

Chapter 2-The Juvenile Justice System in India

Objectives

- To examine the legislative history that has guided the development of separate justice system for juveniles in India
- To describe the legal framework and structure of current juvenile justice system in India
- To examine various theories of the causation of juvenile delinquency for the better understanding of the concept of juvenile delinquency
- To examine and evaluate the nature and extent of crimes committed by juveniles/children in conflict with law in India

Chapter 2- The Juvenile Justice System in India

Juvenile delinquency represents one of the most critical socio-legal issues which have been extensively discussed by the mass media, politics and the civil society. The etymological meaning of the word '*juvenile*' is a 'young person' and '*delinquency*' is 'the failure or omission of duty; a crime'.⁵⁷ The meaning of the word therefore is 'young person committing a crime'.⁵⁸ From the legal perspective, it means a person who has violated the penal law but, has not reached the age of criminal majority. The phrase 'juvenile delinquency' clearly comprises of two elements -*age* (young person defined by age) and *offence*. In countries like USA certain acts committed by juveniles such as truancy, consumption of alcohol etc constitute offence known as status offences but, are not considered so when such act is carried out by adults. The JJA 2015 covers two categories of children, *children in need of care and protection* and *children in conflict with law*. It provides for separate procedures and institutions to deal with these categories of children. However, in the Indian context the usage of the term 'child in conflict with law' is restricted to the offences punishable under the Indian Penal Code or any other special law. The countries around the globe often use the phrase juvenile delinquent in their legal and policy framework interchangeably with child in conflict with law or youth offender etc. In India, *child in conflict with law* means a child who is alleged / found to have committed an offence but, has not completed 18 years of age on the date of commission of offence.⁵⁹

It is widely recognized that juvenile delinquents need a separate justice system and distinct treatment from their adult counterparts. However, there have been conflicting approaches adopted to address juvenile crime across the globe. The development of juvenile justice system in the world is characterised by conflict between two approaches- rehabilitation and punishment. The first juvenile court which was established in Illinois, USA in the year 1899 was based on the principle that rehabilitation is a better response to juvenile delinquency.⁶⁰ Subsequently, the

⁵⁷ N.L.Mitra, *Juvenile Delinquency and Indian Justice System*, 18 (Deep and Deep publications, 1988)

⁵⁸ Ibid

⁵⁹ Sec 2(13), JJA 2015

⁶⁰ The History of Juvenile Justice, ABA Division for Public Education, Dialogue on Youth & Justice, at 5, available at

rehabilitation model of juvenile justice became increasingly popular in other parts of the world too. The philosophical foundation for the separate juvenile court was based on the doctrine of *parens patriae* evolved by the English courts of Chancery or equity.⁶¹ The doctrine permitted the State/ juvenile courts to intervene, take custody and to care for the children when the parents failed to protect their children, thus paving way for the juvenile courts to assume jurisdiction over the dependent, neglected and the delinquent children.⁶² The juvenile courts dealt with juvenile delinquents differently by following informal and child friendly procedures without procedural safeguards and focused only on the rehabilitation of youth regardless of the gravity of the offence committed by them. However, with the passage of time, the so-called rise of serious crimes committed by juveniles raised serious concerns for public safety leading to deterrent approaches in juvenile justice practice. This system of pure rehabilitation approach to juvenile justice persisted until about 1970's and the first country to modify this approach was USA by deciding a series of landmark cases- *Kent v. United States* (1966), *re Gault* (1967) etc.⁶³ These decisions recognized due process rights of juvenile delinquents transferred to adult courts to be tried as an adult in certain cases. This *punitive based approach* focused on due process rights, public safety, punishment and accountability of juvenile delinquents. Many countries across the world have gone through this similar transition and the purpose of juvenile justice system has evidently changed from protecting children to protecting society at large. Nevertheless, rehabilitation continues to be the ultimate goal of juvenile justice system. However, even in the present day, there is huge discussion in almost all the countries about the most appropriate way of dealing with juvenile delinquents as neither the rehabilitative approach nor the punitive approach serves the ends of youth justice.⁶⁴

<https://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>, last seen on 14/04/2015

⁶¹ H.Warren Dunham, *The Juvenile Court: Contradictory Orientations in Processing Offenders*, 23 *Law and Contemporary problems* 508, 509 (Summer 1958), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2763&context=lcp>, last seen on 30/05/2017

⁶² *Ibid*

⁶³ Josine Junger- Tas, *Trends in International juvenile justice: What conclusions can be drawn?* *International Handbook of Juvenile Justice*, 505-532 (2008), available at http://mike.rivait.net/Files_October1_2008/Trends%20in%20Internation%20Juvenile%20Justice.pdf

⁶⁴ Glenn M Stuart, *Book Review: Rethinking Juvenile Justice, by Elizabeth S Scott and Lawrence Steinberg*, 47 *Osgood Hall Law Journal* 167, 168 (2009), available at <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1167&context=ohlj>

2.1 Legislative History of Juvenile Justice System in India

The researcher seeks to study the legislative history of juvenile justice system in India and closely analyze the structural changes that took place in the course of its development. Therefore, this section of the research provides discussion on the selected chronology of legislations in India dealing with children in conflict with law. It has been divided into two sections- (A) Prior-Independence and (B) Post-Independence.

(A) Prior- Independence

Both the Hindu and Muslim laws had provisions for the maintenance of children and the primary responsibility to bring up children was that of parents and family.⁶⁵ The Hindu law ordained the King, as was the case with the equity courts in England, to take care of the child's property till he came of age and became capable of taking care.⁶⁶ Although, there was no specific reference to juvenile delinquents, they showed differential treatment in certain offences and adoption of the principle of lesser culpability of children for their criminal activities.⁶⁷

Undoubtedly, the initial legislative development of juvenile justice system in India can be traced back to the days of British rule in India. This period saw numerous legislations and jail reform committee reports which sowed the seeds for the complete segregation of children from the adult criminal justice system. A plethora of legislations were enacted during the British period covering various subjects pertaining to children such as eradication of child labour, female infanticide, care and protection etc. But, there was neither any legislation nor any reference made to juvenile delinquents or child offenders until the passage of the *Apprentice Act, 1850*.⁶⁸ The Apprentice Act empowered the magistrates to obligate children between the ages of 10 and 15 to serve out their sentences as apprentices to learn a trade, craft or employment instead of sending them to prison for petty offence.⁶⁹ This marked the

⁶⁵ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 57 (2004) ; *Mayne's Treatise on Hindu law and Usage* at 285 (N.Chandrashekar Aiyer, 11th ed., 1953); Shyakh Burhanuddin Abu Bakr Al Marghinan, *The Hedaya- Commentary on the Muslim Laws*, 138, 146 (2nd ed., 1870) (Translated by Charles Hamilton)

⁶⁶ Ibid; *Manusmriti*, Chapter Eight, Shloka 28

⁶⁷ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 57, 58 (2004)

⁶⁸ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 60 (2004)

⁶⁹ Ibid

starting point of legislative recognition of preventing juvenile delinquents from being sentenced to adult prisons.

The Indian Penal Code, 1860 provided that a child under the age of seven years is incapable of committing any offence due to lack of mens rea and excused them from all criminal responsibility.⁷⁰ A child aged between 7 and 12 years is said to possess mens rea and can be criminally held responsible if it is proved that the child at the time of committing of the crime knew the consequences of his wrongful act.⁷¹ This *doli incapax* presumption holds relevance even today in the Indian legal system.

The Whipping Act which permitted the punishment of whipping for juveniles in certain cases was passed in **1864** mainly for two reasons- higher rate of recidivism among juveniles and an escalation in the number of juvenile offenders in jails.⁷² The Act provided whipping as a punishment for the juvenile offenders who were guilty of offences not punishable with death under the Indian penal Code.⁷³ It was believed that the imposition of whipping as a punishment would reduce the population of juvenile offenders in jails and render the establishment of reformatory homes unnecessary.⁷⁴ The punishment was inflicted in the way of school discipline with a light rattan not exceeding thirty stripes which took place in the presence of Justice of peace or authorized officer and medical officer.⁷⁵ In case of adults the punishment of whipping was awarded in addition to imprisonment under the Indian Penal Code and was inflicted with any instrument and on any part of the person as directed by the local Government not exceeding one hundred and fifty lashes.⁷⁶ It is evident that this inhuman act differentiated between the children and adult by adopting comparatively less severe among the worst treatment towards children. Though, by the present standards the juveniles then were punished in a barbaric way including physical punishments such as whipping – it becomes apparent that the Court took account of offender's age and administered less severe punishment to young people than adults.

Then the **Jail Committee** which was constituted in **1864** shortly after the passing of the Whipping Act reported that the juvenile delinquents were the important issues

⁷⁰ Sec 82, The Indian Penal Code, 1860

⁷¹ Sec 83, The Indian Penal Code, 1860

⁷² Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 61 (2004)

⁷³ Sec 5, The Whipping Act, 1864

⁷⁴ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 61 (2004)

⁷⁵ Sec 10, The Whipping Act, 1864.

⁷⁶ *Ibid*

which needed urgent legislative response and Whipping Act should not override the need of prison reforms including reformatory schools.⁷⁷ Even though there was urgent need of reformatory schools for delinquent children in view of bad prison conditions as suggested by the Jail committee report 1864, the real impetus for the passing of the Reformatory Schools Act, 1876 was provided by the then Lt. Governor of Bengal, Sir Richard Temple, a visionary who felt that it was necessary to send the juvenile offenders to reformatory homes rather than jails where they would come into contact with older hardcore criminals.⁷⁸

The Reformatory Schools Act, 1876 which was modified in the year **1897**, was a historic and notable legislative attempt to place juvenile delinquents in separate institutions like reformatory schools rather than adult jails. It dealt only with boys under the age of 15 years convicted of any offence punishable with transportation or imprisonment, termed as youthful offenders. The law permitted the provisional Government to establish Reformatory schools or use schools maintained by private persons having basic arrangements of water supply, food, clothing, bedding along with the means of giving industrial training to youthful offenders.⁷⁹

The Court was empowered to send youthful offenders to such reformatory schools for a period of three to seven years instead of undergoing their sentence in adult jails liable to be subjected to any rules made by the State Government after having taken into account the nature of their offences or other considerations⁸⁰ but they could not be kept in these schools after they attained the age of eighteen years.⁸¹ These youthful offenders over the age of 14 years could be licensed out to reliable persons named in the license or authorized officers of the Government agreeing to take charge of and employ such youth at some trade/ occupation not exceeding three months.⁸²

It is pertinent to note that the pre-independent India through this legislation marked the prudent beginning of the juvenile justice system which accepted the need to provide differential treatment to children upto the age of 18 years by placing them in reformatory schools and giving priority to industrial training. The Act not only

⁷⁷ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 61 (2004)

⁷⁸ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 63 (2004)

⁷⁹ Sec 5, The Reformatory Schools Act, 1897

⁸⁰ Sec 8, The Reformatory Schools Act, 1897

⁸¹ Sec 13, The Reformatory Schools Act, 1897

⁸² Sec 18, The Reformatory Schools Act, 1897

emphasized on confinement of juvenile offenders in institutions for reformation but, apparently non- institutional treatment and training was given acknowledgement where youthful offenders were licensed out to reliable persons if appropriate employment could be found out for them. Despite the noble intention of this legislation the institutions degenerated into adult prisons characterised by overcrowding.⁸³

