

## **UNVEILING THE AGE PERSPECTIVE: A THOROUGH REVIEW OF JUVENILE JUSTICE IN INDIA**

**Ratnesh Singh**

Senior Research Fellow, Department of Public Policy and Public Administration, Central University of Jammu, Bagla, Rahya Suchani, Samba, Jammu and Kashmir, India. 181143

**Dr. Rouchi Chaudhary**

Associate Professor and Head, Department of Public Policy and Public Administration  
Central University of Jammu, Jammu

### **Abstract**

The escalating concern about Juvenile Justice in India presents a formidable challenge, gravely endangering the welfare and security of the children. The determination of age criteria for children in India poses a complex dilemma within the context of juvenile justice. In fact, one of the key provisions of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, is regarding the determination of the age for juveniles involved in heinous crimes. Accurate age determination is crucial for determining the treatment of children within the justice system. Incorrect age determinations can lead to either harsher punishments or inadequate rehabilitation opportunities, undermining justice and child protection.

Hence, understanding the existing legal framework of the Minimum Age of Criminal Responsibility (MACR), age-wise distribution of crimes committed by juveniles and crimes against children is of paramount importance in addressing the challenges of formulating effective strategies within the realm of juvenile justice.

This article presents a comprehensive review of the juvenile justice system in India, with a specific focus on the age perspective, the existing legal framework of the Minimum Age of Criminal Responsibility (MACR) in India, age-wise distribution of crimes committed by juveniles and crimes against children. By unravelling the age perspective, this thorough article contributes to a deeper understanding of the complexities and nuances involved in India's juvenile justice system. It underscores the significance of considering age as a fundamental factor in the pursuit of fair, equitable, and effective juvenile justice practices in the country.

**Keywords:** India, Minimum Age of Criminal Responsibility (MACR), Juvenile Justice (Care and Protection of Children) Acts, Juvenile Delinquency (JD), Crime Against Children (CAC)

### **Introduction**

Children<sup>1</sup> represent the invaluable treasures of the future and are the most precious assets of any nation or society (Ramesh, 2015, p. 1). The quality and trajectory of their growth and development play a pivotal role

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<sup>1</sup> In the juvenile justice laws of India, JJ Act 2000 onwards, the age criteria to define a 'child' as well as 'juvenile' is the same. The report like Crime in India itself has used the terminology 'Juvenile Delinquency (JD)', and 'Child in Conflict with Law (CCL)', interchangeably. Hence, until not specified both these terminologies stand for the same meaning and have been used interchangeably.

in shaping the progress, essence, and direction of a society or nation (M/o WCD, 2016, p. 1). In essence, children are the torchbearers of our future, as eloquently stated by Abraham Lincoln, who believed that they will inherit and guide the civilization of tomorrow (Shakti, 2016, pp. 2-3). To ensure that our future is in capable hands, it becomes imperative that we make every possible effort to nurture and develop our children into competent and responsible adults.

Unfortunately, numerous children across the globe are being deprived of essential opportunities. Every single day, millions of children face the harsh realities of abuse, neglect, exploitation, and violence in various contexts (Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002, p. 5), including their own homes, schools, communities, and workplaces (Pereznieto, Montes, Routier, & Langston, 2014, p. vi). The prevalence of violence against children, incidents of child abuse, and the rise of juvenile delinquency continue to pose significant challenges for governments worldwide in their pursuit of maintaining societal peace and progress (Lalthansangi, 1997, p. 1). Extensive evidence from around the world reveals the manifold negative consequences of violence against children, child abuse, and juvenile delinquency, impacting individuals and communities in the short term, long term, and across generations (WHO, 1999, p. 1). In the most extreme cases, such violence can result in tragic loss of life. Furthermore, it is important to recognize that the repercussions of these issues carry substantial costs for individuals, communities, government entities, and the overall economy (Pereznieto, Montes, Routier, & Langston, 2014, p. vi). Henceforth, a holistic system of juvenile justice could provide an environment that nurtures the potential of young offenders and contributes to the well-being and progress of society as a whole.

