

**ECONOMICS OF JUVENILE DELINQUENCY IN INDIA: EXAMINING THE CONTEMPORARY ISSUES  
WITH THE JUVENILE JUSTICE ACT 2015**

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**ABSTRACT**

*The problem of high Juvenile delinquency has been a problem in India for a long time. The problem consequently led to the development of various laws and justice mechanisms to deal with the problem. The aim was to prevent the rising delinquency across the country through the reformatory approach and the subsequent incorporation of the infrastructure. However, the laws were mostly seen from the eyes of either a sociologist or a child rights' activist, which led to sacrificing of economic efficiency of the laws. Instead of concentrating on providing economic efficiency to India's juvenile justice system, the Juvenile Justice Act of 2015 and its subsequent Amendment in 2021 delivered a big breakthrough by focusing on bringing economic efficiency to the juvenile justice system.*

*This essay attempts to analyze the problem of high juvenile delinquency in India through the Economic lens and has tried to provide reasons for such phenomenon. In furtherance of its objective, the essay also analyzes the economic efficiency of the Juvenile Justice Act, 2015 in controlling the delinquency and provides much useful insights and recommendations to achieve an optimal solution.*

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## 1. INTRODUCTION

Children constitute the most important and vulnerable group of the society and are generally considered as the foundation of any nation on which its future is built. They are the future leaders of the country, creators of the nation's wealth and protectors of the community of the land to which they are rooted. This holds more relevance in a country like India where children are seen as the key to the future goals and development of the nation. Development of the children occurs at different rates with varied perspectives. As they develop their senses, they start yearning for independence from their parents and earn acceptance and esteem from their peers.<sup>2</sup> However, these changes within them lead to the delinquent behaviour from the juveniles who indulge in crime to gain access to their short term goals and ambitions through illegal means. The juvenile justice system in India has evolved through time to prevent and accommodate this irregular behaviour. In the past, the problem was first treated differently through colonial legislations like the Apprentices Act of 1850 and Section 83 of the Indian Penal Code (provisions of *Doli incapax*) which laid the foundations of the juvenile justice system in India.<sup>3</sup>

The juvenile justice infrastructure and its thinking have been exposed to revolutionary changes since the last few decades and are adjusted to reflect the contemporary ideals and needs of society. This was well espoused by the passing of the Juvenile Justice (Care and Protection of Children) Act, 2015 which has made a significant change by enlarging its reformatory approach to reform and rehabilitate the juvenile offenders in mainstream society. However, since its enactment, juvenile delinquency and its prevention have been a debatable point for social scientists. While debates regarding the handling of young offenders in the criminal justice system have traditionally been based on moral and legal principles, developmental differences between juveniles and adults and social causes<sup>4</sup> making it a sociological study, much less attention is given to the economic impacts. This essay tries to focus on the economic perspective of juvenile delinquency. The aim of this essay is to explain and analyze the high juvenile delinquency in

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<sup>2</sup> Deepshikha Agarwal, *Juvenile Delinquency in India- Latest Trends and Entailing Amendments in Juvenile Justice Act*, 3(3) PEOPLE: INT. J SOC. SCI. 1365, 1366 (2018).

<sup>3</sup> Suman Kakar, *Juvenile Justice and Juvenile Delinquency in India*, THE HANDBOOK OF JUVENILE DELINQUENCY AND JUVENILE JUSTICE 49-51 (2015).

<sup>4</sup> DR. NILIMA MEHTA, CHILD PROTECTION AND JUVENILE JUSTICE SYSTEM FOR CHILDREN IN NEED OF CARE AND PROTECTION (I.A. Stephen et al. eds. Childline Foundation 2008).

India through the economic lens and measure the efficiency of the Juvenile Justice Act, 2015 and its contemporary issues with the use of economic tools and theories.

In the first section, the essay tries to build a conceptual framework to explain the high juvenile delinquency prevalent in India and present an optimal solution to the problem. For that purpose, the basic understanding has been implied from the rational choice theory and the economic laws of deterrence and the thesis has been built upon the previous understandings of the economic tools of Cost-Benefit Analysis and criminal market equilibrium. In the second section, the essay tries to correlate the economic theories of crime and punishment to the Juvenile Justice Act 2015 and its provisions and aims are studied from an economic lens to determine the interplay of the law with the economics of the criminal market.

It also tried to determine its efficiency through correlating the understanding from the previous section to the effects that may be caused by the law in the juvenile criminal market. The third section thereafter gives a microscopic view of the trends in the juvenile criminal market. For that purpose, the section makes use of the statistical analysis and the measurement world to prove the gap between the expected and the actual results of the Act and has also tried to explain the economic impact it may have on the juvenile criminal market and the efficiency of the law.

The essay then proceeds to analyze the contemporary developments in the juvenile justice system with the passing of the Juvenile Justice Amendment Act in 2021 and tries to determine if it is an optimal solution or not. In the final section, the essay concludes with some useful insights on the juvenile justice system in India and its efficiency. Also, some worthy recommendations have been suggested to reach the economically optimal solution to resolve the problem of delinquency and the development of the juvenile justice system in India.

## **2. ECONOMICS BEHIND HIGH JUVENILE DELINQUENCY IN INDIA**

Before discussing the reasons behind high juvenile delinquency, it is important to clarify its meaning. Juvenile delinquency has been defined from various perspectives and therefore to understand it, various meanings have to be looked upon. From a general discussion, it might

seem that juvenile delinquency only included serious crimes.<sup>5</sup> While it also encompasses crimes, it covers many activities which are not crimes by themselves.<sup>6</sup> Where the crime is referred to as a deviation from the legal obedience and legally expected behaviour, delinquency is more of a social term that comprises all those activities which are socially unacceptable for a child to do. These acts are often recognized as status offences which hint at the person's condition at the time the offence was committed.<sup>7</sup> However, the consideration of the status offences would make the situation more complex and therefore to achieve the objective of this essay, the focus would be on the criminal activities committed by juveniles.

Although the topic of juvenile delinquency has not been comprehensively analyzed by economists, prior economists have propounded some useful insights while dealing with the criminal market and preventing criminals to commit crimes by economically disincentivizing them.<sup>8</sup> The theories given for a general criminal market can also be used to analyze juvenile crimes also. Some studies while pointing out the difference between the two propound the futility of the rational choice theory in the case of the juveniles which serves as the base to estimate criminals' economic behaviour. Juveniles' psychology and behaviour are much different from that of adult criminals.<sup>9</sup> According to the studies, juveniles are more vulnerable to external influences which may lead them to take decisions that might not be their own.<sup>10</sup> In this case, the rational choice theory fails to apply. However, before applying the theory it is important to understand that the rational choice is made by the person aiming at maximizing his own utility and welfare though the decision might not actually lead to. Although the juveniles may not make a good decision due to external influences, the decision was made aiming at maximizing his/her own utility and welfare which makes the theory relevant even in this case.