The Code of Criminal Procedure (Crpc) in India was enacted a number of times during the British Rule but, it was the **Code of Criminal Procedure, 1898** which provided a uniform law of criminal procedure for India until the enactment of 1973 Code. The Code empowered the Court to confine youth offenders under the age of 15 years in any reformatory establishment by the Provincial Government providing training in some branch of useful industry.⁸⁴

The Indian jail Committee constituted in the year **1919-1920** played a significant role in the development of juvenile justice system in India. The observations and recommendations were realistic as the committee had not only examined the entire prison system in the country but, also visited and inspected the prisons, borstal institutions, industrial and reformatory schools in UK, USA, Japan, Philippines and Hong- Kong. The Committee observed that the juvenile delinquent is predominantly the creation of unfavorable environment and is more amenable to reformation, thus entitled to special treatment and fresh start under better surroundings.⁸⁵

It referred to the young offenders by categorizing them into two groups - **1. Child and Young person** **2. Adolescents**. It relied on English Children Act, 1908 and Madras Children Act, 1920 which defined a **child** as a person under the age of fourteen and **young person** as a person aged fourteen and above but under sixteen.⁸⁶ At the conclusion of childhood, on attaining the age of 16 years, the Committee recommended the limits of age of **adolescence** from sixteen to twenty one.⁸⁷

1. **Child and Young person**- It emphasized the prohibition of the imprisonment of child offenders falling under the category of **child and young person** and further

⁸³ See Indian Jail Committee, 1919-1920

⁸⁴ Sec 399, The Code of Criminal Procedure, 1898

⁸⁵ Report of the Indian Jail Committee, 1919-20, p. 193, para 363

⁸⁶ Ibid at 194, para 364

⁸⁷ Report of the Indian Jail Committee, 1919-20, p. 204, para 388

hinted for the adoption of Madras Act, 1920 throughout the country which manifested provisions similar to English Act, 1908. The English law in fact had laid down that the children under the age of fourteen could not be sentenced to imprisonment or penal servitude and children aged fourteen and above but under sixteen could not be sentenced to penal servitude but, could only be sentenced to imprisonment if, the court certified that the young person in question was so unruly or so depraved that he could not be sent to any other place of detention.⁸⁸

The Committee advocated the creation of remand homes in India to place the children pending trial or inquiry as in the course of examination it discovered children as young as six years pending trial were detained in jail with grown up prisoners.⁸⁹ It also recommended the establishment of Children Courts in India.

The United States by the time mentioned practiced non-institutional treatment with respect to reformation of child offenders. The child offenders were handed over to the private families temporarily or permanently adopted instead of sending them to schools and orphanages.⁹⁰ There was an understanding in America that reformatory institutions should be arranged on cottage plan under which boys or girls would be placed in small cottages or bungalows under the superintendence of a house mother and in the case of older boys, of a man and his wife.⁹¹ The report indicated that these houses with small numbers not exceeding 20 or 25 were likely to reproduce to some extent, the atmosphere of family life.⁹² It also observed that the recommendation of incorporation of this American cottage system of housing the child offenders with private families were unrealistic for India due to dominant caste system practices.⁹³ In 1646, the General Court of Massachusetts Bay Colony had passed the Stubborn Child Law, decreeing that teenage boys who disobeyed their parents could be put to death.⁹⁴ In fact, as late as 1971, the highest state court in Massachusetts reaffirmed the Massachusetts Stubborn Child Law and ruled that children have no right of dissent

⁸⁸ Ibid, at 195

⁸⁹ Report of the Indian Jail Committee, 1919-20, at 195 at para 368

⁹⁰ Report of the Indian Jail Committee, 1919-20, at 201 at para 379

⁹¹ Ibid

⁹² Ibid

⁹³ Ibid

⁹⁴ Too young for life without parole, Los Angeles Times (15/3/2012), available at <http://articles.latimes.com/2012/mar/15/opinion/la-oe-ellison-sentence-20120315> , last seen on 29/04/2018

against the reasonable and lawful commands of their parents or legal guardians.⁹⁵ This law was not repealed until 1973.⁹⁶

2. **Adolescents**-The committee concluded that the adolescents committing crimes should not be sent to ordinary jails where they come into contact with the adult offenders but, rather subjected to separate reformatory schools providing with education as well as religious and moral teaching.⁹⁷ For this class of offenders, it favored the creation of *Special Adolescent Institutions* which would be basically reformatory in character.⁹⁸ On the other hand it endorsed serious interventions in case of adolescents guilty of grave crimes such as murder, culpable homicide, rape etc. The committee favored the housing of such class of adolescents in *juvenile jails* closely resembling adult jails where labour and education were to be administered similar to adult jail system and no ceiling on detention except the sentence of the Court.⁹⁹

In 1920, the State of Madras had already passed the first **Children Act**¹⁰⁰ with provisions relating to the establishment of approved schools, juvenile courts, prohibition of death sentence, treatment of youthful offender committing serious offence etc. The Act defined youthful offender as a person under the age of eighteen convicted of an offence punishable with imprisonment.¹⁰¹ It dealt with youthful offenders by classifying them into two categories- (a) *Children aged 12 years and above but below 18* years convicted of an offence punishable with imprisonment could be sent to senior approved schools for a minimum period of two years and a maximum of five years but, not extending beyond the age of eighteen in addition to or in lieu of the sentence.¹⁰² Apart from this detention the youthful offender could be

⁹⁵ MAJ Herbert A Denson , *Child Abuse* at 10, available at <https://www.ncjrs.gov/pdffiles1/Digitization/46809NCJRS.pdf>

⁹⁶ Ibid

⁹⁷ Report of the Indian Jail Committee, 1919-20, at 205, para 389

⁹⁸ Report of the Indian Jail Committee, 1919-20, at 207, para 395

⁹⁹ Ibid, para 394

¹⁰⁰ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*,67 (2004)

¹⁰¹ Sec 3(3), The Madras Children Act, 1920

¹⁰² Sec 23 & 24, The Madras Children Act, 1920

placed under the custody of parent/ guardian / adult relative/ under the supervision of a probation officer or any other suitable person.¹⁰³

(b) *In cases of children below 12 years* committing an offence punishable with imprisonment, the court could order such persons to be sent to junior approved school for a minimum period of two years without any limit on maximum period but not extending beyond the age of 18 years.¹⁰⁴

The Act prohibited the death and imprisonment of youthful offenders.¹⁰⁵ But in case of youthful offenders convicted of an offence of grave and serious nature, the court could order such offender to be sent a place of safe custody where the period of detention shall not exceed the maximum period of imprisonment which the child could have been sentenced for the offence committed.¹⁰⁶ It provided for the establishment of separate juvenile courts to hear charges against children.¹⁰⁷

The Madras Act, 1920 and the recommendations of the Indian jail Committee 1919-1920 impelled the region of Bengal and Bombay and thus, enacted its Children Act, 1922 and 1924 respectively. Similarly, many regions in pre-independent India soon followed them and enacted their legislation concerning children in early and later 1940's. The Children's Acts in all the states of India adopted a similar model but, they differed noticeably in some prominent aspects. For instance, the Bengal Children Act, 1922 defined "youthful offenders as persons under the age of sixteen years convicted of an offence punishable with imprisonment and transportation". It provided for the establishment of reformatory schools and industrial schools for placing child offenders aged 12-16 and below 12 years respectively¹⁰⁸ thus differing from the Madras Act. Another line of development was the enactment of the Borstal Schools Act for detention, training, treatment of adolescent offenders in Borstal institutions and Punjab was the first state in starting a Borstal School as far back as in 1912.¹⁰⁹ The Borstal Schools Act has been enacted in different states and is still relevant today. Nine States namely, Tamil Nadu (12) and Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan & Telangana (1 each) have reported borstal

¹⁰³ Sec 25, The Madras Children Act, 1920

¹⁰⁴ Sec 23 and 24, The Madras Children Act, 1920

¹⁰⁵ Sec 22, The Madras Children Act, 1920

¹⁰⁶ Sec 27, The Madras Children Act, 1920

¹⁰⁷ Sec 36, The Madras Children Act, 1920

¹⁰⁸ Sec 22, The Bengal Children Act, 1922

¹⁰⁹ Sunil K Bhattacharya, *Juvenile Justice An Indian Scenario*, 83(2000)

schools in their respective jurisdiction.¹¹⁰ The Borstal schools come under the prison administration of the State.

(B) Post-Independence

The scenario changed after the British India became independent in 1947 which was followed by coming into force of the Constitution. The Constitution incorporated provisions on development & protection of children. It provides for protective discrimination in favour of children, “*Nothing in this Article shall prevent the State from making any special provisions for women and children.*”¹¹¹ Also, lack of uniformity among the State legislations and the recommendations of the UN Declaration of the Rights of the Child in 1959 to enact a special law for children led to the passage of the first central legislation i.e. the Children Act, 1960.¹¹²

The Children Act 1960 was made applicable only to the Union territories and the States continued with their existing separate legislation by making suitable modifications. The salient features of the Act are as follows-

- It defined a child as a boy under the age of sixteen and a girl under the age of eighteen indicating discrimination.
- It provided for **two distinct adjudicatory bodies** – *Childrens Courts* in relation to *delinquent children* and *Child welfare boards in relation to neglected children.*
- It introduced separate system of institutions- *Children Homes for the reception of the neglected children* and *Special Schools for delinquent children.* These institutions were mandated to provide the child not only with shelter and education but, also make provision for the development of personality and suitable training for reformation. It provided for the

¹¹⁰Prison Statistics India, 2015, National Crime Records Bureau available at <http://ncrb.gov.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>, at 2

¹¹¹ Article 15 (3), The Constitution of India

¹¹² Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 83 (2004)

establishment of *observation homes for the temporary reception* of both delinquent and neglected children during the pendency of any inquiry. It provided for establishment of *after care organizations* to help the delinquent / neglected children in reintegration to the mainstream society after they leave special schools/ welfare homes.

