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# THE CURIOUS CASE OF JUVENILE JUSTICE: A CRITICAL ANALYSIS OF THE INDIAN JUVENILE JUSTICE SYSTEM

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## ABSTRACT

The Juvenile Justice System is a progressive approach that many countries throughout the world have implemented. As stated in the Act's preamble, the major goal of the Juvenile Justice Act, 2015 is to provide children with care, protection, development, treatment, and social integration. It establishes measures for children accused of and proven to be in violation of the law, as well as children in need of care and protection. The Juvenile Justice Act (2015) included a provision transferring 16–18-year-old youth accused of a severe crime to the youth's Court. The children's court must then reconsider whether the youngster should be tried as a child or as an adult. This research paper critically reviews the Juvenile Justice (Care and Protection of Children) Act, 2015, concentrating on the Act's important components as well as its shortcomings.

**Keywords:** Juvenile, Juvenile Justice System, heinous crimes, Rehabilitation, Care and protection, Treatment, Development,

**Introduction:**

The foundation of the society largely depends on children and are the future and assets of the nation. Since ancient times, the rights of the children has been a critical matter and a topic of dispute. Where there are instances of children being abused and deprived of their rights and protection from injustice and offences, on the other side there are instances and reported cases of children committing heinous crimes against the society. It is very important to consider the mental development of a person while charging the person of an offence. The development of a minor or a child is not same to that of development or the thinking capability of committing an offence of an adult person. Thus, it becomes imperative to draw a distinction between adults committing a crime and a minor committing a crime. The juvenile justice Act focuses on this distinction and considers the cognitive development and the understanding of a juvenile while deciding a case.

**Background:**

To focus on the background of the Juvenile justice (care and Protection) Act, 2015, the first legislation which dealt with the children in conflict with law was the Apprentices Act, 1850. This legislation provided for punishment of children who had committed petty offences as apprentices instead of sending them to prison.<sup>1</sup> Subsequently, after several enactments of legislation for child, the parliament finally enacted the Children Act in 1960, which was considered as a model legislation for all the states and it introduced a sex-based definition of child, thereby bringing girls till the age of 18 years and boys till the age of 16 years within its protective umbrella.<sup>2</sup>

The whole scenario with respect to legislations for the children changed after the landmark case of *Sheela Barse*<sup>3</sup> in 1983 where a journalist filed a writ petition before the Apex Court of India seeking for release of 1400 children in various jails in India despite the prohibition against use of police station or jail under various children's Act. It was this case which enlightened the apex court to recognise that there are different cut off age of children defined under different legislation prevailing in India which ultimately violated the fundamental right to equality

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<sup>1</sup>Ved Kumari "the juvenile justice act 2015-critical understanding" 58 *Journal of the Indian Law Institute* 83–103 (2016).

<sup>2</sup>M. Afzal Qadri, *Criminology, penology, and victimology*, 78 (Eastern Book Company, 7<sup>th</sup>Edn., 2016).

<sup>3</sup>*Sheela Barse v. State of Maharashtra*, SC 1983 AIR 378.

before law and equal protection of law to all the children as guaranteed by the constitution.<sup>4</sup> Thus, the Supreme Court directed to form a uniform legislation regarding the age of children for the whole country and pursuant to this direction, the Parliament enacted the first ever uniform legislation for children, being the Juvenile justice Act, 1986, which was applicable to the whole of India.<sup>5</sup> Under this legislation, the word child was replaced by the word juvenile and the use of police station or jail at any stage and under any circumstances for keeping girls below the age of 18 years and boy below the age of 16 years was made illegal within the territories of India except for Jammu and Kashmir. Later, the Act was adopted by Jammu and Kashmir also.<sup>6</sup>

In 1992, India signed and ratified United Nations convention on the right of the child and because of this ratification, it was considered essential to adopt a uniform cut off age which was decided to be 18 years for both boys and girls to be in conformity with the definition of child in the convention on the rights of child, 1990.<sup>7</sup> The amendment of the Juvenile justice Act, 1986 was introduced with the Juvenile justice (Care and Protection of Children) Act, 2000 which extended the ban on use of police and prisons on children below the age of 18 years found to have committed any offence under any law in force in India.<sup>8</sup>

