

## **JUVENILE DELINQUENCY IN INDIA: A CONCERN**

Gurdeep Singh \*

*If he who breaks the law is not punished, he who obeys it is cheated. This and this alone, is why lawbreakers ought to be punished: to authenticate as good, and to encourage as useful, law abiding behavior.*

Thomas Szasz

### **1. INTRODUCTION**

Ever since the dawn of human civilization, crime has always been one of the major prevailing problems. Very hardly any society can be thought about without besetting the problem. Human beings inherently by nature are fighting animals; to think about a crimeless society thus is nothing but a mere myth. Adolphe Quetelet, the eminent Belgian social statistician observed someone and a half century ago that adolescents, especially the young males are more prone to crime, disorder and delinquency due to their childish impulsiveness and adolescent conflict. In his own words, “the propensity to crime is at its maximum at the age when strength and passions have reached their height, yet when reason has not acquired sufficient control to master their combined influence”. A child is born innocent and if nurtured with tender care and attention, will blossom with faculties; physical, mental, moral and spiritual; into a person of excellent stature. On the contrary, unhealthy surroundings, negligence of basic needs, wrong company and other abuses may turn a child to a delinquent\* .

Juvenile Delinquency is the involvement of a kid who is between the age of 10 and 17 in illegal activity or behaviour. Adolescent misconduct is likewise used to allude to youngsters who display constant conduct of underhandedness or noncompliance, in order to be considered out of parental control, getting to be plainly subject to legitimate activity by the court framework. Juvenile delinquency is also known as “juvenile offending,” and each state has a separate legal system in place to deal with juveniles who break the law<sup>†</sup>.

With the rise in crimes committed by juveniles in India, there has also been rise in shrill debates around it especially post the Delhi gang- rape case where one of the six accused is

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\*Research Fellow, Department of Political Science, Guru Nanak Dev University, Amritsar143005

\* Retrieved from <http://www.crimspace.com/profiles/blogs/juvenile-delinquency-and-india>, visited on 17<sup>th</sup> February, 2019

<sup>†</sup> Amandeep Kaur, Juvenile Delinquency and related Legislations in India, available at <https://blog.ipleaders.in/juvenile-delinquency-related-legislations-india/> visited on 18<sup>th</sup> February, 2019

a juvenile ho was most the brutal attacker of all. From stealing jewellery to stabbing other minors, molesting and raping young girls to killing women as old as their grandmothers, there seems to have no let up in juvenile crime in India in the last one year<sup>‡</sup>. Newspapers are full of juvenile cases these days. Some, in such a scenario, argue for more strict laws for juveniles and some are of opinion that there is lack in implementation of laws. In the present article, researcher has made an attempt to look for reasons that make young minds turn to crime and what methods are required to curtail juvenile crimes along with the study of juvenile law.

## **2. JUVENILE: MEANING AND DEFINITION**

In India the juvenile justice system is broadly administered under the Juvenile Justice (Care and Protection of Children) Act, 2000<sup>§</sup>. This Act is intended to protect the juvenile from the rigors of a trial by a criminal court. It prohibits sentencing of a juvenile and committing him to prison. As its preamble suggests it seeks to adopt a child-friendly approach in the adjudication and disposition of matters in the best interest of children and their ultimate rehabilitation<sup>\*\*</sup>. According to Juvenile Justice Act, juvenile is a person who has not completed eighteenth year of age<sup>††</sup>. A juvenile who is in conflict with law has to be below eighteen years on the date of commission of offence by him<sup>‡‡</sup>. Whether a person is a juvenile or not is determined by proper inquiry conducted by competent authority<sup>§§</sup> and competent authority is a board in relation to juveniles in conflict with law<sup>\*\*\*</sup>. Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 lay down the procedure to be followed in determination of age as follows:

- First of all, matric or equivalent certificate should be produced before the Court, if available.
- In the absence of above, Date of Birth Certificate from the school, other than play pen, should be produced.