- Apart from non-institutional measures, the delinquent children could be sent to special schools for a period of not less than three years in case of boys over fourteen years and over sixteen years in case of girls. The court could reduce or extend this period of stay but, not beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl.¹¹³ In case of other child there was no ceiling on the period of stay in special schools and the courts could send such children until they ceased to be a child.
- The Act prohibited the death sentence and imprisonment of child delinquents but where a child aged 14 and above committed an offence of serious and grave nature and the Children's court was satisfied that the existing special schools or measures were not suitable, it could order the child to be placed in a place of safe custody and report to the Administrator of Union Territory who would make arrangement for the detention of the child not exceeding the maximum period of imprisonment to which the child could have been sentenced for offence committed.¹¹⁴

Even though States modified their Children's Act to align it with the central legislation of 1960, the differential age limit defining a child continued in states which resulted in discrimination. The treatment, duration of stay at special or reformatory homes varied from State to State.¹¹⁵ India declared its first National policy for children in 1974 which included that children who are socially handicapped, *who have become delinquent* or have been forced to take to begging or are otherwise in

¹¹³ Sec 21(1)(c), The Childrens Act, 1960

¹¹⁴ Sec 22, The Children Act, 1960

¹¹⁵ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 84 (2004)

distress, shall be provided facilities of education, training and rehabilitation and will be helped to become useful citizens.¹¹⁶

In 1985, The United Nations General Assembly adopted UN Standard Minimum Rules for the Administration of Juvenile justice also known as Beijing rules. It was the first international instrument on juvenile justice. It became imperative for India to bring the juvenile justice system in the country in conformity with the Beijing Rules. Also in *Sheela Barse v. Union of India*, the Hon'ble Supreme Court advised the Government to initiate the parliamentary legislation to bring complete uniformity with regard to various provisions relating to children in the entire territory of the country so that no child under any circumstances is lodged in jail or police lockup.¹¹⁷

The consequence of these two considerable events¹¹⁸ led to the passage of *Juvenile Justice Act, 1986* which was made applicable to the whole of India except the State of Jammu and Kashmir. Some of the notable features of the Act were-

- The Act used the term *juvenile* which defined *boys* as under the age of *sixteen* and *girls* under the age of *eighteen* indicating discrimination.
- It provided for *separate adjudicatory bodies* – *Juvenile welfare Board* in relation to *neglected juvenile* and *Juvenile Court* in relation to *delinquent juveniles*.
- It provided for the establishment of *Juvenile Homes for housing neglected juvenile* and *special homes for the housing of delinquent juveniles*.
- The Act provided for the establishment of *observation homes* for the temporary reception of juveniles during the pendency of inquiry.

¹¹⁶ National Policy for Children, 1974 available at https://childlineindia.org.in/CP-CR-Downloads/national_policy_for_children.pdf , last seen on 29/04/2017

¹¹⁷ 1986 3 SCC 632

¹¹⁸ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 85 (2004)

- The Act provided for the establishment of *after care homes*.
- Apart from non-institutional measures, the delinquent juvenile could be sent to special home for a period of not less than three years, in case of boys over fourteen years and in case of girls over 16 years.¹¹⁹ In case of any other juvenile, there was no limit on the period of stay and the courts could send such children until they ceased to be a juvenile. It also empowered the juvenile courts to reduce or extend the period of stay but not beyond the age of eighteen years in the case of a boy and twenty years in case of a girl.¹²⁰
- The Act prohibited death sentence and imprisonment of juvenile delinquents but, a juvenile aged fourteen and above found to have committed an offence of serious and grave nature could be ordered to be kept in a place of safe custody not exceeding the maximum period of imprisonment to which the child could have been sentenced for offence committed.¹²¹

The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereafter JJA 2000) came into force on 28.02.2001 repealing the earlier Act of 1986. The frequent demands for the replacement of the Juvenile Justice Act, 1986 in seminars and conferences, adoption of similar approaches for both the delinquent juveniles and neglected juveniles, large scale dissatisfaction with the functioning of Juvenile Justice Act, 1986 etc triggered the passage of JJA 2000.¹²² Moreover, the United Nations Convention on the Rights of the Child (UNCRC), 1989 was ratified by India in the year 1992. In order to align with UNCRC & other international standards it became necessary for India to re-enact its 1986 Act.

¹¹⁹ Sec 21, The Juvenile Justice Act, 1986

¹²⁰ Ibid

¹²¹ Sec 22, The Juvenile Justice Act, 1986

¹²² R. N.Choudhary, *Law relating to Juvenile Justice in India*, p.22 (2012)

Some of the notable features of the JJA 2000 are-

- The Act removed the discriminatory definition of child/juvenile by prescribing a uniform age of eighteen years for both boys and girls to be treated as a child which is based on the UNCRC.
- The Act mandated the establishment of separate *adjudicatory bodies* in every district- *Juvenile Justice Board in relation to juvenile in conflict with law* and *Child welfare Committee in relation to child in need of care and protection*. The Juvenile Justice Act, 1986 had provided that if, there was no juvenile Court constituted for any area, then these powers could be exercised by District Magistrate/ Sub-divisional Magistrate/ Metropolitan Magistrate or Judicial Magistrate of first class as the case may be.¹²³
- It provided for the establishment of *Special Juvenile Police units* to specifically handle matters relating to children.
- The Act provided for the establishment of *Special Homes for the housing and rehabilitation of juvenile in conflict with law* and *Children Homes for the housing of the child in need of care and protection*.
- It provided for the establishment of *Observation homes* for the temporary reception of juveniles alleged to be in conflict with law during the pendency of their inquiry.
- The vocabulary used in the Act such as child in need of care and protection (previously known as neglected child), juvenile in conflict with law (previously known as delinquent child), Juvenile Justice Board (Juvenile Court) etc made the Act more child friendly reducing the stigmatization.

¹²³ Sec 7(2), The Juvenile Justice Act, 1986

- The juvenile in conflict with law could be sent to special home for a period of three years which could be reduced by the Board after consideration of the nature of the offence and circumstances of the case.¹²⁴
- The Act prohibited death sentence and imprisonment of juvenile in conflict with law but, in case of a juvenile aged 16 years and above found to have committed an offence of serious and grave nature, could be ordered by the Board to be kept in a place of safety (arranged by the State Government) not exceeding the period of three years.¹²⁵

The Delhi gang rape case of a para-medical student (Dec 16, 2012) jolted the country when the media reports showed that it was the minor who enticed the victims into the bus and that he was the most brutal of all. This heinous horrific incident sparked public panic with some of the conservative sections demanding the lowering of the age of criminal responsibility from eighteen to sixteen along with cries to increase sanctions associated with juvenile crimes. On the other hand, the letter of the member of the National Commission for the Protection of Child Rights (NCPCR) to the Press Council of India in 2013 cited that the investigation established no record to show that juvenile involved in the Delhi gang rape case was the most brutal and indicated that he was merely a secondary perpetrator in the crime.¹²⁶

The consequence of this predictable reaction was the passage of the Juvenile Justice (Care and Protection of Children), Act 2015. The Statement of Objects and Reasons of the Juvenile Justice (Care and Protection of Children) Bill, 2014 stated that the JJA 2000 was ill-equipped to handle the children in the age-group of 16-18 years by relying on the data collected by NCRB which established increased cases of heinous crimes committed by the children in the age group of 16-18 years. It also highlighted the issues that arose in the course of implementation of JJA 2000 such as inadequate facilities, quality of care and rehabilitation, measures in Homes, increasing incidents of abuse of children in the institutions etc which made it necessary for the review of

¹²⁴ Sec 15(g) , The Juvenile Justice (Care and Protection of Children) Act, 2000

¹²⁵ Sec 16(1) & 16 (2) , The Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

¹²⁶ Dhanya Rajendran, *Busting myths being propogated by media about Nirbhaya's juvenile rapist* , The News Minute (18/12/2015) available at <http://www.thenewsminute.com/article/busting-myths-being-propagated-media-about-nirbhaya%E2%80%99s-juvenile-rapist-36894>, last seen on 11/06/2016.

the 2000 Act.¹²⁷ The Ministry highlighted that the involvement of juveniles in publicized cases as one of the reasons to pass the existing law.¹²⁸ According to this new legislation, a child in conflict with law cannot be prosecuted under the Indian Penal Code but ‘rehabilitated’ in special homes in a homey atmosphere for a maximum period of three years under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015. On the other hand, the legislation also permits the juveniles aged between sixteen and eighteen years to be tried as adults in Children’s Courts for heinous offences¹²⁹ after assessing the physical and mental capacity of the child.

2.2 Legal framework and Structure of current Juvenile Justice System in India

The Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 15.01.2016 repealing the earlier Act of 2000. The object of the JJA 2015 is to consolidate and amend the law relating to children alleged and found to be in conflict with law¹³⁰ and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of child and for their rehabilitation through processes provided and institutions established under the enactment.¹³¹ It was expedient to re-enact the Juvenile Justice (Care & Protection of Children) Act, 2000 to make it a comprehensive legislation for child in conflict with law and child in need of care and protection bearing in the mind the standards prescribed in the UN Convention on the Rights of the Child, UN Standard Minimum rules for the Administration of Juvenile Justice (1985), UN Rules for the protection of juveniles deprived of their liberty (1990) and other related international instruments.¹³²

¹²⁷ Statements of Objects & Reasons to the Juvenile Justice (Care & Protection of Children) Bill, 2014

¹²⁸ Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care and Protection of Children) Bill*, 2014 p.12

¹²⁹ Sec 33 of the Juvenile Justice (Care and Protection of Children) Act, 2015- “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more

¹³⁰ Sec 2(13) defines “Child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

¹³¹ Preamble to the JJA 2015

¹³² Ibid

The Central Government had framed the Juvenile Justice (Care and Protection of Children) Model Rules, 2007 (hereafter JJ Model Rules 2007) which served as guidelines for the States for the implementation of the Juvenile Justice (Care & Protection of Children) Act, 2000. However, the States either followed the rules in its entirety or in parts and due to lack of statutory status it was subjected to different interpretations by the stakeholders.¹³³ To bring uniformity in the adoption of these Model rules among all the States and avoid confusion due to different interpretations, several provisions of the Model Rules, 2007 have been included in the Juvenile Justice (Care and Protection of Children) Act, 2015.¹³⁴ The Juvenile Justice (Care & Protection of Children) Model Rules, 2016 (hereafter JJ Model Rules 2016) has been notified on 21st September, 2016. The Central Government has framed this model rules on various matters relating to JJA 2015 with respect to which the State Government is required to make rules to carry out the purposes of the Act.¹³⁵ In this part of the chapter, the researcher intends to provide a brief description of existing legal framework and structure of juvenile justice system (child in conflict with law) in India which are as follows-

(a) Competent Authorities and Institutions dealing with children in conflict with law under the JJA 2015

The Indian legal framework relating to children in conflict with law i.e JJA 2015 provides for the establishment of competent authorities and institutions to specifically deal with such children. The police referred to as Child Welfare Police Officer (hereinafter referred to as CWPO) mostly represent the first point of contact for the juveniles coming into conflict with law. Juvenile Justice Board (hereinafter referred to as JJB) is the competent authority to adjudicate the matters relating to children in conflict with law. The legislation also provides for the establishment of correctional institutions for the housing of such children.

