

CRITICAL ANALYSIS OF JUVENILE JUSTICE ACT 2015

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Introduction

The country of India includes several states and some of these states have their own "Children's Acts." The main goals of these "Children's Acts" are: (1) to provide for a machinery to effectuate the existing laws; (2) to provide for the protection of neglected and destitute children and prevent them from taking to deviant behaviour; and (3) to make some treatment and rehabilitation provisions in respect to children who are either victimized or uncontrollable².

The basic assumptions underlying the Indian juvenile justice system are: (1) the need to segregate juveniles and adult offenders to aid crime prevention efforts, and treatment and correctional policies; (2) the belief that juvenile deviance is the result of "lapses" in society, and therefore, deviance should be approached in social defence terms, rather than penal terms; and (3) the belief that the juvenile justice system can match system services with specific needs of identifiable juvenile subgroups.

The juveniles who are referred to the juvenile justice system are classified into two basic categories: offenders and non-offenders. Offenders are those who have broken the law, while non-offenders come to the attention of the system because they are socially handicapped or uncontrollable or because they have been victimized.³⁴

Who is a juvenile?

In the Indian context, a juvenile or child is any person who is below the age of 18 years⁵. However, the Indian Penal Code specifies that a child cannot be charged for any crime until he has attained seven years of age⁶.

Why is there a need for a new legislation when a juvenile justice law already exists?

The government passed the Juvenile Justice Act 2015 gave various reasons to justify the need for a new law. It said that the existing Juvenile Justice Act, 2000 was facing implementation issues and procedural delays with regard to adoption, etc. Additionally, the government cited NCRB⁷ data to say that there has been an increase in crimes committed by juveniles, especially by those in the 16-18 years age group.

NCRB data shows that the percentage of juvenile crimes, when seen in proportion to total crimes, has increased from 1% in 2003 to 1.2% in 2013. During the same period, 16-18 year olds accused of crimes as a percentage of all juveniles accused of crimes increased from 54% to 66%.

What is the role of new Act⁸ ?

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides the framework to deal with children who are in conflict with law and children in need of care and protection. The Act replaced the old 2000 Act and lays down the procedures to deal with both categories of children. It highlights the two main bodies that will deal with these children, to be set up in each district: Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs). It provides details regarding adoption processes and penalties applicable under the law. The Act provides for children between 16-18 years to be tried as adults for heinous crimes.

The three types of offences defined by the Act are: (i) a heinous offence is an offence that attracts a minimum penalty of seven years imprisonment under any existing law⁹, (ii) a serious offence is one that gets imprisonment between three to seven years¹⁰ and, (iii) a petty offence¹¹ is penalized with up

to three years imprisonment.

How the treatment of a juvenile in conflict is changed?

Under the 2000 Act, any child in conflict with law, regardless of the type of offence committed, may spend a maximum of three years in institutional care (special home, etc.) The child cannot be given any penalty higher than three years, nor be tried as an adult and be sent to an adult jail. The new Act treats all children under the age of 18 years in a similar way, except for one departure. It states that any 16-18 year old who commits a heinous offence may be tried as an adult. The JJB¹² shall assess the child's mental and physical capacity, ability to understand consequences of the offence, etc. On the basis of this assessment, a Children's Court will determine whether the child is fit to be tried as an adult.

What happens to a child who is found to be orphaned, abandoned or surrendered?

The Act addresses children in need of care and protection. When a child is found to be orphaned, abandoned or surrendered he is brought before a Child Welfare Committee within 24 hours. A social investigation report is conducted for the child, and the Committee decides to either send the child to a children's home or any other facility it deems fit, or to declare the child to be free for adoption or foster care. The Act outlines the eligibility criteria for prospective parents. It also details procedures for adoption, and introduces a provision for inter-country adoption, so that prospective parents living outside the country can adopt a child in India.

What are the penalties for committing offences against children?

Various penalties for committing offences against children are laid out in the Act. These include penalties for giving a child an intoxicating substance, selling or buying the child, cruelty against a child, etc.

Issue to consider: The penalty for giving a child an intoxicating or narcotic substance is an imprisonment of seven years and a fine of up to one Lakh rupees. Comparatively, buying or selling a child will attract a penalty including imprisonment of five years and a fine of one Lakh rupees.