The economics behind the juvenile delinquency not only explains the high juvenile crimes in India but also offers some useful economic insights to deal with the problem. The economic

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<sup>5</sup> L.J. SEIGEL ET AL., *JUVENILE DELINQUENCY: THE CORE 5* (4th ed. Wadsworth Learning 2011).

<sup>6</sup> D. SHOEMAKER, *JUVENILE DELINQUENCY* 19 (Sarah Stanton et al. eds., 3rd ed. 2018) [hereinafter SHOEMAKER].

<sup>7</sup> LEE TEITALBAUM, *STATUS OFFENSES AND STATUS OFFENDERS: IN A CENTURY OF JUVENILE JUSTICE*, 158–75 (Margaret K. Rosenheim et al. eds., Chicago: University of Chicago Press 2002).

<sup>8</sup> John Roman et al., *The Economics of Juvenile Jurisdiction*, RESEARCH ROUNDTABLE ON ESTIMATING THE COSTS AND BENEFITS OF SEPARATE JUVENILE JUSTICE SYSTEM 1-5 (2004).

<sup>9</sup> C. BARTOLLAS ET AL., *JUVENILE DELINQUENCY* 36-56 (Andrew Gilfillan et al., 3rd ed. Pearson 2018).

<sup>10</sup> SHOEMAKER, *supra* note 5 at 60.

perspective of juvenile delinquency thus can be divided into its two main objectives – explaining the juvenile delinquency and determining ways to achieve the optimal solutions to the problem.

### *2.1 Motivation behind the juvenile crimes*

There can be numerous factors that serve as catalysts to juvenile offences like family issues, mental abuse, poor financial condition and several others. However, these factors are more related to the sociological point of view. From an economic perspective, the motivation behind juvenile crimes is more or less the same as that done by an adult though with some changes in the mentality and ultimate goals. The factors can be broadly considered as (i) Higher utility from illegal activities and, (ii) Lower gains from legal activities. The individual has to face the dilemma of choosing the type of activity he/she will pursue to satisfy his needs and desires.<sup>11</sup> Therefore, according to the rational choice theory, the individual will always make a rational choice in choosing from the type of activity he/she will pursue and for that will make a Cost-Benefit Analysis (CBA) of both the legal and illegal activities.<sup>12</sup>

However, the studies suggest that an individual is rather in a dilemma of choosing the optimal combination of the legal and illegal activities which will maximize his utility and welfare and therefore devotes his scarce time according to that optimal bundle (ordinal utility analysis).<sup>13</sup> The rational decision in that case for an individual would thus not only be based on the comparison of costs ( $C_1$  and  $C_2$ ) and benefits ( $B_1$  and  $B_2$ ) of the two choices ( $B_1-C_1$ ;  $B_2-C_2$ ) but also the comparisons between the costs of the two choices ( $C_1$ ;  $C_2$ ) and the benefits of the choices ( $B_1$ ;  $B_2$ ). Moreover, the ordinal approach of utility, as proposed by the previous economists<sup>14</sup>, could be said to determine the reasons for juvenile crimes. However, for an effective CBA or ordinal utility analysis, it is important to ascertain the returns which an individual might receive through each activity.

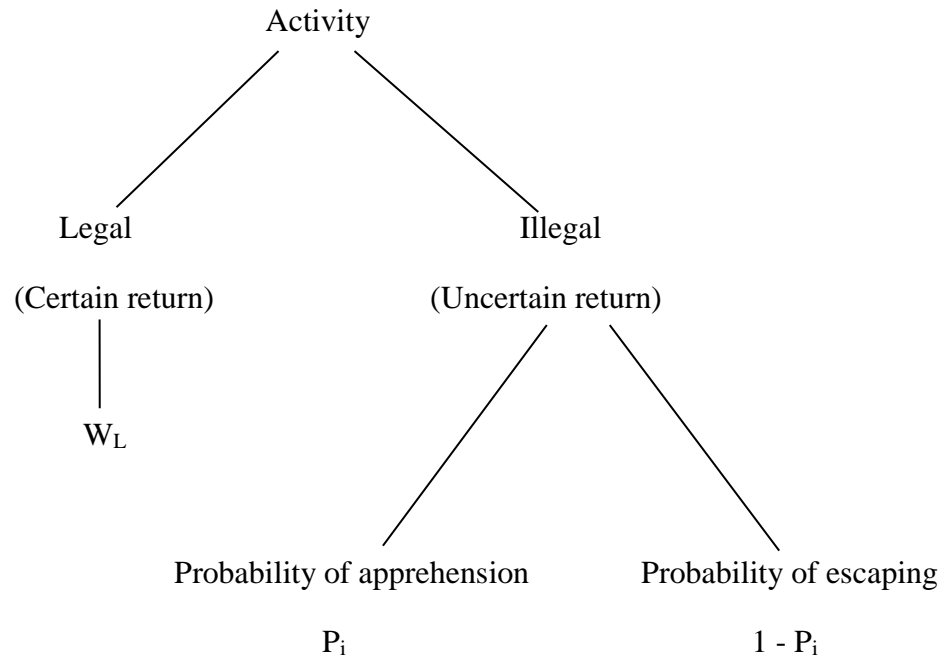
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<sup>11</sup> Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81(3) J POL. ECON. 521, 523-524 (1973) [hereinafter EHRlich].

<sup>12</sup> Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76(2) J POL. ECON. 169, 177-181 (1968) [hereinafter BECKER].

<sup>13</sup> EHRlich, *supra* note 10 at 523-525.

<sup>14</sup> EHRlich, *supra* note 10 at 525-530; BECKER, *supra* note 11 at 180-182.



**Fig. 1: Factors affecting the returns of the activities**

As highlighted earlier in this section, the utility analysis of the activities requires a Cost-Benefit Analysis of both the activities and for that purpose it is important to ascertain the returns which an individual might receive through each activity. As pointed in Fig. 1, the returns from the legal activities ( $W_L$ ) are usually certain and are predictable through pre-determined salary and wages, which makes them more secure and less risky than the illegal undertakings. But the returns from the illegal activities are uncertain and are largely dependent on two variables – probability of apprehension ( $P_i$ ) and probability of escaping ( $1-P_i$ ).<sup>15</sup> Therefore building on the theory of Ehrlich, separate returns can therefore be calculated for the two different scenarios.

$$X_C = W' - F_i(t_i)$$

is obtained with the probability of apprehension ( $P_i$ ), or

<sup>15</sup> EHRlich, *supra* note 10 at 524-525.

$$X_C = W' + W_i(t_i)$$

is obtained with the probability of escaping  $(1-P_i)$ , where  $X_C$  denotes the current real returns of the individual,  $W'$  denotes the real value of the individual's assets and is assumed to be known with certainty,  $F_i(t_i)$  denotes the value of punishment for the offences per unit of time and  $W_i(t_i)$  denotes the value of the earnings (loot) earned by the juvenile offenders per unit of time.<sup>16</sup> It is also important to note that the value of the punishment ( $F_i$ ) not only includes the criminal charges put on the offender or the monetary value of the deterrence caused by the punishment. The costs involved will also include the loss of reputation caused by the punishment, loss of the loot that could be earned through further crimes in that period and the opportunity costs of the legal activities ( $W_L$ ).<sup>17</sup>

