
CAPITAL PUNISHMENT AND JUVENILE OFFENDERS: A CRITICAL ANALYSIS OF ETHICAL, LEGAL, AND SOCIETAL PERSPECTIVES

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ABSTRACT

Addressing juvenile crime is crucial for ensuring a better future for the children involved in criminal activities as well as for the society at large. “Prevention and intervention programs play a key role in guiding young individuals away from criminal activities. It is also essential to address underlying issues such as family dynamics, socio-economic factors, and mental health to create a supportive environment for these young individuals. It is a complex issue, but with the right strategies, there is possibility to reshape their futures positively. There are special courts in India to administer juvenile delinquency in a child friendly manner. The concept of *parens patriae* means that it is the state’s responsibility to act as a legal protector of citizens who are unable to protect themselves, thereby recognising the states duty towards juvenile crimes. The case of Nirbhaya indeed brought to light the complexities and debates surrounding the juvenile justice system, especially in case of heinous crimes. Striking a balance between rehabilitation and accountability is challenging, but it is crucial for a fair and just legal system. Drafting laws that address the nuances of different offenses and ensuring that such laws are interpreted and implemented prudently is essential. Society evolves, and so should our legal frameworks to adapt to new challenges and perspectives. It is a delicate matter that requires thoughtful consideration and collaboration between legislative and judicial bodies”¹.

Keywords: Death Penalty, Juvenile delinquency, Crime Prevention, Reformation.

¹ Cunneen, C., & White, R. (2021). *Juvenile Justice: Youth and Crime in Australia* (6th ed.). Oxford University Press.

Introduction:

“I believe the purpose of Juvenile Law is to provide a structure where troubled kids can reform themselves and mature into better citizens”² – Judge Sim Eunseok.

“Children are indeed the future assets of society, and it is crucial to ensure their protection and development. Various factors that exist, has possibility to lead them down the wrong path. Recognizing these challenges, societies need to implement comprehensive strategies that address economic, social and biological aspects. Investing in education and providing supportive environment can play significant roles in steering children away from negative paths. The principle of ‘doli incapax’ is an essential aspect of the juvenile justice system, not only in India but also in various legal systems. ‘Doli incapax’ refers to the presumption that children lack the capacity for crime because they are considered incapable of possessing the intention to commit a crime. This presumption recognizes the developmental differences in cognitive abilities between children and adults. The establishment of the juvenile justice system in India has historical roots dating back to the colonial period when the country was under British rule. The Juvenile Justice Act in India has evolved over the years to address the needs of young offenders, with a focus on rehabilitation and reintegration rather than purely punitive measures”³. Today we follow Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 which amended certain provisions on the earlier existing Act namely the Juvenile Justice Act, 2015. The Act focuses on the rehabilitation and reintegration of juvenile offenders rather than punitive measures like capital punishment. However, in cases where the juvenile is involved in a heinous crime, there have been debates about whether there should be exceptions to the rule, allowing for stricter penalties.

Chronicle of juvenile capital punishment:

The history relating to the imposition of death penalty upon juveniles can be traced back to the year 1642, when the offence of bestiality was committed by a 16 years old boy named Thomas Granger. This has been recognised to be the initial documented judicial killing of juvenile. The tradition of imposing death penalty upon juveniles continued for 363 subsequent years, where execution of minimum of 366 juveniles took place. Later, in the year 1786, a girl who was 12 years old committed murder of a 6-year-old white girl, for which she

² https://en.wikipedia.org/wiki/Juvenile_Justice_%28TV_series%29?utm_source=chatgpt.com

³ Anupam Bajpai, *Child Rights in India: Law, Policy, and Practice* (Oxford University Press 2017) 145–167.

was put to death by the mode of electrocution. In the case of “*Furman v. Georgia* the apex court of U.S. held that “death penalty was forced on all age groups wantonly and discretionally in contrary to the Eighteen Amendment” and thereby striking down all the existing resolutions pertaining to capital punishment for juveniles. In the late 1900s, significant reformations occurred globally, involving initiatives to restructure and rehabilitate juvenile offenders. A similar transformation occurred in 1850 in India with the enactment of the Apprentice Act, which aimed at the welfare and rehabilitation of juveniles”⁴

