

The Juvenile Justice (Care and Protection of Children) Act, 2015: Interpretation and Implementation

Khushi Jain

Asian Law College, Noida Sector 125, India

Email ID: [khushijain6463\[at\]gmail.com](mailto:khushijain6463[at]gmail.com)

Abstract: *The brutal attack, gang rape, and murder of a female by six males in Delhi in December 2012 in which one of the suspects was a juvenile of barely 17 years old, raised concerns about juvenile justice in India and inflamed the nation's citizens. No matter the severity of the offense, a juvenile could only receive a maximum term of three years in a remand home under the Juvenile Justice (Care and Protection of Children) Act, 2000. Due to this, there was a significant public uproar calling for changes to juvenile justice legislation, a reduction in the minimum age for juveniles, and harsher penalties for juveniles who commit serious crimes like rape and murder. The Justice J. S. Verma Committee, which was established to revise the criminal laws controlling sexual assault against women, stated that the 2000 Act should be implemented more strictly and that the current juvenile justice and welfare system has to be reformed and restructured. To cope with the concerning circumstances The Juvenile Justice (Care and Protection of Children) Act of 2015 was passed by the legislature. This Act's primary objectives were to establish deterrence criteria for young offenders and to safeguard the victim's rights. In accordance with the 2015 Act, which makes a distinction between minor, serious, and heinous offenses, juvenile offenders who commit "heinous offenses" between the ages of sixteen and eighteen will be tried as adults and subject to the criminal justice system. This article critically analyses the interpretation and implementation of the Act, highlighting the challenges faced and implementation of the Act effectively. The article begins with an introduction to the Act, outlining its objectives and provisions. It also discusses the Act's provisions related to children in conflict with the law, such as the creation of special courts for speedy trials. Overall, the article offers a critical assessment of the Juvenile Justice (Care and Protection of Children) Act, 2015's interpretation and application, stressing both its advantages and disadvantages.*

Keywords: Juvenile, Juvenile delinquency, Sexual assault, Heinous offenses

1) Juvenile/ Child

A person who is under the age of 18 is referred to as a "child" according to Section 2 (12). The United Nations Convention on the Rights of the Child made the decision to universally recognize particular children's rights in 1989. According to the Convention, a child is any person who is younger than 18 years old, unless the age of majority is earlier under the applicable law. A person who is considered to be penalized for breaking the law or who is recognized as a young offender against the law is considered to be a juvenile if they are under the age of majority but over a specific minimum age. According to Section 2 (h) of the Juvenile Justice Act of 1986, a juvenile is a boy or girl who has not reached the age of sixteen or eighteen. Juvenile refers to a person who has not reached the age of eighteen as defined by Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000. In contrast, a juvenile is defined as a person under the age of 18 in Section 2 (35) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2) Juvenile Delinquency

The act of committing illegal behaviour or activities as a minor, typically between the ages of 10 and 17, is known as juvenile delinquency. The term "juvenile delinquency" is also used to describe youngsters who display a pattern of mischievousness or disobedience that makes them appear to be beyond the reach of their parents' authority and makes them the target of judicial action. When a child breaks a law, it is considered juvenile delinquency. The processes that are followed when a juvenile commits a crime are different from those for an adult offender. Juvenile court systems and

juvenile detention centres are dedicated to handling minor offenders in all jurisdictions. State laws frequently classify individuals under the age of 17 as minors, but if the offense was particularly heinous, the legal system may charge youngsters even younger as adults.

3) Sexual Assault

Unlawful sexual contact occurs when a person is forced into it against their will, without their consent, or when they are unable to consent due to age, physical incapacity, or because the aggressor (such as a family acquaintance) is in a position of trust or authority. The broad meaning of sexual or indecent assault is an act of physical, psychological, or emotional harm committed against a person without that person's consent that takes the shape of a sexual act. Someone may be coerced or tricked into watching or taking part in any sexual actions.

4) Heinous Offences

"Heinous offenses" includes offenses for which the Indian Penal Code or any other currently in effect law imposes a minimum sentence of seven years or more in prison; with the exception of at least 46 offenses for which juveniles between the ages of 16 and 18 could potentially face adult trials, Heinous offenses have been described in this case as offenses that entail sentences of more than seven years in prison.

According to Section 15 of The Juvenile Justice (Care and Protection) Act 2015, the board must determine whether the child who is accused of committing a horrific crime has the physical and mental capacity to conduct the crime as well as the circumstances surrounding the alleged crime. Under the

Volume 12 Issue 11, November 2023

www.ijsr.net

Licensed Under Creative Commons Attribution CC BY

New Act of 2015, special provisions have been made to tackle child offenders committing Heinous Offences in the age group of 16 - 18 years.

1. Introduction

Children make up a significant portion of society. They are seen as the social pillars on which tomorrow's society will be built. They are valuable human resources that help a nation flourish and prosper. A child is innocent when they are born, and with love and care, they can develop in a way that helps them reach their full potential in terms of their physical, mental, moral, and spiritual well-being. On the other hand, unfavorable environments, disregard for basic necessities, and other forms of abuse can convert a child into a delinquent. Any individual who lacks the capacity to comprehend the repercussions of his actions or who has not yet attained adulthood in terms of immaturity or naive behavior is referred to as a juvenile or child.

