

JUVENILE JUSTICE IN INDIA: AN ANALYSIS ON INCREASE IN NUMBER OF JUVENILE OFFENDERS WITH RESPECT TO TECHNOLOGICAL ADVANCEMENT

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Introduction

Children are the backbone of any society. They are the Nation's future and pride. Juvenile are the children below 18 years of age or who hasn't completed the age of 18 years. What is more shocking about the juvenile is the share of crime which they are contributing in total offences. Juvenile offenders are the children who has committed crime, We generally considered them as an offender rather than criminals. According to Indian penal Code,1860 the children upto the age of 7 are considered as incapable of framing intent and the children between the age of 7-12 are also considered as incapable of developing intent unless it could be shown by his maturity and understanding that he was aware of the consequences of his actions.. The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and developments in the field of prison reforms and juvenile justice. The juvenile court established under the Madras Children Act,1920 was not different from that under the English Children Act,1908. But subsequent Children Acts dispensed with the presence of lawyers on the lines of the *parens patriae model* of the American juvenile courts. The juvenile welfare boards, adopted by the Scandinavian countries became an integral part of the legislations dealing with delinquent and neglected children since 1960.¹

¹ [History and Development of Juvenile Justice Delivery System](http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/10/10_chapter%203.pdf), Shodhganga (November 21, 2022, 1:00 p.m.), http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/10/10_chapter%203.pdf

Basic International Conventions

ICCPR

ICCPR stands for International Covenant on Civil and Political Rights, treaty adopted by United Nations General Assembly and came into force from 23 march 1976. By the end of 2001, the Covenant had been ratified by 147 states. The Covenant elaborates further the civil and political rights and freedoms listed in the Universal Declaration of Human Rights.² The Human Rights Commission is divided into two major documents: the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both became international law in 1976. Together with the Universal Declaration of Human Rights (UDHR), these two covenants comprise what is known as the “International Bill of Human Rights. The ICCPR focuses on issues like the right to life, freedom of speech, religion and voting. Under Article 26 of the ICCPR Human Rights Committee of the United Nations has been established. It consist of eighteen human rights experts, the Committee is responsible for ensuring that each signatory to the ICCPR complies with its terms. The Committee examines reports submitted by countries in every five years (to ensure they are in compliance with the ICCPR) and issues findings based on a country’s performance.³

UNCRC

The United Nations Convention on the Rights of the Child (UNCRC-1989), came into force on 3 September 1990. The Convention recognized not only the right of a juvenile to be processed according to principles of justice and also approved the right to participation, name, nationality, identity, survival and development, adoption, and right against exploitation. These protections being necessary for child's well being, the concerned states have undertaken to ensure such protection to the child. The protection is ensured also in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative or legislative bodies, the best interests of the child shall be a primary consideration.⁴ The Convention protects children’s rights by setting standards in health care; education; and legal, civil and social services. By agreeing to undertake the obligations of the Convention (by ratifying or acceding to it), national

² Summary of ICCPR and ICESCR, eycb.coe.int, http://www.eycb.coe.int/compass/en/pdf/6_4.pdf

³ International Bill of Human Rights, human rights (November 27,2022, 3:14 p.m.), <http://www.humanrights.com/what-are-human-rights/international-human-rights-law/international-human-rights-law-continued.html>

⁴History and Development of Juvenile Justice Delivery System, Shodhganga (November, 2022, 3:54p.m.), http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/10/10_chapter%203.pdf

governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community.⁵ In the view of the Juvenile matters, the main Articles in CRC related to juveniles are Article 37 and 40.

Articles 37(Detention and punishment): No person is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 40 (Juvenile justice): Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that is respectful of their rights. Governments are required to set a minimum age below which children cannot be deemed criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Beijing Rules

UN Minimum Rules for the Administration of Juvenile Justice which is also known as 'Beijing Rules' came in existence in 1985. The Beijing Rules provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of the juvenile justice with a child rights and child development approach.⁶

Riyadh Guidelines

Riyadh Guidelines were adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990. United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) followed immediately. Rule 7 of the Riyadh Guidelines provides that its provisions are to be 'interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, the International Covenants on Civil and Political Rights, the Declaration of the Rights of the Child, and the Convention on the Rights of the Child, and in the context of the Beijing Rules, as well as other instruments and norms relating to the rights, interests, and well-being of all children and young persons. The basic idea behind the Riyadh Guidelines is the recognition of the need for and importance of progressive