¹³³Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care and Protection of Children) Bill*, 2014 at 10

¹³⁴ Ibid

¹³⁵ Sec 110(1), JJA 2015

(i) Child Welfare Police Officers and Special Juvenile Police Unit

All police stations may name atleast one of its officers as CWPO specifically authorized to handle matters relating to children either as victims/perpetrators.¹³⁶ It is mandatory for the State Government to establish atleast one Special Juvenile Police Unit (hereinafter referred to as SJPU) in each district & city comprising of all the child welfare police officers of such district/city and two social workers of which one shall be a woman.¹³⁷ The main purpose of the SJPU is to harmonize all functions of police concerning children. In order to carry out their functions effectively, all police officers of the SJPU are mandated to receive special training at induction.¹³⁸

(ii) Juvenile Justice Board

The JJA 2015 mandates the State Government to establish at least one Juvenile Justice Board (hereinafter referred to as JJB) for every district to adjudicate matters relating to children in conflict with law.¹³⁹ JJB consists of three members - Metropolitan Magistrate or a Judicial Magistrate of First Class (hereinafter referred to as Principal Magistrate) and two social workers of which one shall be a woman.¹⁴⁰ They shall exercise the same powers conferred on Metropolitan Magistrate/ Judicial Magistrate of First Class by the Code of Criminal Procedure.¹⁴¹ These members must possess mandatory eligibility requisites for the appointment to JJB. The Principal magistrate must have atleast three years experience and the social workers must have been actively involved in health, education or welfare activities pertaining to children for atleast seven years or practitioner holding a degree in child psychology, psychiatry, sociology/ law.¹⁴² On the other hand, to further secure competence of the members of the Board, it mandates the requirement of induction training for such members in dealing with children in conflict with law.¹⁴³

¹³⁶ Sec 107(1), JJA 2015

¹³⁷ Sec 107(2), JJA 2015

¹³⁸ Sec 107(3), JJA 2015

¹³⁹ Sec 4(1), JJA 2015

¹⁴⁰ Sec 4(2), JJA 2015

¹⁴¹ Ibid

¹⁴² Sec 4(2) & 4(3), JJA 2015

¹⁴³ Sec 4(5), JJA 2015

(iii) Institutional arrangements for housing the children in conflict with law

The law mandates the State Government to establish atleast one observation home and special home for every district or group of districts either by itself or through voluntary or non-Governmental organizations.¹⁴⁴ The Observation Homes provides for the temporary reception of the child alleged to be in conflict with law pending inquiry and the Special Home provides for the rehabilitation of such children who are housed there by the order of the JJB. The State Government is mandated to establish atleast one place of safety in a State primarily for housing the children aged 16-18 years found guilty of heinous offences by the Children’s Court.¹⁴⁵

(b) Inquiries and Procedures in relation to children in conflict with law

On apprehension, the child alleged to be in conflict with law is kept under the charge of special juvenile police unit or the child welfare police officer who shall produce such child before the Juvenile Justice Board within a period of 24 hours of apprehension excluding the time required for the journey.¹⁴⁶ The Act not only mandates the immediate information of child’s apprehension to be given to the parents or guardian of such child by the concerned Child Welfare Police Officer / SJPU but, also to the Probation officer¹⁴⁷ / Child Welfare Officer¹⁴⁸ in the absence of the Probation office.¹⁴⁹ The Probation Officer / Child Welfare Officer make the social investigation report to be presented to the Board within a period of two weeks from the date of first production of the child before the JJB, consisting of information relating to the antecedents, family background and other significant circumstances which may assist the Board for making the inquiry.¹⁵⁰

¹⁴⁴ Sec 47 and sec 48, JJA 2015

¹⁴⁵ Sec 49, JJA 2015

¹⁴⁶ Sec 10, JJA 2015

¹⁴⁷ Sec 2 (48) , JJA 2015 defines “Probation Officer” as an officer appointed by the State Government under the Probation of offenders Act, 1958 or Legal cum Probation officer (LPO) appointed by the State Government under the District Child Protection Unit

¹⁴⁸ Sec 2(17), JJA 2015 defines “Child Welfare Officers” as an Officer attached to Children’s Home (specialized institution for housing children in need of care and protection) attached to carry out direction given by the Child welfare Committee (adjudicating body with respect to child in need of care and protection) or, as the case may be , the JJB with such responsibility as may be prescribed

¹⁴⁹ Sec 13(1)(i), JJA 2015

¹⁵⁰ Sec 13(1)(ii), JJA 2015

A wide range of orders are at the disposal of the JJB that could be passed with respect to a child found in conflict with law, viz. to be sent to home after advice or admonition and counseling to such child and his parents, to participate in group counseling, to perform community service, to pay fine, to be released into parent's / guardian's /fit person's/fit facility's care and custody and placed in probation for any period not exceeding three years and to be sent to special home for rehabilitation for a period not exceeding three years.¹⁵¹

The JJA 2015 categorizes the offence committed by the children in conflict with law into three groups- petty offences¹⁵², serious offence¹⁵³ and heinous offence¹⁵⁴. The JJB shall dispose the cases of petty offences through summary proceedings and cases of serious offences through summons cases as per the procedure prescribed under the Code of Criminal Procedure, 1973.¹⁵⁵ But, it allows a juvenile aged 16 and above alleged to have committed a heinous offence to be tried as an adult in Children's Court.¹⁵⁶ On the other hand, the child under the age of sixteen years committing heinous offence shall be tried by the JJB by following the procedure for trial in summons cases under the Crpc.¹⁵⁷

The children aged sixteen and above alleged to have committed a heinous offence can be tried as an adult by following the *two stage process* which is as follows-

- I. Preliminary assessment into heinous offence by the Board**
- II. Trial of the case by the Children Court**

¹⁵¹ Sec 18 (1), JJA 2015

¹⁵² Sec 2(45) JJA 2015, "Petty offence" includes the offences for which the maximum punishment under the IPC or any other law for the time being in force is imprisonment upto three years.

¹⁵³ Sec 2 (54) JJA 2015,"Serious offence" includes the offences for which the punishment under IPC or any other law is between three to seven years.

¹⁵⁴ Sec 2 (33), JJA 2015" Heinous offence" includes offences for which the minimum punishment under IPC or any other law for the time being in force is seven years or more.

¹⁵⁵ S. 14(5) (d) and 14(5) (e), JJA 2015

¹⁵⁶ "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act (Sec 2(20), JJA 2015)

¹⁵⁷ Sec 14(5)(f), JJA 2015

I. Preliminary assessment into heinous offence by the Board

In case of heinous offence alleged to have been committed by a juvenile aged sixteen and above, a preliminary assessment is to be made by the JJB with respect to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence with the assistance of experienced psychologists/psychosocial workers or other experts.¹⁵⁸ If the JJB is satisfied on preliminary assessment that the matter should be dealt by the Board itself, the Board shall dispose it in accordance with the procedure prescribed by the Crpc for the trial of summons cases.¹⁵⁹ On the other hand, if the Board after preliminary assessment is satisfied that such child requires to be tried as an adult, it may pass an order transferring the trial of the case to the Children's Court/ the Court of Sessions having jurisdiction to try such cases (where the Children's Court has not been designated).¹⁶⁰ The order passed by the JJB after making preliminary assessment into a heinous offence is appealable before the Court of Sessions.¹⁶¹

II. Trial of the case by the Children's Court

When the case of heinous offence alleged to have been committed by the juvenile aged 16 or above comes before the Children's Court after the preliminary assessment made by the JJB, the Children's Court may further decide as to whether such child should be tried as an adult or not.¹⁶² If the Court decides that there is no need to try such child as an adult, then the matter shall be disposed of by the Children's Court by conducting an inquiry as a JJB and pass appropriate orders that could be passed by the JJB.¹⁶³ On the other hand, the Court may also decide for the trial of the child as an adult as per the provisions of the Crpc bearing in mind the special needs of the child and the

¹⁵⁸ Sec 15(1), JJA 2015

¹⁵⁹ Sec 15(2), JJA 2015

¹⁶⁰ Sec 18(3), JJA 2015

¹⁶¹ Sec 101(2), JJA 2015

¹⁶² Sec 19(1), JJA 2015

¹⁶³ Sec 19(1)(ii), JJA 2015

guarantees of fair trial. In this regard the relevant section of the JJA 2015 reads as follows-

Sec 19(1) (i) – “After the receipt of preliminary assessment from the Board, the Children’s Court may decide that-

i. there is need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and Sec 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.”

Sec 21 of the JJA 2015 prohibits death sentence and life imprisonment without the possibility of release.¹⁶⁴

It is pertinent to note here that as far as the trial of the child as an adult is concerned, Sec 19(1) of the JJA 2015 does not mandate the Children’s Court to impose the mandatory minimum sentence prescribed for the offence (heinous offence as defined under the JJA 2015) in the IPC or any other law for the time being in force. The aforementioned relevant section uses the language, “the Children’s Court may pass ***appropriate orders*** subject to the provisions of Sec 21, ***considering the special needs of the child***, the tenets of fair trial and maintaining child friendly atmosphere.” Furthermore, the JJA 2015 mandates that the Children’s Court shall ensure that such child found in conflict with law is sent to a place of safety for rehabilitation till he attains the age of 21 years and thereafter, the person shall be transferred to a jail, if he is yet to complete the term of stay.¹⁶⁵ On careful reading of these provisions, the researcher understands that the judges of the Children’s Court are given discretion to decide the duration of stay of such children found in conflict with law. It is pertinent to note here that the definition of heinous offence under Sec 2 (33) of JJA 2015 “including the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment of seven years or more” is only one of the criteria for the cases that becomes eligible for the transfer to the Children’s Court.

¹⁶⁴ Sec 21, JJA 2015, ‘No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.’

¹⁶⁵ Sec 19(1)(3) , Sec 20(1) and Sec 20(2), JJA 2015

Furthermore, it is pertinent to note that such child on attaining the age of twenty one years is not automatically transferred to jail to complete the remainder of the sentence. The law mandates the Children's Court to conduct the evaluation of such child based on the yearly follow up progress reports by the Probation Officer/ District Child Protection Unit or the social worker and opinion of relevant experts to make an assessment as to whether such child underwent reformatory changes to become contributing member of the society.¹⁶⁶ Based on this evaluation result, the Children's Court may either decide the child to be released under the supervision of monitoring authority¹⁶⁷ or to complete the remainder of the sentence in jail.¹⁶⁸ The orders passed by the Children's Court are appealable before the High Court in accordance with Crpc.¹⁶⁹

(c) Inspections and Reporting Mechanism

The JJA 2015 mandates/obligates the State Government to appoint inspection committees for the State / district to conduct compulsory visits at least once in three months to the institutional arrangements housing children in conflict with law. The inspection team shall consist of atleast three members of whom one shall be a woman and a medical officer who shall submit the reports to District Child Protection Unit (DCPU) / State Government.¹⁷⁰ The DCPU / State Government shall take appropriate actions based on the findings of such report and send a compliance report to the State Government.¹⁷¹ The Central Government / State Government may separately evaluate the components of juvenile justice system – the JJB, Special Homes, Observation Homes, SJPU, fit institutions & persons etc and in cases of evaluation conducted by both the Governments; the evaluation made by the Central Government shall prevail.¹⁷² The JJB is also entrusted with the responsibility of conducting monthly inspection of the residential facilities for the children in conflict with law and may make suggestions for further improvements to the District Child Protection Unit and

¹⁶⁶ Sec 20(1), JJA 2015

¹⁶⁷The State Government shall maintain a list of monitoring authorities and prescribe mandatory procedures, Proviso to Section 20(2) of JJA 2015

¹⁶⁸ Sec 20, JJA 2015

¹⁶⁹ Sec 101(5), JJA 2015

¹⁷⁰ Sec 54(2), JJA 2015

¹⁷¹ Sec 54(3), JJA 2015

¹⁷² Sec 55, JJA 2015

the State Government.¹⁷³ Also the Management Committee of each institution shall manage and monitor the progress of every child.¹⁷⁴