Execution of underage individuals in India:

“There is restriction in India for imposing death penalty upon children, who are under the age of 18. The Government has stated that the Indian Penal Code prohibits the imposition of the death penalty on children, citing a document indexed as (No UI/151.4/5/2000 dated 12 December 2000, Minister of External Affairs). Even Clause 16 of Juvenile Justice (Care and Protection of Children) Act, 2000, amended in 2006, stipulates: (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with the law shall be sentenced to death.... The restriction is applicable to individuals convicted of a capital crime committed while below the age of 18.”⁵

Related Case Laws:

“*Mukesh and Anrs. v. NCT Delhi* This case is widely known as the Nirbhaya case or the Delhi gang rape case. In this case, a 22-year-old woman was subjected to brutal and repeated gang rape in a private bus by a group of 6 men, including a 17-year-old juvenile and the bus driver. During the trial on March 11, 2013, Ram Singh, the driver committed suicide. The other four convicts -Mukesh, Akshay, Pawan, and Vinay, received the death penalty and were executed on March 3, 2020, at 6:00 a.m. The underage offender underwent a separate trial in a juvenile court and was given a term of 3-year imprisonment in accordance with the Juvenile Justice System in 2013. This stirred public unrest, with citizens calling for the death penalty for the juvenile involved in the grave crime. Despite public outcry, the Supreme Court declined to impose a more severe punishment based on the heinous nature of the crime. This sequence

⁴408 U.S. 238 (1972).

⁵ 16 July 2003, CRC/C/93/Add.5, Second state party report to the Committee on the Rights of the Child, para. 1139

of events led to the enactment of the Juvenile Justice Act in 2015.”⁶

“*Ram Prasad Sahu v. State of Bihar*”⁷: “In this case, the juvenile offender contributed to the major part of the crime. The Supreme court ruled that juvenile can be convicted of both rapes and attempted rape, if a youngster is not eligible for punishment but is capable of committing rape or murder, granting him blanket immunity violates the principles of fairness and proportionality of punishment.”⁸

“*Dr. Subramanian Swamy and Ors. v. Raju Thr. Member Juvenile Justice Board and Anr* in this case, the person appealing argued that sections 1(4), 2(k), 2(i), and 7 of the Juvenile Justice Act, 2000 should be interpreted differently, suggesting that individuals above 16 years old possess sufficient maturity to comprehend the nature and consequences of their actions. Furthermore, they contended that those who commit severe crimes should not receive protection under the Juvenile Justice Act, 2000. However, the Supreme Court maintained that the provisions in the Act are straightforward and require no reinterpretation. Consequently, held that anyone below the age of 18 is deemed a juvenile”⁹

“*Bodhisattwa Gautam v. Subhra Chakraborty* in this case, the Supreme Court declared that the act of rape constitutes a violation of Article 21 of the Constitution, which guarantees the right to life of the victim. Consequently, the blanket immunity granted to juveniles is inconsistent with the fundamental rights outlined in the Constitution”¹⁰

“*Narayan Chetanram Chaudary v. State of Maharashtra* In this case, the Supreme Court vindicated a death row convict upon discovering that the individual, who was a minor when the crime was committed, was treated and sentenced as an adult.”¹¹

Global Standards, Agreements and Treaties on Juvenile Justice:

“There was no much importance given to juvenile justice till late 1900s, now which has been recognised as a region of law by means of international norms. In 1989, the *Stanford v.*

⁶ Criminal appeal nos. 607-608 of 2017, 2017 SCC Online SC 533.

⁷ 1980 AIR 83, 1980 SCC (1) 74.

⁸ https://blog.ipleaders.in/juvenile-crimes-india/#stringent_directions_provided_by_the_judiciary_concerning_juvenile_offenders

⁹ SLP (Crl.) No. 1953 (2013), Criminal Appeal No. 695 (2014).

