

## ROLE OF JUVENILE JUSTICE SYSTEM IN INDIA

Aryaman Gupta\*

### INTRODUCTION

Every saint has a story to tell, and every sinner has a fate,' Oscar Wilde reportedly observed. Mahatma Gandhi's remark that one should hate the crime, not the offender, is a corollary to this statement. This is especially true in the situation of juvenile justice, where the international community has recognized the notion of reformation as the prevailing manner of punishment when dealing with adolescents who have broken the law (G.S. Bajpai, 2019). It has also been observed in recent years that the number of crimes committed by children aged 14-17 has increased significantly. The general tendency or psychology behind the commission of a crime, or the causes of crime, are early-life experiences, dominant masculinity, upbringing, economic calamity, lack of education, and so on. It is an embarrassment that children between the ages of 7 to 10 are now used as tools to carry out unlawful or illegal activities. Because children's minds are innocent and manipulative, they can be enticed at a low cost. (Purti Vyas, 2017)

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Under the Indian Legal System, Juvenile Justice is a legal framework that defines justice for juveniles. Juvenile delinquency is given special treatment and protection by the system. A crime committed by a minor under the age of 18 is referred to as juvenile delinquency. Everyone is aware that there is an increasing rate of juvenile crime, and this increasing rate has created a contentious issue of age determination. Age is regarded as one of the most important factors in determining the accused's maturity level. The magnitude of this problem has sparked widespread concern around the world. Even in developed countries, the number of juvenile crimes is rising year after year. This issue is gradually assuming a significant proportion in India as well. In 1977, 44000 crimes were committed under the Indian Penal Code by juvenile and youthful offenders, an increase of 18.9 percent over 1976. This accounted for 3.5% of all Indian Penal Code crimes reported in 1977, compared to 3.4% in the previous four years (from

\*BBA LLB, SECOND YEAR, INDIAN INSTITUTE OF MANAGEMENT, ROHATAK.

1973 to 1976). In 1977, the volume of juvenile crime per lakh population was 7.0, up from 6.0 in 1976. Likewise, its percentage of crime had risen from 2.6 percent in 1967 to 3.5 percent in 1977. (S.K. Bhattacharya,1981)

The terrifying "Nirbhaya Delhi Gang Rape Case" occurred on December 16, 2012. This incident shocked the entire nation, sparking numerous debates among the legal community and socialists. The main reason for the debate was the involvement of the accused, who was only six months away from reaching the age of 18. The accused's involvement in such a heinous crime of rape compelled the Indian Legislation to enact a new law, and thus the Indian Parliament enacted a new law known as "Juvenile Justice (Care and Protection), 2015."

### **DEFINITION OF JUVENILE AND CHILD UNDER THE JUVENILE JUSTICE ACT, 2015 AND OTHER VARIOUS LAWS**

In general, a "child" is defined as someone who has not reached the age of 18 and is not that much mature to understand what is right and wrong. In the modern era, most countries' penal codes have adopted the principle of '**Doli Incapax**,' which means knowing that the Act you are committing is a crime. The penal laws also state that only children aged seven to twelve can be convicted if the Act they achieved is a heinous crime and they have the knowledge and have accumulated enough ability to comprehend the consequences of their actions. (Purti Vyas, 2017) A child is defined as a person under the age of 18 in **Section 2 (12)** of the **Juvenile Justice (Care and Protection of Children) Act, 2015**, i.e., he or she is under the age of 18. The Act defines the term "Child" as "Child in need of care and protection" and **Section 2 (13)** of the **Juvenile Justice (care and protection of children) Act, 2015** as "Child in conflict with the law." (Purti Vyas, 2017)

- **Children Act, 1960: Section 2(e)** of the Act states "child" means a boy who has not obtained the age of sixteen years or a girl who has not attained the age of eighteen years. (Purti Vyas, 2017)
- **United Nations Convention:** According to the 1989 U.N. Convention on the Rights of the Child, a "child" is defined as a human being under the age of eighteen, unless the majority is attained earlier under the applicable law declaration. (Purti Vyas, 2017)

### **INTERNATIONAL CONCERN FOR JUVENILE**

The UN's General Assembly established the Convention on the Rights of the Child on 20th November 1989, which prescribes a set of standards to be adhered to by all the States parties in securing the child's best interest. The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse. International bodies like United Nations and UNICEF have always emphasized the development of Children.

