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Juvenile Delinquency in the Modern World: Legal Challenges, Reformative Justice and Evolving Perspectives (Nepal, India and South Asian Perspectives)

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Abstract

No person is inherently born a criminal; rather, societal influences, environmental factors, and individual choices shape one's path toward delinquent behavior. The perception that crimes of lesser gravity can be excused is prevalent among people, and while in certain instances, this may hold some truth, it cannot be regarded as a universal principle to be followed. Crime, regardless of its severity, remains an offense against both the government and society. The recognition of this fact led to the evolution of legal frameworks over time, particularly concerning juvenile offenders. It was not until the 19th century that legal systems worldwide began distinguishing between crimes committed by adults and those committed by minors. Before this, both were judged under the same legal standards, leading to unjust consequences for juvenile offenders who lacked the cognitive maturity to fully comprehend their actions. Juvenile delinquency is a multifaceted issue that has been widely debated. While some argue that treating juveniles as criminals is a violation of human rights, others believe that ensuring accountability is necessary for equity and justice. The modern world recognizes the significance of juvenile justice systems, as they provide a structured approach to handling offenses committed by minors. Legal systems across different jurisdictions vary in their treatment of juvenile offenders, but a universally accepted principle is that children who have not yet attained the age of majority should not be punished in the same manner as adults. While it may seem inhumane to treat a juvenile as a criminal, complete leniency can also lead to increased delinquency and embolden young offenders to commit more serious crimes. Therefore, striking a balance between punishment and rehabilitation is essential.

The determination of culpability in juvenile cases requires scrutiny, as the justification for either punishment or acquittal

depends on the level of maturity possessed by the minor. This assessment can be inferred from the juvenile's actions before and after committing an offense. According to well-established principles of natural justice, every individual is entitled to a fair trial and the right to be heard. Convicting a juvenile without considering their maturity level would be a violation of these principles, just as acquitting a minor solely due to their young age would be an injustice. A careful, evidence-based approach is necessary to ensure that juvenile justice is fair, just and effective in preventing recidivism. In recent years, the global landscape of juvenile delinquency has evolved, presenting new challenges and complexities. Factors such as technological advancements, shifting social dynamics, and increased awareness of mental health issues have contributed to changes in the nature and perception of juvenile offenses. Consequently, there is a pressing need to re-evaluate existing juvenile justice systems to ensure they are equipped to address these modern challenges effectively. This includes integrating contemporary rehabilitation methods, enhancing support systems, and fostering community involvement to prevent delinquency and facilitate the reintegration of young offenders into society.

This study aims to analyze how different nations approach juvenile justice, examining the foundations, principles, and legal procedures involved in juvenile justice systems across various jurisdictions. By evaluating existing frameworks, we can gain insights into the effectiveness of different policies and explore ways to enhance the balance between rehabilitation and accountability in juvenile justice. This paper will delve into the core principles guiding juvenile justice, the legal safeguards in place for minors and the evolving perspectives on juvenile crime prevention and reform.

Keywords: Juvenile Delinquency, Juvenile Justice System, Reformatory Theory, Punishment, Rehabilitation

Introduction to Crime at General

The assertion that "no person is born criminal; society and his choices make him one" underscores the profound influence of environmental factors and personal decisions in shaping an individual's propensity toward delinquent behavior. This perspective is particularly pertinent when examining juvenile delinquency, a complex phenomenon influenced by a myriad

of socio-economic, familial, and cultural factors. In the modern world, the issue of juvenile delinquency has garnered significant attention, prompting nations to reevaluate and reform their juvenile justice systems to better address the unique needs of young offenders. In South Asia, a region characterized by its cultural diversity and socio-economic disparities, juvenile delinquency presents unique challenges and manifestations. Countries such as Nepal have undertaken significant legal reforms to align their juvenile justice systems with international standards, recognizing the necessity of treating juvenile offenders differently from adults. The Act Relating to Children 2018, for instance, has strengthened Nepal's juvenile justice framework, emphasizing rehabilitation over punishment.

Recent data from 2024 indicates a nuanced landscape of juvenile delinquency in South Asia. While comprehensive regional statistics are limited, individual country reports provide insight into trends and challenges. For example, Nepal has reported fluctuations in juvenile crime rates, prompting further analysis into the underlying causes and effectiveness of current interventions. The legal doctrines governing juvenile justice in South Asia are continually evolving. In Nepal, the introduction of diversion programs under the Act Relating to Children 2018 marks a significant shift towards restorative justice, aiming to rehabilitate rather than punish young offenders. However, challenges remain in fully implementing these provisions, particularly in ensuring that diversion is applied consistently and effectively across different regions.

This research article delves into the various aspects of juvenile delinquency in the modern world, with a specific focus on South Asia and Nepal. It examines recent data from 2024, analyzes the prevailing legal doctrines, and explores the socio-economic and cultural factors contributing to juvenile delinquency. By understanding these dynamics, the article aims to provide insights into effective strategies for prevention, intervention, and rehabilitation, contributing to the ongoing discourse on juvenile justice reform in the region. Crime has not been specifically defined in any statutory laws existing in the modern world. Eminent jurist William Blackstone, in his book *Commentaries on the Laws of England*, has defined crime as Blackstone, in his book *Commentaries on the Laws of England* has defined crime as “an act committed or omitted in violation of Public Law forbidding or Commanding”¹. According to modern interpretations, Crime nothing but the violation of law resulting in wrong against the society. It the fact that crime is wrong against the whole society which makes it more evident to punish the offender. In criminal law punishing the offender has its one of the key objectives as setting an example for the society that certain acts or omissions would result in deterrent consequences. Let's look at elements of a crime to get a glimpse of the activity going on in the mind of a criminal while committing it.

