



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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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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THE MINIMUM AGE REQUIREMENT UNDER NEW REFORMATIVE JUVENILE JUSTICE SYSTEM IN INDIA: A CRITICAL ANALYSIS

AUTHORED BY - SAKSHI SOLANKI

Abstract

The Indian judicial system has always used a rehabilitative approach to youthful offences. Nonetheless, the enactment of the Juvenile Justice (Care and Protection of Children) Act 2015 marked a transition towards a more punitive strategy for properly addressing juvenile offences. The 2015 Act permitted the prosecution of juveniles aged 16 to 18 as adults, but only for egregious offences. The paper succinctly examines the motives of the Indian political and legal institutions for implementing such a move and evaluates the merits, if any, of departing from a reformatory strategy in addressing children in confrontation with the law and the principles of Human Rights. The enhancement of the juvenile justice system, in accordance with the evolving nature of juvenility, has been significantly influenced by international standards and legislative measures in India, which have played a crucial role in establishing the appropriate age of juvenility and addressing criminal offences based on legal documentation. The laws of the commonwealth countries also cannot be ignored especially when nations are trying to bring uniformity. This article examines the elements of the new reformatory juvenile justice system, considering a diverse range of instances that have aided both the court and the general public in comprehending the intricacies of age criteria. Through the paper, the author succinctly elucidates the new criminal legislation, 'Bharatiya Nagrik Suraksha Sanhita,' and its implications for juveniles. The author ultimately presents recommendations to establish a unified position and mitigate future juvenile offences.

Keywords: Juvenile Justice, New Reformatory Juvenile Justice, Human Rights, Age, Juvenile Offences.

Introduction

The Apprenticeship Act, 1850 gave vocational training to 10-18-year-olds to rehabilitate them instead of punishing them. Magistrates were allowed to protect poor children and minors guilty of vagrancy or small offences and tie them to acquire a profession, skill, or occupation to turn them from criminal to civilised. The 1919–20 Indian Jail Committee report strengthened juvenile rehabilitation. First time report stressed necessity for juvenile-adult trial separation.¹

After independence, the Children's Act 1960² was passed. The Union Territories of India's Children's Act, 1960 established youth courts and child welfare boards to address poor and delinquent children. Finally, a comprehensive Act was passed in 2000 keeping in mind the International standards and ratifications. The Juvenile Justice (Care and Protection of Children) Act, 2000 was passed. It standardised juvenile age at 18. For more sensitive treatment of juveniles, the Act placed two social workers on the juvenile justice board. Many safeguards and international norms were included into the Act. The general circumstances of minors in prisons and lock-ups remain the same owing to non-implementation of juvenile justice system machinery.

After the violent gang rape on December 16, 2012, the juvenile justice system in India altered. Despite the seriousness of the crime, the JJ Act, 2000's liberal and lenient attitude to gang rape in Delhi resulted in nationwide uproar over the granting of just 3 years maximum incarceration to one of the accused, who was 17 years and few months old. As adolescent offenders committed more severe and terrible crimes, calls for harsh punishment increased. J.S.Verma led a commission to study sexual offences under the Indian Penal Code, 1860 and JJ Act, 2000. The J.S.Verma committee classified offences based on proportionality of sentence to reform and rehabilitate the juvenile justice system and protect society. It also created a category for heinous offences by 16-18-year-olds. Following the committee's recommendations, the Lok Sabha presented the Juvenile Justice Bill 2014 on August 8, 2014, exceeding worldwide norms and all legislative enactments from 1850 to 2000.³

The Indian judicial system has traditionally rehabilitated youthful offenders. However, the

¹Satadru Sen, *A Separate Punishment: Juvenile Offenders in Colonial India*, 63 *The Journal of Asian Studies* 81-104 (2004).

²Suman Kakar, *Juvenile Justice and Juvenile Delinquency in India* 18 (2002).

³Scott H Decker & Nerea Marteache, *International Handbook of Juvenile Justice* 65 (2017).

Juvenile Justice (Care and Protection of Children) Act 2015 took a more severe approach to juvenile offending. Only for grave offences, the 2015 Act permitted 16–18-year-olds to be prosecuted as adults. This article briefly explores the Indian political and legal systems' rationale for such a move and the benefit, if any, of abandoning reformation when dealing with law-breaking youngsters.

