



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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LEGAL CHALLENGES FACED BY CHILDREN UNDER JUVNILE JUSTICE SYSTEM IN INDIA

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ABSTRACT

The Indian legal system has long established a rehabilitative response to juvenile crimes. However, with the passing of the Juvenile Justice (Care and Protection of Children) Act 2015, a shift was made towards a more punitive approach for effectively curbing juvenile crimes. The 2015 Act allowed for children between the ages of 16 to 18 years to be tried as adults, albeit only in cases of heinous crimes. This issue brief discusses the motivations of the Indian political and legal systems behind affecting such a shift and the merit, if any, of moving away from a reformatory approach when dealing with children in conflict with the law.

BACKGROUND

Under the legal framework governing justice for juveniles in India, a juvenile or a child is defined as any person who is below the age of 18 years. Prior to the passing of the Juvenile Justice (Care and Protection of Children) Act, 2015, such a child, when in conflict with

law¹, regardless of the nature of offence committed was required to spend a maximum of three years in institutional care. Such a child could not be given a penalty higher than three years, or be imprisoned. When the 2015 Act replaced the Juvenile Justice (Care and Protection of Children) Act, 2000 and came into force on January 15, 2016, it allowed for juveniles in the age group of 16 to 18 years involved in cases of heinous crimes², to be tried as adults.

The 2015 Act required that Juvenile Justice Boards (JJBs) be set up in every district of the country to conduct preliminary inquiries in cases of juvenile crimes, with the aim of determining the physical and mental capacity of such a child as well as his or her ability to comprehend the consequences of the offence committed. This marked a clear departure from treating a child as *doli incapax*: someone who is incapable of realizing the consequences of his or her actions.

After the completion of the inquiry, the Board can decide to transfer the case to a Children's Court³ for trial. If found guilty during the trial, the child is to be sent to a place of safety⁴ for reformation and rehabilitation till he or she attains 21 years of age. Upon turning 21, an evaluation of such a child is to be conducted by the Children's Court. If the child is determined to be reformed, he or she can be released on probation. If not, the child is transferred to an adult jail and serves the rest of the term of imprisonment, determined in accordance with the offence committed.

During the child's stay at a place of safety both during and post-trial, several rehabilitative and social integration measures are to be taken related to education, health, de-addiction, treatment of diseases, vocational training, skill development, and life skills education,

¹ According to the Act, a child in "conflict with law" is a child who is alleged or found to have committed an offence and who has not completed eighteen years of age, and is above the age of ten years, on the date of commission of such an offence.

² Heinous crimes are those crimes which are punishable with imprisonment of seven years or more.

³ As per the Act, "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012 wherever existing. Where such courts have not been designated, the Court of Sessions will have jurisdiction to try offences under the Juvenile Justice Act.

⁴ As per the Act, a "place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

among others. This is intended to ease the child into a more productive role in society, as and when they leave the care institution. The Act also stresses upon the need to reinforce in a child respect for human rights, and calls for treatment of the child in a way that is consistent with fostering his or her sense of dignity. Keeping in line with the same, across the Act, a change in nomenclature from 'juvenile' to 'child' has been effected when referring to a child in conflict with law, to remove the negative connotation associated with the word 'juvenile'. Similarly, trial proceedings of juvenile offenders are held, as far as possible, in an informal manner, to minimise their trauma. Juvenile offenders are not brought to the trial in handcuffs, police officials present at the trial dress informally and the identity of the juvenile offender is protected from the media (Agarwal 2018).

Despite the above child-friendly features of the 2015 Act, it has been deemed regressive due to the transfer of children between the ages of 16 to 18 years, involved in cases of heinous offences, to the adult justice system. In fact, the very introduction of the category of heinous crimes has been deemed to be a departure from a rehabilitative justice system for children. Apprehending a juvenile after he or she attains the age of 21 years for offences committed when at a younger age has also been criticised for being retributive in nature. These and other criticisms of the Act have been discussed further in detail in the following section.

JUVENILE JUSTICE ACT, 2015: LIMITATIONS AND GAPS

The 2015 Act was introduced in the Parliament in 2014 amidst significant public outrage after a juvenile offender in the 2012 Delhi gang rape case was 'merely' sentenced to three years in a reform home⁵. The Statement of Objects and Reasons of the Bill (now, Act) cited numerous reasons why changes were required in the existing legislation, such as, delays in decision-making processes by Child Welfare Committees and Juvenile Justice Boards, a high pendency of cases, an increase in incidents of abuse of children in care institutions as well as inadequate facilities, poor quality of care and rehabilitation measures in these institutions. It was also stressed that there has been an alleged spike in crimes committed by juveniles in the age group of 16 to 18 years, especially those categorised as heinous offences.

⁵ The 2012 December gang rape case involved rape and fatal assault on a female physiotherapy intern in Delhi. Six men were arrested, of which one was a juvenile. The juvenile was sent to a reform facility for three years, as per the provisions of the 2000 Act, and was released on December 20, 2015, in spite of massive public uproar.