Essential elements of Crime are

In criminal law, the foundational elements of a crime are typically identified as Actus Reus (the guilty act) and Mens Rea (the guilty mind). These principles are integral to legal

systems worldwide, including those in South Asian countries such as Nepal and India. Actus Reus refers to the physical component of a crime, the actual act or unlawful omission that constitutes the external manifestation of a criminal offense. In the Indian Penal Code (IPC), Section 32 clarifies that the term 'act' encompasses both a single act and a series of acts, while 'omission' includes both a single omission and a series of omissions. This definition underscores that Actus Reus can result from either a direct action or a failure to act when there is a legal duty to do so. Mens Rea, on the other hand, pertains to the mental state of the individual at the time of the criminal act. It embodies the intention or knowledge of wrongdoing. Although the IPC does not explicitly use the term 'Mens Rea', it incorporates the concept through various terms indicating culpable mental states, such as 'dishonestly', 'fraudulently', 'voluntarily', and 'intentionally'. For instance, Section 299 of the IPC defines culpable homicide as causing death with the intention of causing death or with the knowledge that the act is likely to cause death, thereby reflecting the requirement of Mens Rea.

In the context of Nepal, the legal system has been influenced by both common law and civil law traditions. While specific codifications may vary, the principles of Actus Reus and Mens Rea are recognized within Nepalese criminal jurisprudence. The Nepalese Muluki Criminal Code encompasses provisions that align with these doctrines, emphasizing the necessity of both a guilty act and a guilty mind for establishing criminal liability. Across South Asia, the application of these doctrines reflects a blend of inherited colonial legal frameworks and indigenous legal traditions. While the terminology and specific applications may differ, the core principles of requiring both a prohibited act and a culpable mental state remain central to the adjudication of criminal offenses in the region. Understanding the interplay between Actus Reus and Mens Rea is crucial for legal practitioners and scholars in these jurisdictions, as it ensures that criminal liability is appropriately assigned, balancing the need for justice with the protection of individual rights.

A crime is committed in various stages and not all these stages are per se punishable. Stages of Crime are:

Stages of Crime: A Legal Perspective in South Asia

The commission of a crime is not an instantaneous act but rather a progression through distinct stages. Understanding these stages is crucial in criminal law, as different legal systems assign liability and punishment differently at each stage. The legal doctrines of intention, preparation, attempt and completion provide a framework for determining criminal culpability. These stages are recognized across South Asian legal systems, including Nepal and India, each incorporating them within their penal codes with some jurisdictional variations.

1. Intention: The Mental Stage of Crime

Intention serves as the first and fundamental stage of committing a crime. It is the negative driving force that directs an individual toward criminal actions. Often, intention is confused with motive, but they serve different roles in legal analysis. Intention is the deliberate decision to commit a crime, whereas motive refers to the underlying reason behind that decision. Intention alone does not constitute a crime, as it remains a mental state without a corresponding overt act. This initial stage involves the

¹ DEFINITION OF CRIME, law notes.in, https://www.lawnotes.in/Definition_of_Crime, August 25th, 2020.

mental resolve to commit a crime. Mere intention, without any overt act, is not punishable under Nepalese law. From a legal standpoint, Mens Rea (guilty mind) and intention are closely linked. Most criminal statutes, including those in India and Nepal, require the presence of a guilty intention for an offense to be punishable. However, proving intent is challenging, as it is a psychological state. Courts often infer intent from circumstantial evidence, prior conduct, or statements made by the accused. In India, the Indian Penal Code (IPC), 1860 reflects this principle, as seen in Section 300, where murder requires an "intention to cause death" rather than an accidental outcome. Similarly, Nepal's Muluki Criminal Code considers intent a vital element for criminal responsibility.

2. Preparation: Arranging for the Crime

Preparation follows intention and involves arranging the means to execute a criminal act. However, the law generally does not criminalize mere preparation unless specific offenses are involved. This is because distinguishing between mere planning and an actual criminal act can be ambiguous. For instance, if a person buys a weapon with the intent to commit murder but does not proceed further, proving criminal liability at this stage is difficult. This stage entails arranging the necessary means to commit the intended crime. Generally, preparation alone is not punishable; however, there are exceptions for serious offenses. For instance, Section 33 of the National Penal Code criminalizes criminal conspiracy, stating that if two or more persons agree to commit an offense and any act is done by one or more of them, they are considered to have committed a criminal conspiracy. Punishments vary depending on whether the offense was completed or remained in the conspiracy stage.

Nevertheless, some exceptions exist where preparation itself is punishable, particularly in crimes that pose a threat to national security and public safety. The Indian Penal Code (IPC) criminalizes preparation for certain offenses, including:

- Waging war against the government (Section 122, IPC)
- Counterfeiting currency (Section 489A, IPC)
- Preparation to commit dacoity (Section 399, IPC).

Similarly, in Nepal, preparation for crimes against state security or acts of terrorism is recognized as an offense under its National Penal Code. This recognition arises from the fact that certain offenses, once planned, pose an irreversible threat to society.