The difficulties arising from the lack of a clear definition for the term 'child' in the statutes of law highlight the need for a precise and consistent understanding of child age. *Section 2(a)* of the Prohibition of Child Marriage Act of 2006 establishes 18 years as the age limit for females and twenty-one years for a male, for restraining child marriage (M/o L&J, 2007, p. 2). However, inconsistencies emerge when examining other legal provisions. For instance, according to Section 375 of the Indian Penal Code, a child is defined as someone not being under 15 years of age. Conversely, under Section 376 (IPC), a child is regarded as not being under 12 years of age (Ratanlal & Dhirajlal, 2019, pp. 633-656). Even the Juvenile Laws, which evolved over the year, has adopted different age criteria to define 'juvenile' or 'child'. For instance –

According to the Children Act, 1960, *Section 2(e)*, 'child' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years (M/o WCD, 1960).

According to the Juvenile Justice Act, 1986, *Section 2(h)*, 'Juvenile' means a boy who has not attained the age of sixteen years and a girl who has not attained the age of eighteen years (The Juvenile Justice Act, 1986, 1986).

According to the Juvenile Justice (Care and Protection of Children) Act, 2000, *Section 2(k)*, "Juvenile" or "child" means a person who has not completed the eighteenth year of age (M/o LJ & CA., 2000).

According to the Juvenile Justice (Care and Protection of Children) Act, 2015, *Section 2(12)*, "child" means a person who has not completed eighteen years of age," and *Section 2(35)*, "juvenile" means a child below the age of eighteen years" (M/o Law and Justice, 2016).

These conflicting interpretations lead to ambiguity in determining the status of a child. Harmonizing these inconsistencies, as well as those present in Special/Local Laws, becomes essential to ensure a unified and coherent understanding of child age across the legal framework. Clear definitions of child age are crucial for

safeguarding the rights and well-being of children and for effectively implementing child protection measures (NCRB, 1996, p. 241).

The evolution of age criteria in Indian juvenile laws highlights a gradual shift towards considering individuals below the age of eighteen as children, aligning with international standards and recognizing the vulnerabilities and special needs of young individuals in conflict with the law or in need of care and protection. These changes aim to provide a comprehensive legal framework for the care, rehabilitation, and reintegration of children, promoting their well-being and protecting their rights. To protect the rights of children, provide rehabilitation and reformation, prevent recidivism, promote accountability, and address special circumstances, a comprehensive juvenile justice system there is needed to review the evolution of age criteria in juvenile laws in India and its impacts on understanding the statistics of juveniles crimes as well as juvenile justice system as whole.

### Objective

The objective of the study aims to:

- a. To review the temporal development of the age criteria to define 'child' or 'juvenile' in the Juvenile Justice System of India.
- b. To comprehend the working definition of the concept such as Minimum Age of Criminal Responsibility (MACR),
- c. To review the impact of changes in age criteria on data statistics of Juvenile delinquency, Juvenile Apprehension and Crime Against Children.

### Methodology

The methodology employed in this article involves conducting a thorough literature review to explore the existing knowledge of the Age of 'child' or 'juvenile' in India, along with the Minimum Age of Criminal Responsibility (MACR) in India will be performed. Furthermore, the statistical analysis of official data sources and comparative analysis with standards are employed to provide empirical evidence and highlight trends. The trends of Children in Conflict with Law (CCL), Juvenile Apprehension (JA) and Crimes Against Children (CAC) will be explored through the review of fluctuations in their Yearly incidences, Annual Growth Rate (AGR). The AGR of CCL and CAC, in this study, is calculated by the formula -

$$AGR = \left( \frac{\text{Incidences in the reference Year} - \text{Incidences in previous Year}}{\text{Incidences in the reference Year}} \right) \times 100$$

### Juvenile Justice System and Age Criteria

The term "juvenile delinquency" is a relatively new concept in the legal realm. The idea that children should be treated distinctively from adults emerged only a few centuries ago. Before the mid-eighteenth century, young individuals were regarded and handled as miniature adults. According to Robert Mennel, the term "juvenile delinquency" was initially observed during the eighteenth century, as society began to acknowledge the distinctiveness of children in the realm of criminal behaviour (Mennel, 1973, p. xvii). However, it was not until the late nineteenth century that the legal definition and understanding of delinquency were firmly established in the state of Illinois. Notably, there were no formalized juvenile courts until 1899 (Shoemaker, 2009, p. 6).