To eliminate the backlog of cases by the JJB, regular review of the pendency of cases shall be conducted by the Chief Judicial Magistrate/ Chief Metropolitan Magistrate who may direct the Board to increase the frequency of its sittings or recommend the creation of additional boards.¹⁷⁵ The information of such pendency shall also be provided by the Board to Chief Judicial Magistrate and Chief Metropolitan Magistrate on a quarterly basis.¹⁷⁶ The particulars of the pendency of cases shall also be reviewed every six months by the high level committee comprising of Executive Chairman of State Legal Service Authority who shall be the chairperson, Home Secretary (the Secretary who is responsible for implementation of this Act) and a representation from a voluntary / nongovernmental organization to be designated by the Chairperson.¹⁷⁷

(d) Confidentiality of the proceedings and Records

In order to avoid stigma of conviction following into the adulthood for the criminal wrongdoings, the records and documents relating to a child in conflict with law shall not be kept permanently and destroyed either after the expiry of the period of appeal or any valid period prescribed.¹⁷⁸ But, in case of a child aged sixteen and above is tried and convicted by the Children Court as an adult, the relevant records of conviction of such child shall be preserved by the Children Court.¹⁷⁹ The JJA 2015 prohibits the disclosure of any particulars concerning child in conflict with law which may lead to such child's identification and makes such disclosure punishable with imprisonment which may extend upto six months or fine which may extend to two lakhs rupees or both.¹⁸⁰ However, it only permits the disclosures to be made in the best

¹⁷³ Sec8(3)(j), JJA 2015

¹⁷⁴ Sec 53(2), JJA, 2015

¹⁷⁵ Sec 16(1), JJA 2015

¹⁷⁶ Sec 16(3), JJA 2015

¹⁷⁷ Sec 16(2), JJA 2015

¹⁷⁸ Sec 24(1) & Sec 24(2), JJA 2015

¹⁷⁹ Proviso to Sec 24(2), JJA 2015

¹⁸⁰ Sec 74, JJA 2015

interest of child by the JJB holding the inquiry after recording the reasons in writing.¹⁸¹

Key Comparisons of JJA 1986, JJA 2000 and JJA 2015

Provisions	JJA 1986	JJA 2000	JJA 2015
Nomenclature	Delinquent Juvenile	Juvenile in conflict with law	Children in conflict with law
Definition of a Juvenile	Boys-below the age of 16 years Girls- below the age of 18 years	Any person who has not completed eighteenth year of age	Any person who has not completed eighteenth year of age
Classification of offence	Nil	Nil	Petty, Serious and Heinous offences
Juvenile Justice Board	Juvenile Court conducts inquiry & may direct the child to be placed in special home for not less than 3 years and or till the age of 18 years in case of boys and 20 years in case of girls	JJB conducts inquiry & may direct the child to be placed in special home for a period of three years	Same as JJA 2000 Adds preliminary assessment to be conducted by the JJB in cases of heinous offences committed by juveniles aged 16-18 to transfer the trial to Children's Court
Time for inquiry	Inquiry to be completed within three months from the date of commencement, unless, for reasons recorded in writing by the Board (S. 27(3))	Inquiry to be completed within a period of four months from the date of its commencement, unless, for reasons recorded in writing by the Board (S.14)	Inquiry to be completed within a period of four months from the date of first production of the child before the JJB. It can be further extended for a maximum period of two months for reasons recorded in writing by the Board (S.14) Preliminary assessment to be disposed of within a period of three months from the date of first production of the child Further extension of time may be granted for the serious and heinous offences by the Chief Judicial Magistrate and Chief Metropolitan Magistrates for reasons

¹⁸¹ Ibid`

			to be recorded in writing
Provisions	JJA 1986	JJA 2000	JJA 2015
Special Juvenile Police Unit	Nil	Special juvenile police unit may be constituted in every district /city	SJPU shall be constituted in every district/city
Child Care Institutions	<p>The State Government may establish and maintain as many observation homes as may be necessary for the temporary reception of juveniles (Sec 11)</p> <p>The State Government may establish and maintain as many special homes as may be necessary (Sec.10)</p> <p>Place of safety means any place/institution (not being police lock-up /jail) the person in charge of which is willing temporarily to receive and take care of the juvenile and which in the opinion of Board may be a place of safety (S. 2(o))</p>	<p>Observation Home may be established in every district or group of districts (Sec.8)</p> <p>Special Home may be established in every district or group of districts (Sec. 9)</p> <p>Place of safety means any place/institution (not being police lock-up /jail) the person in charge of which is willing temporarily to receive and take care of the juvenile and which in the opinion of Board may be a place of safety (S. 2(q))</p>	<p>Observation Home shall be established in every district or group of districts (Sec.47)</p> <p>Special Home may be established in every district or group of districts (S. 48)</p> <p>Atleast one place of safety to be set up in a State (S. 49)</p> <p>“place of safety” means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty (S.2(46))</p>

Provisions	JJA 1986	JJA 2000	JJA 2015
Orders that may be passed	<p>Allow the juvenile to go home after advice, admonition, released on probation of good conduct under the care of parents/guardian/fit person /fit institution not exceeding three years, fine if he is over fourteen years of age and earns money</p> <p>Sent to Special Home for not less than 3 years and period of stay shall not extend beyond the time when the juvenile attains the age of eighteen years, in the case of a boy, or twenty years in the case of a girl</p> <p>If the Juvenile Court is of the opinion that an offence committed by a juvenile aged 14 years or more is of serious nature and it would not be in his interest or the interest of other juveniles in special Home to send him to such home, the Court may order such juvenile to be kept in a place of safe custody arranged by the State Government not exceeding the maximum period of imprisonment to which juvenile could have been sentenced for the offence committed. (Proviso to Sec. 22(1) and Sec 22(2))</p>	<p>Same as JJA 1986 Adds, Counselling to the parent or guardian and the juvenile, group counselling, Performance of community service, order the parent/guardian of the juvenile to pay fine (Sec. 21)</p> <p>Sent to Special Home for a period of 3 years (Substituted by Juvenile Justice (Care & Protection of Children) Amendment Act, 2006</p> <p>Same as JJA 1986 but applies to the juvenile aged 16 years and above and the period of detention shall not exceed three years Proviso to Sec.16(2)</p>	<p>Same as JJA 2000 (Sec. 18)</p> <p>Same as JJA 2000 (Sec. 18)</p> <p>Children aged 16-18 years alleged to have committed heinous offence may be tried as an adult in Childrens Court & on finding guilty such child shall be kept in place of safety until the age of 21 years & thereafter either released or transferred to adult jail to complete the remainder of sentence based on evaluation. The judges of the Children Courts are given discretion to determine the duration of stay subject to Sec 21 of the JJA 2015 (Sec 19 and 20)</p>

Provisions	JJA 1986	JJA 2000	JJA 2015
Orders that may not be passed	No delinquent juvenile shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security (Sec. 22)	Same as JJA 1986 (Sec 16(1))	No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any offence (Sec 21)
Removal of disqualification attached to conviction	A juvenile who has committed an offence and has been dealt with under the provisions of this Act and shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. (Sec.25)	Same as JJA 1986 Adds, The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be (Sec.19)	Same as JJA 2000 Adds that the Child aged 16-18 found in conflict with law by the Children's Court, the relevant records of the conviction of such child shall be retained by the Children's Court (Sec. 24)

2.3 Explaining Juvenile Delinquency- Theories of causation

There appears to be world wide acceptance that children who come into conflict with law are socio-economic victims. Some of the major causes of children's involvement in crimes include poverty, lack of education, unemployment and underemployment, peer pressure, dysfunctional families etc.¹⁸² Researchers and philosophers across the world have proposed diverse theories to explain the cause of juvenile delinquency. An understanding of the concept of juvenile delinquency builds upon the explanation that is presented in these theories. However, these theories are mostly propounded by western theorists and thus are recognizably related to western society and culture. Therefore, the researcher attempts to provide a brief overview of major delinquency theories for the better understanding of the concept of juvenile delinquency and then intends to explore the nature and extent of crimes committed by juveniles in the Indian context.

¹⁸² R.N.Choudhary, Law relating to Juvenile Justice in India,7 (3rd ed., 2012)

The earliest theories of juvenile delinquency were erroneous based on superstition. However with the passage of time, the recent theories of juvenile delinquency have reflected objectivity and rational thinking. Although, none of the theories is currently totally accepted, the importance of these theories cannot be undermined as various approaches to juvenile delinquency are sometimes derived from these theories. The early theorists believed the role of natural forces and possession of an individual by an evil spirit to be the root cause of delinquent behaviour among juveniles. These non-scientific explanations collapsed in the 1700's with the advent of Classical school of thought and positivistic approaches in the later 1800's.¹⁸³

The Classical school of thought considers every human being as having free will and acting rationally according to their own free choice. The proponents of the classical approach argued that the delinquent behaviour by a juvenile is the result of individual rational choice. These rational choices are dictated by greed to gain benefits (Pleasure) and evade pain. It is further argued that the children are believed to evaluate costs and benefits of their intended actions before they act on them.¹⁸⁴ Classical theorists seek to prevent crimes by holding the perpetrators criminally responsible for their actions and punished proportionately.¹⁸⁵ In the nineteenth century, the Classical school modified its thought which came to be known as neo-classical approach to deviance wherein they accepted that juveniles and mentally ill adults do not have the same ability to make rational choices as other individuals.¹⁸⁶ Thus, specific attention was given to child offenders by establishing separate courts and separate custodial homes distinct from adults.¹⁸⁷ The contemporary juvenile justice systems in majority of the countries across the globe demonstrate the neo-classical view. However, this distinct system does not always treat the juvenile delinquents differently by only focusing on rehabilitation and social re-integration. In the recent times the juvenile justice system in many countries across the world are seen embracing traits of adult courts and adult sentence. Countries like USA have somewhat adopted the classical approach best exemplified by juvenile delinquents now being transferred to the adult criminal justice system to be tried as an adult in

¹⁸³ John T. Whitehead and Steven P. Lab, *Juvenile Justice- An Introduction*, Chapter 3-Explaining delinquency – Biological and Psychological approaches, 48 (7th ed., 2014), available at http://booksite.elsevier.com/samplechapters/9781455778928/Chapter_3.pdf , last seen on 14/014/2016

¹⁸⁴ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 8 (Oxford University Press, 6th ed., 2010)

¹⁸⁵ Gus Martin, *Juvenile Justice- Process and Systems*, 71 (Sage publications, 2005)

¹⁸⁶ *Ibid*, at 72

¹⁸⁷ *Ibid*

certain serious cases. The Classical School of Philosophy, which once prevailed the discussions on causation of juvenile delinquency, is criticized for adopting conservative approach in the modern era as it did not take into account the circumstances peculiar to a specific individual and heavily relied on penal measures without including the philosophies of rehabilitation.¹⁸⁸

Many modern theories of delinquency are referred to as *positivistic theories* have come from a variety of disciplines – biology, psychology and sociology.¹⁸⁹ According to the positivistic school of thought, delinquent behaviour is caused by factors beyond the control of an individual in contrast with classical school of thought which holds individual rational choice responsible for his or her actions.