The laws relating to children and juvenile significantly changed after the landmark Nirbhaya rape case in 2012.<sup>9</sup> A committee was formed which was headed by justice JS Verma which amended certain provisions of the IPC and the criminal amendment Act 2013 was passed. Subsequently, in 2016, Juvenile justice (Care and Protection of Children) Act, 2015 was enacted.<sup>10</sup> In the Nirbhaya rape case, one of the offenders was a juvenile and had only 6 months from turning to 18 years. As a result, he was treated as a minor and not as an adult and was awarded 3-year imprisonment only. This led to huge public outcry thereby demanding change in the Juvenile justice laws and reducing the age of juvenile and introducing stricter punishment for commission of heinous offences like rape and murder. The amended Juvenile justice Act, 2015 introduces the difference between petty, serious, and heinous offences and provides that

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<sup>4</sup>Ibid.

<sup>5</sup>Juvenile justice Act, 1986 (Act No. 53 of 1986).

<sup>6</sup>Supra note 1.

<sup>7</sup>UN General Assembly, *United Nations Convention on the rights of the Child*, GA Res 44/25, GAOR UN/DOC/A/Res/44/25 (November 20, 1989).

<sup>8</sup>Juvenile Justice (Care and Protection of Children) Act, 2000, (Act No. 56 of 2000).

<sup>9</sup>Editorial, "How Nirbhaya case changed rape laws in India" *Times of India*, Dec 19, 2019.

<sup>10</sup>Jay DBlitzman, "criminal justice: are we criminalizing adolescence?" 32 *GPSolo*, 72-73 (2015).

if an offender, between the age group of 16 to 18 years, is involved in heinous offences, then he can be tried as an adult.<sup>11</sup>

The JJ Act, 2015 has two scopes of applicability; the first being children in conflict with law and the second being, children in need of care and protection. Children in conflict with law includes children below the age of 18 years who have committed offences under the law prevailing in the country. Children in need of care and protection includes child labour and mainly includes children below the age of 18 years who requires care and protection.<sup>12</sup>

### **What leads to juvenile cases in India?**

Under the present context, it is very important to understand as to why a person being minor or below the age of 18 years would involve himself into committing an offence or rather what drives a minor to commit an offence. There are certain factors which influences or can influence a minor to commit an offence.

One of the common factors is the social economic condition of the person which involves poverty, unemployment, and lack of access to quality education and healthcare. These factors are interrelated to each other. If a person does not have money or the financial support, he will not be able to afford education for himself as well as a better standard of living. This will also affect his ability to secure a job and his health conditions and due to the increase in the relation between demand of goods and commodities to that of the purchasing power of a person, it influences the person to get an easier method of fulfilling the wants of the person, thereby involving himself into criminal Activities.<sup>13</sup>

Another common factor is family background of the minor. It is also seen that dysfunctional family environments, broken families, parental neglect, or abuse often contribute to Juvenile delinquency. Children grow up witnessing abuses in their surroundings or within their families which builds a negative impact in the mindset of the children, thereby making them vulnerable to criminal behaviour.<sup>14</sup>

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<sup>11</sup>Aayush Raj, "juvenile justice system in India: Incoherence of Principles, Cutbacks, and Judges' Dilemmas" III *Shimla Law Review* 86 (2020).

<sup>12</sup>Ibid.

<sup>13</sup>Muhammad Nisar, Shakir Ullah, Madad Ali, Sadiq Alam, "Juvenile Delinquency: The Influence of Family, Peer and Economic Factors on Juvenile Delinquents" 9 *Applied Science Reports* 37-48 (2015).

<sup>14</sup> Ibid.