3. Attempt: The Execution Stage Before Completion

Attempt occurs when an individual moves from preparation to direct action toward committing a crime, but the act falls short of completion. This stage is significant because the law punishes attempts separately, as it indicates clear criminal intent and a substantial step toward committing an

offense. Unlike preparation, an attempt is punishable since the offender has already acted on their intention. An attempt occurs when an individual takes a direct action towards committing a crime but fails to complete it. Section 34 of the National Penal Code prohibits attempts to commit offenses, stating that even if it is impossible for the offense to be committed, the attempt is considered to have been committed. A person who attempts to commit an offense is subject to half the punishment specified for that offense.

Under Indian law, attempt-related provisions are outlined in Section 511 of the IPC, which states that anyone who attempts to commit an offense and fails shall be punished with half of the punishment prescribed for the offense itself. Specific attempts, such as attempted murder (Section 307, IPC) and attempted culpable homicide (Section 308, IPC), carry distinct penalties. Similarly, Nepal's Muluki Penal Code recognizes the attempt stage as a punishable offense. The gravity of punishment depends on the offense attempted. For example, an attempted robbery would result in a lesser sentence than a completed robbery, but an attempted murder would still attract a significant penalty. In Nepalese criminal law, the progression of a crime is delineated into distinct stages: Intention, Preparation, Attempt, and Completion. Each stage carries specific legal implications under the National Penal (Code) Act, 2017 (2074).

One of the key characteristics of attempt is that the act must be directly connected to the offense (causa causans), meaning the act must be an essential cause leading to the crime. Courts often analyze whether the accused's actions would have resulted in a completed offense if not interrupted by external circumstances.

4. Completion: The Final Stage of Crime

The final stage of crime occurs when the intended criminal act is successfully carried out, leading to the completion of the offense. At this stage, full criminal liability applies, and the offender faces the maximum penalty prescribed under the law. Unlike intention, preparation, or attempt, completion of a crime eliminates any ambiguity regarding the offender's intent and actions. This final stage is reached when the intended criminal act is successfully carried out, resulting in the full commission of the crime. At this point, the offender is subject to the full penalties prescribed by law for the specific offense.

For instance, in cases of murder, once the act results in the victim's death, the accused is fully liable under Section 302 of the IPC (India) or its equivalent provisions in Nepal's Penal Code. Similarly, if a person successfully commits theft, rape, or fraud, the law imposes full criminal liability as per Nepal's Muluki Criminal Code or India's IPC.

Comparison of Criminal Stages in Nepal, India and South Asia

Stages of Crime	Punishment in India (IPC, 1860)	Punishment in Nepal (National Criminal Code)	South Asian Perspective
Intention	Not punishable unless acted upon	Not punishable unless acted upon	Common law principles apply in most South Asian countries
Preparation	Generally not punishable, except for serious crimes (e.g., war against the state)	Recognized in cases of national security crimes	Some nations criminalize preparation in terrorism-related offenses
Attempt	Punishable under Section 511 IPC with half of the full offense's punishment	Considered a punishable offense with graded penalties	Widely recognized as a separate offense across South Asia
Completion	Full criminal liability with maximum prescribed punishment	Full criminal liability with maximum prescribed punishment	Criminal law systems across South Asia follow similar principles

Understanding these stages is crucial for the application of justice in Nepal, as the law assigns varying degrees of liability and punishment at each stage, reflecting the seriousness and proximity of the individual's actions toward the commission of the crime. The stages of crime play a crucial role in determining criminal liability in legal systems across Nepal, India, and South Asia. While intention alone is not punishable, and preparation is rarely criminalized, attempt and completion mark the critical thresholds where criminal liability becomes enforceable. The punishment for attempted crimes varies, ensuring that offenders cannot escape legal consequences even if their crime remains incomplete.

Moving forward, criminal laws in South Asia must continue evolving to address modern challenges, such as cybercrime and organized criminal activities, where the lines between intention, preparation, and execution are often blurred. Policymakers should consider stricter laws for preparatory stages of crimes related to terrorism, cyberattacks and financial fraud to enhance deterrence while maintaining a fair legal balance. The increasing sophistication of crimes requires legal frameworks to remain adaptable and proactive in holding offenders accountable while protecting civil liberties.

The legal principle of *doli incapax*, derived from Latin meaning "incapable of evil," has historically if children below a certain age are presumed incapable of forming the necessary criminal intent, or *mens rea*, to be held liable for criminal actions. Traditionally, this presumption was irrebuttable for children under seven and rebuttable for those aged seven to fourteen, requiring the prosecution to prove that the child understood the wrongfulness of their actions.

However, recent developments in juvenile crime have challenged the applicability of this principle as a definitive standard for determining criminal liability. Instances of minors engaging in complex and premeditated offenses suggest that some children possess a level of maturity and understanding that enables them to form criminal intent. Consequently, reliance solely on age-based presumptions may be insufficient. A more nuanced approach involves assessing the individual maturity and cognitive development of the minor to determine their capacity for *mens rea*. This assessment requires a thorough examination of the minor's actions, intentions, and comprehension of the consequences at each stage of the alleged offense. In practice, the application of *doli incapax* varies across jurisdictions. For example, in Australia, the age of criminal responsibility is set at ten, with a rebuttable presumption of *doli incapax* for children aged ten to fourteen. The prosecution must prove beyond reasonable doubt that the child knew their conduct was seriously wrong, not merely mischievous.