Other Provisions

- **Adoption:** The Central Adoption Resource Agency will frame regulations on adoption. These regulations will be implemented by state and district agencies. Prospective adoptive parents should be physically and financially sound. A single or divorced person may adopt a child. A single male may not adopt a girl child. The Bill also provides for inter-country adoption.

- **Registration of institutions:** Institutions for child care having a valid registration under the 2000 Act will continue to be recognized. Other institutions were required to be registered within six months of this Act coming into force. The registration is valid for five years and needs to be renewed. Inspection committees will inspect these institutions and registration may be cancelled if they do not meet the prescribed criteria.

Key Issues and Analysis¹³

16-18 year old accused of certain offences may be tried as adults

The new Act states that 16-18 year old juvenile offenders may be tried as adults in certain cases. There are differing views on whether juveniles should be tried as adults. Recently, the Supreme Court while hearing a case related to juvenile crime observed that the 2000 Act needs to be reviewed due to increasing heinous offences by juveniles. The law needs to deter juveniles from committing heinous

crimes and safeguard the rights of victims. For crimes like rape and murder it is hard to conceive that the juvenile is not aware of the consequences¹⁴. However, the Standing Committee examining the new Act observed that 16-18 years is a sensitive and critical age requiring greater protection¹⁵. Other experts have argued that a criminal justice system that has a reformatory and rehabilitative approach towards juvenile offenders may reduce cases of repeat offences. They say that under the old law, juvenile crime has only shown a marginal increase over the past few years¹⁶.

Non-compliance with the UNCRC in treatment of 16-18 year age group

The Act requires certain juveniles between the ages of 16-18 years to be tried as adults with regard to specific offences. This provision is not in accordance with the UNCRC, as ratified by India, and mentioned in the Act's Statement of Objects and Reasons. The Standing Committee observed that the Act violates the UNCRC¹⁷ as it differentiates between children below 18 years of age¹⁸. The UNCRC states that signatory countries should *treat every child under the age of 18 years in the same manner and not try them as adults*. It recommends that those countries that treat or propose to treat 16-18 year olds as adult criminals, change their laws to align with the principle of non-discrimination towards children. The 2000 Act was enacted to implement the UNCRC guidelines in the Indian context. Unlike the new Act, the 2000 Act complies with the UNCRC guidelines and does not distinguish between persons below the age of 18 years. However, many other countries try juveniles as adults, in case of certain crimes. All of these countries, except the United States, have ratified the UNCRC.¹⁹

Key observations and recommendations of the Standing Committee

The Standing Committee on Human Resource Development submitted its report on the Bill on February 25, 2015.

Key recommendations include²⁰:

- **Constitutional provisions** : The Committee noted that the 2000 Act recognizes the sensitive age of 16-18 year olds and is reformatory and rehabilitative in nature. Subjecting juveniles to the adult judicial system would go against the principle of Articles 14²¹ (unequal treatment of 16-18 year olds) and 15(3)²² (against the objective of protecting children) of the Constitution. It also said that the Bill was in violation of Articles 20(1) and 21 of the Constitution²³.

- **NCRB data**: One of the reasons cited for the Bill's introduction is an increase in heinous offences committed by 16-18 year olds. The Committee stated that this data compiled by NCRB is misleading as it is based on filing of FIRs and not actual convictions.

- **Implementation**: The Committee observed that the Act is not being implemented well. It recommended better implementation and uniform establishment of systems and procedures, by all agencies.