This case opened up the debate on the plausibility of booking juveniles as adults in cases of heinous crimes.

However, when the Bill (now, Act) was placed before a Review Committee constituted by the Parliamentary Standing Committee formed to present a report on the Bill, which had members from the civil society as well as experts and academicians, the Committee cautioned against a linear, singular interpretation of the data presented by the National Crime Records Bureau indicating such an increase. It was pointed out that the percentage of juvenile crimes within the total number of crimes committed in India is extremely low. Between 2008 and 2013, it remained consistent at around 1.0% to 1.2% (Table 1). Moreover, of the total number of juvenile crimes, only about 7% of the cases comprised of offences such as murder and rape (Parliamentary Standing Committee 2015: 20). Members of the Review Committee also brought light to the fact that such a number is inclusive of instances where children were falsely apprehended. In this context, the NCRB data was misleading as it was based on the number of FIRs filed against juveniles and not the number of actual convictions and subsequent disposal of cases.

TABLE 1: JUVENILE DELINQUENCY DATA (2008-2013)

S.No.	Year	Juvenile Crimes	Total cognisable crimes	Percentage of juvenile crimes to total crimes
1.	2008	24,535	20,93,379	1.2
2.	2009	23,926	21,21,345	1.1
3.	2010	22,740	22,24,831	1.0
4.	2011	25,125	23,25,575	1.1
5.	2012	27,936	23,87,188	1.2
6.	2013	31,725	26,47,722	1.2

SOURCE: NATIONAL CRIME RECORDS BUREAU

Further, certain members of the Committee commented that the need to coerce juvenile offenders into the adult criminal system seems imprudent when Section 16 of the 2000 Act already had a provision to deal with children between the years of 16 and 18 who had committed serious crimes. Various dispositions with ample scope for reparation, healing and reformation were included in the 2000 Act such as admonition, community service, imposition of a fine, probation and group counselling (Parliamentary Standing Committee 2015: 20).

Concerns were also raised regarding the procedure laid out for a preliminary inquiry to be conducted by the Juvenile Justice Boards. It was considered not only highly arbitrary in

nature, but also contradictory to the principle of 'presumption of innocence' of any mala fide or criminal intent of a child up to the age of 18 years, as included in Clause 3 of the Act (Parliamentary Standing Committee 2015: 18). Additionally, the ability and sensitivity of the JJB members to conduct such an inquiry without a training in subjects of child psychology was flagged off as an area of concern. To address this concern, Section 4 (3) of the Act does state that, "No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law".

Ultimately, though, it was deemed that the problem didn't lie with the provisions of the previous Act but simply with the implementation of its provisions. Care institutions which were to be set up under the 2000 Act were either not set up or were not functional in several states. Even when functional, they suffered from problems arising due to inadequate fund allocation, ineffective training of the cadre as well as lack of individual care plans (Parliamentary Standing Committee 2015: 20). The Justice Verma Committee constituted in the aftermath of the Delhi gang rape case to suggest possible amendments to criminal law, also recognised that juvenile care homes in the country were "not being run in a manner consistent with the spirit of the Juvenile Justice Act" (Verma et al 2013: 419). Thus, the intent behind the formulation of a new legislation altogether was questioned for not being focused on improving the existing infrastructure and institutional capacity for reformation of children in conflict with law, and instead giving a retributive response amidst the public outcry after the Delhi gang rape.

REASONS DRIVING JUVENILES INTO CONFLICT OF LAW

An analysis of the legislation guiding juvenile justice is incomplete without examining the factors and circumstances that might lead to juveniles committing crimes. In 2018, the educational and family background of juveniles who were apprehended was taken into record by the NCRB. The data revealed that a total of 20,099 cases involved children who were either illiterate, or educated up to primary level only, or lived with their guardians or were homeless (National Crime Records Bureau 2018).

TABLE 2: BACKGROUND OF JUVENILES IN CONFLICT WITH LAW IN 2018

Illiterate	3,610
Upto Primary educated	10,666
Above Primary to above Higher Secondary Educated	23,980
Living with Parents	32,433
Living with guardians	3,432
Homeless	2,391

SOURCE: NATIONAL CRIME RECORDS BUREAU 2018

Research has proven that children often develop delinquent tendencies if they grow up in a hostile domestic environment or under ineffective parenting. Similarly, children belonging to broken or dysfunctional families also show a higher tendency of delinquency (Agarwal 2018). Conditions of substance abuse and psychiatric disorders can also lead to law-abiding behaviour (ibid.). Specifically in the context of India, it has been noted that weak community ties with can result in delinquency, often beginning with acts of street brawls, hooliganism and petty thefts (Brandt 2006; Chung and Steinberg 2006).

During the debate in Lok Sabha regarding the Bill (now, Act), Congress MP Shashi Tharoor pointed out how "a majority of children in conflict with law come from illiterate and poor families. These are the ones that are being punished instead of being given education". He also stated how the Bill violates the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 as well as the Beijing Rules which require a child or a young person accused of an offence to be treated differently from an adult (FP Staff 2015).