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<sup>‡</sup> Srishti Jha, "Inside the Juvenile Mind", *Hindustan Times*, 19<sup>th</sup> February 2019, p 10

<sup>§</sup> Manish Kumar, "Determination of Age under the Juvenile Justice Act: A Contentious Issue", *Criminal Law Journal*, February 2011, p 56.

<sup>\*\*</sup> Kallu@ Amit v. State of Haryana, AIR 2012 SC 3212

<sup>††</sup> Section 2 (k) of Juvenile Justice Act, 2000.

<sup>‡‡</sup> Harpreet Singh v. State of Haryana, 2010 (2) RCR(Cri) 362.

<sup>§§</sup> Balbir Singh v. State of Rajasthan 1990 CriLJ 481.

<sup>\*\*\*</sup> Section 2 (g) of Juvenile Justice Act, 2000.

- In the absence of above, Birth Certificate given by a corporation or a municipal authority or panchayat should be produced.
- In the absence of all above, the medical opinion may be sought which will declare the age of accused.

If even after inquiry court is not able to assess exact age of the accused, in such a case, court may give benefit to juvenile by considering his age on lower side within a margin of one year<sup>†††</sup>. However, there is no hard and fast rule of determining juvenility each case depends upon its own facts<sup>†††</sup>.

### **3. FACTORS RESPONSIBLE FOR JUVENILE DELINQUENCY**

In the age of lost innocence, the term 'criminal children' is not any oxymoron. If numbers are a fair indication juvenile crime saw a disturbing increase according to police reports<sup>§§§</sup>. Causes for juvenile delinquency have been pointed out by different criminologists in different ways. Cohen in his major work "Delinquent Boys" has claimed that crime committed by the young could be explained by the sub-cultural values of the peer grouping and particularly he has emphasized on the problem arising from the middle class values. On the other hand, Cloward and Ohlin attached more importance to the criminality of the lower-class juvenile, because it illustrates the existence of gangs or subcultures which support and approve of the actions of the delinquent. Additionally, psychological researches on teen-age violence brought into light that reason for violence may be birth complications, poverty, anti-social parents, poor parenting, aggression, academic failure, psychological problems, alienation from home, school etc.. However, there is one major psychological theory – Social Learning Theory, which seeks to explain the causes of a particular behavior. Followers of this theory see crime as a deliberate response to a particular life event. The most famous representative of this theory A. Bandura believed that people are not born with innate actions, and that violence and aggression can be learned by modeling the behavior of others. Most times, the causes of the crime indeed can be linked to this theory especially in cases of minors.

#### **A. Issues associated with family**

A family, especially parents, plays a big role in the development of the child/adolescent. Issues associated with family can be one of the risk factors. These issues can be economic, social, etc. In Georgia, with the increasing number of immigrants raises the number of minors left without a parent. For grandparents or other caregivers, sometimes it is challenging to pay attention and supervise these children so they do not end up in an unfavorable environment. Improper surroundings may push a child/adolescent to commit a crime. The causes of committing a crime can be domestic violence, parental indifference and their bad habits, etc.

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<sup>†††</sup> Ashwani Kumar Saxena v. State of Madhya Pradesh, 2012(4) Recent Apex Judgments 523

<sup>†††</sup> Ram Suresh Singh v. Prabhat Singh 2009(6) SCC 681.

<sup>§§§</sup> Retrieved from [www.articles.timesofindia.com](http://www.articles.timesofindia.com) visited on 8-1-2019

### **B. Violence breeds violence**

Often, potential perpetrators are the victims of violence. Individuals may confront violence in a variety of social settings: in family, school, etc. Children who have experienced violence are most likely to have infringed relationships with adults, cannot communicate with their peers, and become “bullies” to prove themselves; sometimes they link their fate to a criminal environment.