According to the *Biological school of thought* some children are naturally born criminals with internal physical qualities (genetic, biological and biochemical) that dictate their deviant behaviour.¹⁹⁰ Pre-modern theorists (physiognomists and phrenologists) endorsed that the offenders could be identified by visible physical features of the body present from birth. Protruding eyebrows, receding foreheads, deformed noses, lack of earlobes, prominent lips, bumps on the head etc were generally treated as indicators of deviance. Undoubtedly, there were several theories of delinquency advanced by biological school of thought. Prior to twentieth century, the pre-modern proponents of biological school of thought theorized that biological factors directly caused the deviant behaviour.¹⁹¹ However, the modern theorists believe that biology, society and environment affect the human behaviour which may pre-dispose one to criminality.¹⁹² The inaugural attempt to explain deviant behaviour by studying the shape and structure of the body (known as somatotyping) of the delinquents was made by William Sheldon, an American psychologist in his work in 1949. He identified three basic body types and their strong association with temperament viz. *endomorphie body type* (having soft, round, fat body) characterized by temperament of sociability and tolerance for others, *mesomorphie body type* (marked by muscular and hard body) related to aggressive behaviour and *ectomorphie body type* (distinguished as thin, fragile and weak body) described as shy, sensitive

¹⁸⁸ Gus Martin, *Juvenile Justice- Process and Systems*, 73 (Sage publications, 2005)

¹⁸⁹ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 9 (Oxford University Press, 6th ed., 2010)

¹⁹⁰ Gus Martin, *Juvenile Justice- Process and Systems*, 73 (Sage publications, 2005)

¹⁹¹ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 31(Oxford University Press, 6th ed., 2010)

¹⁹² Gus Martin, *Juvenile Justice- Process and Systems*, 76 (Sage publications, 2005)

and introvert.¹⁹³ Sheldon applied this somatotyping theory by conducting a study of 2000 young males who had been directed to a specialized rehabilitation homes for boys in Boston.¹⁹⁴ The study was based on personal opinion i.e. by observing photographs of 2000 young males.¹⁹⁵ Sheldon concluded that higher degree of mesomorphism and low degree of ectomorphism existed in juvenile delinquents.¹⁹⁶ The Biological school of thought also saw various proponents claiming that deviance is inherited i.e. transmitted biologically from parent to child and passed from generation to generation. However, these inheritance and delinquent theories failed to provide specific biological explanation of *what* is being inherited to produce crime and delinquency.¹⁹⁷ Critics of the biological theories of delinquency argued that these theories were not empirically supported; data were obtained from subjective evaluation methods based on personal viewpoints. It was also criticized for its failure to take into account other intervening circumstances influencing delinquent behaviour such as the role of environmental factors etc.

The proponents of the *psychological theory* assert that the cognitive and personality disorder caused by biological, environmental or any other conditions predispose an individual to commit crime.¹⁹⁸ According to the Austrian psychologist and neurologist, Sigmund Freud, the pioneer of the psychoanalytical theory, human personality has three components- id, ego and superego which affect human behaviour.¹⁹⁹ Id represents self gratification and selfish desires largely observed among infants²⁰⁰; ego indicates rational mind with an innate ability to act and make choices that enhance the well being of others not driven by selfish desire; superego represents moral judgement i.e. judgement of right and wrong.²⁰¹ According to Freud, delinquents and adult criminals are persons without sufficiently developed egos and superegos.²⁰² However, the theory is mainly criticized for the unavoidable complications that arose due to the use of behavioural concepts such as the id, ego, superego which could not be directly observed and its susceptibility to huge variations

¹⁹³ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 34 (Oxford University Press, 6th ed., 2010)

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 34 (Oxford University Press, 6th ed., 2010)

¹⁹⁷ Ibid, at 46

¹⁹⁸ Gus Martin, *Juvenile Justice- Process and Systems*, 78 (Sage publications, 2005)

¹⁹⁹ Ibid

²⁰⁰ Gus Martin, *Juvenile Justice- Process and Systems*, 79 (Sage publications, 2005)

²⁰¹ Ibid

²⁰² Gus Martin, *Juvenile Justice- Process and Systems*, 80 (Sage publications, 2005)

in interpretation due to subjective evaluation method.²⁰³ It also failed to take into account the effects of environmental factors on personality and behaviour. And, then there were proponents of psychopathological approach to explanation of delinquency who stated that there were some criminals often referred to as psychopaths and sociopaths characterized by their brutal, selfish minds, lack of empathy and remorse for their victims.²⁰⁴ The criminologists of the 20th century, Sheldon Glueck and his wife Eleanor Glueck performed extensive research on juvenile delinquency by conducting a comparative study of 500 delinquents and 500 non delinquents and concluded that less than 1% of the delinquent children could be identified as psychotic compared with 1.6% of non-delinquent children.²⁰⁵ However, the researcher opines that it would not be wrong to conclude that the psychological explanation of delinquency is selectively applicable to juvenile delinquents who actually have mental and personality disorder. Nevertheless, the theory holds significance in the contemporary juvenile justice system particularly in rehabilitative programmes to treat the juvenile delinquents.

There are different theories or approaches to *sociology* which explain delinquency by establishing the linkage between societal factors and crime causation. The proponents of these theories providing different sociological description of delinquency usually consider the association of delinquency with lower class conditions of the society such as poverty, neighborhood degeneration, low educational achievement, inadequate housing and family dysfunction.²⁰⁶ The strain theory developed by sociologist, Robert Mertrou during the 1930's is one of the major contemporary sociological theories. The proponents of this theory focused their research attention on individuals who are capable of growing into productive members of the society but become criminals / delinquents due to their socio-economic status. According to Mertrou's strain theory, every society wants its members to achieve socially acceptable goals through legitimate means. However, not all members of the society have access to the resources to achieve the socially accepted goals thus creating a strain for less fortunate societal members.²⁰⁷ In such cases those without access to resources may exploit illegitimate means to achieve economic success and may

²⁰³ Ibid, at 79

²⁰⁴ Gus Martin, *Juvenile Justice- Process and Systems*, 81 (Sage publications, 2005)

²⁰⁵ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 80 (Oxford University Press, 6th ed., 2010)

²⁰⁶ Gus Martin, *Juvenile Justice- Process and Systems*, 82 (Sage publications, 2005)

²⁰⁷ Ibid, at 83

become delinquents or criminals. This theory has been severely criticized for focusing exclusively on lower class delinquency and its failure to explain the reason as to why all youth suffering from strain do not turn into delinquents.²⁰⁸ Another prominent sociological approach, the differential association theory described by the American sociologist, Edwin Sutherland proposed that delinquent behaviour is learnt through interaction with others primarily in small and informal settings.²⁰⁹ Apart from the difficulty in empirically testing this theory, a common criticism faced by this theory is its justification that delinquent behaviour is learnt by not taking into consideration individualistic factors.²¹⁰ Then, there are the proponents of the *social control theory* who assume that the behaviour of the child is regulated by societal means of social control such as families, schools, religion etc. According to them the absence or deficiency of these societal control forces hamper the socialization of a child and predisposes such a child to commit delinquent acts.

From the above discussion of theories of juvenile delinquency, it is clear that the explanation of causation of juvenile delinquency is diverse, complex and constantly changing. Accordingly, the different major theories of delinquency discussed above explain various risk factors as the reason for an individual's inclination towards delinquent behaviour and thus, consequently leads to conclusion that no single theory can explain juvenile delinquency. Every delinquent act of the juvenile may be consequence of a single risk factor or multiple risk factors. It is impractical to assert that specific cause or factor will always result in delinquency among juveniles. However, one cannot deny that there are certain determinants of delinquency commonly seen in juvenile delinquent cases which are psychological, sociological in nature & which do not directly lead to delinquency but, is merely a predisposition to such behaviour. Not all individuals predisposed to risk factors eventually turn into delinquents. Regardless of different explanations of causation of juvenile delinquency offered by various theorists, it is broadly acknowledged that juvenile delinquents are less responsible than their adult counterparts and thus in need of distinct justice system that focus on protection and rehabilitation. Nevertheless, the contemporary juvenile justice practice in most countries across the world reflects both classical and positivistic approach to delinquency. The classical school of thought

²⁰⁸ Ibid

²⁰⁹ Donald J Shoemaker, *Theories of Juvenile Delinquency*, 189 (Oxford University Press, 6th ed., 2010

²¹⁰ Ibid, at 192

considers an individual responsible for his own actions and focus on proportionate punishment. This approach is in corroboration with few countries transferring serious juvenile offenders to adult justice system to be tried and punished as an adult criminal. The positivist view, on the other hand, assumes that human behaviour is predominantly influenced by biological, psychological and sociological factors beyond the control of any individual. These approaches resulted in the development of policies which now focuses on rehabilitation & social reintegration of juvenile delinquents.

A case-control study conducted in the five observation homes in the city of Hyderabad, Lucknow and Pune by the Armed Forces Medical College, Pune, India indicated that all the children surveyed belonged to the lower economic strata and the study concluded that it is difficult to pinpoint a single factor responsible for juvenile crime but, a combination of factors such as broken homes, addictions and abuse seem to have an important association with juvenile delinquency.²¹¹ On the other hand, the study conducted by the Delhi Commission for Protection of Child Rights (DCPCR) and Butterflies (NGO) on children in conflict with law in Delhi, indicated that juvenile delinquency is an issue prevalent in all socioeconomic classes but, the lower class are more likely to be incarcerated as the children from higher strata though, involve in such behaviour, rarely come for adjudication process.²¹² In most instances, their cases are settled out of court or also go unreported fearing damage to the family status, thus making them invisible in the statistics.²¹³ Also, according to this study, parental neglect, broken homes, poor academic achievements, drugs/substance abuse can act as risk factors of juvenile delinquency.²¹⁴ The study titled '*Mental Health & Substance Use Problems in Prisons: The Bangalore Prison Mental Health Study (2011)*' conducted by NIMHANS, Bangalore in collaboration with Karnataka State Legal Services Authority reported that 79.6% of the prisoners could be diagnosed as having the diagnosis of either mental disorders/substance use. These mental

²¹¹ Archit Gupta et al, *Sociodemographic characteristics and aggression quotient among children in conflict with the law in India: A case-control study*,28(4) The National Medical Journal 172, 172 (2015), available at <http://archive.nmji.in/archives/Volume-28/Issue-4/Original-Article-I.pdf>, last seen on 5/10/2017

²¹² *Why Children commit offences-Study on Children in conflict with law in Delhi*, Delhi Commission for protection of Child Rights (DCPCR), 8 (2015) available at <http://www.butterflieschildrights.org/admin/resource/Why%20Children%20Commit%20Offences-DCPCR.pdf>, last seen on 8/10/2017

²¹³ Ibid

²¹⁴ Ibid

disorder/addiction to substance use may either be present prior to prison entry/ or aggravate in prison. Studies in several countries indicate that around 65-85% of youths in correctional homes have major psychiatric diagnoses.²¹⁵ A cross-sectional study of 50 juvenile boys in an Observation home in India concluded that 88% of them suffered from psychiatric disorders.²¹⁶ The study of 487 juveniles-under-enquiry in Prayas Observation Home, Delhi reported that 86.44% of the sample had a history of substance use.²¹⁷ Research has shown that there is a strong positive association between drug use and crime in adolescents.²¹⁸ Taking into account the various theories of causation of juvenile delinquency and the aforementioned findings of the empirical study, the researcher concludes that, although, all children who are the victims of vulnerabilities do not turn into delinquents, the vulnerability factors are often present in the background of the children who come into conflict with law.