## **THE JUVENILE JUSTICE SYSTEM IN INDIA AND OTHER COUNTRIES**

### **JUVENILE JUSTICE SYSTEM IN U.K.**

Under the Children Act of 1908, Juvenile Courts were established in England for the first time in 1908. The primary responsibility of these courts was to provide proper care and protection to the child and young offenders and take all necessary steps to remove all undesirable surroundings around the offenders and ensure the offenders' reformation through education and training. (Purti Vyas, 2017)

1. **The Children and Young Offenders Act of 1933** grants the Juvenile Courts civil powers to investigate certain severe cases. The Act also states that any child or adolescent who commits a crime must be tried in Juvenile courts. The Act also includes provisions for the establishment of Remand Homes. (Purti Vyas, 2017)

2. The new Act in U.K. legislation also addresses the rights of juvenile offenders. The Act, known as **the Criminal Justice Act of 1948**, provides a certain level of security by sending young offenders to remand homes. (Purti Vyas, 2017)

### **JUVENILE JUSTICE SYSTEM IN U.S.A.**

Compared to other countries, the functioning of Juvenile Courts in the United States of America is relatively less complex and more accessible. In the process of offender trial, the courts of the United States of America take an informal approach. During the first stage, the police officer in charge of the case has complete discretion to keep the juvenile offender in child custody, immediately release him, admonish the offender, or do both. In the second stage, police officers must contact the Juvenile Courts to inform them of the case and control the situation. (Purti Vyas, 2017)

If the court issues an order, juvenile offenders are sent to Certified Schools or Children's Homes after their trial. According to the Juvenile Justice System in the United States of

America, a juvenile is tried as an adult only when the juvenile's age is close to adulthood as defined by statute, or when a juvenile offender is found to be involved in repeated offenses and is deemed a danger to society. **(Purti Vyas, 2017)**

### **JUVENILE JUSTICE SYSTEM IN INDIA**

India, like other countries, has made legal provisions that specifically address the rights and protection of juvenile offenders to address the problem of juvenile delinquency. The Indian Juvenile Justice System is based on three main assumptions: **(Purti Vyas, 2017)**

1. Young wrongdoers should not be tried in court, but rather should be corrected in any way possible; **(Purti Vyas, 2017)**
2. They should not be punished by the courts, but should be given the opportunity to reform. **(Purti Vyas, 2017)**
3. Trials for children in conflict with the law should be based on non-punitive treatment through community-based social control agencies, such as Observation Homes and Special Homes. **(Purti Vyas, 2017)**

### **JUVENILE JUSTICE ACT, 2015**

The Juvenile Justice act of 2000 was superseded with the Juvenile Justice act of 2015 because a more powerful and efficient justice system that prioritised both deterrence and reformatory measures was required. There were arguments made in the Parliament that the juveniles should be allowed more room for transformation, reformation, or betterment and that is only feasible when there is a unique justice system. The approach to juveniles should be distinct from that of adults. Therefore, the Juvenile Justice (care and Protection of Children) Act, 2015, which was the new act, centred on an approach to adjudication and disposition of cases that was friendly to juveniles. **(Purti Vyas, 2017)**

### **SOME OF THE MOST NOTABLE FEATURES OF THE ABOVE ACT ARE AS FOLLOWS -:**

- Section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines a child as a person who has not reached the age of 18, i.e., he/she is under the age of 18. The term "Child" is classified in the Act as "Child in need of care and

protection" and "Child in conflict with the law" in Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015. **(Purti Vyas, 2017)**

- There was a clear distinction made regarding the facets of offences, implying that categories were created labelling the offences as heinous, serious, and petty. There are rules in place for juveniles between the ages of 16 and 18. If they commit a crime, they can be tried as adults after a thorough examination of their mental capacity. **(Purti Vyas, 2017)**
- Introduction of Juvenile Courts, which meant that special courts were to be established that would only try Juvenile offences, similar to the NDPS courts, courts dealing with POCSO, and so on. **(Purti Vyas, 2017)**
- With the passage of the 2015 Act, the scope of the definition of "Child in Need of Care and Protection" was expanded to include the following points, among many others, from Section 2 (14) of the Juvenile Justice (Care and Protection of Children) Act, 2015:
  1. Those whose guardians or parents are/were unable or unwilling to care for the child.
  2. Those who are/were discovered performing work in violation of labour laws.
  3. Those who are on the verge of marrying before reaching the specified legal age.
  4. The definition of adoption is also defined in the Act, which recognises the rights of adopted children. **(Purti Vyas, 2017)**

## **STATEMENT OF THE PROBLEM**

Exploring the perception of the death penalty for Juveniles for heinous crimes like rape and murder.