Through the above equations, it can be inferred that if successful, the offender gets the entire value of the output of illegal acts while bearing the costs of inputs and the opportunity costs of the returns from the legal activities. In contrast, if caught, he may end up losing his current real assets in the form of the value of the penalties and loss of the other loots. In the end, the individual, in furtherance of his goal of maximizing his utility, will want to acquire more wealth and earnings while decreasing his costs in achieving the purpose. And for that purpose, will devote time in proportion to that combination of the activities which fulfil these conditions.<sup>18</sup>

Though the ordinal utility model provides much help in explaining the phenomena of juvenile delinquency, it presupposes perfect mobility between the legal and illegal worlds. Due to this, the model bases its theory that the optimal utility can be achieved through a specified bundle of both activities. However, in actuality, this does not hold as juvenile criminals face various barriers while choosing the activity to achieve personal welfare. The barriers constructed by external pressures like social, financial and educational influence the choice of the juveniles greatly.

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<sup>16</sup> EHRlich, *supra* note 10 at 524-525.

<sup>17</sup> See BECKER, *supra* note 11 at 180-182.

<sup>18</sup> EHRlich, *supra* note 10 at 524-525.

David Brandt<sup>19</sup> has extensively talked about the social and psychological factors responsible for delinquency in India. Along with the social factors, it has been noted that the social environment has a strong impact on the deviating tendencies of the juveniles. Therefore, the social structure and organization will play an important part in impacting the rational choice of juveniles.<sup>20</sup> In India, the high delinquency in sociological and psychological terms can be attributed to the rising poverty, broken homes, family tensions, emotional abuse, rural-urban migration, breakdown of social values, atrocities and abuse by parents or guardians, faulty education system, the influence of media and unhealthy social environment of the slums.<sup>21</sup> These social problems act as constructors of the financial, social and educational barriers, which make legal opportunities impossible to avail or too costly to be availed, leading to the pursuit of illegal activities.

Moreover, the mass migration of workers and poor villagers to urban centres adds fuel to the already rising problem of delinquency.<sup>22</sup> The migrant workers, especially juveniles, come to the urban centres with expectations of higher returns. However, the increased migrant population indirectly leads to bad neighbourhoods, poor housing and incomplete families, which has a deep negative influence on the children's minds.<sup>23</sup> The rising population, along with constant opportunities, also reduces the probability of receiving high returns to the juvenile migrants. These factors act as a deviation from the expectations of the juveniles, and thus, there arises a gap between the actuality and expectations which the juveniles try to fill with the returns of the crime, which are much higher than the abysmal returns from the legal works.<sup>24</sup>

## *2.2 Defining an optimal approach*

Juvenile delinquency has been a matter of most serious concern among sociologists and criminologists among all other crimes. Economists, though define the seriousness of the matter due to the existence of additional social costs incurred due to the juvenile crimes. The social

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<sup>19</sup> DAVID BRANDT, *DELINQUENCY, DEVELOPMENT, AND SOCIAL POLICY* (London, Yale University Press 2006).

<sup>20</sup> Deekshitha Agarwal, *Juvenile Delinquency In India - Latest Trends And Entailing Amendments In Juvenile Justice Act*, 3(3) PEOPLE: INT. J SOC. SCI. 1365, 1367-1368 (2018).

<sup>21</sup> Dr. Mahendra Tiwari et al., *Analytical view on the concept of Juvenile Delinquency*, 5(9) INT. J RES. ECON. SOC. SCI. 147 (2015).

<sup>22</sup> As per the analysis of Census 2011, every fifth child in India is a migrant with 18.9 per cent of the child population as migrants. For more information on the subject, see YOUNG LIVES INDIA, *UNDERSTANDING CHILD MIGRATION IN INDIA 2* (UNICEF, March 2020).

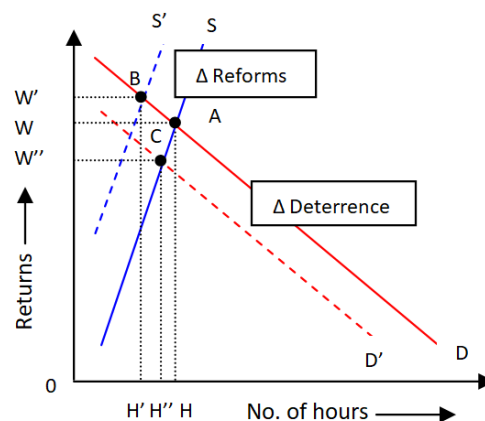
<sup>23</sup> G.S. BAJPAI, *JUVENILE JUSTICE: IMPACT AND IMPLEMENTATION IN INDIA 11* (Bloomsblury Publishing 2019).

<sup>24</sup> *Id.* at 12.



costs can be defined as the total costs of punishments or criminal proceedings which consider both the costs of the offender and gain or costs to the others including the victim.<sup>25</sup> This is the same reason why fines are preferred by economists rather than imprisonment. Fines make the costs of the offender equal to that of the gain of others (in this case, state and the victim), thereby making the total social costs zero. Whereas the social costs of imprisonment are higher as the costs to offenders are large while enlarging the costs of the state also in maintaining prisons. The social costs will, however, be especially too large for juvenile delinquency as the costs will also include the maintenance costs of the juvenile homes and the loss of future human resources in the form of children,<sup>26</sup> which is a huge cost for the society.

Dealing with juvenile delinquency has been a hot topic for decades for both criminologists and economists and the methods adopted to prevent it are met with various changes from time to time. While looking at it from an economic perspective, the choice has to be made by the policymakers regarding the type of approach, i.e. deterrent or reformatory to be used for obtaining an optimal solution. For resolving the dilemma, the essay will be using the criminal market equilibrium<sup>27</sup> and the first law of deterrence.



**Fig. 2: Effects of policy on Juvenile Criminal Market Equilibrium**

<sup>25</sup> BECKER, *supra* note 11 at 181-182.

<sup>26</sup> *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, JUSTICE POLICY INST. 4-19 (2009).

<sup>27</sup> Isaac Ehrlich, *Crime, Punishment and the Market for Offences*, 10(1) J ECON. PER. 43, 44-48 (1996).