Throughout history, there has been tension between the desire to assist juvenile offenders and the inclination to punish them. This tension has influenced the structure and operations of the juvenile justice system, both in

the United States and potentially worldwide. In the 1880s, the events such as ‘the House of Refuge (1825-1860)’ and ‘Child Savers (1850-1890)’, shaped the development of the contemporary juvenile justice system (Shoemaker, 2009, p. 6). In the 19<sup>th</sup> century, the Houses of Refuge (1825-1860) were institutions established in the United States to address the rising concerns about juvenile delinquency, which were increasing because of the economic downturn and influx of immigrants. It aimed to control and prevent juvenile delinquency by providing shelter, education, and vocational training to at-risk youth. The first House of Refuge was founded in 1825 in New York (Krisberg, 2018, p. 17); (Finley, 2007, p. 205); (Shoemaker, 2009, p. 110). By 1860, in the USA, their increased to Twenty, which further increases to forty-five by 1885 (Finley, 2007, p. 148).

In the United States, Child Savers (1850-1890) was a significant movement of a group of reformers who advocated for the protection and rehabilitation of children in need which aimed to “address the challenges faced by vulnerable and delinquent youth” (Krisberg, 2018, pp. 25-28); (Finley, 2007, p. 34). The collective endeavours of the Child Savers eventually culminated in the establishment of the initial legislation concerning delinquency and the subsequent formation of the juvenile court in Cook County, Illinois on July 1, 1899. The first delinquency law, referred to as the "An Act for the Treatment and Control of Dependent, Neglected, and Delinquent Children", it set the jurisdictional age of the juvenile court at sixteen, although this age was later increased to seventeen for boys and eighteen for girls. Consequently, individuals below these specified ages were directed to the juvenile court for adjudication (Shoemaker, 2009, p. 32). By 1923, the majority of states in the United States, along with numerous countries worldwide, had transitioned to implementing an independent and separate juvenile justice system exclusively designated for children (Gardner & Lanza-Kaduce, 2015, p. 88).

In India, as stated by P.P. Barooah (1999), “Since the ancient times ‘The Family’ has been the most important child care institution in India. A satisfactory rearing of the child was ensured by an effective social organisation through the institution of ‘Joint Family’ and close-knit community”. This stressed cooperative responsibility and provided care and protection to children (Barooah, 1999, p. 16). Ancient Indian literature like Manu Smriti and Arthashastra suggested different punishments and special protection for children. For instance, Masmriti suggests different punishments were recommended for children committing nuisance<sup>2</sup> or involved in gambling<sup>3</sup> and the Arthashatra provides protection to the children from slavery and bounded labour. The Arthashatra also states that the head of family and the state were obliged to provide safety to children (Rangarajan, 1992, p. 72).

However, the first legislation in India to cater to “the special needs of children within the criminal justice apparatus” was the Apprentice Act, 1850 and the *first* legislation which had the provision to establish a separate Juvenile Justice System was *the Madras Children Act, 1920*. After this act, several provinces of India innated their owned Children Act. After the independence, as the subjects of public order, Police and Prisons, reformatories, Borstal institutions and other institution of a like nature, were State subject (Seventh Schedule, item number 1, 3, and 4 respectively) (Legislative Department, M/o L&J, 2018), the States had their own children or juvenile laws. This leads to a bifurcated and non-uniform legislative framework of the juvenile

<sup>2</sup> Chapter IX, Slokas 283 states, “But a distressed person, an infant or an old man, found guilty of the same offence (defecating on the king’s high way – Slokas 282), shall be liable to remove the faeces. This is the decision”. (Sharam, 2020, p. 444)

<sup>3</sup> Chapter IX, Slokas 230 states, “Women. Infant, old or insane persons, poor men, and sick folk, incapable of paying the penalty (for gambling IX-221-229), the king shall punish with stipes of bamboo twists, or with chords, or by binding them”. (Sharam, 2020, p. 435)

justice system (Raj, 2020, p. 90). This bifurcated framework of juvenile justice system leads to the dilemma on the age criteria of juvenile justice in India. Even in Juvenile Justice Act, 1986 the age criteria for male and female children were different. In the JJ Act 2001, gender-neutral age criteria i.e., 18, was adopted to define the ‘child’ or ‘juvenile’.