The new reformative juvenile justice system: Post 2015 Act

According to India's juvenile justice system,⁴ anyone under the age of eighteen is considered a juvenile or kid. A kid who was in dispute with the law, regardless of the nature of the offence, was obligated to spend no more than three years in institutional care prior to the Juvenile Justice (Care and Protection of Children) Act, 2015. No punishment harsher than three years in jail or community service would be appropriate for such a minor. On January 15, 2016, the Juvenile Justice (Care and Protection of Children) Act, 2015, which had previously superseded the Juvenile Justice (Care and Protection of Children) Act, 2000, went into effect. It allowed the trial of juveniles (aged 16 to 18) charged with serious offences as adults. In response to public demands that the Act reduce the age of juveniles from 18 to 16, it instead creates a new category of juveniles accused of serious crimes between the ages of 16 and 18, and brings them before an adult court. If proven guilty of the most egregious crimes, these minors may face the same criminal trials as adults and be sentenced to the same prisons. In light of this clause, which goes against all international and constitutional obligations to protect children, the likelihood of sending children as young as this to ordinary prisons increases.

To determine a juvenile offender's mental and physical capacity, as well as their capacity to understand the gravity of the crime, the 2015 Act mandated the establishment of Juvenile Justice Boards (JJBs) in each district of the nation. These boards would then undertake preliminary enquiries in juvenile crime cases. This was a radical change from the previous practice of seeing children as *doli incapax*, or unable to understand the gravity of their own acts.

The Board has the option to move the matter to a Children's Court for trial after the investigation is finished. The trial's outcome will determine whether the juvenile is to be transported to a safe haven for reformation and rehabilitation till the age of 21. It is the

⁴Manoj Mate, *The Rise of Judicial Governance in the Supreme Court of India*, 33 B.U. Int'l L.J. 169 (2015).

responsibility of the Children's Court to assess such a minor after they reach the age of 21. Probationary release is an option if the juvenile is deemed to have made positive changes. In such case, the juvenile is sent to an adult correctional facility and is then sentenced to serve the remaining duration of their incarceration, which is based on the nature of the offence. Education, health, de-addiction, illness treatment, vocational training, skill development, life skills education, and other rehabilitative and socially acceptable measures are to be implemented throughout the child's stay at a safe location both during and after the trial. When the time comes for the kid to leave the care facility, this will help them transition into a more contributing member of society.

Additionally, the act emphasises the importance of treating children with respect and dignity while simultaneously reinforcing in them a respect for human rights. To avoid any potential negative connotation, the term "child" has been used instead of "juvenile" when referring to a minor in trouble with the law throughout the Act. Similarly, young criminals are subjected to informal trial processes in an effort to limit the trauma they may experience. The juvenile criminal is not handcuffed when taken to trial; police officers present dress casually; and the media is not allowed to identify the juvenile offender.

The transfer of juveniles (16–18 years old) implicated in situations of horrific crimes to the adult criminal system has led some to argue that the 2015 Act, despite its child-friendly provisions, is retrogressive. Some have even gone so far as to say that classifying crimes as horrific represents a break from juvenile justice's focus on rehabilitation. Arresting a minor after they become 21 for crimes committed when they were younger has also come under fire for being disproportionately punitive. These and other concerns about the Act have been addressed in further depth in the sections that follow.⁵

Juveniles and Human Rights issues post 2015 Act⁶

Reducing the age of juveniles or implementing a waiver system to enable Juvenile Justice Boards to transfer juveniles accused of significant crimes to the adult criminal justice system would neither enhance the protection of women from juvenile crime nor facilitate the rehabilitation of serious juvenile offenders. The most pressing and vital area of change is not

⁵Ved Kumari, *Juvenile Justice in Global Perspective* 420 (2015).

