between the details regarding the age mentioned in the medical evidence and the documentary evidence. The court found that in such cases, the documentary evidence will take importance and be considered.

It is a well understood criminal law concept that a person cannot be held liable when mens rea and actus reus or either one is absent. They have been set as the 2 fundamental elements to constitute criminal liability. The famous philosopher Blackstone put forth his views regarding individuals who were too naive and incompetent to commit crimes. He was the one initially categorized children into 2 sections, ones who will attract blanket immunity from the principle of doli incapax, children below 7 years and the rest above 14 years who could be tried as adults in case of criminal liability. He opined that an adult and a child offender above the age of 14 should adhere to the standard laws applied to all.<sup>18</sup> The problem arose when the child offenders were between the age of 7-14. Normally, they would be acquitted considering their age, but on certain special occasions, analysing the nature of crime and mental state, they would be punished as an adult and found guilty.

## VII. POSITION IN UNITED KINGDOM

While the growing concern regarding juvenile delinquency has alarmed individual worldwide, the administrators of the English justice system refuse to change their ideology with respect to the method of handling this issue. They continue to believe that such behaviour and conduct is a result of outside factors and is ephemeral in nature, they say that the children will grow to learn the error of their ways and can be reformed in time with the required type of help. Due to such perspective, the English reformists and its criminal justice system attempts to tackle this issue outside the normal process. They have researched and looked into various other avenues on how to address the issue and have finally adopted a procedure for the treatment of child offenders.

The case of *CH vs. DDP* laid down certain undisputable principles on the matter of juvenile delinquency.

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<sup>16</sup> Indian Penal Code, 1860

<sup>17</sup> Juvenile Justice Act, 2000

<sup>18</sup> [lawyersclubindia.com/articles/a-legal-context-into-the-exploration-of-the-juvenile-justice-system-8234.asp](http://lawyersclubindia.com/articles/a-legal-context-into-the-exploration-of-the-juvenile-justice-system-8234.asp)

1. By default the principle of *doli incapax* will come into play, such a presumption may only be countered by solid proof/evidence that suggests that the juvenile was well aware of what they were doing and its consequences thereof.
2. Interviews are a mandate to understand the mental status of the child and maturity to comprehend. Only valid inferences from such interviews may also be used to counter the principle.
3. Mere evidence to suggest that the omission of the act is equal to the offence is not acceptable by the court.
4. The higher the age of the child, the more likely it is that the court will find them guilty due to the age and maturity level and is relatively easy to show a guilty mind.
5. The behaviour and reaction of the child after the act and prior to the act should be studied to understand the nature.<sup>19</sup>

The Children and Young Person Act 1933 deals with a juvenile matter in the United Kingdom. Under section 50 of this legislation, there is a presumption that no child whose age falls below 10 years can be found guilty for a crime. As per section 16 of this statute, a child aged below 10 years must not be arrested and taken into custody, in case a child is arrested without knowledge of their age and later found to be under the age of 10, he/she must be released instantly under s.34(2) according to the Police and Criminal Evidence Act. The procedure typically followed is that a juvenile can only be detained or maintained in police custody for up to 72 hours. They also have other concessions given to a juvenile such as, a child cannot be kept in a police cell unless no other methods of accommodation are available. It is also a belief that was laid down in the famous case of *J.M. vs. Runeckles*<sup>20</sup>, that juveniles between the age of 10-14 lack maturity and the capacity to understand right from wrong and hence are incapable of an offence.

The UK strictly adheres to the UN Convention on the Rights of the child which mandates that a child must not be treated as an adult offender, instead a humane approach must be adopted and treated with respect. It further suggests that a child must be protected from trial and custody as much as possible. As per the article 37 under this convention, it stipulates that a child must not be imprisoned unless and until all other avenues have been exhausted and it is the only remaining measure to be taken up. Even in such cases, the punishment must be awarded for the shortest duration. While other nations have decided to pick up and establish

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<sup>19</sup> <http://www.legalservicesindia.com/article/2006/Juvenile-Delinquency-in-India,-U.K.-and-U.S.A.html>

<sup>20</sup> (1984) 79 Cr App R 255

severe punishments as an attempt to instil fear in the minds of the young as a way to mitigate the rate of juvenile crimes, the UK prefers to stick to its beliefs and methods of leniency. However, we can see that they have made sincere efforts to balance out the various requirements and opinions regarding juvenile offenders. One such case that is an example of such an attempt is the case of Director of Public Prosecutions vs. K & B, where much to the surprise of many, a 14-year-old child was convicted and found guilty for a salacious rape and assault. This child was found to have a valid intent and hence qualified for the required element of mens rea.