¹⁰, 1996 SCC (1) 490.

¹¹ 2023LiveLaw (SC) 244, Sessions Case No. 462 (1994).

Kentucky”¹² “case established that individuals under the age of 16 are capable to be punished with death penalty for their crimes. However, this ruling was later overturned by the “*Roper v. Simmons*”¹³ case. “In the latter, the case was relating to a 17-year-old named Christopher Simmons, who committed a murder in the course of a robbery. Here, the jury recommended the death penalty upon finding him guilty, but in 2015, the U.S. Supreme Court affirmed that capital punishment is illegal for individuals under the age of 18. International Covenant on Civil and Political Rights, 1966 states that sentence of death will not be forced for crimes perpetrated by people under 18 years and will not be carried out on pregnant women.”¹⁴ “The United Nations Standard Minimum Rules, also known as The Beijing rules for the Administration of Juvenile Justice in 1985, advocate for the well-being of juveniles. The guidelines for the administration of the Juvenile Justice system, established by the Havana Rules, alternatively recognized as The United Nations Rules for the Protection of Juveniles who are Deprived of their Liberty in 1990. There is an International Convention namely UN Convention of Child Rights in which Article 37 speaks about Torture and Deprivation of Liberty whereas Article 40 is regarding the Administration of juvenile justice”¹⁵ “Article 37 of the convention states that no child shall be subjected to cruel or inhuman punishment or treatment, which prohibits death penalty and life imprisonment for juveniles. In case if any child is deprived of its freedom will be catered with legal amenities in order to contact their families. Article 40 states that juveniles must be treated with dignity and worth and it is the State’s duty to take care, guide and supervise in attrition to counselling of such children offenders.”¹⁶

Analysis:

“Juvenile crime data for the year 2018:

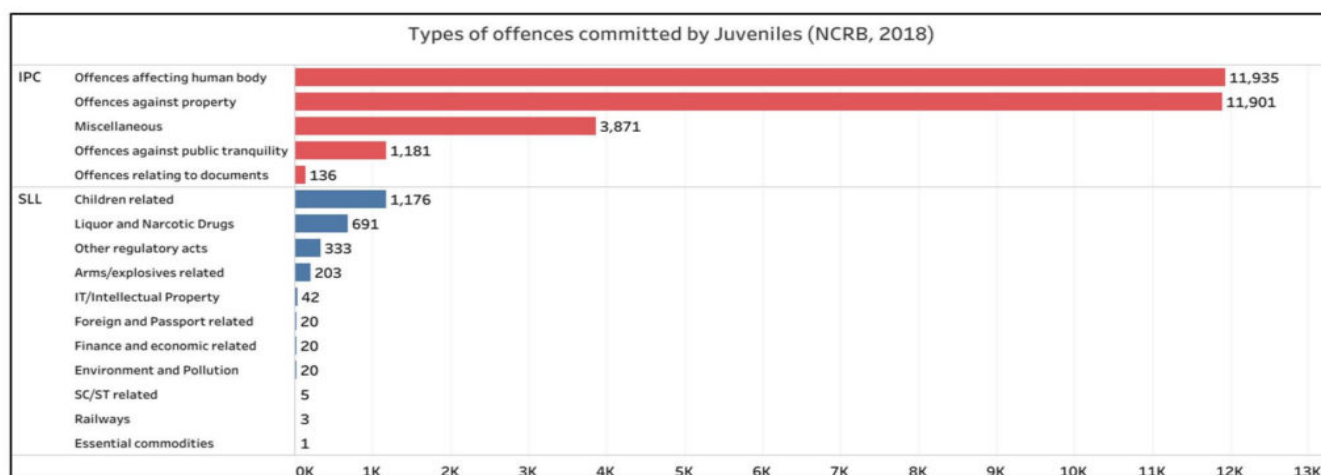
¹² 492 U.S. 361 (1989), 109 S. Ct. 2969.