### **C. Imitation – Does one crime provoke others?!**

A human being goes through several stages of social development, among which childhood and adolescence are important. Values, patterns of behavior, and motives are forming in childhood age. At this stage, family and parents play an important role in a person's life. Further, in adolescence, people try to define their own identity, try to establish themselves, and often the influence of parents is replaced by the influence of peers and friends. Hence, the reason for juvenile delinquency can become imitation. They can follow the example of:

- I. family members who engage in criminal behavior;
- II. peers prone to committing criminal acts;

the so-called “authorities” who push children to commit crimes. Unfortunately, in Georgia remains an idea of the so-called “good boy” and “thief in law”, and the “authorities” associated with them. This mentality is still propagandized within juveniles, where crime is considered as a norm. Some teenagers have chosen a similar path that increasing the risk of committing a crime by them.

### **D. Psychological issues**

Poor socio-economic status, indifferent attitude of parents, feelings of inferiority, lack of attention, and many other reasons can lead to various types of psychological issues in children and adolescents. For example, depression, fears, and complexes, excessive aggression, etc. This can provoke the minor to commit a crime.

### **E. “Street” children**

The problem regarding homeless children remains a serious concern. Children living on the streets, due to poor economic and social conditions, can be considered as one of the risk groups, as they are homeless children, who see “hooliganism” as the only way of their existence.\*\*\*\*

It must be stated here that the nature of delinquency among male juveniles and those of girls are not, however, of same kind. Boys are found to be more prone to offences such as theft, pick-pocketing, gambling, eye-teasing, obscenity, cruelty, mischief etc. while girls more commonly are discovered in sex-involvements, running away from home, truancy and shop lifting. Furthermore, as researches have shown delinquency rate in respect of

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\*\*\*\* Retrieved from <https://www.penalreform.org/blog/juvenile-delinquency-causes-prevention-and-the-ways-of/> visited on 8-2-2015

boys is much higher than those of girls, as boys by nature are more adventurous and easily get aggressive as compared to girls<sup>††††</sup>.

#### **4. THEORIES OF JUVENILE DELIQUENCY**

The word Juvenile delinquency has been debated by psychologists, criminologists, and even sociologists from time immemorial. Lot of people, having contrasting and concurring opinions, have been focusing on the real cause, which can be explained using different theories ranging

from classical to modern ones.

Philosophers have come up with different explanations seeking to investigate these tendencies of juvenile crime. Some have associated it with the aspects of race, gender, poverty that are depicted by poor socio-economic status, while others have associated it with childhood events such as sexual abuse or other forms of physical abuse. Peer group influence has also provided large surface areas for juvenile crimes to flourish. There are socially based theories that explain juvenile delinquency together in traditional and modern or advanced perspective. Some of the

Discussed theories are:-

##### **4.1 Strain / Institutional Anomie Theory**

The Strain theory was written in the 1940s by Robert Merton. The theory clarifies that juvenile delinquency occurs because teenagers' don't have enough resources to make themselves happy. Their goals were not able to be achieved within legal means so they find unlawful means by which to attain their goals. Strain theory emphasizes that most juveniles share similar goals, values, and aspirations; but many juveniles do not have an equal ability or the means to accomplishing such goals, as economic or social success. Merton's theory

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<sup>††††</sup> Retrieved from <http://www.crimspace.com/profiles/blogs/juvenile-delinquency-and-india>, visited on 17<sup>th</sup> February, 2019

of strain was explained into details by Robert Agnew (1992) to enlighten the varieties of delinquent behavior through the general strain theory.