## **VIII. POSITION IN UNITED STATES**

The United States, similar to other nations, earlier had laws that were lenient towards juvenile offenders. However, this approach related to the treatment of offenders changed over time. Refugee and reform homes were established in big cities such as New York and Chicago in the 1800s. This approach was resorted to in order to cater to the special and other private requirements of juveniles and to separate them from the association of other adult criminals. This method also paved the way for reforming the juveniles and possibly deter future crime.

The penal reformists of US too had the view that juveniles had to be reformed and rehabilitation was the primary motive of the laws rather than award criminal liability and punishment to juveniles. They were initially against the imposition of penal liability as well, this was due to the belief that these juvenile offenders were immature and reformatory measures could potentially correct them and bring them back to society. Further, the point of them being impulsive in nature and relatively impressionable minds came into the picture, which could lead to kids becoming delinquents. Such malleable minds of children make them extremely susceptible to unnecessary influences. To add on to such a factor, the impulsive nature of juveniles thwarts their capacity to assess and effectively comprehend the ramifications of their actions. Due to such views which were prevalent in society, policies that spoke of deinstitutionalization and decriminalizing children were established. But their establishment was momentary. Soon, this perception transitioned in the 1900s, after looking at some of the more heinous crimes undertaken, the increase in the extent of violence and magnitude of deviance, these policies were overruled and new laws replaced the old. Under these laws, juveniles were also criminalized for the horrific acts performed. The slogan “adult crime adult time” became a popular belief and spread like wildfire throughout the nation. In a short duration, these laws were accepted and implemented by 38 states in the US. In certain states like South Dakota and Indiana, juvenile aged 10 are also tried as adults. However, the

degree of punishment varies. A child aged 12 may be awarded life imprisonment if found that he/she committed extremely gruesome and appalling crimes.<sup>21</sup> These serious juvenile offenders are maintained in a separate facility with a controlled environment and are given therapy and other rehabilitative programs in an attempt to turn them around. In cases where the crimes are sombre and inexorable are performed by 13-15 year children, the jurisdiction of the juvenile court comes to an end and the case is moved to the adult court considering the nature of the crime.

## **IX. POSITION OF JUVENILE JUSTICE SYSTEM IN INDIA**

Throughout history, there has been a practice of providing concessions to juveniles and pardoning them for crime done in the name of them being a child. We can see that even during the British rule, Lord Cornwallis proposed and brought about “The Ragged School” for delinquents.<sup>22</sup> Historical legislation such as the IPC does not expressly define or provide for juvenile offenders but contains provisions for their safety. Section 82 and 83 of the code says that children below the age of 7 are incapable of being found guilty of a crime due to lack of intent or mens rea<sup>23</sup>. The Apprentice Act spoke of a separate juvenile justice statute as well. This special position of juveniles in the country remains undisturbed to this day unless these juveniles engage in serious crimes with the full knowledge of the nature of the crime, then they are held guilty for the same.

The reformatory school act of 1876 and 1897 hold the position of being positive steps towards the objective of reforming children. This legislation shifted the focus from punishment for crimes of children to rehabilitative measures and reformation. Indian criminal and juvenile justice system is also bound by the UN Convention on the rights of child, similar to the UK. The constitution of India provides sturdy support in this attempt to differentiate the treatment and punishment meted out to juveniles. Under A.15(3) of the constitution, it empowers the state to establish special provision for children and to protect their interests. Further, A. 21, 23 and 24 which speak of fundamental rights of each and every citizen, is also available to the children of the land. A 1974 National Policy for Children was later adopted in furtherance of the objective of rehabilitation and reformation of the juvenile offenders, and for the protection and welfare of other abandoned, neglected, and exploited children. After these various methods were undertaken in an attempt to establish a separate system for

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<sup>21</sup> Dr. Shivani Goswami & Dr. Neelu Mehra, Juvenile Justice Systems in United States and India: Modern Scenario and Much Needed Modifications, *Journal of Law and Criminal Justice* ISSN: 2374-2674.

<sup>22</sup> Dr. Anuradha, 2012, Juvenile Justice: critically juxtaposing the models in india and singapore, Asian Law Institute,.

<sup>23</sup> Indian Penal Code, 1860

juvenile cases, it culminated in the establishment of a larger and extensive statute, the juvenile justice act. This legislation strives to ensure the protection and promotion of the interests of children and provides for child reform and rehabilitative provisions. India is well versed in formulating and establishing exhaustive, and detailed legislation to tackle each issue of the society. Despite such efforts, the rate and magnitude of juvenile crimes in our country have been on a steady rise.