⁵ Convention on the Rights of the Child, WikiProgress (November 30,2022 9:00 p.m.), <http://wikiprogress.org/articles/children-youth/convention-on-the-rights-of-the-child/>

⁶ R.N. Choudhary, Law Relating To Juvenile Justice In India, (4th edn, 2013)

delinquency-prevention policies. The policies are supposed to include various opportunities particularly education as it would not only satisfy the varying needs of the young but also would serve as a supportive framework for safeguarding the personal development of those children who being in social danger zone are in need of special care and protection.⁷

Present Day Administration of Juvenile Justice in India

The present day Juvenile Justice System in India has not been a continuous process resulting from an uninterrupted concern for children. The timing and content of various developments relating to the Juvenile Justice System have close relationship with the reforms taking place elsewhere in the world rather than with the demands of children in the country. For example, the partition of the country had aggravated the problems of neglected and delinquent children, and Parliament, recognizing it, did introduce a model legislation to deal with them in 1953. The bill was shelved due to reorganization of the Part C states and it was not until six years later, after the UN Declaration of the Rights of the Child in 1958, that another Bill was introduced in Parliament in 1959. Various other measures like the National Children's Board, generated hope for continuous focus remaining on the children but that proved to be short-lived bubbles enthusiasm and never picked up any momentum.

Committees like the Ganga Sharan Sinha Committee were set up to study the problems juveniles comprehensively but their recommendations remains generally unimplemented piece-meal and tardy progress of juvenile justice legislations.

The Juvenile Justice (Care and Protection of Children) Act has been enacted as a consequence of the major shift in policy from welfare to rights of children with India's ratification of the full impact of the legislation and enforcement pattern under the JJ (C&P) Act of the various rights recognized under the Convention on the Rights of the Child. An immediate consequence of the JJ(C&P) Act has been that with the increase in age of boys from 16 to 18 years, a large number of children languishing in jails have to be moved out. Some other recent development indicate that children groups are beginning to realize the importance of having rights. More groups are seeking enforcement of children's rights.⁸

The Juvenile Justice (Care and Protection of Children) Act was enacted to consolidate and amend the law relating to Juveniles in conflict with law and children in need of care and protection by providing for proper care protection and treatment by catering to their

⁷ Supra Note 4

⁸ Conceptual Analysis of Juvenile Justice, Shodhganga (November 30, 2022, 1:28 p.m.) at 70, http://shodhganga.inflibnet.ac.in/bitstream/10603/127042/9/09_chapter%202.pdf

development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

The Juvenile Justice Act 1986 was repealed by this act. Any action taken under the former act would be deemed to have been taken under the corresponding provisions of this new Act.⁹

Cyber Delinquency

It is criminal activity carried out by means of computers or the Internet. The word delinquency is used with a reference to juvenile justice law. The criminal justice system, not just in India but in entire world has faced the dilemma of what to do when the offenders are minors. In India, a separate juvenile justice system exists with its own courts and rehabilitation facilities as juveniles cannot be jailed. When a juvenile commits a crime, it is not called a crime it is called delinquent conduct. This explains why we can't refer cyber offences committed by juveniles as cyber crime but cyber delinquency.¹⁰

Juvenile Cyber Delinquency

The Internet space or cyber intergalactic is growing very fast and as the cyber offenses. Some of the kinds of Cyber felons are mentioned as below.

Hackers: They are the individuals who explore others' computer systems for education, out of curiosity, or to compete with their peers. They may be attempting to gain the use of a more authoritative computer, gain respect from fellow hackers, build a status, or gain receipt as an expert without formal education.

Pranksters: They are the individuals who perpetrate tricks on others. They generally do not intend any particular or long-lasting harm.

Career felons: They are the individuals who earn part or all of their income from crime, although they Malcontents, addicts, and irrational and incompetent people: "These individuals extend from the mentally ill do not necessarily engage in crime as a full-time occupation. Some have a job, earn a little and steal a little, then move on to another job to repeat the development".