The first law of deterrence states that an increase in deterrence reduces the number of crimes.<sup>28</sup> Based on this, Fig. 2 illustrates the increase in deterrence through an increase in the expected punishments by deterrent laws. The increase in the deterrence reduces the expected returns from the criminal activities ( $P_i$  and  $F_i$  increases) to  $W''$  and the demand curve of the crimes (which also represents the average revenue from the crimes) shifts left from  $D$  to  $D'$  and the equilibrium is established at  $C$  with hours spent on the criminal activities reduces to  $H''$ . The peculiar feature of the graph of the juvenile criminal market is that the Supply curve of the crimes is highly inelastic as compared to the adult criminal market graph. As the supply curve shows the number of hours the juveniles would spend on the criminal activities on the specific returns (which also meant the number of juveniles supplied on a given return), the inelasticity of the curve means that the juveniles would less increase their time devoted on crime on higher increment in returns. The reason for this abnormal attitude of the juveniles lies behind their psychological understanding. In contrast with the widely held belief that adolescents feel 'invincible', recent research indicates that young people do understand, and indeed sometimes overestimate, risks to them.<sup>29</sup> Therefore it appears that juveniles not only consider risks *cognitively* (by weighing its potential costs and benefits) but also *socially* and *emotionally* which makes them take less illegal undertakings as compared to the adults<sup>30</sup> even if returns from them increases rapidly.

The inelastic supply curve although does not prevent the decrease in the juvenile crime rates but it does reduce the efficiency of the policy by making reduction in crime rates (Benefits) much lesser than the costs incurred in maintaining deterrence (enforcement costs, punishment costs and social costs). Although the reforms came due to the pressure exerted by the child rights activists and sociologists, but if also seen from an economic perspective, the reformatory approach would be more efficient than the deterrent approach. Through the reforms the juveniles would be reformed into good persons giving up the wrong ways, which would bring down the supply curve to  $S'$  and the number of hours spent on criminal activities to  $H'$ , which is a much higher reduction than by the deterrent approach.

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<sup>28</sup> ISAAC EHRLICH, *ECONOMICS OF DETERRENCE (THEORY)* 127 (Macmillan Pubs. Ltd. eds., Palgrave Macmillan: London 2018), [https://doi.org/10.1057/978-1-349-95189-5\\_2618](https://doi.org/10.1057/978-1-349-95189-5_2618).

<sup>29</sup> Laurence Steinberg, *Cognitive and affective development in adolescence*, 9(2) *TRENDS IN COGNITIVE SCIENCES* 69, 69–74 (2005).

<sup>30</sup> Kelly Richards, *What makes juvenile offenders different from adult offenders?* 409 *TRENDS & ISSUES IN CRIME AND CRIMINAL JUSTICE*, AUS. INST. OF CRIM. (Feb. 18, 2011), <https://www.aic.gov.au/publications/tandi/tandi409>.

The reformatory approach now forms the base of the juvenile justice system of every nation.<sup>31</sup> In India also, the need for the good education and social environment had been realized through the Juvenile Justice Act of 1960 and the policymakers have followed this approach to intensify the reforms and bring down the supply curve which will reduce the juvenile crime rates while incurring lesser costs and reaping more benefits.<sup>32</sup>

### 3. EXAMINING THE EFFICIENCY OF THE JUVENILE JUSTICE ACT, 2015

Juvenile delinquency has not been new in India. India for a long time has been evolving its juvenile laws and infrastructure in accordance with the global changes in the perspectives and changing understanding behind the approaches from deterrent to reformative. Juvenile justice is currently governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which was brought by the government to address the rising juvenile delinquency through higher reforms in the juveniles. The Act addresses both children in conflict with the law and children in need of care and protection. While debating the Act in the Parliament, Mrs. Maneka Gandhi (then minister of women and child development) even remarked it as a ‘comprehensive Act’ which included issues regarding the adoption and foster care as well.<sup>33</sup>

Through this statement, it can be easily inferred that the aim of the government behind bringing this law is ‘Reformation and Rehabilitation’ of the Juvenile offenders. The Act follows a more reformatory process than its predecessor (Act of 2000) and introduces various concepts and institutions for juvenile reformation. The main feature of the Act is the provisions for the Adoptions and rehabilitation of the juveniles which are given due importance by separating it as a different chapter in the Act.<sup>34</sup> To improve the working of the institutions the existing Central Adoption Resource Authority (CARA) was given extensive enforcement powers.<sup>35</sup> Also, the

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<sup>31</sup> As far as 194 countries have ratified the UN Convention on Rights of Child and Child Protection, 1992.

<sup>32</sup> More benefits would be reaped as by changing the ways from legal to illegal, the juveniles are brought back to mainstream society. This will ensure the real economic development of both the juveniles and the nation, thereby securing our country’s future economic resource.

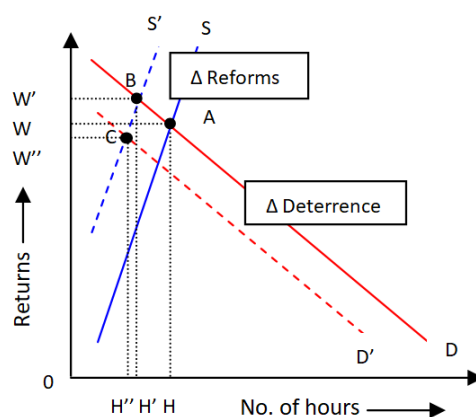
<sup>33</sup> Rajya Sabha Debates, Debate on Juvenile Justice Bill (Dec. 22, 2015), [http://164.100.47.5/new\\_debate/237/22122015/Fullday.pdf](http://164.100.47.5/new_debate/237/22122015/Fullday.pdf).

<sup>34</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, Ch. 7-8, No. 2, Acts of Parliament, 2016 (India) [hereinafter JJA 2015].

<sup>35</sup> *Id.* at § 70.

mandatory registration of the Child Care Institutions (CCIs)<sup>36</sup> and strengthening of Child Welfare Committees (CWCs)<sup>37</sup> highlights the reformatory motive of the act by giving a good social and educational environment to the juvenile offenders.

Though the Act seems to be a step forward in the direction of juvenile justice and child rights in India, the economic analysis becomes more important to determine its efficiency in controlling juvenile delinquency in India. For that purpose, those provisions of the Act will be taken into consideration, which have a significant impact on the reformation or deterrence to the juvenile offenders to conveniently study the impact of the reformation and deterrence of the Act on the juvenile criminal market.



**Fig. 3: Effects of the 2015 Act on Juvenile Criminal Market**

Before analysing the Act, it is important to note that the Act apart from its aim of reformation and rehabilitation of the juvenile offenders, has also focused on redefining the offences and

<sup>36</sup> A Child Care Institution, commonly known as an orphanage, as defined under the Juvenile Justice Act, 2015, means a facility recognized under the Act for providing care and protection to children, who need such services. Children in conflict with the law are provided residential care and protection in Observation Homes, Special Homes, and Places of Safety. Also see JJA 2015, *supra* note 33 at § 41.