The countrywide, appalling case of Nirbhaya gang rape, was one such case that shook every soul. In this case, a woman of age 23 was brutally raped by 6 males repeatedly on an empty bus. Upon medical examination of the body, it was found that her internal organs were ripped and caused severe internal bleeding as a result of insensitive penetration of an iron rod. This resulted in damaging internal organs to a point of no recovery. Upon further investigation, it was found that the most inhumane of the acts were performed by a minor. He ferociously attacked the woman and ripped her like a mindless animal. One can question whether such a vicious attack from the part of a minor was truly done without any knowledge of the nature and consequences of the act. From the nature of the crime and series of events, it is evident that the minor definitely was aware of what he was doing and went ahead to continue it anyway. He is most definitely not innocent and it will qualify as a valid mens rea. This is not the only case in support that juveniles are capable of horrendous crimes. Plenty of other cases exist in support of the claim of juvenile brutality and to prove their involvement in gory offences such as this.

It has been brought to the notice of the public with the aid of academic research and papers that the Juvenile Justice Act is yet to be implemented to achieve its main objective.<sup>24</sup> There are several factors that pose as an obstacle for the efficient implementation of the legislation such as prevailing domestic violence and abused within their homes, lack of adequately trained officers and staff, improper institutions for education and care, ineffective reformatory methods and procedure within the justice system. As a result of these aspects, juveniles are harassed and victimized on a deeper level affecting the objective of reformation. It is essential that fitting and improved welfare policies and programmes must be implemented to respect the requirements and rights of children. Psychological studies show that children possess a tender mind which is extremely impressionable, therefore, those juveniles who have been exposed or subjected to abuse, harassment or violence in any form tend to inculcate those attributes and exhibit the same as they grow older, such violence and harassment may

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<sup>24</sup> Panakal, J.J. 1961. 'Special Training of Police for Prevention of Juvenile Delinquency', *The Indian Journal of Social Work* and K.a. Shukla, 1983, 'Juvenile Delinquency in India: Research Trends and Priorities'.

even be influenced by the very juvenile system that was established to protect them and prevent them from such behaviour.<sup>25</sup> Sheer conformity with the international protocols and complying with their procedures are insufficient if the basic facets and ideals of the juvenile justice system are not upheld and implemented.

## **X. WHETHER JUVENILES REQUIRE A SPECIAL CRIMINAL JUSTICE SYSTEM: REHABILITATION**

Women, children, senior citizens, the economically and socially backward classes of the society are deemed to be the most vulnerable in society. Women and children are often found to be the primary victims of abuse and exploitation by many. Children are young and relatively new to the world, society and how it works. Their tender ages usually are unable to comprehend many things, due to lack of adequate maturity.

In the current situation, when any news of juvenile offenders or children part-taking in gruesome crimes seeps into the public news channels and media. It culminates in public outrage with crass opinions regarding the justice system, claims of its incompetence and leniency. They fight for harsh punishments to mitigate such future conduct. While such emotions and strong reactions are extremely understandable, it is also reasonable to say that they come from a place of overwhelming emotion rather than reasonability and understanding. The basic principle and philosophy upon which the juvenile justice system is established are to reform these wayward children who may not even completely fathom the ramifications of their actions. Enshrined in our constitution, under article 14 is the principle of equality and equal protection of the law, equal protection of law stipulates that equals are to be treated equally and unequals unequally. Children are not equal to adults, they vary exponentially in terms of physique, mind, thoughts, maturity, etc. If children were treated and tried as adults for every offence it would support the concept of inequality rather than equality. Therefore, a retributive and humane approach is vital to uphold the basic principles. Innumerable children who are unknowing are left bereft in the streets, to survive in this world with barely anything, neglected, they're often the target of violence, abuse and exploitation. All of these factors contribute to the nature and mental functioning of the child. Acts committed by them are done without thought, on impulse, due to lack of education and awareness, it is not the same as those done by adult offenders. Those acts are indeed punishable but such punishment must be meted out in a different method.<sup>26</sup>

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<sup>25</sup> Santrock, J. W. (2011). *Child development*. New York McGraw-Hill Humanities.

<sup>26</sup> Arlene Manoharan and Swagata Raha, 2015, Juveniles Need Reform Not Prison, The Hindu.