**Three sources of strain:**

- i. Strain caused by the failure to attain positively valued objectives, basically the same as Merton as theory of anomie.
- ii. Strain caused by the elimination of positively valued incentives from the individual. Examples include the loss of a girl/boyfriend, divorce or separation of parents, death of a loved one, or leaving friends and moving to a new neighborhood or school.
- iii. Strain as the demonstration of negative stimuli, such as child abuse and neglect, physical punishment, family and peer conflict, stressful life conditions, school failure, and criminal victimization. An example would be a juvenile who has had a goal to get a job and to buy the modern Phone, that juvenile will be saving everything money that he or she gets. But as time goes on if that juvenile finds out that he or she is not keeping up to the amount of the price of the phone, he will either steal a phone or he steal money to purchase the phone. Research has made it clear that pressure such as a family breakup, unemployment, moving, feelings of dissatisfaction with friends and school are positively related to delinquency. In this sense lack of opportunities make makes juvenile use deviant and illegitimate means to achieve their goals.

**4.2 Subculture Theory**

Another theory about juvenile delinquency is the subculture theory. In 1955, Albert Cohen developed the subculture theory, which is a culmination of several of his theories. This theory is made from the fact that modern societies have established a culture of separation where isolated groups of people have their own values and norms from the main society. These behaviors have introduced the arts of learning antisocial behaviors that defined by criminal studies as offense. According to Cohen, juvenile delinquency is a product of society. The juveniles commit crimes, such as stealing, because it is not a social norm, and

they do it to fit in with their subculture.

#### 4.3 Differential Opportunity Theory

The differential opportunity theory is concerned with young people who commit crimes. Richard Cloward and Lloyd Ohlin asked these questions, why do people prosper or succeed in life? Why do others commit certain crimes while others don't? Criminologists have spent time analyzing these questions all day in and out and there have been numerous theories. But Cloward and Ohlin believe that opportunities play a very strong role in juvenile delinquency as lack of money causes strain. If juveniles have more chances to succeed, then they would be less likely to turn to subculture groups for justification more over the differential opportunity theory considers the fact that there can be other conditions besides social factors that add to a juvenile's delinquency.

Cloward and Ohlin's theory believes that the juvenile may be successful throughout school but may fail to find a profitable work or honest job. The failure to find gainful work leads the juvenile to be delinquent and not the social factors. The differential opportunity theory varies from the subculture theory because there are many reasons other than social factors that can lead a juvenile to be delinquent. If the juvenile has more opportunities, they will be more eager to succeed than to join a subculture. This theory was developed by Richard Cloward and Lloyd Ohlin in the year 1960<sup>\*\*\*\*</sup>.

### 5. PREDICAMENT OF JUVENILE DELIQUENCY IN INDIA

Recently on July 17, 2013 Supreme Court dismissed the seven public interest litigations and refused to bring down the age of juvenile from 18 to 16 in view of recent spurt in crimes by those in this particular age group<sup>§§§§</sup>. Is treatment of heinous crimes especially rape, murder, acid attacks, as 'spurt' a rational view? In a recent case<sup>\*\*\*\*\*</sup>, accused who

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<sup>\*\*\*\*</sup> Retrieved from <http://www.legalservicesindia.com/law/article/1294/17/Juvenile-Delinquency-In-India>

<sup>§§§§</sup> R. Sedhuraman, "SC refuses to bring down the juvenile age from 18 to 16", *The Tribune*, p 1.

<sup>\*\*\*\*\*</sup> Monu@Moni@ Rahul @ Rohit v. State of U.P. 2011 (7) RCR (Criminal) 2256

was a juvenile kidnapped a minor girl at gunpoint in the midst of a marriage procession and raped her. Wouldn't release of such an offender defeat the ends of justice?

When a juvenile commits monstrous crimes particularly when he is 16 or above or when he is on the verge of attaining majority, how far it is just to give him benefits under Juvenile Justice Act? If age is the sole decisive factor to determine the quantum of punishment then what is the requirement of having Section 83<sup>†††††</sup> under the Indian Penal Code in which sensibility of the child is seen. In India, the age of criminal responsibility is fixed at 7 years by the Indian Penal Code, 1860 as "Nothing is an offence which is done by a child under seven years of age.<sup>†††††</sup>" For the age group of 8 to 12 years, Therefore, to avail this immunity, the accused child will have to prove that he has not attained the maturity to judge what he was doing was wrong. For children between 12 to 18 years, Section 83 is there under which no such immunity is available if the child knows the consequences of what he is doing. But however, even if they are found to be responsible for criminal acts, they cannot be treated or sentenced in the same manner as adults<sup>§§§§§</sup>.