<sup>37</sup> For the Children in need and care of protection, State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers in relation to child in need of care and protection under this Act. A child in need of care and protection is produced before CWC for being placed in safe. The Committee has the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. See JJA 2015, *supra* note 33 at § 27. Also for more information about CWCs, see *Child Welfare Committee*, WOMEN AND CHILD DEVELOPMENT DEPARTMENT (last visited Sept. 9, 2021), <https://wcdhry.gov.in/child-welfare-committee/>.

punishments to punish the offenders worthy of it.<sup>38</sup> The Act not only provided for the implication of the Indian Penal Code (IPC) on the juvenile offenders of 16-18 years of age for heinous offences,<sup>39</sup> but also hinted at the segregation of the juvenile justice on the basis of the nature of the offence and culpability of the offender, thus creating deterrence among the juveniles who used to believe themselves safe under the law. Due to this, as shown in Fig. 3, the supply curve shifts to S' (reforms) and the demand curve shifts to D' (deterrence), thereby establishing the new equilibrium at C. The point to be noted is that without deterrence the crime rates would have fallen much less than it has fallen due to some element of deterrence in the Act, therefore making the more effective than its predecessors. However, before reaching to conclusions, it is also important to analyze the impact of the limitations of the Act on the juvenile criminal market.

#### 4. MICROSCOPIC VIEW OF THE JUVENILE DELINQUENCY AND THE JUVENILE JUSTICE ACT

Juvenile delinquency is not a new phenomenon in India and there had been a juvenile justice system and infrastructure for handling it. However, the Juvenile Justice Act, 2015 was a major breakthrough in the evolution of the juvenile laws in India and has brought forth various ideals and infrastructural mechanisms to prevent the incidence of juvenile crimes. But for an effective analysis, it is also important to look at the reality apart from the economical expectations and understand the indirect economic consequences of the law. The Act too suffered from various defects in terms of implementation and interpretation which gave rise to several hindrances in achieving its purpose. Delays in the adoptions and poor maintenance of the institutions are some of the consequences of the poor implementation of the Act which instead reduces the efficiency of the law in controlling the rising juvenile delinquency in India.

##### 4.1 Delays in Adoption

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<sup>38</sup> The incident of the Delhi Rape case of 2012 acted as a catalyst in revisiting not only the existing the criminal laws which led to addition of various new crimes through the Criminal Law (Amendment) Act, 2013 but also the juvenile justice laws which led to the separation of the heinous crimes from the serious crimes and redefining the age groups of the juveniles on the basis of their culpability. Rituparna Bhattacharya, *Understanding the Spatialities of Sexual Assault against Indian Women in India*, 22(9) J. GENDER, PLACE AND CULTURE 1340, 1340-1356, DOI: 10.1080/0966369X.2014.969684.

<sup>39</sup> JJA 2015, *supra* note 33 at § 15.

The Juvenile Justice Act, 2015<sup>40</sup> deals with the procedure to be followed in case of adoptions. As referred before adoptions act as the reformatory schemes to the juvenile offenders which help them get a good social environment, bridge family ties and educational support. However, the delays in the adoptions have been quite a problem since the enactment of the Act. Though the reason is not clear, it is empirically observed that the complicated procedures and placing the jurisdiction in the hands of the courts, thus overburdening them have contributed to the same.<sup>41</sup> As of 2018, there are 629 cases for adoptions pending in various courts across the country,<sup>42</sup> which shows the authenticity of the fact.

<b>YEAR</b>	<b>IN-COUNTRY ADOPTION</b>	<b>INTERCOUNTRY ADOPTION</b>
2013-2014	3924	430
2014-2015	3988	374
2015-2016	3011	666
2016-2017	3210	578
2017-2018	3276	651
2018-2019	3374	653
2019-2020	3351	394
2020-2021	3142	417

**Table 1: Annual Adoption Statistics**

Source: Central Adoption Resource Authority, MWCD, GoI

As shown in Table 1,<sup>43</sup> the in-country adoptions before the enactment of the 2015 Act (2013-2015) were much higher and ranged between 3500-4000 adoptions. However, after 2015, the adoptions started declining to <3500 which can be shown by the huge drop during 2015-2016. This is in contradiction to the Inter-country adoptions which surged after the enactment of the Act due to the coming of the additional procedures to facilitate inter-country adoption. The stark reality of the dismal position of the adoptions in India can be further highlighted by the fact that

<sup>40</sup> JJA 2015, *supra* note 33 at § 59-60.

<sup>41</sup> Krishnadas Rajagopal, *Speeding up the adoption process*, THE HINDU-COMMENT, Aug. 31, 2018 at <https://www.thehindu.com/opinion/op-ed/speeding-up-the-adoption-process/article24822478.ece>.

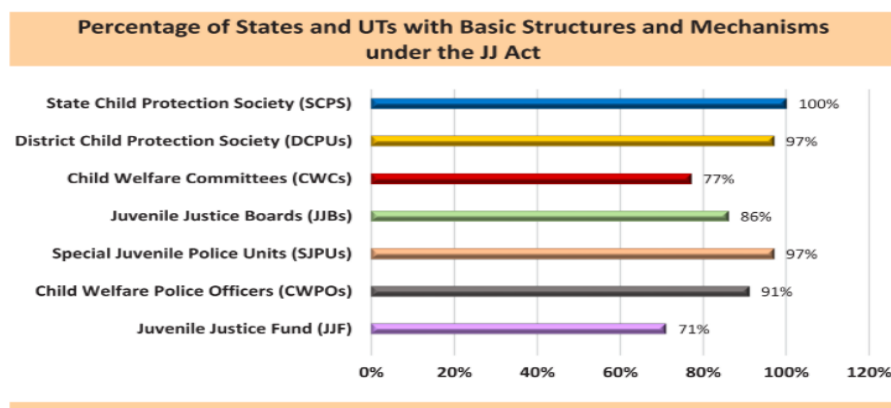
<sup>42</sup> The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 L.S. 137, Winter Sess. Statement of Objects and Reasons (2018).

<sup>43</sup> *Adoption Statistics*, CENTRAL ADOPTION RESOURCE AUTHORITY (Jun. 2021), [http://cara.nic.in/resource/adoption\\_Statistics.html](http://cara.nic.in/resource/adoption_Statistics.html).

as of June 2019, 6971 orphaned, abandoned or surrendered children were living in the Specialized Adoption Agencies across the country and further 1706 children are residing in CCIs linked with such agencies.<sup>44</sup> The already abysmal position of the adoptions in India further suffered a severe blow from the COVID-19 lockdown (2020-2021) when the adoptions declined sharply by 12% from 2018-19 due to further delays (Table 1).

#### 4.2 Lack of Proper Institutions

The Juvenile Justice Act not only gives attention towards facilitating the adoptions but has also provided for the proper institutional framework to ensure efficiency. But the actuality is far beyond the expectations of the lawmakers. As reflected in Fig. 4,<sup>45</sup> not every state is proficient in maintaining the institutions required for efficient working of the Act and only 28 out of 35 States and UTs have Juvenile Justice Boards which are much essential to providing juvenile justice. The Child Welfare Committees which acts as the final authority to dispose of cases relating to child protection and rehabilitation and to ensure basic facilities has been provided by only 77% (28 states) and in only 20 states District Magistrate is carrying out a quarterly review of CWCs.<sup>46</sup>



**Fig 4: States having basic structure under the Act**

Source: Status of Juvenile Justice System, NALSA 2019

<sup>44</sup> Unstarred Question No. 1225, Ministry of Women and Child Development (Jun. 28, 2019), <http://164.100.24.220/loksabhaquestions/annex/171/AU1225.pdf>.