Another common factor is peer influence. There are reported cases of Juvenile delinquency where it is seen that often children involve in committing crimes because of the peer pressure and the pressure of a children in gaining social acceptance and belongingness to a certain group.<sup>15</sup>

Juvenile delinquency can also occur from substance abuse such as influence of alcohol, and drug addiction as well as excessive exposure to violent or inappropriate contents in social media including movies, television, and online platforms which has the potential to influence behaviours and attitude of children.<sup>16</sup>

### **Legal position**

Under the JJ Act, 2015, the word juvenile has been interchangeably used with the word child and it is defined as a person who has not completed 18 years of age. The word child as defined under the UN convention on the rights of child include the person under the age of 18 years. Section 4 of the Juvenile justice Act, 2015 makes it “mandatory for the state governments to constitute Juvenile justice board in every district”<sup>17</sup> and section 27 provides for “setting up child welfare committee for each district”<sup>18</sup>. An important provision which was introduced in the 2015 Act is that the preliminary assessment of a child accused of heinous offences under section 19 and based on this provision, the Juvenile justice board can transfer the case to children's Court to try the Juvenile as an adult for the offence.<sup>19</sup> Thus, under these circumstances, it becomes imperative to understand the definition of heinous offences, petty offences, and serious offences in this context.

Section 2(33) of the Act defines the term heinous offences and means “offences for which the minimum punishment under the Indian penal code or any other law for the time being in force is imprisonment for 7 years or more.”<sup>20</sup>

Section 2(45) of the Act defines petty offences and means “offences for which the maximum punishment under the Indian penal code or any other of the timing in force is imprisonment up

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 4.

<sup>18</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 27.

<sup>19</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 19.

<sup>20</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 2(33).

to 3 years.”<sup>21</sup>

Section 2(54) of the Act defines the term serious offences and means the “offences for which the punishment under the Indian penal code or any other law for the time being in force is imprisonment between 3 to 7 years.”<sup>22</sup>

The constitution of India which forms the foundation of all the statutes prevailing in the country, also lays down certain provisions for the rights and protection of the children. Article 15(3) of the Indian constitution gives power to the state to make special provisions for the children and under this provision only, Juvenile justice Acts were established.<sup>23</sup> The concept of ‘*parens patriae*’ principle which is deeply rooted in the constitutional scheme of our polity and refers to the “role of the state as sovereign and guardian of persons and the legal disability including children and insane.” It is this principle that states that “state must take care for those who cannot take care of themselves such as minors who lack proper care and protection from their parents.” Thus, the second scope of the Juvenile justice Act of 2015 which involves can protection of children is largely based on the doctrine of ‘*Parents Patriae*’<sup>24</sup>.

### **Critical analysis:**

While the Act was introduced as a result of the Nirbhaya gang rape case to fill up the loophole of the Act which did not punish for offenders below the age of 18 involved in commission of heinous offences like rape and murder, it had also introduced amendments which are contrary to the protection and benefit of the children as guaranteed by the Indian constitution as well as the UN convention and protection of the rights of the child.<sup>25</sup>

- **Inadequacy of the definition of age of child-** One of the important amendments which the 2015 Act brought was the distinction of age of child above 16 years of age and below 18 years of age in case of heinous crimes. There is discrimination in the age to be considered as a child in UNCRC and the JJ Act, 2015. While the Indian constitution permits enactment of special legislation for the benefit of the children, nowhere does it provide the definition of who is a child. There are several articles such as article 24

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<sup>21</sup>Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 2(45).

<sup>22</sup>Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016) S. 2(54).

<sup>23</sup>Constitution of India, 1950, Art. 15(3).

<sup>24</sup>Kumar Askand Pandey, Brain Science, Juvenile Delinquency and the Juvenile Justice (Care and Protection of Children) Act, 2015: A Critique, 7 RMLNLUJ -54 (2015).