⁹ Ms. Bobby Anand, Juvenile Justice in India- On A Path To Redemption, LawyersClubIndia (December 2, 2022, 1:28 p.m.), <http://www.lawyersclubindia.com/mobile/articles/details.asp?mod-id=181>

¹⁰ Harshal Morwale, Juvenile Cyber Delinquency- Evaluation of Legal Implications, Academia (December, 2, 2022, 4:04 p.m.), http://www.academia.edu/15156318/Juvenile_Cyber_Delinquency_Evaluation_of_legal_implications

Cyber Pestering: This crime involves use of internet to harass someone. The behavior includes false accusations, threats etc. Normally, majority of cyber stalkers are men and the majority of victims are women.

Spamming: Spamming is sending of un-solicited bulk and commercial messages over the internet. Although exasperating to most email users, it is not illegal unless it causes damage such as congestion network and disorderly service to subscribers or creates negative impact on consumer attitudes towards Internet Service Provider (ISP).

Cyber Pornography: Women and children are victims of sexual exploitation through internet. Pedophiles use the internet to send photos of illegal child pornography to targeted children so as to attract children to such funs. Later they are sexually exploited for gains.

Phishing: It is a criminally fraudulent process of acquiring sensitive information such as username, passwords and credit card details by concealing as a trustworthy entity in an electronic Communication.

Software Piracy - It is an illegal imitation and distribution of software for business or personal use. This is considered to be a type of infringement of copy right and a violation of a license agreement. Since the unsanctioned user is not a party to the license agreement it is difficult to find out remedies.¹¹

Most Common Juvenile Cyber Delinquency

According to rational choice theory designed by Cornish and Clarke, an offender first weighs the benefits of the crime against the punishment (if caught), and then decides to commit a particular offense. Unlike adults, who are ultimately responsible for their own actions, juveniles are drawn in many directions. Some juvenile crimes are based on impulse, others are premeditated. Juveniles committing cyber related offences may not even consider the pros and cons, and may act on impulse, failing to realize how wrong their decision could be. They fail to believe that computer crimes are actually crimes.¹²

1. Cyber Bullying: Cyber bullying is bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites. Examples of cyber bullying include mean text messages or emails, rumors sent by

¹¹ P. Arokia Vasantha Ravi, Cyber Crime- An Overview of Security Measures, Seclusion, Fortification and Suggestions, 5 IJARCSSE 9, 9 (2015)

¹² Harshal Morwale, Juvenile Cyber Delinquency- Evaluation of Legal Implications, Academia (December 04, 2022, 4:40p.m.), http://www.academia.edu/15156318/Juvenile_Cyber_Delinquency_Evaluation_of_legal_implications

email or posted on social networking sites, and embarrassing pictures, videos, websites, or fake profiles.¹³

2. Digital Piracy: Digital piracy is sharing and/or downloading of software and digital music and movies without the permission of the copyright holder. Kids who would never in a million years shoplift a DVD will "steal" thousands of songs without compunction.

This happens because, according to a study that appeared in the journal *Psychology Crime and Law*, most college students don't consider such downloading to be stealing and don't believe it's morally wrong. There are probably a number of reasons for this: The intangible nature of digital "goods" is different from that of tangible goods. Traditionally, the crime of theft involved "unlawfully appropriating property without the effect consent of the owner, *with the intent to deprive the owner of the use of the property.*" When you download a copy of a song, you don't deprive the owner of the use of that song, as you do when you steal a tangible item. Kids have a hard time understanding abstractions.¹⁴

3. Pornographic material: Swapping of pornographic material is another common juvenile cyber delinquency. This is a case (unless it involves underage models/actors) of an act that is illegal for juveniles but becomes perfectly legal on one's eighteenth birthday. A profound interest in sex is a part of human nature and teenagers are awash in hormones that make this "crime" almost inevitability, given the temptation of all that easily available porn on the Internet.