Even the 2021 amendment to the Juvenile Justice Act, has brought significant changes to the age criteria for heinous crimes in India. According to the changed provision, if a juvenile aged 16 to 18 years commits a heinous offence, such as rape or murder, the Juvenile Justice Board has the discretion to conduct an inquiry and determine if the case should be transferred to a Children’s Court for trial under the regular criminal justice system. This evolutionary history of juvenile laws shows that at all phases of the development of the juvenile justice system in India, the determination of age criteria to define ‘child’ or ‘juvenile’ was a leading concern for the legislature.

### **Minimum Age of Criminal Responsibility (MACR) in India**

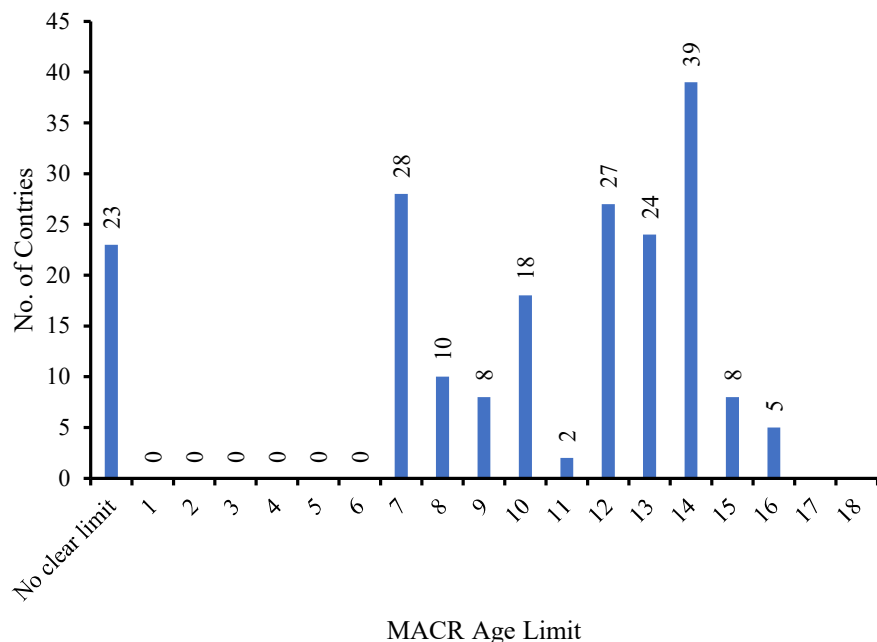
The Minimum Age of Criminal Responsibility (MACR) is a crucial concept in juvenile justice systems worldwide. It refers to the minimum age at which a child can be held legally accountable for committing a criminal offence (UNCRC, 2018, p. 4). The establishment of an appropriate MACR is essential to ensure a fair and just treatment of children in conflict with the law, balancing their accountability with their unique vulnerabilities and rights as minors (Brown & Charles, 2021); (UNICEF, 2017).

The UNCRC provides a framework for countries to establish MACR policies consistent with child rights principles. Article 40 of the UNCRC recognizes that children alleged or accused of committing crimes should be treated in a manner consistent with their age and the promotion of their reintegration into society. The Committee on the Rights of the Child suggest countries to increase the MACR to 12 years (Office of the SRSG on Violence Against Children in 2012, United Nation, 2015, p. 6), but, unfortunately, The MACR varies significantly across countries, ranging from 7 years to 18 years or having no specific age limit at all (Russell Webster, 2017). Some countries opt for a tiered MACR system, distinguishing between

According to Cipriani (2009), 23 countries do not have a specific minimum age of criminal responsibility and no country in the dataset has set the MACR below the age of 7. This indicates a global consensus that children below this age are not considered legally responsible for their actions. The distribution of MACR across different age levels shows variations in the policies adopted by countries. This indicates that a significant number of countries have set the MACR at age 7, followed by varying numbers of countries at higher age levels. The absence of information for age levels 17 and 18 suggests limited data availability or potentially different approaches taken by countries in defining the MACR for individuals approaching adulthood (Cipriani, 2009, pp. 108-109).