2.4 Nature and extent of crimes committed by juveniles in India

The increasing involvement of juveniles in serious crimes has become a major concern for the Indian society. One of the reasons for repealing the Juvenile Justice (Care and Protection of Children) Act, 2000 was its inability to handle the child offenders in the age group of 16- 18 years. This was based on the data collected by the National Crime Records Bureau (NCRB) which established increased cases of heinous offences committed by the children in the age group of 16-18 years.²¹⁹ The Ministry of Women and Child development also observed that the participation of juvenile offenders aged 16-18 years in some of the recent high profile rape cases which triggered public debate across the country led to the conclusion that the JJA 2000 was wholly inadequate to address the situation.²²⁰ Consequently the new

²¹⁵ Bhoge N D et al, *A cross sectional study of psychiatric morbidity in juvenile boys admitted in an Observation home*, 4(1) International Journal of Advances in Medicine 192, 193 (2017), available at <http://www.ijmedicine.com/index.php/ijam/article/viewFile/308/279>, last seen on 8/01/2018

²¹⁶ Ibid

²¹⁷ Shridhar Sharma et al, *Substance use and criminality among juveniles-under-inquiry in New Delhi*, 58(2) Indian Journal of Psychiatry 178, 178 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4919962/>, last seen on 8/12/2017

²¹⁸ Chetna Malhotra et al, *Drug use among Juveniles in conflict with law*, 74(4) Indian Journal of Pediatrics 353, 353 (2007) , available at <http://medind.nic.in/icb/t07/i4/icbt07i4p353.pdf> , last seen on 7/11/2017

²¹⁹ Statements of Objects and reasons of the Juvenile Justice (Care & Protection) Bill, 2014

²²⁰ Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care & Protection of Children) Bill*, 2014, at 12

legislation, Juvenile Justice (Care and Protection of Children) Act, 2015 permits juveniles aged 16-18 years alleged to have committed heinous offences to be tried like their adult counterparts. But, the NCRB data is merely based on the number of juveniles apprehended and not on the number of convictions which was also observed by the Standing committee report. However, the Parliamentary Standing Committee on Human Resource Development had cautioned against this change. These contentions raises grave doubt as to whether the new law, Juvenile Justice (Care and Protection of Children) Act, 2015 was based on real facts of delinquency or the negative perception that was created towards the juveniles by the high profile cases.

The researcher intends to explore the nature and extent of juvenile delinquency in India by examining numerical data. Measuring juvenile delinquency enables to test the effectiveness of the existing juvenile justice practices and design effective programmes and policies. The following study is based on the crime data from 2001-2015 reported by the National Crime Records Bureau (hereinafter referred to as NCRB). The NCRB attached to the Ministry of Home affairs, Government of India possibly provides the most authentic compilation of official data pertaining to crimes including juvenile delinquency. It is pertinent to note here that NCRB chiefly reports the number of juveniles arrested/apprehended each year and not the number of convictions. This may not reveal the actual number of crimes committed by juveniles. Also, the crimes are vastly underreported in India. Despite its limitation, the NCRB is the only legitimate official document available to be considered for the study. On the other hand, there are no other authentic studies conducted neither at the national level nor at the regional level on the rate of juvenile crimes.

The time period selected for the study of the data reported by NCRB is 2001, 2005 and 2010-2015. The past years records will be presented, compared and analyzed to understand the nature and extent of juvenile crimes in India. The longer time frame is selected for the study as it enables to understand situation of juvenile delinquency in India. The numerical data on juvenile delinquency for the aforementioned time frame is examined on the following aspects-

- Nature of offences committed
- Age and Offence committed
- Disposal of cases and Orders passed

- Recidivism rates
- Residence & level of Education of the juveniles committing crimes etc.

Table 1- Cases registered against juvenile/ children in conflict with law under IPC (2001-2015)

Year	Total Cognisable Crimes	Total Juvenile Crimes	Percentage of Juvenile crimes to Total Cognizable Crimes
2001	1769308	16509	0.9
2002	1780330	18560	1.0
2003	1716120	17819	1.0
2004	1832015	19229	1.0
2005	1822602	18939	1.0
2006	1878293	21088	1.1
2007	1989673	22865	1.1
2008	2093379	24535	1.2
2009	2121345	23926	1.1
2010	2224831	22740	1.1
2011	2325575	25125	1.0
2012	2387188	27936	1.2
2013	2647722	31725	1.2
2014	2851563	33526	1.2
2015	2949400	31396	1.1

Source- National Crime Records Bureau, Ministry of Home Affairs

In Table 1, the percentage of the cases reported against the juveniles from 2001-2015 remain stable and largely unchanged. The crimes committed by juveniles in India shows a steady trend but, it has escalated proportionately with the overall crimes. By comparing the numerical data, one may deduce that the percentage of crimes reported against juveniles has not increased very much over the past 15 years but, it is also true that it has been rising proportionately with the overall crimes which are quite distressing. The juvenile crime rates were down in 2005, 2015 etc but overall there has been year-over-year increase since 2001.

Table 2- Juveniles apprehended in 2014-2015 (under IPC), classified by offences

Sl. No	Type of offence	Juveniles apprehended in 2014	Juveniles apprehended in 2015
1	Murder	1163	1092
2	Attempt to murder	1029	1360
3	Rape	2144	1841
4	Kidnapping and abduction	1932	1508
5	Dacoity	279	301
6	Robbery	1401	1838
7	Criminal Trespass	3802	3632
8	Theft	8863	7936
9	Riots	2074	1716
10	Cheating	754	109
11	Grievous Hurt	1972	1269
12	Assault on Women with the intent to outrage her modesty	1772	1598
13	Other offences	8116	11640
14	Total Offences	42566	39074

Source- National Crime Records Bureau

In Table 2, the figures of year 2014 and 2015 indicating the apprehension of juveniles classified by type of offences reflects disturbing trend.

Table 3- The Number of Juveniles apprehended (under IPC) in 2001, 2005 and 2010-2015, Classified by Age

Age	No of Juveniles apprehended per year							
	2001	2005	2010	2011	2012	2013	2014	2015
7-12	1592	1097	758	878	883	936	668	551
12-16	8914	10215	9337	10048	10946	12025	10534	10537
16-18	13091	14067	17376	19840	23636	25804	31364	27986
Total	23597	25379	27471	30766	35465	38765	42566	39074

Source- National Crime Records Bureau

The table 3 shows that most of the children coming in conflict with law are usually between the ages of 16-18 years. Total juveniles apprehended in the age-group of 16-18 increased from 55.5% in 2001 to 73.7% in 2014 and 71.62% in 2015. Their arrests account for more than 50% of the total arrests every year. The figures show that the total arrests in age group of 12-16 is smaller than the age-group of 16-18 but their share in total arrests is 25% or more every year. The number of children committing crimes in the age group of 12-16 has remained constant over the past few years. Interestingly, the children committing crimes in the age-group of 7-12 years who constitute around 1-6% of the total juvenile arrest every year have shown a declining trend. Thus, the researcher understands that there is a direct relationship between age and number of crimes committed by juvenile in India i.e. older juveniles has the highest arrest rates.

Table 4- The No. of Juveniles apprehended in 2001, 2005 and 2010-2015, Classified by offences under IPC

No. of Juveniles Apprehended Per year	Offences							
	Murder	Rape	Kidnapping And Abduction	Dacoity	Robbery	Theft	Other Offences	Total
2001	539	506	149	98	238	4465	17602	23597
2005	690	678	272	209	421	6289	16820	25379
2010	847	937	589	133	689	6064	18212	27471
2011	1168	1231	823	182	782	6552	20028	30766
2012	1281	1316	913	260	977	7205	13513	35465
2013	1230	2074	1230	240	1194	7969	24828	38765
2014	1163	2144	1932	279	1401	8863	26784	42566
2015	1092	1360	1508	301	1838	7936	31138	39074

Source – National Crime Records Bureau

As seen in the Table 4, increasing numbers of children are arrested for theft. The figures also show an increasing tendency of juveniles to get involved in serious crimes such as murder, rape, kidnapping, dacoity, robbery etc. It clearly indicates that over the years juveniles have become capable of committing serious offences.

Table 5.1- The No. of Juveniles Apprehended in 2001, 2005 and 2010-15, Classified by Age and Offence (Murder)

Age	No. of Juveniles apprehended for murder							
	2001	2005	2010	2011	2012	2013	2014	2015
7-12	26	22	10	31	26	23	19	13
12-16	228	275	237	356	394	362	300	283
16-18	285	393	600	781	861	845	844	796
Total	539	690	847	1168	1281	1230	1163	1092

The figures in the above table show that the highest number of arrests for murder was made in the age-group of 16-18 years. Their arrests for murder increased from 52% in 2001 to 73% in 2014 and 72.8% in 2015. The juveniles in the age-group of 12-16 also show an increasing trend. The number of arrests of juveniles whose age range is from 7-12 years for murder has always been much lesser and has been dropping over the years.

Table 5.2- The No. of Juveniles Apprehended in 2001, 2005 and 2010-15, Classified by Age and Offence (Rape)

Age	No. of Juveniles apprehended for Rape							
	2001	2005	2010	2011	2012	2013	2014	2015
7-12	12	13	10	25	33	50	23	14
12-16	230	260	276	367	396	636	633	490
16-18	264	405	651	839	887	1388	1488	1337
Total	506	678	937	1231	1316	2074	2144	1841

Source- National Crime Records Bureau

The table show that juveniles in the age range of 16-18 years account for majority of the arrests for rape. Their share has significantly increased from 52% in 2001 to 70% in 2014 and 72.6% in 2015. However, the amendment of law relating to the offence of rape under the Indian Penal Code through the Criminal Law (Amendment) Act, 2013 widened its ambit by increasing the type of sexual acts that constitute rape. This leads

to the obvious conclusion that this amendment has inflated the figures reported in 2013. But, it is pertinent to note here that the 2014 figures are a major concern as out of 2144 total arrests for rape, 1488 (70%) arrests were made of juveniles in the age-group of 16-18 years. The similar trend is also seen in the year 2015. There has been steady increase in arrests among children aged 12-16 years. The numbers of arrests have dropped over the years with respect to juveniles aged 7-12 years. A study on children in conflict with law in Delhi conducted by the Delhi Commission for Protection of Child Rights in collaboration with Butterflies, NGO in 2015 indicated that most of the rapes reported against juveniles are consensual sex charged as rape.

Table 5.3 - The No. of Juveniles Apprehended in 2001, 2005 and 2010-15, Classified by Age and Offence Committed (Dacoity)

Age	No. of Juveniles apprehended for Dacoity							
	2001	2005	2010	2011	2012	2013	2014	2015
7-12	05	0	0	3	5	1	4	0
12-16	34	75	28	37	48	49	48	45
16-18	59	134	105	142	207	190	227	256
Total	98	209	133	182	260	240	279	301

Source- National Crime Records Bureau

Majority of arrests for dacoity were made of juveniles aged 16- 18 years. However the arrest rates have dropped over the years in the other categories of age group of juveniles.