Hacking: Criminal trespass via computer (which most laws call *unauthorized* access) is another of the most common juvenile cybercrimes. The stereotypical hacker is a nerdy teenager who breaks into remote systems not for the purpose of stealing and using information, and often not even for the purpose of creating havoc, but merely to prove to himself and others that he has the skills to do it. In some cases, however, that teenager can be prosecuted under the same laws (and sentenced to the same penalties) as a terrorist who hacks into systems to disrupt vital communications with the intent to cause serious injury and death.¹⁵

¹³What is Cyber Bullying, StopBullying, (December 5, 2022, 4:47 p.m.), <https://www.stopbullying.gov/cyberbullying/what-is-it/>

¹⁴ Natalie Wolchover, Illegal Downloading Is OK, College Kids Say, LiveScience (December 05, 2022, 5:08 p.m.) <http://www.livescience.com/13692-illegal-downloading-college-kids.html>

¹⁵ Deb Shinder, Juvenile cyber-delinquency: Laws that are turning kids into criminals, TechRepublic, (December 06, 2022, 5:15 p.m.) <http://www.techrepublic.com/blog/it-security/juvenile-cyber-delinquency-laws-that-are-turning-kids-into-criminals/>

Mass Media Effects on Juvenile

The mass media significantly influence behavior. Juveniles are especially vulnerable to the mass media. This condition points to concerns on possible negative effects of the mass media on juvenile behavior. Reach of mass media has widened in last 20 years. At present time, mass media can reach young children in their homes. Main source of media interaction are through computers, televisions and mobiles and similar devices. Young children can have access to it even without help of adults. The violent content in television reality shows and in movies stir up tender and feeble minds of children and they tend to imitate the same they saw in television or movies without knowing of consequences. Also frequent exposure to violent video games develops violent traits in juveniles.

Available Options to Control Juvenile Delinquent Behaviour:

The options available for addressing juvenile delinquency are as follows:

1. Laws against violence and delinquent behavior among juveniles
2. Parental control
3. Support of secondary social environments like schools and community groups
4. Stricter regulation of the mass media on violent content¹⁶
5. Filters should be used in internet connections to regulate porn contents
6. To keep a check over children's friend group and their activities

Must be taken initiatives

In some cases, education may be enough; most young people don't know the intricacies of the law nor understand the severity of the possible consequences. For some less serious juvenile offenders, the behavior will change simply in the course of growing up. Teaching children ethical and moral behavior in general will go a long way toward alleviating problems such as cyberbullying and cybervandalism; they need to learn empathy and how to put themselves in the place of the victims.

Kids may also harbor the illusion that their actions online are anonymous, that "nobody will ever know," that their posts boasting of their illegal behaviors are truly private, or even that nothing that happens in the cyber world is "real." They may dehumanize the people on the other end of that network link and think of mistreating them as the same as doing it to a software construct in a game. Again, education and personal growth are key to changing that.

¹⁶ Supra Note 8

For some types of cybercrime, such as copyright violations/piracy, it's going to be harder. It may be time to rethink the system that makes these acts crimes in the first place. In fact, one of the reasons we have so many more criminals today is that we have so many more criminal laws. And there is evidence that when a populace is overwhelmed by laws to the point where even a person who tries to be an upstanding citizen can't keep from breaking some of them in just trying to go about his/her business, that causes a loss of respect for all laws, including the ones that are beneficial and necessary.

A Research has increasingly shown that locking up young people has negative effects. It places them at higher risk of dropping out of school and of being unemployed, and it makes it more likely that they will become permanently entangled with the criminal justice system.¹⁷If we brand children as criminals, because of common and relatively normal behavior, we create a generation in which criminality becomes the norm. Perhaps the juvenile cybercrime problem will push us to finally reexamine our entire criminal justice system and how it "just grew that way."¹⁸

We have laws we don't need to make more laws in future for children's safety or protection, the very need is to implement them properly. Its high time where parents need to think and to keep an eye over their children's internet and real life activities. Parents need to examine the behavior of their children time to time and to help them in understanding the values of life. If we want a better future of our child then firstly we need to make him a good human being not a "juvenile offender".

¹⁷ [Better Care for young offenders](http://www.nytimes.com/2013/03/02/opinion/better-care-for-juvenile-offenders.html), nytimes,(December 08, 2022, 8:00 p.m.)

<http://www.nytimes.com/2013/03/02/opinion/better-care-for-juvenile-offenders.html>

¹⁸ Deb Shinder, [Juvenile cyber-delinquency: Laws that are turning kids into criminals](http://www.techrepublic.com/blog/it-security/juvenile-cyber-delinquency-laws-that-are-turning-kids-into-criminals/), techrepublic (December 08, 2022, 9:42 a.m.) <http://www.techrepublic.com/blog/it-security/juvenile-cyber-delinquency-laws-that-are-turning-kids-into-criminals/>