### **Figure 1**

*MACR distribution worldwide*

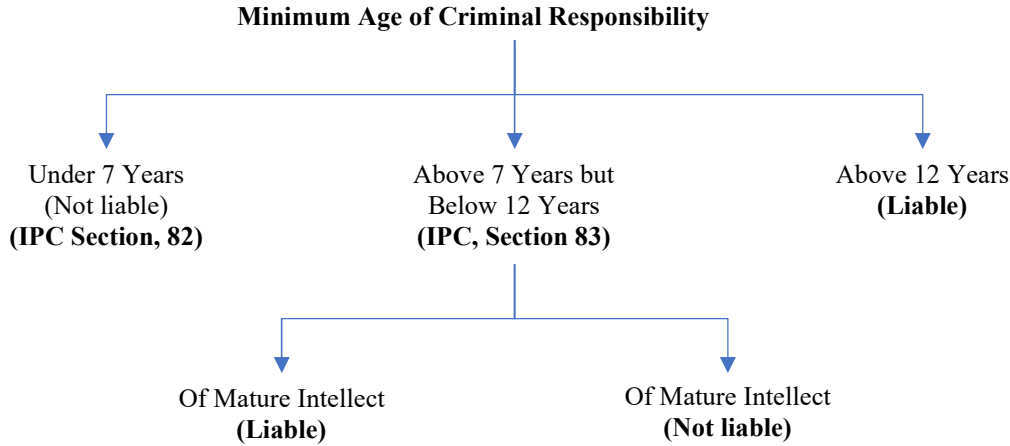


**Source:** Don Cipriani, (2009)

In India, regarding the MACR, Section 82 of the IPC, 1860 unequivocally states that "Nothing is an offence which is done by a child under seven years of age (IPC, 1860, 6th October 1860); (Ratanlal & Dhirajlal, 2019, p. 111)." This provision recognizes that children below the age of seven are deemed incapable of committing a crime and are exempt from criminal liability. Section 83 of the IPC further expands on the age range of criminal responsibility. It states that "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion (Ratanlal & Dhirajlal, 2019, pp. 111-112)." This provision acknowledges that children between the ages of seven and twelve may not possess the necessary cognitive development to fully comprehend the implications of their actions. Thus, they are also considered incapable of committing an offence under the law (Madhavi, 2021, pp. 4-5).