Critics argue that the *doli incapax* doctrine may be outdated, especially in cases involving serious offenses committed by minors who demonstrate a clear understanding of their actions. There have been calls for reform to ensure that the legal system adequately addresses the complexities of juvenile offending, balancing the need for accountability with considerations of the child's developmental stage. Therefore, while the *doli incapax* principle serves as a foundational doctrine in juvenile justice, contemporary challenges necessitate a more individualized assessment of a minor's maturity and intent. This approach ensures that determinations of criminal liability are both just and

appropriate to the developmental capabilities of the young offender.

Juvenile and Developments

Living in a forever evolving world has its benefits and flaws. For instance, as we are going ahead with the 21st century remarkable developments are coming up each year in the field of technology, medicine and engineering but as it is said there is always two sides of a coin the other side of this beautiful evolving world is that with that today crime is breaking all the records of past years. In recent times Juvenile Crime as spiked at an alarming rate. In the USA juvenile crime has risen by 35 per cent between the years 2014 and 2018². While in India total percentage of juvenile apprehended under Indian Penal Code, 1860 and other special laws stood at a stagnant figure of 73.8 per cent of total cases registered in 2016³. Similarly, according to the Tarak Dhital, executive director of Central Child Welfare Board, Lalitpur, Nepal, Juvenile cases registered have increased from 138 delinquency case with 156 defendants being Juvenile in the year 2016 to 295 delinquency case with 347 minor defendants in the year 2017⁴.

To understand Juvenile let's see who a Juvenile is. Age of minor differs in every nation for instance in Nepal a person is considered minor means a person who has not attained the age of 16 years⁵ while in India this age is 18 years⁶ and in the United States of America also this stand at 18⁷. Now, a thing which laws miss out is, what interlinkage is there between maturity level and definition of juvenile. In simple words, this connection can be understood as Juvenile is the person who commits the crime and once, he is brought on trial, they arise the issue of his maturity level, which is assessed by the court with scrutiny. In recent years, a lot of times Juvenile word has been associated with various heinous crimes. In the year 2015 a district court in Delhi, India was rattled when an instance of the shooting occurred in a courtroom which leads to death of a Head constable and serious injury to the accused where the shooters were

² JUVENILE HOMICIDES ROSE AMID OVERALL CRIME DECLINED, <https://thecrimereport.org/2020/06/22/juvenile-homicides-rose-amid-overall-crime-decline/>, Accessed on August 28, 2020.

³ JUVENILE APPREHENDED IN 2016 (CONCLUDED), [ncrb.gov.in, https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%205A.4.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%205A.4.pdf), Accessed on August 28, 2020.

⁴ JUVENILE DELINQUENCY AT RISE IN NEPAL SAYS STUDY, [thehimalayantimes.com, https://thehimalayantimes.com/kathmandu/juvenile-delinquency-rise-nepal-says-study/](https://thehimalayantimes.com/kathmandu/juvenile-delinquency-rise-nepal-says-study/), Accessed on August 28, 2020.

⁵ Nepal Citizenship Act 25 of 2063, §-2(a), 2006 Check Penal Code of Nepal

⁶ The Majority Act 9 of 1875, §-3(1), 1875

⁷ TITLE 18 CRIMES AND CRIMINAL PROCEDURE, § 5031, [govinfo.gov, https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context](https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context), Accessed on August 28, 2020.

identified as juvenile⁸. In the same year another incident happened in the US state of Tennessee, where an 11-year-old boy shot dead his neighbor for not letting him see their puppy, which shook the conscience of everyone, and another incident happened within two days of this where a boy shot dead his brother using the gun kept on the picnic table⁹.

In above-mentioned cases, one thing which remained common was that common people were more or less in the favor of minors for not having enough understanding about the consequences of their actions and on the contrary enforcement authorities were in the favor of resorting to strict punishment for any minor, keeping the limitation of human rights and child safety in mind, to curb the juvenile violence as the involvement of juveniles in instances of violence is on an exponential rise throughout the world.

Juvenile Delinquency and its Contributing factors

Juvenile Delinquency is the instance when an offence is committed by a child who has not celebrated his 18th birthday on the day of the commission of such an offence¹⁰. Simply put together, it is the phenomenon of crime being committed by a minor. Explaining juvenile delinquency in the legal term is simple but understanding it on a broader aspect can be very challenging. To get a deeper insight into the concept of juvenile delinquency which can be the topic of a separate research study itself. For now, let's stick to the definition given above. Delinquency is not just a crime or an offence, but it is consisting of various behaviors. Some of the delinquent behaviors are:

- **Breaking the Rules:** Children are supposed to be naughty therefore breaking rules is quite expected from them. But there is a very thin line between the innocent act of breaking rule and deliberate act of the same. If a child is not cautioned and guided at the right time, he may become a serious offender in future. The basic motive behind breaking the rule for every child is to attain his freedom. Therefore, to make children follow the rules one must ensure that rules are neither very rigid, nor should it curb the valid desires of childhood.
- **Addiction:** Addiction of any kind is not good for physical and mental health. Now a day's children have access to various information providers e.g. the Internet, where they can come across any kind of substance which is addictive. Parents must keep a close watch on the behavioral changes in their child so that addiction of

any kind could be detected and treated at early stages itself.