<sup>25</sup>Atul S. Jaybhaye, “critical analysis of juvenile justice system in India” *Bharati Law Review* 103-111 (2017).

which prohibits employment of a children in a factory below the age of 14 years<sup>26</sup> and article 21A which secures the right to free and compulsory education between the age group of 6 to 14 years.<sup>27</sup> Similarly, article 39 (e) and 39(f) states that children of tender age should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom in dignity<sup>28</sup>. This article does not specify any age group. Article 45 imposes responsibility to provide early childhood care for children below the age of 6 years.<sup>29</sup> The reference of all articles mentioned above depicts that the Indian constitution does not provide a blanket definition of child and has different age group under different provisions. In 1992, when India ratified UNCRC, the provisions of CRC was thus becoming applicable and article 1 of the convention defines a child as any person below the age of 18 years unless majority is attained at an earlier age in that country.<sup>30</sup> With reference to this definition, the age of majority in India is 18 years. The JJ Act, 2000 was especially enacted to bring effect to the age parity by providing 18 years to be the blanket age of attaining majority and to be treated as an adult under the Act for both boys and girls.<sup>31</sup> But the amendment which was brought in the 2015 Act, it removed the blanket age of 18 years to be tried as an adult and introduced an age gap of 16 to 18 years within which an offender charged of heinous offences can be tried as in adult. The legislators had conveniently ignored the fact that this enactment is in direct contravention to the UN Convention for the Rights of the Child as well as General Comment 10 on the UNCRC committee which specifically prohibited children below the age of 18 years to be tried as adults. It is imperative to focus on article 14 of the Indian constitution which guarantees equality before the law and equal protection of the laws within the territory of India.<sup>32</sup> It also includes children and it does not permit class legislation within it and only permits reasonable classification. It is important to focus on certain other legislations which deals with children such as the POCSO Act where the age of majority if defined to be 18 years.<sup>33</sup> Even under the child Marriage Act, for male a child someone who is less than 21 years of age and for female child is

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<sup>26</sup>Constitution of India, 1950, Art. 24.

<sup>27</sup>Constitution of India, 1950, Art. 21A.

<sup>28</sup>Constitution of India, 1950, Art. 39(e) and 39 (f).

<sup>29</sup>Constitution of India, 1950, Art. 45.

<sup>30</sup>Article 1 of UNCRC.

<sup>31</sup>Bibhabasu Misra, "Are we Becoming Intolerant, Retrograde Towards Our Own People - a Critical Evaluation of the Juvenile Justice Amendment Act, 2015" SCC OnLine Blog OpEd 3, (2020).

<sup>32</sup>Arul Varma, "Unshrouding the Enigma Behind Preliminary Assessment Under the Juvenile Justice (Care and Protection of Children) Act, 2015" 62 JILI-263 (2020).

<sup>33</sup>Ms. Rabab Khan, "Age of the Juvenile: A Critical Analysis" 22 ALJ-273 (2014-15).

someone whose less than 18 years of age. A Juvenile below the age of 18 years cannot be held responsible for commission of a crime like an adult because he is incapable of distinguishing between what is right and what is wrong.<sup>34</sup> The age of 18 years is set as the age to attain majority because a child is incapable of understanding the nature of the offence (if committed) and the consequences it would lead to. Thus, important to note that the brain functions differently of an adult to that of a child. Child can be easily influenced by peer groups. In medical terms, Prefrontal cortex is the last to develop which is responsible for impulsive control such as judgement, decision making, reasoning. The cells and the neural developments in the brain provide anatomical basis for concluding that the youth up to age of 18 years is less responsible for criminal Acts than adults.<sup>35</sup> The Frontier lobe functions because children tend to use Amygdala during decision making which leads to impulsive aggressive behaviour and dominates the frontal lobe which makes children more prone to gut instincts. Frontal lobe helps in psychological development which includes reason, understanding, logic, but it does not develop till 18 years of age. Even prefrontal cortex deals with development of complex behaviours and personality but it develops till 18 years of age and is not completely developed before 18 years.<sup>36</sup> In criminal jurisprudence, mental culpability or intentional is an important factor to prove the guilt of a person. But in case of a child, an Act committed without having the capacity to understand it or doing an Act out of impulsiveness or gut instant cannot lead to treatment of that child as adult offender. Basing on this theory, the apex court held in the case of *Salil Bali v. UOI*<sup>37</sup>, that children are different from adults and they are less culpable.

- **Contradiction between the object of JJ Act and its provisions** - Focusing on the object of the JJ Act, 2015, it states that it is an "*Act to consolidate and amend the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child friendly approach in*

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<sup>34</sup>Shipra Tiwari, "Juvenile Justice System in India and the Mental Health of Juveniles" SCC OnLine Blog OpEd 82 (2021).