## Figure 2

*Provisions regarding MACR in IPC*

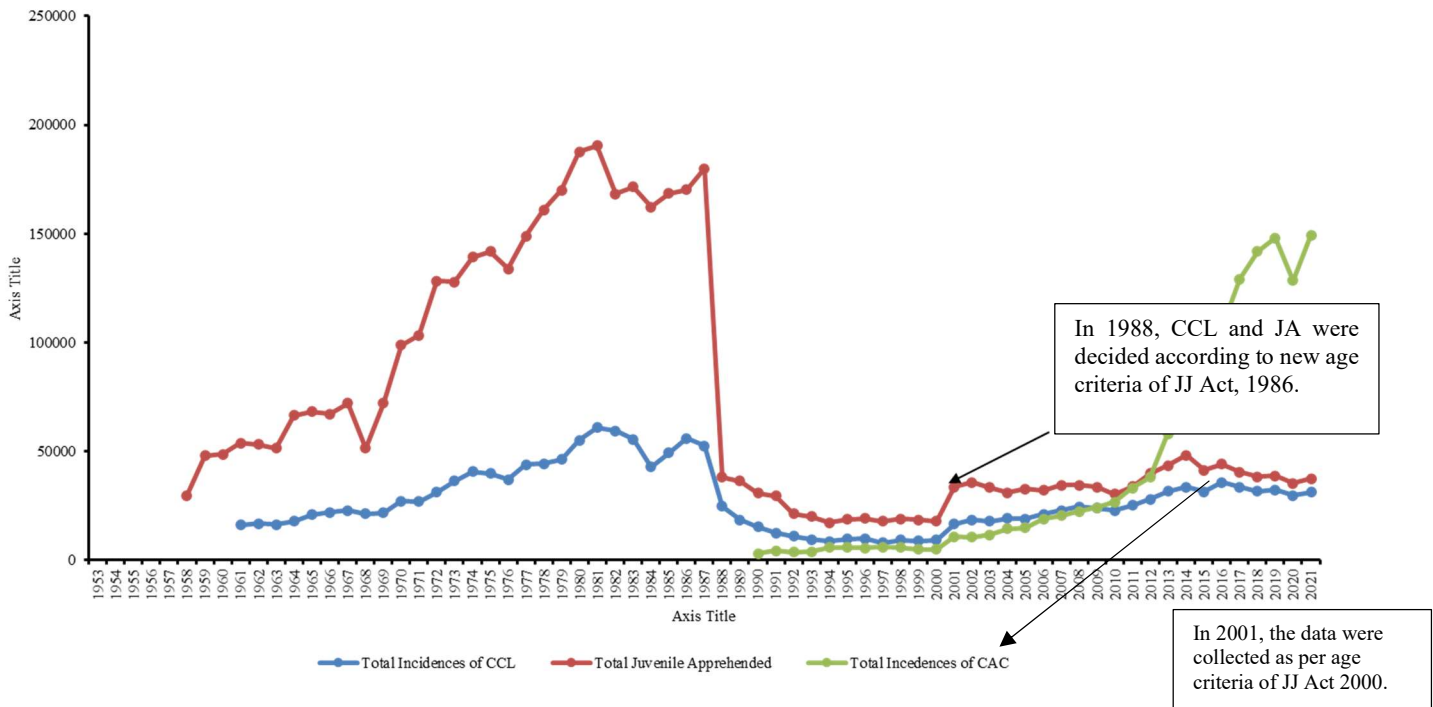


Note: IPC, Section 82<sup>4</sup>; IPC, Section 8<sup>5</sup>

These provisions in the IPC reflect the recognition that young children may lack the mental capacity to understand the gravity and consequences of their conduct. By exempting children below seven years and those between seven and twelve who lack maturity, the law acknowledges the need for a more nuanced approach to criminal responsibility in these age groups.

**Figure 3**

*Trends in Incidences of Child Crimes (Juvenile Delinquency and Crime Against Children) and Juvenile Apprehension in India (1958-2021)*



<sup>4</sup> Section 82 of the Indian Penal Code (IPC), 1860 states “Nothing is an offence which is done by a child under seven years of age”.

<sup>5</sup> Section 83 of the Indian Penal Code (IPC), 1860 states “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion”.

**Source:** Crime in India (1954 – 2021)

It is worth noting that these provisions in the IPC intersect with the broader framework provided by the Juvenile Justice Act, which sets the age of criminal responsibility at eighteen years. The combination of these laws reflects the dual approach in India, with a focus on rehabilitation and reintegration for children in conflict with the law, while also recognizing the need to ensure public safety and accountability for older adolescent offenders.