- **Theft and Pickpocketing:** Most of the street children are engaged in these activities and reason for it vary from poverty to the compulsion by adults. Theft is done by everyone at some point in their childhood be it theft of favorite food from mom's custody or theft of favorite comics book from the brother's cupboard. But once the child begins to enjoy it then such acts can become a matter of grave concern. So, if such behavior is coerced at the right time, then it doesn't become a serious problem.
- **Fighting:** Most of the juvenile crimes are an act of anger and anguish among minors. The simple reason for it is the substantial hormonal changes. As a child is not familiar with the concept of Ego, anger and revenge they tend to form their perceptions and does an act which in their conscience is the right way to deal with it. Therefore, it is evident for parents and guardians to sit with the child and help them in managing their emotions.

Core Reasons behind delinquent behavior¹¹

There is a variety of reason which leads to delinquent behavior by a juvenile. Most prevalent reasons for Juvenile Delinquency are:

- **Poverty:** Poverty alone is not responsible for delinquent behavior but once it is coupled with the lack of education then it becomes the most common reason for juvenile delinquency.
- **Bad Company:** People with whom a person spends time affects his growth substantially. Same is the case with children. In a study conducted by UNESCO, it was observed that most of the children knew that their friends were not good, but they anyway supported them as children had no other friends or family interested to be their friend.
- **Ignorance:** Most eminent factor leading to delinquent behavior is ignorance. Ignorance leaves a serious impact on a child. A child is not capable of understanding the nature of activities carried by him. Therefore, parents must spend some good time with their children.

Now since we have adequate information about Juvenile and Juvenile Crime, let's investigate various International Standards of Juvenile Justice.

International Standards of Juvenile Justice System

The key guiding standards for Juvenile Justice internationally are:

- **UN Convention on The Rights of Child (1989):** UNCRC like the constitution of any country establishes the rights and freedoms of a child. It enumerates various rights of the child such as Right to Privacy (Article-16), Right to Education (Article-28), Right to Review in Treatment in Care (Article-25), Right to Social Security (Article-26), Right to Adequate Living Standard (Article-27), Right to leisure, play and culture (Article-31) It also states many duties of Government towards

⁸ JUVENILE CONTRACT KILLERS OPEN FIRE IN DELHI COURTROOM, theindianexpress.com, <https://indianexpress.com/article/cities/delhi/police-constable-killed-three-others-injured-after-firing-in-delhi-court/>, Accessed on August 28, 2020.

⁹ US BOY 11 HELD FOR SHOOTING DEAD 8-YEAR-OLD NEIGHBOUR, bbc.com, <https://www.bbc.com/news/world-us-canada-34450841>, Accessed on August 28, 2020.

¹⁰ TITLE 18 CRIMES AND CRIMINAL PROCEDURE, § 5031, govinfo.gov, <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partIV-chap403-sec5031/context>, Accessed on August 28, 2020.

¹¹ MAJOR REASONS FOR JUVENILE DELINQUENCY, nrs.gov.rw, <https://www.nrs.gov.rw/index.php?id=36>, Accessed on October 4, 2020

child protections like Protection from Drug Abuse (Article-33), Protection from Sexual Exploitation (Article-34), Protection from Child Labour (Article-32), Protection from Inhumane treatment and Detention (Article-37), Right to Juvenile justice i.e. every child accused of a crime must be treated with dignity and must be provided with a fair trial (Article-40)¹².

▪ **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 1985¹³:** When it comes to international juvenile justice administration, Beijing rules are pivotal in the proper administration of justice. These rules can be summarised in the following six rules:

- **Rule 1:** State shall ensure the well-being of juvenile and family of the Juvenile.
- **Rule 2:** State shall endeavour to provide a meaning full life to the juvenile during the period when the child is most likely to get distracted.
- **Rule 3:** Family, volunteer and government must ensure full mobilization of all the available resources to help the juvenile.
- **Rule 4:** Juvenile Justice system shall be considered as an integral part of the development of a nation. Social justice shall be ensue in juvenile justice standards.
- **Rule 5:** These rules shall adhere to the economic, social and cultural aspects prevailing in the state.
- **Rule 6:** State shall develop a system of Juvenile Justice Services and make sure that only competent persons are part of such a system.

▪ **United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)¹⁴:** These rules further improvised the implication and scope of the Beijing Rules of 1985. There are ten rules given by this UN resolution, which are:

- **Rule 1:** Juvenile Justice System shall ensure that such system shall look after the rights and safety of Juvenile. Moreover, it states that Imprisonment shall be the last resort.
- **Rule 2:** No Juvenile shall be deprived of his liberty until unless such deprivation is required and ordered by the Judicial authority. Further, such disposition shall be for a minimum period possible.
- **Rule 3:** Intent of the rules is to ensure that minimum standards regarding deprivation of liberty are followed and such standards are in consonance with human rights.

¹² SUMMARY OF UNCRC, unidef.org.uk, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>, Accessed August 30, 2020.

¹³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Resolution 40/33 of 29 November, ohchr.org, <https://www.ohchr.org/Documents/ProfessionalInterest/bejjngrules.pdf>, Accessed on August 30, 2020.

¹⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty Resolution 45/113 of 14 December, ohchr.org, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>, Accessed on August 31, 2020.