## **LITERATURE REVIEWS**

### **(1) Juvenile Justice in Different Cultural Contexts: A Comparison of India and Germany**

This is a report by Prof. Doctor. Bernd-Dieter Meier and Assistant Prof. Abhijit D. Vasmatkar compare the Juvenile Justice of Germany and India, which share different

cultural backgrounds. In this report, the authors present facts and figures to determine the population differences, literacy rate, various religious groups, youth rate, and life expectancy for comparing the context of this system in both countries. To reach the crime and delinquency in both states, the author uses police data. In this report, the author uses different approaches to find out the cultural differences between India and Germany and social norms, family life, social life, parental upbringing, and religious aspects. They also compare the juvenile justice systems in India and Germany, noting that in India, the issues of juveniles in conflict with the law and children in need of care and protection are combined in a single Act, the Juvenile Justice (Care and Protection of Children) Act. In Germany, the two issues are still addressed by two separate laws: the Youth Courts Act (Y.C.A.) and the Child and Youth Services Act (CYSA), the organization of juvenile justice and the reaction to juvenile delinquency. This report mainly focuses on how the Juvenile Justice system acts in a country like India, which is a fast-developing country and with a high percentage of youth and on the other hand in Germany, which is already highly developed and prosperous nation. **(Meier, Bernd-Dieter, Abhijit D. Vasmatkar, and Pune NET, 2011)**

## **(2) JUVENILE DELINQUENCY IN INDIA- LATEST TRENDS AND ENTAILING AMENDMENTS IN JUVENILE JUSTICE ACT**

This is a research paper written by Deepshikha Agrawal. In this paper, the author majorly focuses on the causes of juvenile delinquency and undertakes the explanations given by different experts in their field to explain the problem. This paper also focuses on the evolution of the Juvenile Justice Act and Juvenile Justice System in India and essential provisions in the Juvenile Justice Act. This paper also contains statistical data from the National Crime Records Bureau to understand juvenile delinquency trends and analyze them. In this paper, the author explains the different factors like social, biological, and psychological behind the behavioural change in juveniles. These behavioural changes are related to their bodies, like hormonal changes, height, weight, puberty, etc. **(Agrawal,2018)**

## **(3) JUVENILE JUSTICE AND DUE PROCESS RIGHTS OF CHILDREN IN INDIA AND THE UNITED STATES**

It is a journal that makes a cross-culture comparison of the present and past Juvenile court systems in India and the U.S.A. The author discusses issues such as juvenile court development, differences and similarities in juvenile court philosophies, and the impact of legislative reforms in political, social, and legal contexts in this journal. This journal also compares the due process rights of children in the countries (India and U.S.A), which are culturally distinct, and the historical context of the juvenile justice system in two countries. This journal also discusses how countries change this system over time and respond to their needs. **(Kethineni S, Klosky T.)**

**(4) DESCRIPTIVE ANALYSIS OF FIVE JUVENILE JUSTICE SYSTEMS: UNITED STATES, SCOTLAND, ENGLAND, INDIA, AND SOUTH AFRICA**

In this article author majorly focuses on the descriptive analysis of the juvenile justice system in five countries: The United States, Scotland, England, India, and South Africa. The emphasis is on each country's approach to defining delinquency and processing those who are officially labelled as a delinquent. In this article, the author analyses the Juvenile Justice System from a cross-cultural standpoint and considers the type of situations over which the juvenile justice system has jurisdiction are similar in many countries. **(JANEKSELA, GALAN M., 1991)**

**(5) JUVENILE JUSTICE SYSTEM IN INDIA- A CRITICAL ANALYSIS**

In this article author wants to say that now age is just only a number i.e., there is no difference between a juvenile whose age is between 16 to 18 and a person who already attained the age of 18 because the person who is juvenile (age between 16 to 18 years) already attain enough maturity to understand the seriousness of the act. According to author, allowing 16-18 years old to be tried as an adult in certain situations is undeniably a triumph for the Indian judicial system; nevertheless, the definition of heinous appears to be faulty. A crime is not just a wrong that violates the letter of the law. It's a mistake that academics have characterized as morally reprehensible, having effects that go well beyond the victim. Because of this, crime is seen to be an offence against the state. We look for those who publicly challenge the legitimacy of the law while also jeopardising the stability of society while dealing with those who have been charged with these crimes. Similarly, it was erroneous to insist that a person under the age of 18 should not be tried in adult court. And narrowing this gap represents a significant development for

