

# Reforms and revision: a detailed comparison of the juvenile Justice Act 2015 and its 2020 amendment

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## INTRODUCTION

The Juvenile Justice (Care and Protection of Children) Bill 2014 was passed by the Rajya Sabha in the winter session and has now become an Act, Juvenile Justice (Care And Protection Of Children) Act, 2015, with the presidential assent on the 4<sup>th</sup> of January, 2016. The Act has been put forth with primary focus on issues with regard to children in conflict with law and in need of care and protection, and it intends to replace the Juvenile Justice (Care and Protection of Children) Act, 2000. It has been evolved from the notion of criminal justice, which mainly revolves around two things: firstly, justice should be served to the victim and secondly, punishment should be awarded to the accused.<sup>1</sup>

## HISTORICAL PERSPECTIVE

Over the years, there have been several acts governing juvenile crimes. These include Apprentice Act 1850, Reformatory School Act 1876, The Recommendation of India Jails Committee 1919-20, and Children Act 1960 etc.<sup>2</sup> The Juvenile Justice Act of 1986 states that a boy would be considered as a juvenile if he is less than 16 years of age, and a girl would be considered as a juvenile if she has not attained the age of 18 years.<sup>3</sup>

In 1985, UN Standard Minimum Rules for Administration of Juvenile Justice came up with the Beijing Rules, which stated as follows:<sup>4</sup>

- Juvenile should be treated different from adults
- Juveniles should be kept apart from adults
- Countries have to look for intellectual, mental and emotional state of the juvenile and the beginning of that age shall not be fixed at too low on age level.

In 1989, UN Convention on Rights of Child came up with four sets of rights:<sup>5</sup>

- Right to survive where the juvenile should have a right to name and nationality
- Right to protection where the juvenile should not have any inhuman treatment
- Right to development where the juvenile has a right to education, recreation etc.
- Right to participation where the juvenile will have a freedom of thought and expression, conscience, religion etc.

UNCRC also considered anyone under the age of 18 years as juvenile.

Finally the Juvenile Justice (Care and Protection of Children) Act came up in 2000, where it was stated that:<sup>6</sup>

- The age of both boys and girls should be uniformly raised to 18 years.
- There are two categories; child in need of care and protection who is found in difficult circumstances and in danger of survival and growth and the Child Welfare Committee will take care of it; secondly, a juvenile in conflict of law where the child who is alleged of committing an offence is looked after the Juvenile Justice Board.

The Juvenile Justice (Care and Protection of Children) Act 2000 also stated that the juvenile should not be exposed to media.<sup>7</sup> Moreover the maximum punishment given to juvenile would be 3 years after which he/she shall be released back to the society else the juvenile can also be sent for stay in reformatory home.<sup>8</sup>

## RISE IN JUVENILE DELINQUENCY AND REQUIREMENT OF NEW LEGISLATION

<sup>1</sup> *The Juvenile Justice (Care and Protection of Children) Bill, 2014*, <http://www.prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/>

<sup>2</sup> *The History And Development Of Juvenile Justice Delivery System*, [http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/10/10_chapter%203.pdf)

<sup>3</sup> Section 2(h), The Juvenile Justice Act, 1986.

<sup>4</sup> United Nations Standard Minimum Rules for Administration of Juvenile Justice (“Beijing Rules”), 1985.

<sup>5</sup> United Nations Convention on Rights of Child, 1989.

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>7</sup> Section 21, Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>8</sup> Section 44, Juvenile Justice (Care and Protection of Children) Act, 2000.

When we look through some of the statistics, we can see that there have been rise of participation of minors in illegal crimes. From 2012 to 2014, there has been 30 % rise in crimes by Juveniles. According to NCRB, from 2003 to 2013, the juvenile rate of crime has increased from 1% to 1.2 %.70 % of juveniles who have been accused of crime are between the age of 16 to 18 years.<sup>9</sup>

In December 16, 2012 gang rape, one offender was a juvenile who was 6 months short of 18 years and the punishment was only for 3 years. Was it justified for the victim who died due to multiple organ failure after the gang rape? Similarly, even in Shakti Mills gang rape case, the convicts were juveniles.

Adoption is yet another aspect wherein the provisions lack clarity and the Central Adoption Resource Agency (CARA) seemed to be the only institution to talk about regulations regarding the adoption of orphaned, abandoned and surrendered juveniles.

Hence, it is in the backdrop of all these scenarios and especially, the public outcry in the verdict of the unfortunate Delhi gang rape case, that there was a dire need to propose a new Act and hence, the Juvenile Justice (Care and Protection of Child) Act, 2015 came up.<sup>10</sup>

### **CHARACTERISTICS OF THE NEW ACT**

The Juvenile Justice (Care and Protection of Children) Bill 2014 came about with the Ministry of Women and Child Development introducing it in the Lok Sabha on 12th August 2014. The Act, was mainly intended on framing a more robust, effective and responsive legislative framework for children in need of care and protection as well as children in conflict with the law. The new legislation clearly defined and classified offences as petty, serious and heinous, and also talked about differentiated processes for each category.<sup>11</sup> Since there was a rise in the number of serious offences being committed by juveniles belonging to 16-18 years age group, and taking into consideration the fact that recognizing the rights of the juveniles, in par with that of the victim was equally important, special emphasis was given to provisions that tackle heinous offences committed by individuals in this age group. It was thus, a response to the perceptions, articulated by a wide cross-section of society who was of the opinion that an effective and strengthened system of administration of juvenile justice, care and protection was an utmost necessity.<sup>12</sup>