- **Rule 4:** State shall ensure that such rules and standards are applied, without any sort of discrimination, equally on every minor.
- **Rule 5:** These rules shall strive to provide a point of reference for the professional in order to facilitate them when guiding juveniles.
- **Rule 6:** These rules shall be made available to Juvenile in his preferred language free of cost.
- **Rule 7:** If required state shall amend their legislation in order to incorporate the rules and shall also provide a remedy for in case any breach happens.
- **Rule 8:** Authorities shall raise awareness among the juvenile justice person that they shall constantly work towards enabling juvenile to return in the mainstream society with proper dignity.
- **Rule 9:** These rules shall not preclude the application of relevant instruments and resources of UN and Human Rights wherever necessary.
- **Rule 10:** Rules 6-7 shall prevail if any conflict occurs between the rules 2-5 and 6-7.

▪ **United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990)¹⁵:** These principles are more focused on the prevention of Juvenile Delinquency rather than tackling the issue. There are six principles adopted in this resolution, which are:

1. Juvenile delinquency has a substantial effect on crime prevention in society.
2. Society has a pivotal role in controlling juvenile delinquency as it can majorly bring down such cases by ensuring harmonizing development of minors.
3. For understanding the rules relating to juvenile and application of the same young persons shall be given preference as they can form a better connection with the Juvenile.
4. For successful implementation of present guidelines focus on preventive programs is required on early childhood stage.
5. Children shall not be penalised for trivial acts which doesn't cause any severe harm.
6. Community-based programmes for the prevention of Juvenile Delinquency shall be established. States must try to refrain from using formal authorities as much as possible.

Analysis of current situation

From the above resolution is it clear that the UN and Human Rights Commission has provided appropriate guidance regarding the Standards of Juvenile Justice. Now it is time for the state to work in harmony with its internal functionaries to ensure proper implementation of these international standards. However, many times states have been observed to contradict these principles. For instance, in a study conducted by Child Workers in Nepal Concerned Centre (CWIN) it was observed that street children were

¹⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Resolution 45/112 of 14 December, ohchr.org, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>, Accessed on September 1, 2020.

detained by the police for playing at night¹⁶. In a report by Advocacy forum, Nepal it was observed that there is only one juvenile correction house and even in that facility juvenile are kept with adult offenders which shows the lack of activism in authorities regarding international principles¹⁷. This shows that even authorities need to understand the rights of children and the very need for enforcement of such rights.

However, there is another aspect to the juvenile delinquency which aims to deal with the juvenile involved in heinous crimes. Indian Judiciary in the year 2012 had to deal with the same aspect when a horrific incident of gang rape occurred in Delhi, India.

Every person who came across this incident was in an everlasting shock after knowing about this barbaric crime. Among the accused a person was juvenile, considering how inhumane this incident was a request throughout the nation was raised to try him and punish him as an adult as maximum punishment according to the Indian laws which could be given to him was three years. Considering his active involvement as horrific acts this punishment was not sufficing in the eyes of humanity. But it was very rightly stated by Judiciary that such barbaric incident is very rare so decreasing the age of majority or bringing any substantial change in juvenile justice act will not be appropriate as still there are many cases where the juvenile has potential to reform. Another pertinent point to note is that in the report of advocacy forum, Nepal it was found that many juvenile admitted in correction home at Nepal were charged with rape of very young girl, armed robbery, attempt to rape, attempt to murder and causing grievous hurt¹⁸. These incidents raise a serious doubt on the universal application of above stated International Principles and in the light of same Indian Judiciary took a step for bringing the convicts of juvenile delinquency under the realm of equity and justice by amending the juvenile laws in 2015 and stating that minors of age bracket 16-18 years will be tried as adults in cases where allegations against them is of a heinous offence punishable with a minimum imprisonment of 7 years¹⁹. Same consideration is to be given by international organisation for a better juvenile justice system. A way of categorizing the minors into the age brackets and punishing them in accordance with the gravity of offence could be a feasible way to do the same.

Juvenile delinquency is a multifaceted issue that requires a holistic approach involving legal doctrines, psychological considerations, socio-economic factors, and rehabilitation strategies. Various aspects need to be considered to ensure a balanced approach that safeguards the rights of minors while

ensuring justice. The legal principle of *doli incapax*, derived from Latin meaning "incapable of evil," has historically if children below a certain age are presumed incapable of forming the necessary criminal intent, or *mens rea*, to be held liable for criminal actions. Traditionally, this presumption was irrebuttable for children under seven and rebuttable for those aged seven to fourteen, requiring the prosecution to prove that the child understood the wrongfulness of their actions. However, recent developments in juvenile crime have challenged the applicability of this principle as a definitive standard for determining criminal liability. Instances of minors engaging in complex and premeditated offenses suggest that some children possess a level of maturity and understanding that enables them to form criminal intent. Consequently, reliance solely on age-based presumptions may be insufficient. A more nuanced approach involves assessing the individual maturity and cognitive development of the minor to determine their capacity for *mens rea*. This assessment requires a thorough examination of the minor's actions, intentions, and comprehension of the consequences at each stage of the alleged offense.

The legal doctrine of Actus Reus (guilty act) and Mens Rea (guilty mind) forms the foundation of criminal law. Traditionally, minors have been presumed to lack the requisite mens rea to be held fully responsible for their actions. However, as crimes committed by juveniles have become more complex, courts have begun to assess the level of cognitive maturity of minors rather than solely relying on their age. The *doli incapax* doctrine, which assumes that children below a certain age cannot commit crimes due to their lack of understanding of right and wrong, is being challenged worldwide. Many nations now consider individual assessments of maturity and intent rather than strict age-based presumptions. Countries such as the UK and Australia still maintain a rebuttable presumption for children between 10 and 14 years old. However, there have been ongoing debates about lowering or increasing the minimum age of criminal responsibility considering evolving psychological research on child development.