¹³ 543 U.S. 551 (2005)

¹⁴ <https://leaglesamiksha.com/2022/02/24/juvenile-justice-capital-punishment/>

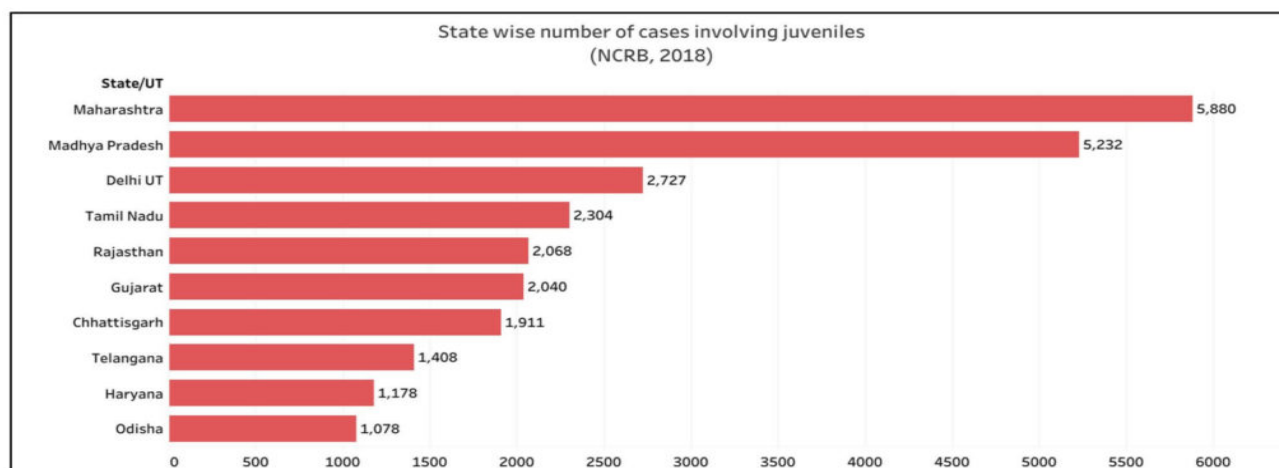
¹⁵ <https://leaglesamiksha.com/2022/02/24/juvenile-justice-capital-punishment/>

¹⁶ Article 37 and Article 40 of UN Convention of Child Rights



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Fig.1



18

Fig.2

Upon examining fig.1 and 2, it is evident that while the statistical data regarding crimes committed by juveniles (fig.2) may fluctuate on comparing various states, the offenses they primarily engage in typically pertain to bodily harm and property (fig.1). These offenses are commonly associated with adults rather than immature individuals.

¹⁷ https://factly.in/wp-content/uploads/2020/01/Crimes-by-Juveniles_Types-of-offences-by-Juveniles-1024x410.jpg

¹⁸ https://factly.in/wp-content/uploads/2020/01/Crimes-by-Juveniles_Statewise-numbers-1024x431.jpg