**Age Criteria and Juvenile Statistics in India**

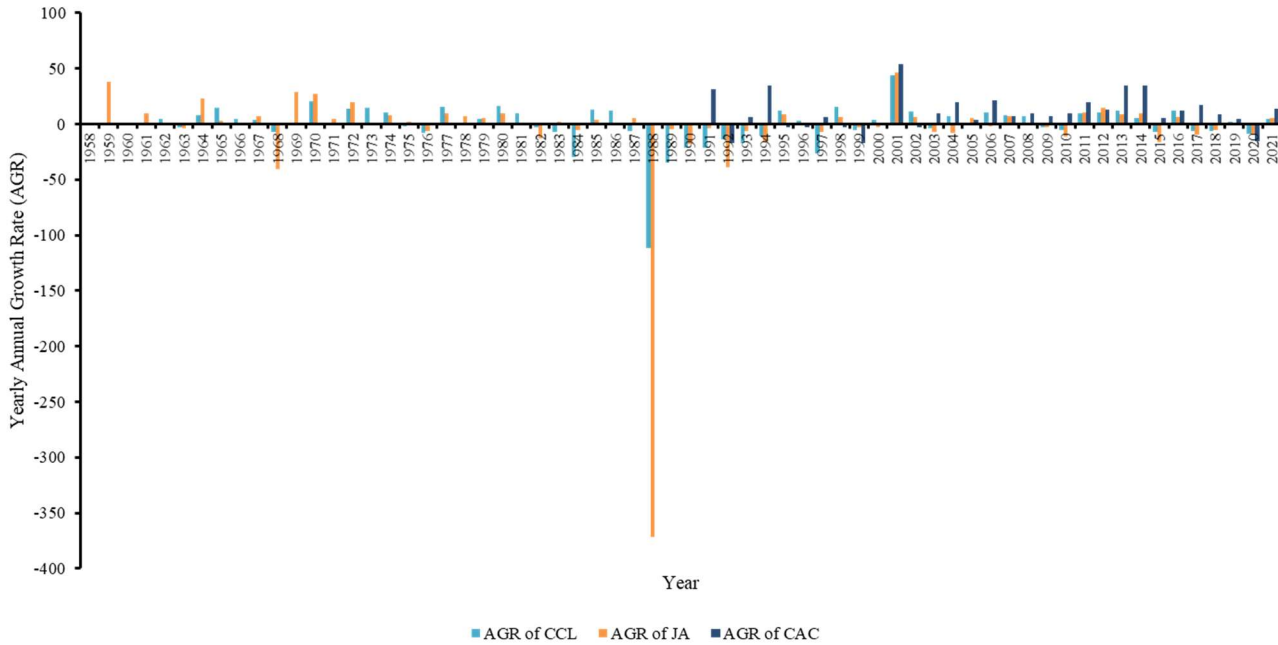
Since 1953, the Ministry of Home Affairs, Government of India publishes an annual report titled Crime in India to present the data on the condition of the crime in India. Since its establishment, the National Crime Record Bureau (NCRB) prepared these reports. Earlier it was prepared by the Bureau of Police Research and Development (BPRD), the Central Bureau of Investigation (CBI) and the Intelligence Bureau (IB). These reports are the prime source of reference for researchers, academicians, policy makers etc. for the data on crime in India. Since 1958, it provides data on juvenile apprehension. In 1961, after the enactment of the Children Act, 1960, a separate chapter was added to this report to provide data on crime related to children under heads Juvenile Delinquency. In 1990, NCRB further added a new chapter to provide data concerning Crime Against Children. Presently, it provides data concerning children under two heads or chapters i.e., Juveniles in Conflict with Law and Crime Against Children (NCRB, 2022).

The data provided in the report Crime in India is the prime source to exhibit and understand the statistics of CCL, JA and CAC in India. From the analysis of data, it has been observed that the changes in age criteria to define the 'child' or 'juvenile' has significantly impacted its data statistics, and these fluctuations can't be explained without the mention of the change in age criteria. For instance, as Figure 2 shows, there are several notable trends in the incidences of the Child in Conflict with the Law (CCL), Juvenile Apprehensions, and Crime Against Children (CAC) in India from 1958 to 2021. From 1953 to the late 1960s, the incidences of CCL and JA, remained relatively stable, with minor fluctuations. However, starting from the 1970s, there was a noticeable increase in the number of CCL and JA cases, which continue until the mid-1980s. During the incidences of CCL increased from 16160 in 1961 to 52610 in 1987. Hence the Average AGR in the incidences of CCL during this period was 3.89 per cent per year. A similar pattern was observed in the incidences of JA during this period. The incidences of JA increases from 29774 in 1958 to 179962 in 1987. The Average AGR in the incidences of JA during this period was 4.98 per cent per year (Figure 3 & 4).