Understanding the causes of juvenile delinquency is crucial for formulating policies. Various criminological theories explain why minors commit crimes. Albert Bandura's Social Learning Theory suggests that children learn criminal behavior through observation, imitation, and reinforcement. Exposure to violence at home, delinquent peer groups, or criminal role models significantly increases the likelihood of a juvenile engaging in criminal activities. Robert Merton's Strain Theory posits that crime results when individuals are unable to achieve socially accepted goals through legitimate means. In South Asia, economic deprivation, unemployment, and lack of educational opportunities often push minors into illegal activities such as theft, drug trafficking, or violent crimes. Howard Becker's Labeling Theory emphasizes that society's reaction to a delinquent act plays a crucial role in shaping an individual's criminal identity. If a juvenile offender is labeled as a "criminal," it may reinforce their delinquent behavior rather than rehabilitate them. This theory advocates for rehabilitation rather than punitive measures.

Juvenile justice laws differ across jurisdictions, but there are some commonalities in legal approaches. The United Nations Convention on the Rights of the Child (UNCRC) mandates that juvenile offenders should not be

¹⁶ A Study on Trend of Juvenile Delinquency in the Kathmandu Valley, http://www.oijj.org/sites/default/files/documental_1169_en.pdf, Accessed on September 4, 2020.

¹⁷ ADVOCACY FORUM, TORTURES OF JUVENILE IN NEPAL 52, 1st ed. 2010.

¹⁸ ADVOCACY FORUM, TORTURES OF JUVENILE IN NEPAL 10, 1st ed. 2010

¹⁹ WHEN A JUVENILE IS TRIED AS ADULT, indianexpress.com, <https://indianexpress.com/article/explained/when-a-juvenile-is-tried-as-an-adult-when-not-5840823/>, Accessed on October 4, 2020.

treated the same as adults. It encourages rehabilitation, education, and reintegration into society rather than punitive measures. Countries like Nepal and India have aligned their laws with UNCRC guidelines, ensuring child-friendly legal procedures. Nepal has taken progressive steps by enacting The Act Relating to Children 2018, which provides special protections for minors. Some key aspects of Nepal's juvenile justice system include the establishment of Juvenile Benches in courts, diversion programs to rehabilitate rather than punish young offenders, and the prohibition of life imprisonment or the death penalty for juveniles. Legal provisions in Nepal emphasize counseling, education, and social reintegration. India has adopted a differential approach to juvenile offenders. Under the Juvenile Justice (Care and Protection of Children) Act, 2015, minors between the ages of 16 and 18 can be tried as adults for heinous crimes such as rape and murder. This amendment was introduced after the 2012 Delhi gang rape case, which involved a 17-year-old offender. While Pakistan and Bangladesh have laws that recognize the special status of juveniles, enforcement challenges and judicial delays often result in prolonged detainment of minors. Sri Lanka has a separate Juvenile Court System, but limited resources and infrastructure pose challenges in its implementation.

Recent data from 2024 indicates a shift in the nature and frequency of juvenile crimes in South Asia. With increased access to the internet, cybercrime committed by juveniles has surged. Hacking, financial fraud, and online harassment are emerging concerns. Governments are now introducing digital literacy programs to combat cyber delinquency. In urban areas, juvenile gang activity has risen, often linked to drug trafficking and violence. Nepal, India, and Pakistan have reported cases of minors being recruited by organized criminal groups due to their legal immunity and vulnerability. Data shows that while most juvenile offenders are male, female juvenile delinquency is increasing, particularly in cases related to drug smuggling and cyber offenses. One of the most pressing debates in juvenile justice is whether young offenders should be rehabilitated or punished. Arguments for rehabilitation emphasize that minors have a higher capacity for change than adults, that punitive measures increase recidivism rates rather than prevent future crime, and that psychological interventions, skill training, and social support help reintegrate juveniles into society. On the other hand, arguments for stricter punishment contend that certain minors demonstrate adult-level criminal intent and should be held accountable, that rising juvenile involvement in serious crimes necessitates stricter laws, and that public safety concerns arise if habitual offenders are not deterred. Countries like the United States have adopted a stricter approach, allowing juveniles to be tried as adults for serious offenses, while Scandinavian nations focus on extensive rehabilitation programs.

Considering the evolving nature of juvenile crime, legal reforms are necessary. Some nations are debating whether the age of criminal responsibility should be lowered, considering the rise in violent juvenile crimes. However, this remains controversial due to concerns about child psychology and human rights. Juvenile courts should focus on education, vocational training, and psychological counseling rather than incarceration. Programs that involve family participation have been more effective in reducing recidivism. Governments can leverage artificial intelligence and big data to identify at-risk youth and

intervene before they engage in criminal activities. Predictive policing strategies, when implemented ethically, could reduce juvenile crime rates. Juvenile justice remains a complex yet crucial part of criminal law. While traditional doctrines such as mens rea, actus reus, and doli incapax continue to influence legal systems, modern developments demand a more flexible, rehabilitative approach. South Asian nations, including Nepal, are making strides in reforming juvenile laws, yet implementation challenges remain. Moving forward, a balanced model incorporating both legal accountability and rehabilitation will be key to addressing juvenile delinquency in a fair and effective manner.