This Act that intends to replace the Juvenile Justice Act of 2000, states that juveniles between 16-18 years of age should be tried as adults for heinous offences. Also, any such juveniles, who commit a lesser, i.e. serious offence may be tried as an adult only if he is apprehended after the age of 21 years. Since this assessment will take place by the Board which constitutes of psychologists and social experts as stated under Section 15 of the Act, it will ensure that the rights of the juvenile are duly protected if he has committed the crime as a child.<sup>13</sup> The trial of the case will accordingly take place as a juvenile or as an adult on the basis of this assessment. The responsibility of determining whether a juvenile offender is to be sent for rehabilitation or be tried as an adult is vested on the Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) constituted in each district.<sup>14</sup> They are required to do so only after conducting a thorough preliminary inquiry into the matter so as to ensure that the rights of the juvenile are duly protected if he has committed the crime as a child. Thus, as opined by the Women and Child Development Ministry, headed by Maneka Gandhi, this kind of a detailed assessment helps in creating a balance that is sensitive to the rights of the child, protective of his legitimate interests and yet conscious of the need to deter crimes, especially brutal crimes against women.<sup>15</sup> The Act also addresses the issue of eligibility of adoptive parents and the procedure for adoption. Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have also been prescribed.<sup>16</sup>

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<sup>9</sup> The Juvenile Justice (Care and Protection of Children) Bill, 2014,

<http://www.prsindia.org/uploads/media/Juvenile%20Justice/SC%20report-%20Juvenile%20justice.pdf>

<sup>10</sup> *Juvenile Justice Bill introduced in the Lok Sabha*, THE INDIAN EXPRESS, August 12, 2014.

<sup>11</sup> Section 2(45), 2(54) & 2(33), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>12</sup> Amendments to the Juvenile Justice (Care and Protection of Children) Bill, PRESS INFORMATION BUREAU GOVERNMENT OF INDIA CABINET <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118528>

<sup>13</sup> Section 15, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>14</sup> Section 4 & 27, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>15</sup> *supra* note 12.

<sup>16</sup> *supra* note 1.

The Act also incorporates the principles of the Hague Convention on Protection of Children and Cooperation in Respect of Inter Country Adoption (1993) in cases involving detention, prosecution or penalty of imprisonment; in matters relating to apprehension, production before court, disposal orders and restoration, procedures and decisions related to adoption of children, and rehabilitation and reintegration of children who are in conflict with law or, as the case may be, in need of care and protection under other such law.<sup>17</sup>

Currently, the Act replaces the word 'juvenile' in the Juvenile Justice Act, with the word 'child' and the expression 'juvenile in conflict with the law' with 'child in conflict with law'.<sup>18</sup> The Act identifies a 'child in conflict with law' to be one who has been found by the Juvenile Justice Board to have actually committed an offence.<sup>19</sup> The Act also defines also defines an 'abandoned child' as well as 'aftercare'.<sup>20</sup> Chapter II of the Act, providing for 'General Principles for Care and Protection of Children', is the most noteworthy characteristic of the Act as it incorporates in it internationally accepted principles of presumption of innocence, dignity and worth, family responsibility, non-stigmatizing semantics, privacy and confidentiality, repatriation and restoration, equality and nondiscrimination, and diversion and natural justice, among others.<sup>21</sup> Institutionalisation is suggested as a measure of last resort wherein juveniles can be institutionalised only if no other family based care option is possible or available.<sup>22</sup>

Confidentiality is yet another important aspect of the Act, as it prohibits the media from disclosing the identity of children or propagating any such information which would lead to identifying them as stated under Section 70.<sup>23</sup> All reports in relation to the same are supposed to be treated as highly confidential in nature. Some of the other acts that are punishable under the Act include corporal punishment and ragging,<sup>24</sup> cruelty to children,<sup>25</sup> employment of children for begging,<sup>26</sup> adoption without proper procedure,<sup>27</sup> and sale or procurement of children for any purpose, etc.<sup>28</sup>

Juveniles between the ages of 16 to 18 years, who committed heinous offences may be tried as adults irrespective of date of apprehension and in other cases and juveniles will get maximum 3 years imprisonment in institutional care as determined by the Juvenile Justice Board. Moreover, juveniles cannot be given death penalty and juveniles cannot be given life imprisonment without possibility of release.<sup>29</sup> Thus,

- i. for heinous offences, minimum punishment would be 7 years imprisonment under Indian Penal Code or under any other law.<sup>30</sup>
- ii. for petty offences, the punishment shall be less than 3 years.<sup>31</sup>
- iii. for serious offences punishment would be between 3 to 7 years.<sup>32</sup>
- iv.