⁶Vandita Jain, *A Critical Study on the Juvenile Justice Act, 2015*, 4 *Indian Journal of Law and Legal Research* 4 (2022).

the legislation itself, but its implementation. If the law is executed in both word and spirit, and services are crafted and administered by motivated experts from many fields, adolescents accused of or determined to have committed significant offences may actually be reformed, rehabilitated, and reintegrated into society.⁷

The system is now hindered by inadequate infrastructure and inexperienced personnel, making the legal objective of juvenile rehabilitation and reintegration an elusive aspiration. There is frequently little or no tolerance, comprehension, or readiness to see these individuals as they are - young adolescents, the majority of whom appear to exist on the periphery of society. The NCRB data indicates that, in 2011, 6,122 detained juveniles were illiterate, 12,803 had attained education only up to the elementary level, and 56.7% were from impoverished homes with an annual income of up to Rs 25,000. These kids are mostly regarded as incorrigible offenders at the OH, SH, or the designated site of safety.⁸

The JJ system lacks specialised personnel, such Probation Officers, Public Prosecutors, Superintendents, Police Officers, and Social Work members or Principal Magistrates of the JJB. The quality of social investigation reports, counselling, monitoring, and mentorship provided by probation services, community services, and similar entities is mostly substandard, if accessible at all. Functionaries are often disheartened and typically see these assignments as punitive, since they lack the requisite training and assistance to navigate the very demanding circumstances in the OH and SH, while simultaneously facing responsibility when youngsters abscond or take their own lives. Although most state governments provide some kind of training for bureaucrats, JJBs, SJPU personnel, and others, these initiatives are irregular and lack a coherent strategy for competence development, a complete curriculum, or advanced training resources.

International Regime for the Juvenile Justice

Although the notion of juvenile justice received little attention until the late 19th century, it has since evolved into a legal domain characterised by a substantial volume of laws and international treaties. The worldwide juvenile justice system addresses offences committed by minors and implements measures to safeguard their interests against legal abuse. In response

⁷Palak Singh, *An Analysis of Juvenile Justice System of India*, 17 *Supremo Amicus* 326 (2020).

⁸Sameera Khan, *A Study on the Juvenile Delinquency in India: Sociological Aspect and Judicial Response*, 4 *Supremo Amicus* 28 (2022).

to heightened concerns over child safety and rights, several nations have implemented legislative measures to preserve the interests of juveniles.

In *Roper v. Simmons*,⁹ Christopher Simmons, aged 17, conspired to burgle a woman's home and commit murder. He, along with two others, conspired to commit the crime. Nonetheless, before the evening of the murder, one of his associates terminated the agreement. Simmons and his accomplice unlawfully entered the victim's residence, restrained her hands, and threw her down the bridge. The jury convicted him and recommended the death punishment.

In 2015, however, the US Supreme Court overturned the 1989 *Stanford v. Kentucky*¹⁰ decision, which allowed capital punishment for offenders above the age of 16, ruling that it was unconstitutional for a person under the age of 18 to be sentenced to death.

The United Arab Emirates has passed and put into effect laws pertaining to juvenile delinquency, and it has also taken sufficient steps to safeguard juveniles. The United Arab Emirates was an early adopter and ratifier of the UN Convention on the Rights of the Child, having done so on January 3, 1987. For official feasts, extraordinary circumstances, or any other reason, a juvenile may be permitted to leave the institution under the requirements of Article 51 of Federal Law No. 43 of 1992. A decision by the minister of the interior, after a proposal from the committee, may also be used to grant extraordinary vocation, as allowed for under the law.

Hence, it is clear from the foregoing that the relevant laws provide significant protection to the region's juveniles, and the government has taken sufficient measures to safeguard juvenile justice.

With the exception of the Australian Capital Territory (ACT), every Australian state and territory has standardised the age of criminal liability at 10 years of age. The United Nations Committee on the Rights of the Child presently lists 14 as the minimum age, however in 2018 both legal and medical experts advocated for a higher age of 16.

⁹ 543 U.S. 551.
¹⁰ 492 U.S. 361.

Juveniles who have committed crimes in the United Kingdom are meant to be protected and guided by the juvenile justice system. Consideration of the youth's age, situation, and welfare informs the system's foundation in rehabilitation concepts. At now, different countries in the UK have different minimum ages for criminal liability; for example, in England and Wales, it is 10 years. Juvenile offenders are defined as adolescent criminals (defined as 10–17 years old). In Northern Ireland, the age of criminal responsibility is 10 years old, but in Scotland, it is 12 years old.¹¹

Gaps in legislative aspects of juvenile justice

While the legislation is generally forward-thinking, it still has several holes that must be closed to adequately handle the problem of rehabilitating, treating, and reforming youths who commit major offences while also avoiding recidivism. There are subsets of juveniles who are in confrontation with the law, and the Act does not address their unique needs.¹² Juvenile sex offenders, recidivists, female juveniles, and victims of juvenile criminality are not specifically addressed in the document.