Conclusion and Recommendations

In the modern world, most nations adhere to the reformatory theory of punishment, which emphasizes rehabilitation over retribution. The fundamental principle of this theory is that no individual should be punished without being given a fair chance for reformation and repentance. This approach is particularly crucial in cases of juvenile delinquency, as minors are at a tender and impressionable age. A child is often likened to a rough clay that can be molded in any manner, depending on the guidance and opportunities provided. Therefore, the potential for reformation is a primary consideration when determining the appropriate punishment for juvenile offenders.

It is universally accepted that harsh punishments should be a last resort, reserved only for exceptional cases where rehabilitation has failed, or the crime committed is of a severe nature. However, recent developments in juvenile crime have cast doubts on the absolute effectiveness of reformatory punishment. The growing involvement of minors in organized crime, cyber offenses, gang violence, and even violent offenses like murder and sexual assault has led to debates on whether leniency and rehabilitation alone sufficient deterrents are.

While human rights advocates argue that strict punitive measures for juveniles violate fundamental human rights, law enforcement agencies and judicial authorities often face the real-world consequences of dealing with repeat juvenile offenders. Many enforcement agencies question the effectiveness of reformatory justice, especially when minors exploit legal loopholes, commit grave offenses, and return to criminal behavior despite multiple interventions. This raises an important dilemma: Should there be stricter penalties for certain juvenile crimes? Should the age of criminal responsibility be lowered?

The reformatory theory of punishment has long been the foundation of juvenile justice systems across the world, emphasizing rehabilitation over punitive measures. This approach is based on the belief that juveniles, due to their young age and psychological immaturity, possess a higher potential for reformation and reintegration into society. However, with the increasing complexity and severity of juvenile crimes, including cyber offenses, gang involvement, and violent acts, the effectiveness of this system is being questioned. While human rights perspectives advocate for leniency and second chances, law enforcement and judicial authorities often highlight the practical challenges of repeat offenders and the exploitation of legal protections by some juveniles.

The growing concern surrounding juvenile justice reforms demands a well-balanced approach one

that preserves the rehabilitative spirit of juvenile justice while also ensuring accountability and deterrence for serious offenses. Moving forward, it is evident that a universal, one-size-fits-all model cannot be applied to juvenile offenders. Instead, a more individualized approach based on the nature of the crime, intent, maturity level, and psychological assessment of the minor should be developed.

To address these challenges, the following recommendations can be considered:

1. **Revisiting the Age of Criminal Responsibility:** Countries should reassess their legal frameworks to ensure that age-based protections do not become loopholes for committing serious crimes. While minors should not be treated as adults in all cases, a flexible approach that considers the nature of the crime and the cognitive maturity of the offender should be introduced.
2. **Stricter Punishments for Heinous Crimes:** While reform remains a priority, exceptional cases involving grave offenses such as murder, rape, terrorism, or organized crime may require stricter punishments, including longer sentences or special correctional programs. These measures should be implemented with judicial oversight to prevent misuse.
3. **Enhanced Psychological Evaluation and Risk Assessment:** Before deciding on punishment, every juvenile offender should undergo a thorough psychological evaluation to assess their level of maturity, criminal intent, and likelihood of reformation. This can help in determining whether a minor is eligible for reform-based rehabilitation or needs stricter interventions.
4. **Specialized Juvenile Correctional Programs:** Instead of placing juveniles in conventional prisons, governments should invest in specialized juvenile correctional facilities that focus on behavioral therapy, vocational training, and psychological counseling. The goal should be rehabilitation, not just confinement.
5. **Community-Based Rehabilitation and Monitoring:** Post-release monitoring and reintegration programs should be introduced to prevent recidivism among juvenile offenders. Mentorship programs, community service, and job training initiatives can help reformed juveniles reintegrate into society.
6. **Parental and Educational Reforms:** Juvenile delinquency is often rooted in family dysfunction, lack of parental supervision, and socio-economic factors. Schools and parents should be actively involved in preventing juvenile crimes through awareness programs, early intervention strategies, and counseling services for at-risk children.
7. **Use of AI and Predictive Policing for Prevention:** Law enforcement agencies can utilize artificial intelligence (AI) and data analytics to track and identify at-risk youth before they engage in criminal activities. Ethical implementation of predictive policing strategies can help prevent juvenile crimes before they occur.
8. **International Cooperation for Juvenile Justice Reform:** With the increasing cross-border nature of crimes (such as cybercrimes and human trafficking involving minors), countries must collaborate on best practices, legal frameworks, and international juvenile justice standards to create a more consistent and

effective system worldwide.

Juvenile delinquency is an evolving challenge that requires dynamic legal adaptations rather than rigid, outdated approaches. While rehabilitation must remain the cornerstone of juvenile justice, certain modern challenges necessitate stricter measures for serious offenses. Achieving the right balance between justice, public safety, and rehabilitation is crucial to ensuring a fair yet effective juvenile justice system. Moving forward, international legal reforms, enhanced psychological assessments, and specialized correctional programs will play a pivotal role in shaping a more just, accountable, and rehabilitative approach to juvenile justice.

Considering the current rise in juvenile delinquency and the evolving nature of crimes committed by minors, the need for significant amendments in juvenile justice laws is inevitable. Soon, there will likely be global discussions and legal reforms aimed at redefining the scope of punishment for juveniles and setting new standards for juvenile justice worldwide. The challenge remains to find a balanced approach that upholds children's rights while ensuring public safety and justice for victims.

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