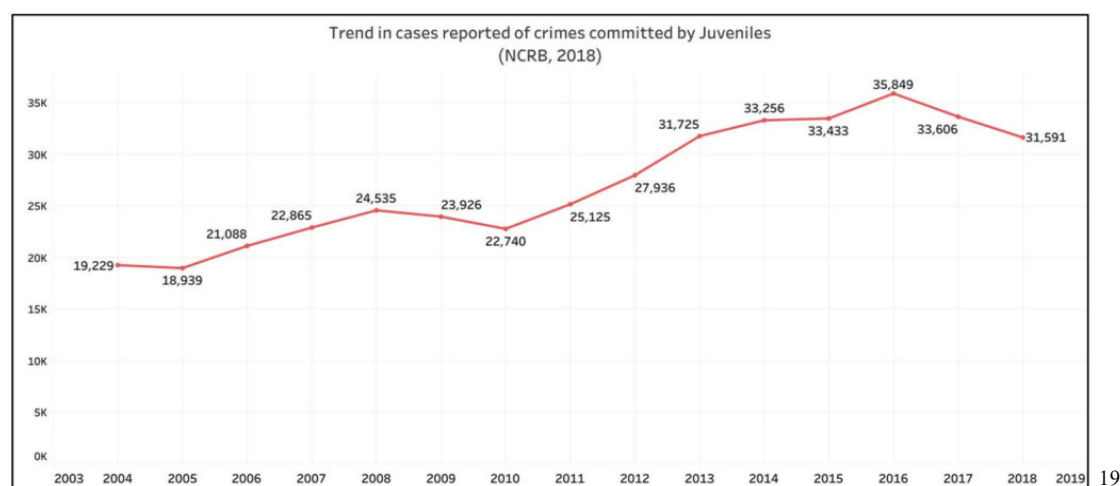


Fig.3

Fig.3 clearly illustrates the rising trend in crime rates over the past two decades. In the year 2003, the number of crimes committed by juveniles stood at 19,229, while in 2019, it increased to 31,591. This surge in juvenile crime rates is primarily attributed to the lack of stringent punishment imposed on them. This proves that by adopting to the reformatory theory of punishment, the system is unable to control the increasing juvenile crime rates.

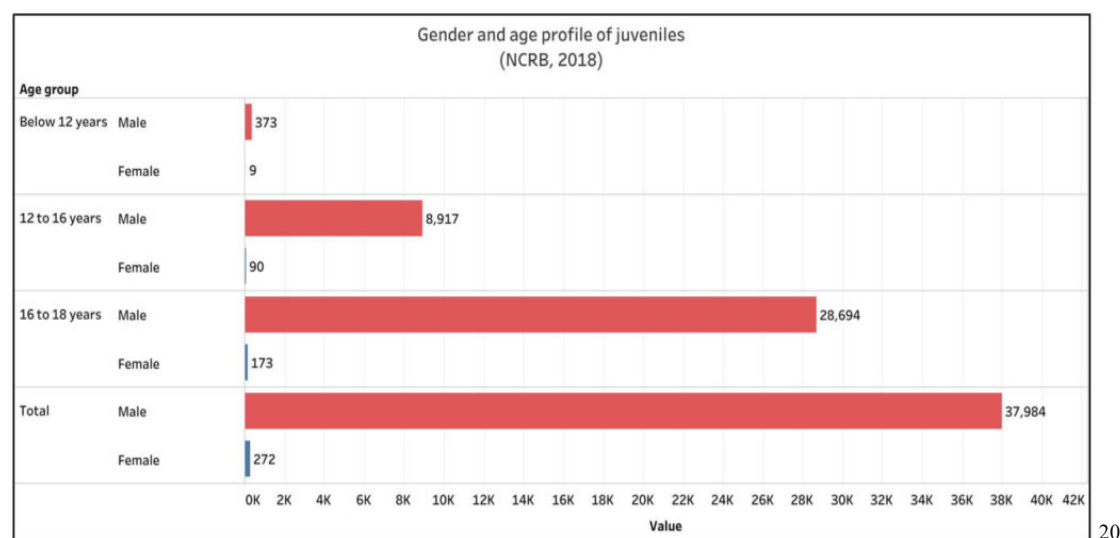


Fig.4

“Across the country, a total of 31170 cases were registered against juveniles in 2021,

¹⁹ https://factly.in/wp-content/uploads/2020/01/Crimes-by-Juveniles_Trend-in-cases-of-Juveniles-1024x460.jpg

²⁰ https://factly.in/wp-content/uploads/2020/01/Crimes-by-Juveniles_Gender-and-age-profiles-of-Juveniles-1024x461.jpg

showing a 4.7% increase over 2020, when the number of cases was 29,768. Majority of them — 76.2% or 28,539 in absolute terms — were in the 16 to 18 age group. Crime rate among juveniles had also gone up from 6.7% to 7.0%.”²¹