Indeed, these very “innocent”, “unknowing” juveniles occasionally engage in the most horrendous crimes like rape, murder, etc. Such offences are not popular, they’re extremely rare. The laws and legislations need to be framed keeping in mind the core reasons and inciting factors of delinquency, not merely to punish the wrong done as it is doesn’t always provide the desired result. It has been studied that when juveniles have been isolated from the world, imprisoned with other criminals, punished, harassed, they experience shame and attract a certain label to their name in society. This culminates in increased criminal and aberrant behaviour. This concept is understood as “secondary deviance”.<sup>27</sup> This endorses the perspective that a rehabilitative and reformatory approach must be adopted in juvenile cases to bring them back to society. Children tend to pick up and learn from their surroundings. If they witness harassment or abuse, they tend to behave the same, if they see a person helping another and being kind, they will be kind and helpful. Similarly, if juveniles are thrown in jail for acts that they may not even truly grasp, they might just end up becoming hardened criminals learning from those around in jail. Thus, the main intention behind the juvenile justice system is to reform such deviant tendencies and turn the erring child.

## **XI. CONCLUSION**

One can assertively state that there can be no man who is a criminal from the very inception, by birth. Such criminal characteristics and behaviour arise due to certain disheartening experiences, circumstances in the individual’s life. Various countries have adopted the rehabilitative and reformatory approach to tackling such cases, strongly hoping that these sidetracked juveniles can be brought back. However, the recent understanding that has taken its position in the spotlight is that some of these juvenile offenders cannot be reformed considering the nature of heinous crimes performed. The pre-requisite mental state and thought process may potentially be etched and such offenders are irredeemable and recidivious, beyond help. Hence, certain nations like the USA has decided to change its approach in juvenile crimes, from a liberal and empathetic approach to a relatively stringent and draconian form.<sup>28</sup> Despite incidents that very clearly exhibit the brutal and unvirtuous acts performed by minors most perversely, India, as well as the UK, seem to be quite adamant on its position in this matter. They refuse to change their methods and approach to juvenile criminal matters even though statistics and evidence show that such savage crimes by juveniles are booming.<sup>29</sup> One of the reasons for such increase may be the confidence that

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<sup>27</sup> Martin R Gardner, *Right of Juvenile Offenders to be Punished: Some Implications of Treating Kids as Persons*

<sup>28</sup> A. Clayton & Kethineni, Sessa, *Comparative Delinquency India and the United States*, Garland Publishing.

<sup>29</sup> NCRB reports that from 2003 to 2013 various crimes committed by juveniles (age group 16-18 years) have

the children have that they are well protected by the law and this gives them the audacity to flout the laws. The heart-piercing case of Nirbhaya stands as an example for the same when a juvenile was not found guilty in the eyes of law despite the concrete evidence advanced to show his mens rea, actus reus amounting to guilt. Juveniles who are capable of executing such crimes after careful preponderance and premeditation, most certainly cannot be pardoned merely because of their age. They are not blameless and innocents. While reformatory therapy and rehabilitation could help them mend the error of their ways, it is not a guarantee, once such an act is done it is engraved in time and their minds. That is an eternal part of them and they can go back to the life of crime at their discretion. Another issue in the Indian juvenile justice system is that the degree of crime and the mental intent plays no part in the case of a juvenile criminal offender, paramount importance is given to an inconsequential number, the age, and the case is decided thereof.<sup>30</sup> This seems to be contravention with the very basic and fundamentals of criminal law and justice.

The United States has considered this point and has revised its laws and policies on the matter, especially after witnessing the degree of crime. They also support the idea of reformation and have established facilities for the same, but they have not completely neglected the use of stringent laws when the case demands one. In conclusion, while India and the UK are quite sympathetic and have their hearts in the right place, looking at the deeper and root cause of the issue. They are yet to understand that only a lenient approach may not help their cause. It is true that the welfare of the child has to be looked into but only so far as the child is a child in mind, heart and behaviour. Juveniles should not be given draconian punishments for all crimes, they must not be placed at par with adult criminals. However, when the situation calls for a harsh punishment, in extremely rare cases, as a last resort, it has to be awarded to uphold justice.

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increased by 59.7%, <http://ncrb.gov.in/CD-CII2013/CII13-Tables/Table%2010.7.pdf>.

<sup>30</sup> Umesh Chandra v. State of Rajasthan 1982(2) SCC 202, a three judge bench of the Supreme Court held the Act is applicable on the child who at the date of occurrence is of particular age. The age on the date of trial is not to be determined. In the case of Pratap Singh v. State of Jharkhand (AIR 2005 SC 2731), the court said that the relevant date to determine the age of juvenile would be the date on which the crime is committed and not the date on which the juvenile is produced.