Table 5.4- The No. of Juveniles Apprehended in 2001, 2005 and 2010-15, Classified by Age and Offence Committed (Robbery)

Age	No. of Juveniles apprehended for Robbery							
	2001	2005	2010	2011	2012	2013	2014	2015
7-12	08	7	7	3	9	3	7	22
12-16	89	149	207	203	238	311	339	431
16-18	141	265	475	576	730	880	1055	1385
Total	238	421	689	782	977	1194	1401	1838

Source- National Crime Records Bureau

The table shows an increasing tendency of juveniles aged 16-18 years to get involved in robbery. Their share in total arrests for robbery has increased from 60% in 2001 to 75% in 2014 and 2015.

Table 6- Juveniles Apprehended (under IPC and SLL) in 2001, 2005 and 2010-2015, Classified by Disposal of Juveniles Apprehended and sent to Courts

Disposal Of Juveniles Apprehended	The No. of Juveniles apprehended per year							
	2001	2005	2010	2011	2012	2013	2014	2015
Arrested and Sent to Courts	33628	32681	30303	33887	39822	43506	60539*	56501*
Sent to Home After advice/ Admonition	4127	3807	4145	4045	5927	6613	7345	7354
Released on Probation placed under the care of parents or guardians	4833	5578	5739	6333	7290	8599	8159	8842
Released on Probation placed under the care of Fit institution	1003	1933	1047	1627	2183	1689	2276	1918
Sent to Special Homes	4037	4423	5798	7292	9677	9549	8700	9665
Dealt with fine	897	1361	1089	1201	1452	1756	1857	2578
Acquitted or otherwise disposed of	4435	1801	1685	2311	2572	3198	3509	4582
Pending disposal	14296	13778	10810	11078	10721	12102	17972	21562

*Arrested and sent to Courts (60539 in 2014) and (56501 in 2015) include juveniles apprehended during the current year plus number of juvenile cases pending disposal at the beginning of the year

Source- National Crime Records Bureau

As shown in the Table 6, the conviction rates have increased from 44% (14897 convictions out of 33628 total cases) in 2001 to 47% (28337 convictions out of 60539 total cases) in 2014 and to 54 % (30537 convictions out of 56501 total cases) in 2015. The acquittal rates show a declining trend from 13% in 2001 to 7% in 2014 and 8 % in 2015. The high conviction rates and low acquittal rates thus leads to the inference that the juveniles are capable of committing crimes. The most used orders by the JJB against the adjudicated juveniles are sending to special homes or releasing such children on probation under the care of parents /guardians. There is no data as to the performance of community service which is one of the orders that may be passed by the JJB against a child in conflict with law in India.

Table 7- Juveniles Apprehended (under IPC and SLL) in 2001, 2005 and 2010-2015, Classified by Recidivism

Recidivism	No. of Juveniles Apprehended (under IPC & SLL)/ year							
	2001	2005	2010	2011	2012	2013	2014	2015
Juveniles Apprehended for first time	28693	29331	26629	29990	35346	39361	45621	38877
Apprehended Juveniles convicted in the past	4935	3350	3674	3897	4476	4145	2609	2508
Total juveniles apprehended	33628	32681	30303	33887	39822	43506	48230	41385

Source- National Crime Records Bureau

The recidivism rates i.e. the juveniles already convicted in the past repeating crimes has decreased from 14.7% in 2001 to 5.4% in 2014 and 6% in 2015. The successfulness of a juvenile justice system can be traced on the basis of recidivism data. This data also ensures & promote the accountability of the system. The figures in the table show that numbers of repeat offenders have declined over the years thus, leading to the inference that the Indian juvenile justice system has positively influenced in transforming the young offenders into law abiding individuals. But, the Indian juvenile justice system does not keep the records of the convicted juveniles

permanently and do not follow into their adulthood. This may lead to failure in testing the effectiveness of the juvenile justice system in preventing youth from coming into conflict with law. For instance, a juvenile already convicted in the past repeating a crime at the age of 18 years or more would be placed in adult criminal justice system because of his age. This would not add to the recidivism data of the adult criminal justice system as the records of juvenile convictions are not kept permanently and consequently, the repeat offender shall be considered as the first time offender. The researcher also opines that the segregation of the data of repeat offenders by age, offence type, details of previous convictions (offence committed, length of custodial/non-custodial sentence) etc would help in understanding deficiencies of the juvenile justice practice.

Table 8- The No. of Juveniles apprehended (under IPC and SLL) in 2001, 2005 and 2010-2015, Classified by Residence

Residence	No. of juveniles apprehended (under IPC and SLL)/year							
	2001	2005	2010	2011	2012	2013	2014	2015
Living with parents	27020	25398	24549	27577	31639	35244	38693	35448
Living with guardians	4075	4564	4082	4386	5793	5800	7905	4315
Homeless	2533	2719	1672	1924	2390	2462	1632	1622
Total	33628	32681	30303	33887	39822	43506	48230	41385

Source – National Crime Records Bureau

The table show that around 80% of children apprehended every year live with their parents. However the data does not provide any details as to the number of children living with their single parent or both the parents. However, the juveniles living with guardians also show an increasing trend. At the same time, it is unusual that juveniles who are homeless are showing a declining trend. Due to the non availability of total juvenile population in India on the basis of the aforementioned classification of residence, it is not possible to establish any relationship between crimes committed by juveniles and their residence. However, it does not go without saying that the

influential role of family and parental control in the socialization process of the child has declined over the years.

Table 9- The No. of Juveniles Apprehended in 2001, 2005 and 2010-2015, Classified by level of Education

Level of Education	No. of Juveniles Apprehended per year							
	2001	2005	2010	2011	2012	2013	2014	2015
Illiterate	7898	8660	6339	6122	7226	8392	10530	4757
Primary Education*	15943	12394	11086	12803	13459	13984	15004	14229
Below Matric/ Higher Secondary Education	7937	9508	9855	10519	13983	15423	17637	19056
Higher Secondary and above	1850	2119	3023	4443	5154	5812	5059	3343
Total	33628	32681	30303	33887	39822	43506	48230	41385

*Right to free and compulsory Education Act, 2009 came into effect on April 1, 2010

Source- National Crime Records Bureau

The education does not seem to show any positive influence as the overall crime rates are increasing substantially over the years.

The data of the National Crime Records Bureau, 2000-2010 indicate that about 60 percent of juveniles apprehended came from families whose income was less than 25,000/-per annum and 20% from families whose income was between 25,000/- to 50,000/- per annum aggregating to about 80% of juveniles arrested in that income group.²²¹

²²¹ Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care & Protection of Children) Bill*, 2014, at 26

Based on the NCRB figures seen above, the following concluding observations can be made-

- The overall crimes committed by juveniles have increased steadily over the years, but have never declined in these years.
- Older juveniles specifically in the age group of 16-18 have highest arrest rates. They also account for majority of arrests for serious and heinous offences.
- The convictions rates of juveniles have increased substantially over the years.
- The NCRB does not provide any data as to the causes of offending. Some of the recent high profile crimes committed by juveniles in India are committed in groups or gangs under peer pressure. In such cases, a juvenile may be aiding or contributing to the offence in secondary way. NCRB do not reveal these details. Statistical research in many countries endorse that juvenile delinquency is predominantly a group phenomenon.²²²

2.5 Conclusion

The notion of separate justice system for juvenile or child offenders largely developed in India during the British rule. At first, it was the Apprentice Act, 1850, which authorized for various types of apprenticeships for young offenders instead of being held in confinement in prisons and was selectively made applicable to petty offences. It was followed by the Reformatory Act, 1897 which authorized the youthful offenders under the age of fifteen years to be sent to reformatory schools and also permitted entrusting of youthful offenders under the age of fourteen years to reliable persons for apprenticeships. It marked the beginning of juvenile justice system in India which not only accepted the need of providing differential treatment to children upto the age of eighteen years but also gave acknowledgement to non-institutional treatment by licensing out youthful offenders to reliable persons for apprenticeship.

²²² *United Nations fact sheets on youth*, available at <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>, last seen on 8/04/2018

The period between 1920 until the independence saw numerous State legislations reflecting progressive approaches through the establishment of separate institutions such as courts, reformatory schools etc with respect to juvenile offenders. Although these legislations prohibited death punishment and imprisonment of young offenders, they permitted detention in exceptional cases of serious offences committed by the children aged fourteen and above. It is also important to note here that the pre-independent legislations did not bring all the juveniles in conflict with law under the single reformatory institutions. They further sub-classified the juveniles according to their age and handled them at different reformatory institutional arrangements.

The Post British India witnessed many juvenile related legislations being enacted, repealed and re-enacted. The first legislation after independence, the Children's Act 1960 applicable to Union territories provided for the establishment of separate courts, schools, observation homes, after-care organizations etc. There was no limit on the period of stay in special schools and the court could order such children to be kept in these homes until they ceased to be child. The Act, though banned death punishment and imprisonment, permitted detention (not exceeding the maximum period of imprisonment for the offence committed) in exceptional cases of offence of serious & grave nature committed by child aged fourteen and above. Then, followed the Juvenile Justice Act, 1986 which was made applicable to the whole of India was very much alike but, differed marginally from its predecessor, the Children's Act, 1960.

The Juvenile Justice (Care and Protection of Children) Act 2000 which repealed the Juvenile Justice Act, 1986 introduced the establishment of special juvenile police units in addition to the already existing components of the juvenile justice system handling juveniles in conflict with law established under its preceding legislations. One of the conspicuous transitions seen in the JJA 2000 was with respect to provisions relating to period of stay in special homes and juveniles involved in crimes of serious & grave nature. This Act brought in the detention time limit by providing that a juvenile in conflict with law could be sent to special home for a maximum period of three years.²²³ It also laid down that the juveniles aged sixteen and above

²²³ Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

could not detained for more than three years even in exceptional cases of offences of serious & grave nature.²²⁴

The researcher in the course of study of the development of the juvenile justice system mainly focusing on structural developments discovered that the post-independence legislations brought all the juveniles upto the age of eighteen years under single reformatory institution unlike the pre-independence State legislations which sub-classified them based on the age and subjected them to different institutional arrangements. The period between 1920 until 2000 provided provisions for the detention of juveniles aged 14 & above in exceptional cases of offences of serious and grave nature, not exceeding the maximum period of imprisonment prescribed under IPC for the offence committed. This was replaced by the JJA 2000 which brought in detention time limit of three years irrespective of the seriousness and gravity of the offence. Again, the new legislation of 2015 permits the juveniles aged between sixteen and eighteen years to be tried as adults in Children's Courts for heinous offences allowing detention not exceeding the maximum period of imprisonment prescribed under IPC for the offence committed. It prohibits death sentence and life imprisonment without the possibility of release. The judges of the Children's Court are given discretion to decide the term of stay. With the passage of Juvenile Justice (Care and Protection of Children) Act, 2015, the juvenile justice legislative development in India has come in full circle.

²²⁴ Ibid