<sup>45</sup> NATIONAL LEGAL SERVICES AUTHORITY, A QUICK OVERVIEW STATUS OF JUVENILE JUSTICE SYSTEM, STRUCTURE, MECHANISMS & PROCESSES 5 (2019), <https://drive.google.com/file/d/1CktonWaSh5aGOrO4Oi14HuvpdqIECEaH/view> [hereinafter NALSA].

<sup>46</sup> *Id.*

For the juvenile offenders the data is more horrifying with only 5 states having Observational homes in every district<sup>47</sup> and a mere 71% states having a Place of Safety for juvenile offenders.<sup>48</sup> The CCIs which even exist are not even registered and applied under the Act of 2015,<sup>49</sup> thus making their legal status vulnerable and juvenile offenders pushed back in the uncertain future. Furthermore, the Committee on review exercise of CCIs (2018) noted that many CCIs fail to provide even the basic services to the children including individual bedding, and proper nutrition and diet.<sup>50</sup>

### **4.3 Impact on Criminal Market and Incidence of Juvenile crimes**

The delays caused in the adoption process and the lower level of institutional framework and facilities provided to the juvenile's act as hindrances to the Juvenile Justice Act, 2015 in achieving efficiency. The problems of delay and proper implementation however not only fail the laws to achieve the social goals but also prevent it attaining an efficient solution. The delays caused in adoptions and lack of institutions and facilities to the juveniles creates a rift between the level of reformation expected by the Act and the level of reformation achieved in reality. This rift results in a lesser shift in the Supply curve (S') than was originally expected (S''). Maintaining the deterrence constant, the equilibrium will be established at E and not at C (expected equilibrium) and the reduction in the crime rates will therefore be far lower than what could be achieved through proper implementation of the laws and reduction in delays (Fig 5).

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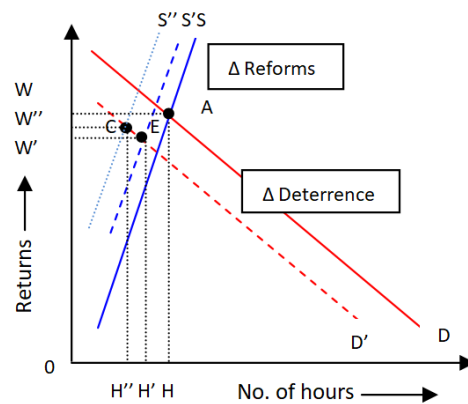
<sup>47</sup> NALSA, *supra* note 44 at 12.

<sup>48</sup> NALSA, *supra* note 44 at 14.

<sup>49</sup> As of 2020, 2162 CCIs are present across India out of which only 32.03% are registered. *See* MINISTRY OF WOMEN AND CHILD DEVELOPMENT, REPORT OF THE COMMITTEE FOR ANALYZING DATA OF MAPPING AND REVIEW EXERCISE OF CHILD CARE INSTITUTIONS UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 AND OTHER HOMES 38 (2018), [https://wcd.nic.in/sites/default/files/CIF%20Report%201\\_0\\_0.pdf](https://wcd.nic.in/sites/default/files/CIF%20Report%201_0_0.pdf).

<sup>50</sup> *Id.* at 111-173.



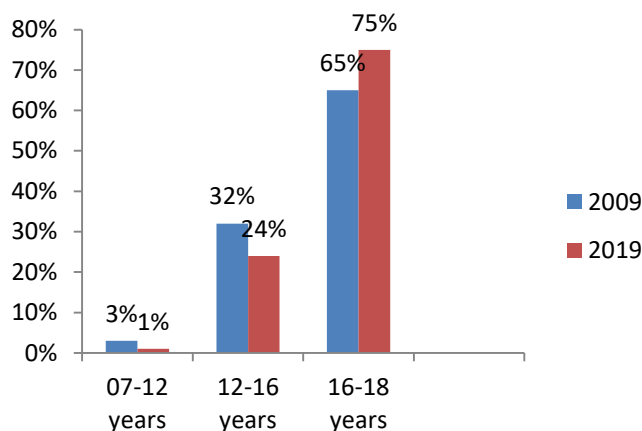


**Fig 5: Impact of hindrances on Juvenile Criminal Market**

Moreover, by keeping the deterrence constant would also amount in huge social costs. The court fees, maintenance of the courtrooms, juvenile homes, etc. requires much state expenditure. The infrastructure demanded an efficient juvenile justice system too requires much state expenditure on maintaining the adoption centres, JJBs, CCIs, CWCs and other protection institutes. With benefits (reduction in the number of hours devoted for criminal activities) reduced to what was expected to be achieved through the Act and the social costs increasing due to increased state expenditure and dilapidated conditions of the juveniles, the Costs exceeds the Benefits (CBA), thereby failing the purpose of the Act by again making crime more beneficial than surrendering.

As can be seen in Fig 6,<sup>51</sup> though the reduction in juvenile crimes has occurred, the reduction has been less than expected due to the delays and implementation discrepancies that made the law inefficient. Also, the crimes by age group of 16-18 have however increased which indicate the shifting of the supply curve even to right in their case due to their different psychological understanding of the current trends from the other juvenile age groups.

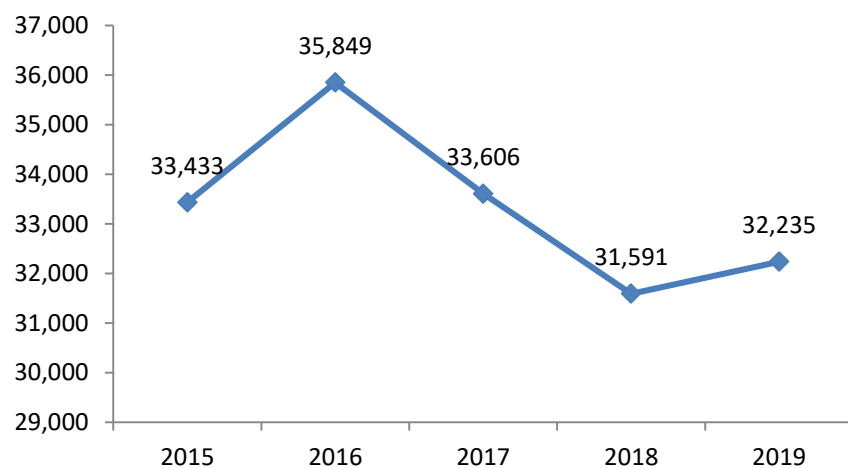
<sup>51</sup> *The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021*, PRS LEGISLATIVE RESEARCH (Jul. 2021) <https://prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-amendment-bill-2021>.