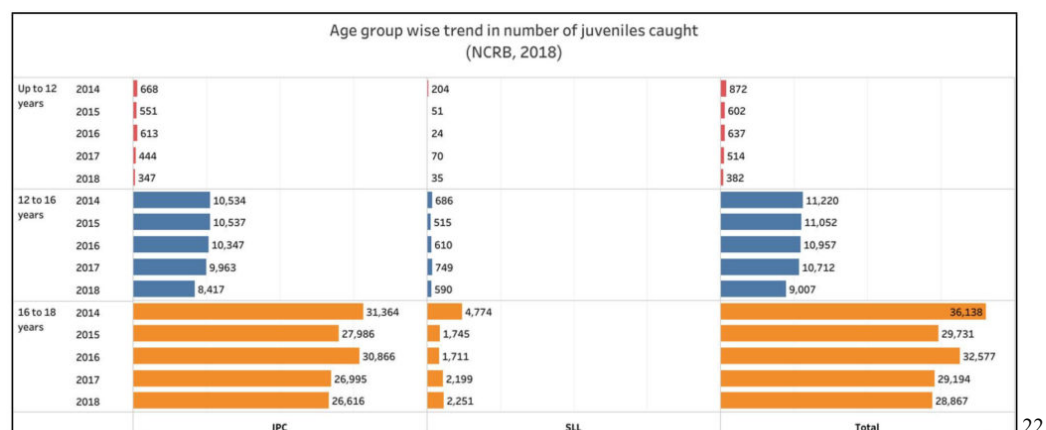


Fig.5

Based on fig.5, it is deduced that significant crimes are prevalent within the age range of 16 to 18 years. Consequently, reducing the age of juvenility is essential to prevent granting blanket immunity to individuals involved in serious criminal activities.

Methodology:

In order to gather data, this study uses a Doctrinal Research methodology that combines statistical and case study research techniques. The study is divided into two sections: the first looks at juvenile law and how different case laws interpret them, and the second section concentrates on the research context, data gathering and data analysis.

Constraints in the Study and Avenues for Future Research:

“This study focuses exclusively on the realm of juvenile capital punishment rather than examining the entire system. Another constraint is that the research relies heavily on hypothetical scenarios. The key question at hand is whether juveniles can be subjected to capital punishment, or if they are granted automatic immunity by invoking their juvenile status

²¹ <https://citizenmatters.in/ncrb-juvenile-crime-records-delhi-policing-police-policy-31663#:~:text=Across%20the%20country%2C%20a%20total,from%206.7%25%20to%207.0%25.>

²² https://factly.in/wp-content/uploads/2020/01/Crimes-by-Juveniles_Age-group-wise-Trend-in-cases-of-Juveniles-caught-1024x430.jpg

for heinous crimes they commit. In the Indian Penal Code (IPC), Sections 82 and 83, which pertain to general defences, become pivotal in this context. Section 82 states that a child below 7 years of age is considered innocent due to their limited understanding and mental capacity. On the other hand, if a child between 7 to 12 years commits a crime, it should be assessed based on the child's comprehension of its nature and consequences. In Juvenile Legislation, the age of juvenility is specified as under eighteen, implying that individuals of this age should be capable of making decisions about right and wrong. Therefore, further research is required to precisely determine the appropriate age for juvenility”²³.

Discussion and Conclusion:

“In today’s world, there is no reason to penalize someone for a horrible and violent crime with such a low sentence based only on their age. Rape is rape, and no one can get away with it by claiming age, mental infirmity, or mental unfitness.”²⁴ The purpose of the Juvenile Act, maintaining the age threshold below 18, is rooted in the assessment of juvenile maturity. However, with technological advancements and an increase in crime rates, there are instances of meticulously planned crimes that appear to be carried out by individuals of mature judgment rather than juveniles. This situation allows offenders to seek refuge under the Juvenile Act, avoiding capital punishment that might otherwise be warranted for such serious offenses. As an exception, the legislature should consider amending the law to include such heinous crimes under capital punishment. A specialized legal system is imperative to address the rise effectively and efficiently in juvenile delinquency. The primary goal of this system should be to identify and eliminate the root causes influencing juveniles to commit offenses, allowing them the opportunity to rebuild their lives.

²³ Government of India. (2023). *The Bharatiya Nyaya Sanhita, 2023*.

²⁴ <https://lawstudy.com/role-of-juvenile-justice-system/>

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