<sup>35</sup>CAHartley, LH Somerville, "The neuroscience of adolescent decision-making" *Current Opinion on Behavioural Science* 108-115 (2015).

<sup>36</sup>"Brain Development during adolescence" *Lumen*, available at <https://courses.lumenlearning.com/wm-lifespandevelopment/chapter/brain-development-during-adolescence/#footnote-2982-2> (accessed on 25<sup>th</sup> June, 2023).

<sup>37</sup>*Salil Bali v. UOI*, (2013) 7 SCC 705



*the adjudication and disposal of matters in the best interest of the children and for the rehabilitation processes provided and institutions and bodies established hereinunder and for matters connected therewith or incidental thereto".*<sup>38</sup>The Act's goal and grounds make it clear that the legislation is not intended to subject children to punishment, but rather to cater for their care, protection, development, treatment, and social integration. The principle of the JJ Act in general is reformation and rehabilitation rather than retribution or deterrent approach. In cases where the difference has been drawn based on the age of the offenders and circumstances of the commission of the offence and sent to adult jails, it will leave a negative influence and impact upon the juveniles, thereby forcing them into hardened criminals and not reforming them to send back to the society.<sup>39</sup> The theory applied in the Juvenile justice Act is very different to that of the theory applied in the Indian penal code while punishing in adult. Indian penal code is based on the deterrent approach which aims to deter criminals by providing stricter punishments whereas the law-makers while enacting the Juvenile justice Act, believed that a child who is below 18 years of age still has a chance to be reformed and sent back to the society.<sup>40</sup> By introducing the provision of treating children as an adult who has committed heinous crimes between the age gap of 16 to 18 years, legislators had contradicted the object and reasons of the Juvenile justice Act and has ignored the fact that a child does not understand the consequences of commission of an Act and the brain does not develop like that of an adult brain below the age of 18 years. A child can be easily persuaded or influenced by peer pressure or dysfunctional family, thereby leading to juvenile delinquency.<sup>41</sup>

- **Preliminary assessment of juveniles leads to violation of the Indian constitution-**  
The JJ Act, 2015 has also introduced section 15 which provides for preliminary assessment of the juvenile who has committed heinous offences. If the Juvenile justice board after conducting preliminary assessment about the mental and physical capacity of the juvenile to commit such offence, concludes that the Juvenile can understand the consequences of the offence, then based on the assessment by the board, the Juvenile

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<sup>38</sup>Object and reasons of Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No 2 of 2016)

<sup>39</sup>Tanisha V. Agrawal, "A Critical Analysis of Juvenile Justice System and its Objectives" 1 *International Journal of Economics, Commerce and Management Research Studies* (2018).

<sup>40</sup>Gauri Pillai & Shrikrishna Upadhyay, "juvenile maturity and heinous crimes: a re-look at juvenile justice policy in India" 10 *NUJS Law Review* 49 (2017).

<sup>41</sup>Ibid.

can be treated as an adult.<sup>42</sup> This is an indirect contravention to article 14 and article 20 (3) of the Indian constitution. Article 14 provides for right to equality and equal protection of law. The difference of treatment which is provided to juvenile between the age group of 16 to 18 years and below the age group of 16 years should pass the test of intelligible differentia and rational Nexus between the subject and the object of the Act. As has been discussed in the previous paragraph, there is no rational Nexus between the distinction casted upon juveniles between the age group of 16 to 18 years and the object of the Act. Article 20 (3) of the Act is also violated as because the statements which the Juvenile would give before the assessment board may go against him. The board is instituted to assess the mental capability and the physical capability of the child and in order to determine the capability, it is imperative that the board would indulge themselves into asking questions which may self-incriminate the Juvenile without providing any option of giving consent or willing to answer the assessment. Another criticism is that the mental capacity of a juvenile cannot be defined in definite terms and there is a likelihood that the assessment report is based on biased opinion of the board members and is arbitrary and hastened decision with possible errors.<sup>43</sup>