Comparison of the Juvenile Justice Act, 2000 Act and New Act²⁴**Table 4: Comparison of the Juvenile Justice Act, 2000 with the Juvenile Justice Act, 2015**

Provision	The Juvenile Justice Act, 2000	The Juvenile Justice Act, 2015
Treatment of juveniles	All children under the age of 18 years treated equally. Maximum penalty for juvenile in conflict with law is three years.	Juveniles aged between 16-18 years committing serious or heinous offences could be tried as adults. However, there will be no death penalty or life imprisonment.
Juvenile Justice Board	Conducts inquiry and directs the juvenile to be placed in any fit institution for a period not exceeding three years.	Adds a preliminary inquiry, conducted in certain cases by JJB to determine whether a child is placed in a home or sent to Children's Court to be tried as an adult.
Child Welfare Committee	Disposing of cases for children in need of care and protection; Frequency of meetings not specified.	Functions are same as in the Act; training of members to be done within two months of Bill becoming law; Committee to meet at least 20 days in a month.
Appeals	Appeal to the Session Court within 30 days of JJB order; further appeal to a High Court.	Appeal JJB/CWC order within 30 days to Children's Court, further High Court (District Magistrate for foster care, etc).
Adoption	No provision for inter-country adoption in the Act; the Guidelines Governing the Adoption of Children, 2011 provide for inter-country adoption.	Inter-country adoption allowed if adoption cannot take place within the country, within 30 days of child being declared legally free for adoption.
Foster care	Temporary placement of a child to be given for adoption, with a family for a short/extended period of time; biological family may be allowed to visit.	Same as the Act. Adds new provision for monthly checks on foster family by the CWC.
After-care	Monetary and continued support for children after they leave special or children home for a period of three years or till 21 years of age.	One-time financial support to children leaving child care institutions after completing 18 years of age.

Conclusion: - Nirbhaya case²⁵ was an eye opener for all. One of the accused was a few months away from being 18. So he was tried in juvenile court. Public Interest Litigation was filed in the Supreme Court of India seeking that the boy be tried as an adult in a court. After the Supreme Court

allowed the juvenile court to give its verdict, the boy was sentenced to 3 years in a reform home on 31 August 2013. The victims' mother criticised the verdict and said that by not punishing the juvenile the court was encouraging other teenagers to commit similar crimes. In July 2014, Minister of Women and Child Development, Maneka Gandhi said that 50% of juvenile crimes were committed by teens who know that they get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults, will have deterrent effect on them. Whether it was Delhi gang rape case or public opinion developed because of hype created by media, Juvenile Justice Act of 2000 needed to be amended to include punitive approaches in the existing Juvenile Justice Law, which so far is purely rehabilitative and reformatory.

(End notes)

- 1 Ph.D. Scholar, A.K.K. New Law Academy, Ph.D. (Law) Research Centre, S.P.P.U. Pune
- 2 Gokhale, S.D., and N.K. Sohoni 1976 "The Juvenile Justice System in India." Chapter 1 in Juvenile Justice: An International Survey. Rome, Italy United Nations Social Defense Research Institute.
- 3 <http://www.jstor.org/stable/41420985> Accessed: 08-07-2016 05:57 UTC
- 4 This section is based on information contained in Gokhale and Sohoni 1976.
- 5 The Juvenile Justice Act, 1986
- 6 Section 82 of Indian Penal Code, 1960
- 7 National Crime Records Bureau
- 8 The Juvenile Justice (Care and Protection of Children) Act, 2015
- 9 Section 1 clause (33) of The Juvenile Justice Act 2015
- 10 Section 1 clause (54) of The Juvenile Justice Act 2015
- 11 Section 1 clause (45) of The Juvenile Justice Act 2015
- 12 Juvenile Justice Boards
- 13 <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%202014.pdf>.
- 14 Gaurav Kumar vs. State of Haryana, Petition for Special Leave to Appeal, 2366-2368/ 2015.
- 15 The Juvenile Justice (Care and Protection of Children) Act, 2014, Standing Committee on Human Resource Development, February 25, 2015.
- 16 "Rough Justice", Faizan Mustafa, Vice Chancellor, NALSAR University of Law, The Indian Express, November 27, 2014.
- 17 The United Nations Convention on the Rights of the Child 1989
- 18 Ibid
- 19 <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%202014.pdf>.
- 20 The Juvenile Justice (Care and Protection of Children) Act, 2014, Standing Committee on Human Resource Development, February 25, 2015
- 21 D.D.Basu, Introduction to the Constitution of India, (22nd Ed.).
- 22 Ibid
- 23 Ibid
- 24 Sources: The Juvenile Justice Act, 2000; Juvenile Justice Bill, 2014; PRS
- 25 State Through Reference vs Ram Singh & Ors