Indian law. It is important to remember that when a case is heard, the facts of the case and the sort of behavior displayed should be used as benchmarks to assess whether or not the alleged juvenile was capable of understanding his crime. In addition, the idea of horrible acts needs to be reconsidered. Setting a punishment threshold in terms of years alone does not represent the victim's sorrow or the criminal's thoughts. (Divya Sharma, 2020)

## RESEARCH METHODOLOGY

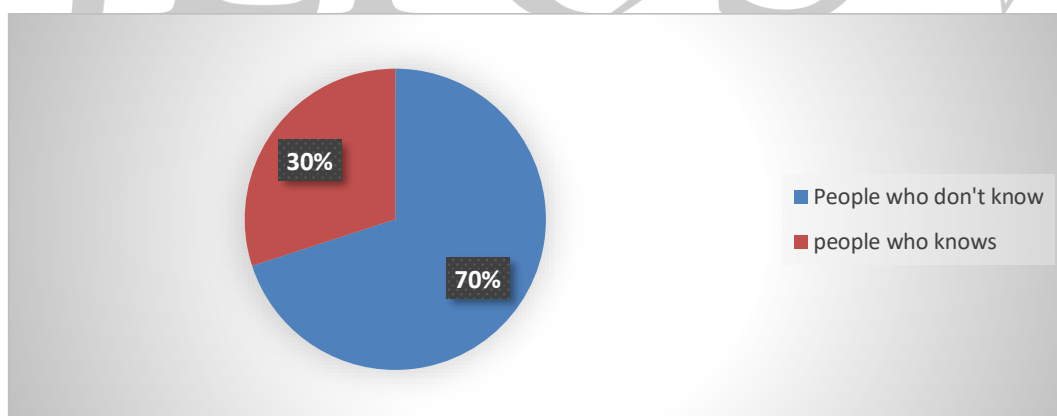
In this paper I collected data from various sources like articles, journals, research papers, by taking interviews of people of different class, background, gender, age and status.

## RESULT OF THE SURVEY

In this report I collected the perception of 20-25 people of different class, background, gender, age and status. I put some of the following questions before them

### Q1. WHAT IS THE MEANING OF THE WORD JUVENILE? WHAT IS THE PARAMETER?

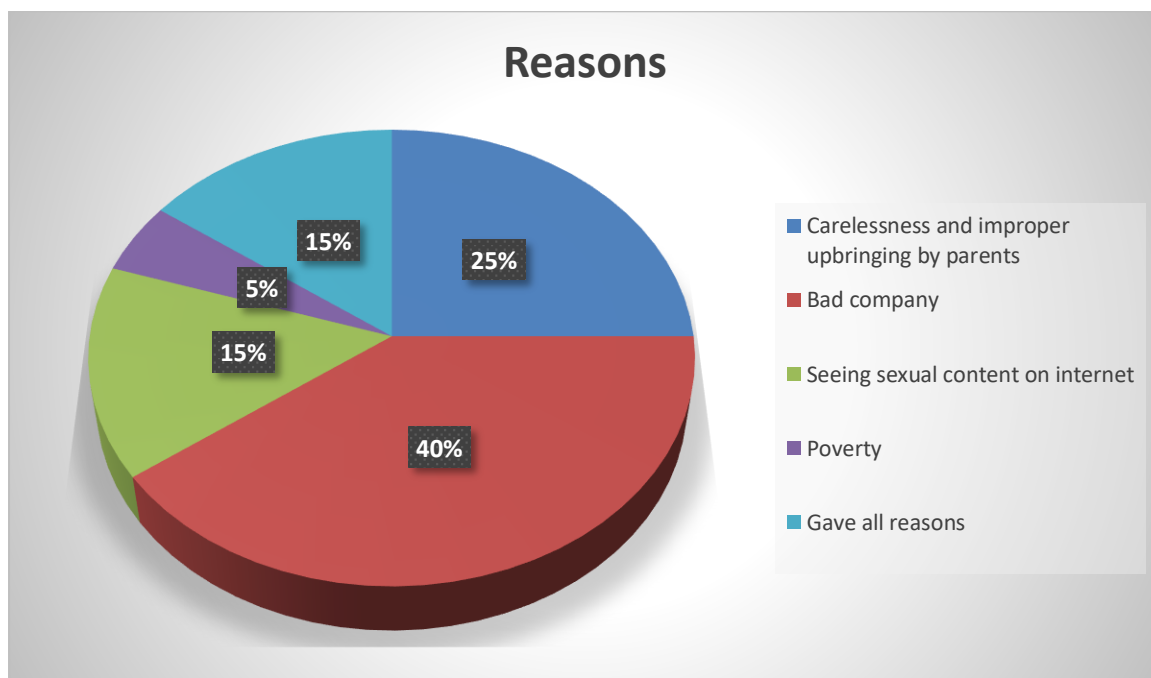
The reason behind putting this question before the people is that to know about how many people are knowing the term 'Juvenile'. So, our finding is that