- **Age determination** - determination of age by medical examination is more of a problem in case of determining the age of the minor between 16 to 18 years. Earlier legislation provided “determination of age by examination by medical board conducting bone ossification test, dental and physical examination of the child which reduces the margin of errors from two years on either side to 6 months on either side”.<sup>44</sup> But after the enactment of the Juvenile justice Act 2015, the Act primarily emphasises on the bone ossification test for determining the age of the Juvenile which may give a margin of error up to 2 years.<sup>45</sup> In the absence of documentary evidence, it may not be possible to determine the age range by reference to medical tests.<sup>46</sup> Supreme Court of India held in the case of *Rajindra Chandra v. Union of India*<sup>47</sup> that the benefit of doubt

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<sup>42</sup>Supra note 32.

<sup>43</sup>Katikaneni Praveen Kumar vs State Of Telangana and others, criminal revision No. 255 of 2023

<sup>44</sup>*Satbir Singh & others v. State of Haryana*, AIR 2005 SC 3549

<sup>45</sup>*Pratap Singh vs. State of Jharkhand*, (2005) 3 SCC 551

<sup>46</sup>Anshul Rahul Dalmia, Stuti S. Kokkalera, “Re-Examining India's Juvenile Justice Framework: A Call to Recognize a Juvenile's Mitigated Culpability and Potential for Reform” 12.1 JILS-1 (2021).

<sup>47</sup>*Rajindra Chandra v. Union of India*, (2002) 2 SCC 287

is to be given to the child and will be binding on the Juvenile justice sport while determining the age of the child.<sup>48</sup>

It was contended before the Supreme Court in *Subramanian Swami v. Union of India*<sup>49</sup> that clubbing all children till the age of 18 years, regardless of their mental capacities or the nature of the Act committed by them, was an over-classification and was not acceptable under the Constitution. Supreme Court rejected this argument and stated that “if the broad features of categorization are identifiable and distinguishable and the categorization is reasonably connected with the object targets, Article 14 will not forbid such a course of Action. As per the object of the Act, the purpose is to provide proper care, protection, development, treatment, social integration etc.”<sup>50</sup>

Recently, the JJ act, 2015 was amended by The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 which has been passed by the Rajya Sabha on 28<sup>th</sup> July, 2021. The new bill focuses on the care and protection of children under the JJ act and to that respect, has brought certain amendments in the definition clauses of serious crimes, heinous crimes, adoption, and other definition clauses. The amendment bill has given more power to the executive and bureaucrats, thereby making the process more certain and implementing effective ways to distinguish children from adults.

### **Conclusion:**

Thus, to conclude, it is indeed true that the juvenile justice laws needed reformation to implement stringent provisions and the Delhi gang rape case made it realise but the amendments which was introduced in 2016 as a result of the Criminal Law (Amendment) Act, 2013 contradicted UNCRC provisions to which India is a party. Though it is a fact that juveniles who understood offences and the mental culpability to commit the offences were getting the undue advantage of the leniency of the provisions and indulged themselves into committing more crimes in the garb of the juvenile justice laws. It becomes very essential to properly implement the provisions and preliminary assessment and treating a juvenile as an adult based on that assessment otherwise it could lead to gross violation of the rights of the

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<sup>48</sup>Adrita Ghosh, “Juvenile Delinquency: A detailed Study” 2.4 JCLJ-1725 (2022).

<sup>49</sup>*Subramanian Swami v. Union of India*, (2014) 8 SCC 390.

<sup>50</sup>*Ibid.*

juvenile and breach the theory of reformation upon which the juvenile justice Act was formed.

**Suggestions:**

1. Proper implementation of the provisions of the juvenile justice Act, 2015.
2. Consent should be taken from the juvenile after explaining him the consequences of the questions of assessment as it can lead to self-incrimination.
3. For determining the age of the juvenile, documents such as school certificate or birth certificate should be given more importance rather than medical tests to procure accuracy.
4. For determining the mental culpability, proper measures should be taken by expert psychologists to determine the culpability.
5. Efforts should be taken to reform the juvenile and send him back to the society by introducing rehabilitating programs.

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