A juvenile who is committing robbery or murder is it equitable to assume that he is not having knowledge or awareness of what is right and what is wrong. When a juvenile is committing rape or dacoity, don't these acts fall under the category of offences? Do victim undergo a lesser pain when the offence is committed by a juvenile? When a juvenile throws acid doesn't that acid corrodes victim's body? Or do bullets fired by a juvenile never cause injury? Are suffering, trauma, pain and misery of victim is of a smaller amount when the offence is committed by a juvenile? Probably, answers to these questions are not affirmative. When the act committed by a juvenile is an offence and that too grave then why he should be given compassionate treatment?<sup>\*\*\*\*\*</sup>

With the advancement of technology and science the age of understanding, reasoning and appreciating has decreased<sup>†††††</sup>. A juvenile of the age 15 in modern times is mature enough and has same understanding that an adult of age 20-25 years used to have some 25

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<sup>†††††</sup> Section 83 of Indian Penal Code 1860 says, "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion".

<sup>†††††</sup> Section 82 of Indian Penal Code, 1860

<sup>§§§§§</sup> Adhideb Bhattacharya, "Indian Juvenile Justice System-Analysis" available on

<http://www.nationalbarindia.org/articles/32/indian-juvenile-justice-system-analysis/>

<sup>\*\*\*\*\*</sup> Arvindeka Chaudhary, "Juvenile Delinquency in India: Minor Criminals Major Crimes" International Multidisciplinary Research Journal, Vol.3, Issue 5, p8

<sup>†††††</sup> Shamsher Singh v. State of Haryana 2012(4) RCR(Cri) 626.

years ago. Today, age and mental growth are not going hand in hand<sup>+++++</sup>. If courts stick with keeping soft, easygoing and merciful attitude towards juveniles no doubt, juveniles after spending 3 years maximum in the correctional homes will continue with their lives but what about victim. Victims' scars will remain forever.

## 6. CONCLUSION

When the Juvenile Justice System process came up, it seems juvenile delinquency as an act and not a crime. The program can be viewed as a collection of correctional styles introduced to juvenile offenders to solve and prevent certain eventualities from reoccurring. Throughout generations the rate of delinquency has rocketed, the government has reformed different laws and amendments to protect the community. Delinquency has been taken advantage of and will remain if proper action isn't taken. When the law of punishment is kept in abeyance, it gives rise to the law of the fishes. The strong will swallow the weak. By not punishing the guilty, by not arresting who ought to be arrested and by failure to protect the subjects from crimes- decline and disaffection is produced among the subjects. Also, punishment when ill-awarded excites fury even among hermits and ascetics dwelling in forests, not to speak about house-holders<sup>§§§§§</sup>. Today a juvenile is mature enough to understand various factors which perpetuate the commission of crime. Undue sympathy to impose inadequate sentence would do more harm to the justice. The Punjab and Haryana High Court rightly observed in *Shamsher Singh v. State of Haryana*<sup>\*\*\*\*\*</sup>, that with the enhancement of mental maturity at a comparatively lower age, the provisions of the Juvenile Justice Act deserve to be reassessed and re-examined by the legislators.

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<sup>+++++</sup> Srishti Jha, "Inside the Juvenile Mind", *The Hindustan Times*, 17<sup>th</sup> February 2013, p 10.

<sup>§§§§§</sup> V. K. Gupta, "Kautilyan Jurisprudence", V. K. Gupta Publishers: Delhi, 1987, p 8.

<sup>\*\*\*\*\*</sup> 2012(4) RCR(Cri) 626.