**Fig 6: Juveniles arrested by Age groups**

Source: Crime in India, 2009-2019, NCRB, PRS

The crimes committed by juveniles have been reduced to a limited extent by the Juvenile Justice Act, 2015 and juvenile delinquency is controlled to a larger extent than its predecessor Juvenile Justice Act, 2000 (Fig 7).<sup>52</sup> However, due to higher enforcement costs incurred as per the Act, the Act faces a harsh reality of being economically inefficient and has failed to provide an optimal solution to the problem of high juvenile delinquency in India.



**Fig 7: Crimes committed by Juveniles during 2015-2019**

Source: Crime in India 2015-2019, NCRB

## 5. RESOLVING THE PROBLEMS WITH THE AMENDMENT OF 2021

<sup>52</sup> *Id.*

In order to resolve the problems faced under the Juvenile Justice Act, 2015 because of delays in adoptions and lack of proper enforcement, the Ministry for Women and Child Development introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 which seeks to amend the 2015 Act. The Bill has been recently passed in the Parliament and has been enacted through the Presidential Assent. Giving importance to the matter of delays in the adoption process, the Statement of Objects and Reasons of the 2021 Act states that as adoptions are non-adversarial in nature, they can be dealt with through a well laid out process.<sup>53</sup>

Through this object of the law, it can therefore be inferred that the bill seeks to prevent delays in the adoption process and ensure effective enforcement to bring efficiency in the original Act. For that purpose, the Bill proposes several reforms to prevent delay which includes the transferring of the power to apply for adoption from civil courts to the District Magistrate<sup>54</sup>, extending the jurisdiction of the children's courts<sup>55</sup> and fastening the appellate process.<sup>56</sup> The Bill also ensures efficiency within the CWCs by adding certain eligibility criteria for the members.<sup>57</sup>

The reforms in the form of preventing delays in the adoptions and juvenile criminal cases provide much-needed boost to the efficiency in the juvenile laws in India. If explained in the economic terms the reforms introduced in the Bill will lead to the shifting of the supply curve to the further left, thus helping it to match the expected supply curve (S'') of the Act (Fig 5). This will lead to the establishment of equilibrium at the expected point C and the incidence of the crimes will drop at the expected rate through which the full efficiency of the law will be achieved.

## 6. CONCLUSION AND RECOMMENDATIONS

The juvenile justice system of Indian has been evolving for decades to reach the optimal solution to the problem. The traditional approach of custodial care in the institutions is being rapidly altered by the strong convictions in favour of the Right to Family as a basic right of children and

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<sup>53</sup> The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, Statement of Objects and Reasons, No. 23, Acts of Parliament, 2021 (India) [hereinafter JJ ACT 2021].

<sup>54</sup> *Id.* at § 18-21.

<sup>55</sup> JJ ACT 2021, *supra* note 52 at § 26.

<sup>56</sup> JJ ACT 2021, *supra* note 52 at § 28.

<sup>57</sup> JJ ACT 2021, *supra* note 52 at § 9(1).

so is the juvenile justice system of India. However only the social and legal factors behind the change in the Juvenile Justice system were latent in the studies whereas the economic factors were largely ignored. Through this essay, the economic values hidden in this right and the reasons behind the high juvenile delinquency rate in India have been brought forth. In India, the enactment of the Juvenile Justice Act, 2015 was a major breakthrough in the evolution of the juvenile laws in India and had provided much-needed efficiency to control the rising juvenile crimes across the country. Though the Act failed to meet the expectations of the policymakers and proved a little efficient due to enforcement problems and delays in judicial mechanism, with the Amendment of 2021 the Act could serve as a revolutionary step in bringing an efficient solution to the problem.

However, it is highly doubtful that even then the Amendment would be efficient enough to control the high juvenile delinquency in India attributed to some inherent defects which could instead push back the juvenile justice system of the country. The Amendment proposes to enlarge the ambit of the serious offences while diminishing the extent of the heinous offences,<sup>58</sup> thereby reducing the deterrent factor from the original law. While providing no solutions to the problems faced by the juveniles in the adoption centres and specialized agencies because of poor facilities and infrastructure, there exists a huge probability of shifting of the demand ( $F_1$  reduced due to lack of deterrence) and supply curve (lack of incentives in education and legal opportunities due to poor facilities) to the right, thus alleviating the positive effects of the law. Also, the transferring of powers to the District Magistrate does not adequately ensure the prevention of delays in the adoption process.

As far as efficiency of the policies is concerned, the optimal solution can however be reached with even these faulty provisions. The proper maintenance of the juvenile justice infrastructure is a necessary thing to be done for proper implementation of the Act. Proper maintenance of the juvenile care centres, CCIs and adoption centres and providing good education and legal opportunities to the juvenile offenders will not only serve its social purpose but also bring efficiency in the laws by adequately reducing the supply of juvenile criminal activities. Also, the prevention of delays in juvenile cases and the adoption process will require revisiting the defects in the judicial machinery rather than transferring of the powers and proper enforcement is needed

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<sup>58</sup> JJ ACT 2021, *supra* note 52 at § 2(7).

to control the same. Though it may be argued that it will further increase the social costs by raising the enforcement costs of the Act, thereby reducing its efficiency (CBA), the benefits reaped through effective enforcement would be much higher than the costs. Through these measures, the number of offenders will reduce thus, reducing the juvenile crime rates. Therefore, the enforcement costs can be incurred as long as effective enforcement is taking place.

Also, the law has to be reformed to raise the level of deterrence too for the highly culpable juveniles so that economic benefits can be assured while ensuring social benefits. In recent years, juveniles and their problems have been paid larger attention from both, the society and the government. But it has been seen the problem of juvenile delinquency is enormous and never-ending, thus resulting in a lack of everything that has been done till today.

Juveniles are the most important economic resource for the future of any country. This holds even more relevance in India where juveniles and children constitute almost 36% of the projected population in 2021.<sup>59</sup> If these problems are not curbed on time then the growth of the children and juveniles will be hampered leading to a dark future for the country. The Juvenile Justice Act, 2015 although provides a major breakthrough in the juvenile justice system of India, clearly still much can be done and much has to be done.

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<sup>59</sup> CENTRAL STATISTICS OFFICE, YOUTH IN INDIA 2017 13 (Social Statistics Division, Ministry of Statistics and Programme Implementation, 2017).