#### **CRITICISMS**

As is the case with every bill, the bill in question, which has now become an Act, was also subjected to several criticisms. A majority of these differing views revolve around the fact that whether juveniles should be tried as adults. While some are of the view that the current law is not deterrent in nature, others opine that a reformatory approach will reduce the tendency and likelihood of repeating the offences. Looking at it from a constitutional point of view, the provision of trying a juvenile committing a serious or heinous offence as an adult based on date of apprehension could

<sup>17</sup> Anil Malhotra, *Towards A Comprehensive Juvenile Justice Law*, THE HINDU, July 18, 2014.

<sup>18</sup> Section 2(12) & 2(13), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>19</sup> Section 2(13), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>20</sup> Section 2(1) & 2(5), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>21</sup> Chapter II, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>22</sup> *supra* note 17.

<sup>23</sup> Section 70, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>24</sup> Section 82, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>25</sup> Section 75, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>26</sup> Section 76, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>27</sup> Section 80, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>28</sup> Section 81, The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>29</sup> *Juvenile Justice Bill 2014: What you should know*, <http://www.oneindia.com/feature/juvenile-justice-bill-2014-what-you-should-know-1497925.html>

<sup>30</sup> Section 2(33), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>31</sup> Section 2(45), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

<sup>32</sup> Section 2(54), The Juvenile Justice (Care And Protection Of Children) Act, 2015.

lead to a serious violation of Articles 14 and 21 respectively. The provision also defies the spirit of Article 20(1) by according a higher penalty for the same offence, if the person is apprehended after 21 years of age.

The United Nations Convention on Rights of Children states that juveniles cannot be treated separately between 16-18 years. Article 20(1) is no ex post facto criminal legislation. For example, the age of consent for sex is 18 years. Eminent personalities like Shashi Tharoor, were also of the view that the justice system should focus on “*rehabilitation and not retribution*” and that it would be “*emotionally, ethically and morally*” wrong to punish a child, who does not have access to basic facilities, like an adult.<sup>33</sup>

The Justice Verma Committee constituted as a result of the gang rape, in its report, states that if the juvenile is under 18 years and sent to normal jail and treated as adult, then there is no chance of rehabilitation. On the contrary, they will in turn into hardened criminals, as the child’s brain in the formative stage is very mild and vulnerable in nature.<sup>34</sup> The Parliamentary Standing Committee stated that the existing juvenile justice system is reformatory and rehabilitative. Children between the age of 16 and 18 years are extremely sensitive in nature and it is a critical age requiring greater protection and hence there is no need to subject them to adult or different type of judicial system.<sup>35</sup>

The statistics in this regard also needs to be looked into as these constitute some of the grey areas that require proper understanding. 56% of juvenile offenders have an annual income of Rs 25000 at home. 1 in every 8 juvenile criminals is an orphan. 1.2 % of all these crimes are committed by the juveniles. 6 % of all the rapes are committed by the juveniles. 87 % of all juvenile criminals have not even attended school.<sup>36</sup>

So, now the question arises as to what if a child less than 15 years commits a crime? Will the law have to be changed again? The harsh truth behind this scenario is that ours is an over legislated but an under implemented/enforced country. There has been no word on Juvenile Justice Reforms. The pendency of cases before the Juvenile Justice Board is 45,258. Most cases of juvenile crimes stems from substance abuse. There are no de-addiction centres. Even AIIMS, one of the most reputed institutions in the world has only two beds as of today. The Asian Centre for Human Rights, in 2013 also conducted a survey and had prepared a report on “*India’s Hell Holes*” which deals with child sexual harassment in Juvenile Justice Homes.<sup>37</sup>

#### CONCLUSION

The social conditions should be improved. The juveniles themselves are victims. They do not have access to education. Many children at a tender age take the responsibility of the family and start earning. They are themselves victims of child labour and child abuse. Hence, rationality should determine our policy which should be reformatory and not retributive, which should be of care and not vengeance.

As the saying of the Nobel laureate Kailash Satyarthi goes,

*“Whether it is crime by a child or on a child, the focus has to be on reform and restitution and not on deterrence.”*

<sup>33</sup>Lok Sabha Passes Amendments To Juvenile Justice Act, To Face Rajya Sabha Test, <http://www.firstpost.com/india/lok-sabha-passes-amendments-to-juvenile-justice-act-to-face-rajya-sabha-test-2232674.html>

<sup>34</sup> Report of the Committee on Amendments to Criminal Law, <http://bba.org.in/sites/default/files/Justice-Verma-Committee-report.pdf>

<sup>35</sup> In Fact: New Juvenile Justice Act On The Way, But Debate Continues, <http://indianexpress.com/article/explained/in-fact-new-juvenile-justice-act-on-the-way-but-debate-continues/>

<sup>36</sup> The Juvenile Justice System in India and Children who commit serious offences – Reflections on the Way Forward, <https://www.nls.ac.in/ccl/justicetochildren/intl.pdf>

<sup>37</sup> India’s Hell Holes: Child Sexual Assault in Juvenile Justice Homes, ASIAN CENTRE FOR HUMAN RIGHTS <http://www.achrweb.org/reports/india/IndiasHellHoles2013.pdf>