In my survey there is only 30% people who knows about the word juvenile and 70% even didn't hear this word.

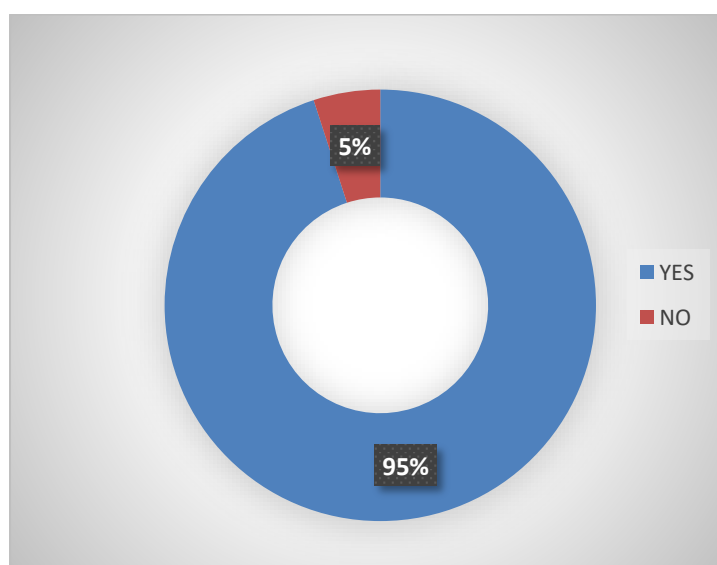


**Q2. WHY JUVENILE DOES A CRIME?**



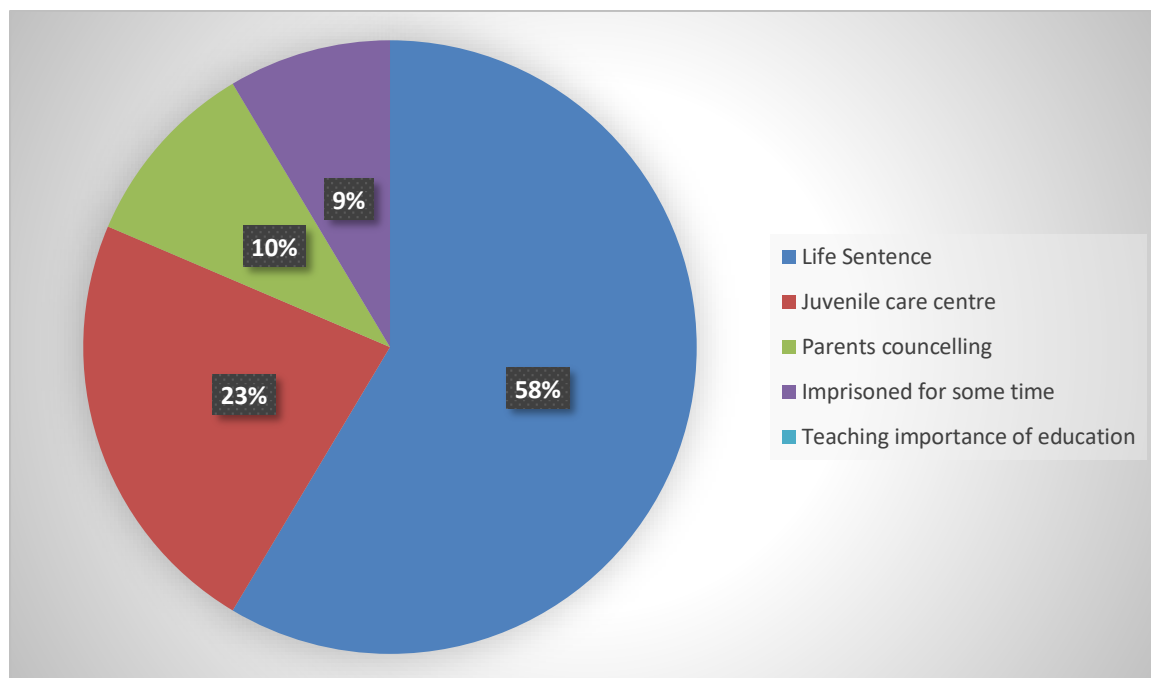
So, 25% people think carelessness and improper upbringing by parents is the reason, 40% people think bad company is the reason, 15% people think seeing sexual content on internet is the reason, 5% people think poverty is the reason, 15% people considered all of the above reasons behind the juvenile delinquency.