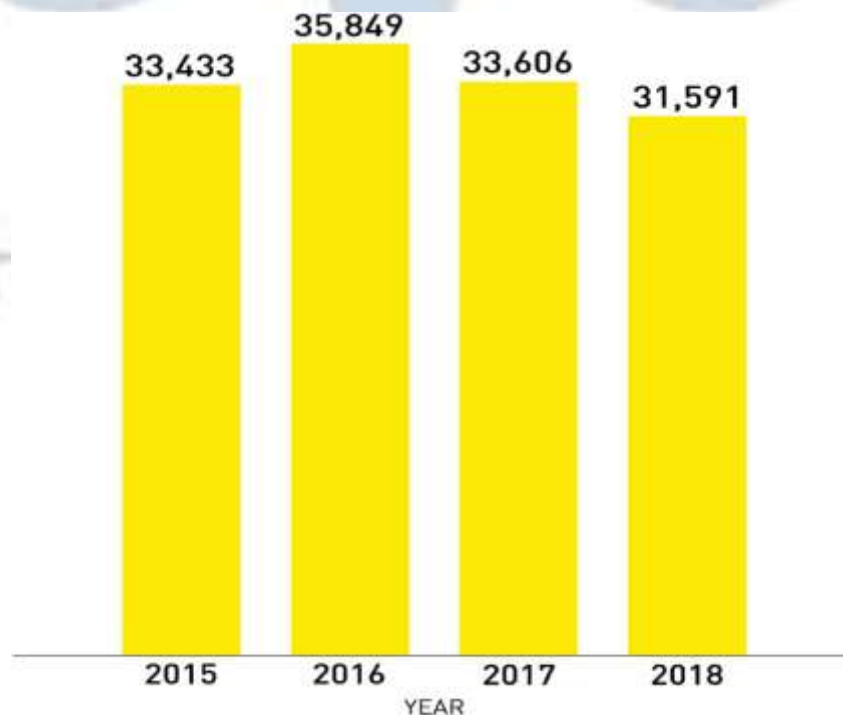
Thus, it is clear that a combination of social, environmental, economic and psychological parameters trigger delinquency among juveniles. It is for this reason that under the Act, as a preventive measure, a special category of 'children in need for care and protection' is included. This refers to children without a home, children living on streets, child laborers, children who are orphaned or have been abandoned, children who might be victims of abuse or trafficking, children suffering from any mental illness, among others, who might be especially vulnerable to commit crimes. While such positive measures are a clear

recognition of the fact that at an adolescent age, children are more prone to recklessness and rebellious behaviour, at the same time, pushing for their incarceration into adult jails will only decrease their chances of reformation. Reformation and rehabilitation is not only important because it is a part of the existing law, but also because it reveals the underlying reasons for delinquency among children and seeks to resolve them through empathetic measures such as counselling (Prasad 2020).

CONCLUSION

It is possible that children with malicious intent, who are aware that being underage absolves them of tough consequences of their actions, might continue to commit crimes unfettered without fear of repercussions. In fact, after the Juvenile Justice (Care and Protection of Children) Act, 2015 came into effect, data from the NCRB shows how, barring 2016, the subsequent years show a decline in the number of crimes committed by juveniles (Figure 1). However, the reasons behind such a decline must be examined carefully, with a clear segregation between IPC and SLL (Special and Local Laws) crimes⁶.

FIGURE 1: NUMBER OF JUVENILE CRIMES (2015-2018)



SOURCE: NATIONAL CRIME RECORDS BUREAU

⁶ In case of juveniles between the ages of 16 to 18 years, the number of those apprehended for SLL crimes has increased between 2016 and 2018, even though the same under IPC has decreased.

Regardless, it is pertinent to attribute to each case of juvenile delinquency its individuality. It should be noted that children alleged to have committed heinous crimes are not protected under the "principle of fresh start" under Section 3 of the 2015 Act which provides for the record of the trial to be erased. Also, even though Section 24 of the Act exempts juvenile offenders from any disqualification which could be incurred under any law for commission of an offence under this law, the same protection is not extended to children above the age of sixteen who have committed heinous offences. This implies that disqualifications under the law would apply to them permanently, contrary to the principle of fresh start and to the principles of rehabilitative justice. Given that children are more amenable to reforms compared to adults, they should be given a chance to re-start and re-orient their life with a clean state instead of being pushed into a potential cycle of crime and incarceration. Thus, a careful balance between punishment, deterrence and rehabilitation must be established at the core of India's juvenile justice framework. Ultimately, as stated by the Justice Verma Committee Report,

to ensure that the constitution of the Child Welfare Committee, Juvenile Justice Board, the infrastructural facilities in a home, the quality of food, the quality of counselling and psychotherapy required for a child to wipe out the scars of abuse and deprivation in early childhood and to mainstream him/her in society and to educate him/her fully, requires a deeper and profound engagement of the State and civil society. This is the primary duty of the State, which is found wanting (Verma et al 2013: 419).

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