Some of the important aspects include:

- i. Sexually violent youth: Adolescence is a period of amazing transformation. A lot of young people's rule-breaking tendencies, along with their heightened sexual attraction, disappear around this period. Teens and young adults do, however, perpetrate horrific acts of sexual violence. Researchers have found that sexually offending youth are a diverse group with complex treatment needs; that sexual arousal is not static but rather constantly changing; that most sexually offending youth respond positively to treatment interventions; and that these youth are more similar than different to other delinquent youth. The JJ Act and Rules noticeably do not include any provisions for the supervision, rehabilitation, or treatment of juvenile sex offenders.
- ii. Juvenile Recidivists: The general observations indicate that some young adolescents are ensnared in a cycle of criminal behaviour and often re-enter the juvenile justice system. These youngsters often possess intricate unmet requirements, presenting significant hurdles to the personnel, court authorities

¹¹<https://researchbriefings.files.parliament.uk/documents/POST-PN-0577/POST-PN-0577.pdf>.

¹²Arushi Bajpai & Akash Gupta, *Revisiting Criminal Law Bills: An in-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill*, 45 Statute Law Review 2 (2024).

managing the case, and the society as large.¹³ Once again, the legislative framework lacks regulations for the handling of adolescent recidivists by functionaries and the JJB, representing a significant deficiency that hinders appropriate remedies for this demographic.

- iii. Serious offender females: Although there are many shared traits between males and females who enter the system, studies show that girls are more likely to have experienced trauma and abuse as children, mental health issues, and family separation. Girl juveniles are mostly unprotected by law, while there are provisions for sex-based isolation in the OH/SH and for reintegration into society via individualised aftercare programs. However, statutory functionaries and civil society actors have significant challenges when dealing with this unique group of girls in special homes due to the lack of legislative criteria pertaining to the precise kind of services that are to be offered to them.
- iv. People who have lost loved ones due to tragic acts perpetrated by minors: The juvenile justice system shows no empathy for the victims or respect for their rights. The use of restorative justice programs that facilitate victim-offender reconciliation is on the rise globally, including in the context of juvenile offenders. These programs aim to repair damaged relationships among victims, communities, and offenders by balancing competency development, accountability, and public safety concerns. Every member of the JJ team has firsthand knowledge of the special difficulties that arise when a minor is convicted of a major crime perpetrated against another minor. When it comes to victims of juvenile crimes, there are almost no resources available to help them get the support they need. Both the procedure and the result of JJB proceedings may be disheartening and frustrating for victims and their families who have been left without any kind of legal, psychosocial, or financial help as they traverse the system. The juvenile justice system gets a bad name because of this.

Enhancing the efficacy of reformation and rehabilitation for these adolescents must be prioritised to foster responsibility and trust in the system, so averting reactive legislative actions.

¹³Rishikesh Dave, *The Criminal Law Amendment Bill, 2023: A Critical Analysis*, 4 *Jus Corpus Law Review* 62 (2024).

Bharatiya Nagrik Suraksha Sanhita and the Juveniles

The Bharatiya Nyaya Sanhita (BNS) 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 include several stipulations pertaining to juvenile justice,¹⁴ encompassing:

- i. **When one becomes legally liable for a crime**
Twelve years old is the bare minimum for criminal culpability. Presumption of incapacity to commit a crime is applied to minors under the age of twelve.
- ii. **Doli Incapax**
A violation committed by a minor under the age of seven is not deemed a crime, according to Section 20 of the BNS. According to Section 21 of the BNS, if a kid does anything between the ages of seven and twelve and does not have the capacity to comprehend the repercussions of their acts, then it is not deemed an offence.
- iii. **Plea bargaining**
Offensive crimes committed against minors are exempt from the use of plea bargaining under section 300 of the BNSS.
- iv. **Chapter 300**
Juveniles and minors as defined under the Juvenile Justice (Care and Protection of minors) Act, 2015 are exempt from the provisions of Chapter 300 of the BNSS.
- v. **Bail provisions**
The Juvenile Justice Act mandates that within twenty-four hours of an individual's detention, any child believed to be involved in a legal dispute must be turned over to the special juvenile police unit or a designated child welfare officer. It is unacceptable to confine the youngster to a police station or a prison. Additionally, the release of such a juvenile on bond with or without surety is required regardless of whether the offence is bailable or not. If the kid's release on bond is denied due to certain exceptional circumstances, the child must be housed in an observation home according to the guidelines until they are brought before a JJB.