**Q3. DO YOU THINK THAT DEATH PENALTY SHOULD BE GIVEN OR REWARDED TO JUVENILES FOR HEINOUS CRIME LIKE RAPE OR MURDER?**



5% people think death penalty should be given or rewarded to juvenile but 95% people think death penalty should not be given.

#### Q4. WHAT ELSE CAN BE DONE IN PLACE OF DEATH PENALTY TO REDUCE INVOLVEMENT OF JUVENILE IN CRIME?



In response of this question 58% people think life sentence should be given and juvenile should be encouraged to do some productive work there, 23% people think they should hand over to 'Juvenile Care Centre', 23% people think parents' counselling should be done, 9% people think that imprisonment for some time like 7 years or less should be given to juveniles and 10% people think that teaching them importance of education.

#### ANALYSIS

My analysis from whole study is that Juveniles should not get death penalty because no one is born criminal but circumstances, situation, family's atmosphere, bad company makes him or her a criminal and juvenile age is only like that who gets flinch easily and unable to understand the future consequences of their actions because they are unaware of the results of what is wrong and right also this is the age in which teenagers hormones are not stable and they do what is not expected the reasons could be lack of education, childhood is not being treated properly by the parents, teachers and elders this leads to anti-social behavior in them, wrong sources from the internet or websites (sexual content) which makes addicted especially during

these covid times students 'needs android phones for their online classes and making their parents fool sounds wrong. Poverty and poor economic conditions are also viewed as significant contributors to juvenile crime. As a result of poverty, parents or guardians fail to meet the needs of their children, while children expect their desires to be completed by parents by hook or crook, and once their wishes are met, they begin to steal money from homes or homes other parents. This leads to a habitual tendency to steal, which leads to large-scale theft and the migration of deserted and impoverished juvenile boys to slum areas brings them into contact with some anti-social elements of society who engage in illegal activities such as prostitution, drug or narcotic smuggling, etc. These types of activities pique the interest of the young, and they may participate in them.

So, beside the death penalty if that is their first attempt they should be handed over to '**BAL SUDHAR GRAHA**' because they have a long life ahead and they should get a chance for improvement for what they have done also, get to know the realization of their mistake so that they can't do such things in future and be a better person further. Also, research states that putting death penalty doesn't affect crime rates. Rather education would do a better job. So, according to me there is need to do amendments in some places of **The Juvenile Justice (Care and Protection of Children) Act, 2015** like in that one of the specifications says that if juvenile between the age of 16 to 18 do a crime which is heinous in nature so that juvenile can be treated as like an adult after the checking of his or her mental health during the time of the act done by him or her. But the main problem with this law is that if juveniles will treat like an adult and send them to jail with professional prisoners it would be hamper their rehabilitation and make them evil minded.

## CONCLUSION

Juveniles are the future of any nation. They play an important role in the development of the nation. So, to protect them from unsocial elements is very necessary. Only death sentence is not only solution of the problem. There are many other ways to addressed with this problem like first of all government should ban all the websites on internet which carries unethical and sexual content or should make strict laws on access of these type of websites because this is the major reason behind this unsocial behavior of juveniles and parents also should keep watch on the activities of their children and if feels something wrong mustn't neglect it. We have to make them aware about the future consequences and also tell them how these can destroy their

whole life. The rising rates of juvenile crime in India are a serious concern but if we will try to tackle this problem together, we will definitely achieve this goal.

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