**Figure 3**

*Trends in Annual Growth Rate (AGR) of Incidences of Child Crimes (Juvenile Delinquency and Crime Against Children) and Juvenile Apprehension in India (1958-2021)*





**Source:** Crime in India (1954 – 2021)

In 1988, there is a significant decrease in the total incidences of CCL and total number juvenile apprehended. By 1988, the number of reported CCL cases dropped to 24,827, while the total juvenile apprehended decreased to 38,168. The declining trend continues in 1989, with further reduction in CCL cases (18457) and juvenile apprehended (36,392). From 1990 onward, the data on the total incidences of CAC included in Crime in India. In 1990, there were 2930 reported cases of, indicating the instances of CAC alongside the CCL and juvenile apprehension. In 1988, there was a significant decline in the AGR of both CCL and JA, with values of -111.91 per cent and -371.5 per cent.

This drop in the incidences was result of change in age criteria for child or juvenile in juvenile laws. As stated in Crime in India, 1988 states that “On October 2, 1987 the Juvenile Justice Act, 1986 was implemented, replacing the Children Acts that were in effect in different the States and Union Territories. As per Section 63 of this Act, the previous Children Acts were repealed. Consequently, 1988 marked the first year when juvenile delinquency was determined based on this new law. The revised Act introduced a revised definition of a 'juvenile' as a male below 16 years of age or a female below 18 years of age. Prior to 1988, both juvenile boys and girls were considered below 21 years of age. Therefore, it is important to note that the juvenile statistics for 1988 cannot be directly compared with the juvenile statistics from previous years.” The change in the age criteria and the adoption of the new Act significantly impacted the interpretation and analysis of juvenile delinquency data (NCRB, 1989, p. 121).

However, from 1992 to 1999, the AGRs vary across the three categories. Some years show negative AGRs, indicating a decrease in incidences, while other shows positive AGRs, suggesting an increase.

In JJ Act 2000, the age criteria for juveniles were redefined. As per the new act, ‘males and females below the age of 18 years are considered as juveniles’. The crime figure, as per this definition was published for the first time in Crime in India 2001. That leads to an increasing spike in the incidences of CCL and CAC. For instance, in the year 2000, all three categories show positive AGRs, although the magnitude is relatively small.

This year the incidences of CCL, JA and CAC increases with AGR of 43.87, 46.5 and 53.57 per cent respectively (NCRB, 2002, p. Chap. 10).

### **Age Group and Juvenile Apprehension in India**

The division of age groups in the data on juvenile apprehension in India has evolved over the years to reflect changes in juvenile laws. Initially, starting from 1958, the data presented the distribution of juvenile apprehension in three age groups: 7-12 years, 12-16 years, and 16-21 years. However, in 1969, the classification was modified to include a separate age group of 16-18 years, alongside the existing groups.

Another change occurred in 1988 when the age group of 18-21 years was removed, and the classification comprised three age groups: 7-12 years, 12-16 years, and 16-18 years. These changes in age group divisions reflect the evolving understanding of the different stages of adolescence and the legal parameters that define a juvenile in India. These changes in age criteria have significantly impacted the data statics of juvenile delinquency, juvenile apprehension and/or Crime Against Children. Analysis of these data without concern will give a false view of these statics.

### **Conclusion**

The above discusses the age criteria of the juvenile justice system has highlighted the evolution of age criteria in Indian juvenile laws and the challenges posed by inconsistencies in defining a child.

The article delves into the intricate matter of age criteria within India's juvenile justice context, highlighting the challenges associated with accurately determining the age of children involved in criminal activities due to unreliable documentation and verification methods. It stresses the potential consequences of incorrect age determinations, which can result in either excessive punishment or inadequate rehabilitation opportunities, thereby undermining both justice and child protection. To address this dilemma, the article calls for the implementation of improved age verification mechanisms, training programs for professionals, and robust safeguards to ensure accurate age determinations and uphold the rights of children in conflict with the law. It advocates for a balanced approach that prioritizes both the protection and accountability of juvenile offenders within India's juvenile justice system.

Ultimately, the article calls for clear definitions of child age and consistent implementation of child protection measures to ensure a just and equitable juvenile justice system. By reviewing the temporal development of age criteria, comprehending the concept of MACR, and assessing the impact of changes in age criteria on data statistics of juvenile delinquency and crimes against children, the study provides valuable insights for policymakers, practitioners, and researchers working in the field of juvenile justice.

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