The guiding idea of India's juvenile justice system is rehabilitation, not punishment. Its goal is to facilitate the reintegration of convicted juveniles into society while shielding them from the severe repercussions of criminal prosecution.

¹⁴Kanika Bansal, *Rebooting Criminal Justice Systems in India*, 15 *Journal of Management & Public Policy* 6 (2024).

Recommendations for reforms of law with regard to age requirement

For juveniles who are accused or convicted of severe or serious crimes,¹⁵ the judicial system offers a reasonably thorough structure that allows for real reform and rehabilitation. Reducing the minimum age for a juvenile offender or creating a waiver mechanism to transfer them to the adult criminal justice system for significant offences do not need changes to the legislation. Nonetheless, change is necessary on several fronts and will need a toolbox of approaches. It comprises, in part:

a. JJBs' ability to pass on more types of orders

Based on the offender's requirements, the offender's intended reformation or rehabilitation, the specifics of the case, and the seriousness of the crime, the JJB may issue orders that include more than one option from this Section under a proviso to Section 15(1). But this can only happen if the conditions of Section 15(g) are met and the maximum duration of imprisonment remains unchanged. In addition, JJBs should have the authority to convene specialists who may provide their professional advice and guidance to guide their orders and contribute to SIRs.

b. Further targeted suggestions for female juvenile offenders

Along with the aforementioned recommendations to address this subset of offenders, the executive branch should make funding for specialised juvenile offender rehabilitation programs for sex offenders a top priority. A reproducible component of an Integrated Treatment Program for Adolescents Committing Serious Offences, Specifically Juvenile Sexual Offenders, may be devised by specialists in collaboration with the four Regional Institutes of Mental Health and others.

c. Making rehabilitation programs more effective

Providing safeguards and services to youth in accordance with their developmental requirements is the primary objective of the juvenile justice system. An excessively punitive stance will not accomplish the goals of protecting the public and reducing youth crime and recidivism. Effective rehabilitation programs, supported by research, need more funding instead. Extensive research on rehabilitation programs for all youths in conflict with the law, particularly those who commit serious offences, must be conducted by the Ministry of Women and Child Development in collaboration with the Commissions for Protection of Child Rights, non-governmental organisations (NGOs),

¹⁵Ayush Pandey, *The New Criminal Laws: Just a Break From the Colonial Past or a Vision for a Citizen-Friendly Future?*, 4 *Jus Corpus Law Journal* 9 (2024).

medical professionals, psychologists, social workers, and other specialists. Consideration of program, offender, and environment variables is key to achieving adequate rehabilitation results, according to research.

Conclusion

The reaction to juvenile delinquency must be equitable, age-appropriate, and informed by developmental psychology. Any modification to existing legislation requires a comprehensive grasp of the jurisprudence, philosophy, and implications of the present law. It must be conducted via rigorous and inclusive consultation procedures that first establish agreement on critical policy issues. Without factual and evidence-based investigations, modifying the age position of a juvenile, which is firmly established in international human rights legislation and our domestic legal system, would be an improper and backward action. Modifying the JJ Act in response to national indignation about a single juvenile case might establish a perilous precedent and could impact several teenagers who now benefit from the reformatory and rehabilitative services intended by the existing legislation. It would also contravene the legal requirements established by the Constitution, the recommendations of the Justice J. S. Verma Committee, and the global principles articulated in the UN Convention on the Rights of the Child. The country must recommit to investing in these adolescents to reform and reintegrate them into the society with dignity. Numerous nations globally are transitioning from deterrent strategies to restorative and revolutionary justice approaches. India has a rather advanced legal framework based on widely acknowledged ideas and methodologies. The path ahead should therefore illustrate that the reformatory and rehabilitative paradigm is effective, particularly for a nation with one of the finest constitutions globally and a rich array of healing traditions.