## 7. ANNEXURE

TABLE 1

**January 2019 – Structures and Mechanisms established under the Juvenile Justice Act. The data has been collected by the National Legal Services Authority through a questionnaire made in 2018 and has been used by the author for the research purpose.**

S. No.	States/UTs	State Child Protection Society	District Child Protection Society	Child Welfare Committees	Juvenile Justice Boards	Special Juvenile Police Units	Child Welfare Police Officers	Juvenile Justice Fund
1.	ANDAMAN & NICOBAR ISLANDS	YES	YES	NO	NO	YES	YES	NO
2.	ANDHRA PRADESH	YES	YES	YES	YES	YES	YES	YES
3.	ARUNACHAL PRADESH	YES	YES	NO	YES	NO	NO	NO
4.	ASSAM	YES	YES	NO	NO	YES	YES	NO
5.	BIHAR	YES	YES	NO	YES	YES	YES	YES
6.	CHANDIGARH	YES	YES	YES	YES	YES	YES	YES
7.	CHHATTISGARH	YES	YES	YES	YES	YES	YES	YES
8.	DADRA AND NAGAR HAVELI	YES	YES	NO	YES	YES	YES	NO
9.	DAMAN AND DIU	YES	YES	YES	YES	YES	YES	NO
10.	DELHI	YES	YES	YES	NO	YES	YES	YES

11.	GOA	YES	YES	YES	YES	YES	YES	YES
12.	GUJARAT	YES	YES	YES	NO	YES	YES	YES
13.	HARYANA	YES	YES	NO	NO	YES	YES	YES
14.	HIMACHAL PRADESH	YES	YES	YES	YES	YES	YES	YES
15.	JHARKHAND	YES	YES	YES	YES	YES	YES	YES
16.	KARNATAKA	YES	YES	YES	YES	YES	YES	YES
17.	KERALA	YES	YES	YES	YES	YES	YES	YES
18.	LAKSHADWEEP	YES	NO	YES	YES	YES	YES	NO
19.	MADHYA PRADESH	YES	YES	YES	YES	YES	YES	NO
20.	MAHARASHTRA	YES	YES	YES	YES	YES	YES	YES
21.	MANIPUR	YES	YES	YES	YES	YES	YES	YES
22.	MEGHALAYA	YES	YES	YES	YES	YES	YES	YES
23.	MIZORAM	YES	YES	YES	YES	YES	NO	NO
24.	NAGALAND	YES	YES	YES	YES	YES	NO	YES
25.	ODISHA	YES	YES	YES	YES	YES	YES	YES
26.	PUDUCHERRY	YES	YES	NO	YES	YES	YES	YES
27.	PUNJAB	YES	YES	YES	YES	YES	YES	YES
28.	RAJASTHAN	YES	YES	YES	YES	YES	YES	YES
29.	SIKKIM	YES	YES	YES	YES	YES	YES	NO
30.	TAMIL NADU	YES	YES	YES	YES	YES	YES	YES
31.	TELANGANA	YES	YES	YES	YES	YES	YES	YES
32.	TRIPURA	YES	YES	YES	YES	YES	YES	NO
33.	UTTAR PRADESH	YES	YES	YES	YES	YES	YES	YES
34.	UTTARAKHAND	YES	YES	YES	YES	YES	YES	YES
35.	WEST BENGAL	YES	YES	NO	YES	YES	YES	YES

**TABLE 2**

**December 2010 – Juveniles Apprehended Under IPC/SLL Crimes by Age Groups in 2009 (State/UT wise). The data has been collected by the National Crimes Records Bureau, Ministry of Home Affairs and has been used by the author for the research purpose.**

<b>S. No.</b>	<b>States/UTs</b>	<b>7-12 Years</b>	<b>12-16 Years</b>	<b>16-18 Years</b>
1.	ANDAMAN & NICOBAR ISLANDS	2	10	14
2.	ANDHRA PRADESH	61	640	1285
3.	ARUNACHAL PRADESH	3	47	31
4.	ASSAM	11	153	221
5.	BIHAR	0	199	543
6.	CHANDIGARH	7	80	81
7.	CHHATTISGARH	53	1239	1064
8.	DADRA AND NAGAR HAVELI	0	6	13
9.	DAMAN AND DIU	0	0	10
10.	DELHI	20	282	325
11.	GOA	3	26	48
12.	GUJARAT	28	480	713
13.	HARYANA	4	184	719
14.	HIMACHAL PRADESH	4	61	154
15.	JAMMU AND KASHMIR	1	24	2
16.	JHARKHAND	1	37	64
17.	KARNATAKA	38	89	77
18.	KERALA	5	269	552



19.	LAKSHADWEEP	0	0	0
20.	MADHYA PRADESH	206	2016	4334
21.	MAHARASHTRA	173	1771	4344
22.	MANIPUR	0	0	0
23.	MEGHALAYA	10	72	36
24.	MIZORAM	7	32	77
25.	NAGALAND	2	12	39
26.	ODISHA	19	285	240
27.	PUDUCHERRY	0	9	40
28.	PUNJAB	32	80	134
29.	RAJASTHAN	51	795	1532
30.	SIKKIM	1	15	66
31.	TAMIL NADU	131	605	908
32.	TRIPURA	25	17	4
33.	UTTAR PRADESH	5	325	527
34.	UTTARAKHAND	4	69	81
35.	WEST BENGAL	27	94	206

**TABLE 3**

**September 2020 – Juveniles Apprehended under IPC/SLL crimes during 2019 as categorised under different crime heads. The data has been collected by the National Crime Records Bureau, Ministry of Home Affairs and the data has been abridged by the author for the research purpose.**

<b>S. No.</b>	<b>Type of Crime</b>	<b>7-12 Years</b>	<b>12-16 Years</b>	<b>16-18 Years</b>
1.	OFFENCES AGAINST THE HUMAN BODY	151	3148	10815
2.	OFFENCES AGAINST THE STATE	0	0	1496
3.	OFFENCES AGAINST THE PUBLIC TRANQUILITY	11	291	1496
4.	OFFENCES AGAINST THE PROPERTY	212	4009	10792
5.	OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS	1	21	125
6.	MISCELLANEOUS IPC CRIMES	17	503	2088
7.	OTHER IPC CRIMES	36	416	1082
8.	CRIME AGAINST WOMEN	0	0	8
9.	CHILDREN RELATED- ACTS	34	495	1234
10.	SCs/STs – RELATED ACTS	2	4	5
11.	OFFENCES AGAINST STATE-RELATED ACTS	0	8	45

12.	ARMS/EXPLOSIVE-RELATED ACTS	0	35	215
13.	IT/IPR-RELATED ACTS	0	4	40
14.	FINANCE & ECONOMIC ACTS	0	3	53
15.	LIQUOR & NARCOTIC DRUGS-RELATED ACTS	3	118	688
16.	ENVIRONMENT & POLLUTION-RELATED ACTS	0	4	16
17.	FOREIGNER AND PASSPORT-RELATED ACTS	0	6	8
18.	RAILWAYS-RELATED ACTS	0	3	3
19.	TELEGRAPH/CINEMATOGRAPH ACTS	0	0	0
20.	FOOD, DRUGS AND ESSENTIAL COMMODITIES ACTS	0	0	3
21.	OTHER REGULATORY AND ENFORCEMENT ACTS	0	37	262
22.	OTHER SLL CRIMES	0	29	106