In the legal sense, a juvenile or minor is someone who hasn't reached a certain age that the country's laws have set as the minimum age at which they can be held legally responsible for their illegal activities. A juvenile or child is a person who has not reached the age of majority, i. e., 18 according to Indian Majority Act, 1875. However, under IPC, a child under the age of seven cannot be prosecuted with any offence and is considered as '*Doli Incapax*'.

Delinquency is a type of immature behavior that is socially unacceptable in all societies. It is an inappropriate behavior, omission, or moral conduct on the part of a child. People typically expect children to fulfill certain social obligations, and when they don't, the child is deemed to be delinquent. The behavioral problem known as juvenile delinquency is widely understood to be "a child acting or pretending to act like an adult or grown up." The child's behavior may appear to be infantile and foolish, yet it has the potential to seriously frighten and disturb people. When a child under a certain age engages in the same illegal activity as an adult, it is not considered a crime and is instead referred to as juvenile delinquency, regardless of the fact that the child was fully aware of the consequences of his or her actions and committed a very serious, fatal, dreadful, and heinous crime.

The proclamation of the right of the child was unanimously endorsed by the United Nations general assembly, which met in plenary session on November 20, 1956, with the participation of representatives from 78 nations. India signed the declaration as a party. The UN convention on the rights of the child (UNCRC) was ratified by the UN general assembly in 1989, 30 years after the declaration of the rights of children. In 1992, India ratified the convention. The UN regulations for protection of juveniles deprived of their liberty, which were enacted two years earlier, established guidelines emphasizing the protection of juveniles, prevention of deprivation of liberty, and the fact that achieving juvenile justice is now a political priority.

2. Objectives and Provisions

Objective of the Act: - The purpose of this statute was to keep young people from turning into more serious offenders. Maintaining public safety, fostering skill development, rehabilitating and habilitate youth, and effectively reintegrating youth into society are the key goals of the juvenile justice system.

Provisions of the Act: -

- Children under the age of sixteen or eighteen may face adult charges if they commit a serious crime.
- However, neither a life sentence nor a death sentence would be awarded.
- Offenders who commit less serious crimes are not punished as adult criminals and are only subject to a maximum penalty of three years, as per the likely preceding act (Juvenile Justice, 2000).
- Under the 2000 Act, the state provided financial aid to minors up until the age of 21. Nevertheless, this is no longer the case; instead, it is granted to a kid upon their release from a reformatory home and upon reaching the age of majority, which is 18 years old.
- A 30 - day appeal window exists in children's court for board orders.
- If the accused person was not a part of a heinous act, there is no appeal process available for an acquittal order.

Children in conflict with law

The new Act improves the juvenile justice system's protective strategy for both children in trouble with the law and those in need of care and protection. The Juvenile Justice Act of 2015 revised the term "juvenile" in conflict with the law to refer to a "child in conflict with law." Crimes have been divided into three categories: minor, major, and heinous. When it comes to serious crimes, minors between the ages of 16 and 18 may face adult trials following a preliminary evaluation by the Juvenile Justice Board. Before the case is sent to the Children's Court, the Juvenile Justice Board must complete a preliminary evaluation within three months. According to the Act, if the Children's Court decides to try the kid as an adult, it must make sure that the final ruling includes a specific care plan for the child's rehabilitation, which includes the probation officer's or the Unit for District Child Protection. The Children's Court will see to it that the child remains in a safe environment until he becomes twenty - one.

The Children's court will determine whether he needs to be moved to jail or whether he has undergone reformatory adjustments and could avoid incarceration once he reaches the age and the term is still unresolved. The Act completely prohibits the use of the death penalty or life in prison without the chance of release for juvenile offenders who are handled as adults by the juvenile justice system. The Children's Court will decide if the youngster will be freed from custody or placed in jail when they turn 21.

A child will be placed in a Special Home if the Juvenile Justice Board determines that they have committed an offense. For minors who are 18 years of age or older who

have been charged or found guilty of a heinous offense, a Place of Safety will be established. Children who are awaiting trial and those who have been found guilty will have different arrangements and amenities in the Place of Safety. The Juvenile Justice Board will conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the Observation Home [Section 8 (3) (m)].

- *Preliminary Assessment by Juvenile Justice Board:* The most significant modification made by the JJ Act, 2015 is that a child who has reached or is older than 16 years old may be tried as an adult under Section 15 of the JJ Act, 2015. A individual who has not reached the age of eighteen is considered a kid under the Act. The JJB, also known as the Juvenile Justice Board, is required by Section 15 of the JJ Act, 2015 to do an initial evaluation of minors in order to determine their mental health. To determine their mental capacity, the JJB may enlist the aid of psychologists, psycho-social workers, and other professionals. Under Section 18 (3), the Board may designate a child to be tried as an adult by Children's Court if it is satisfied that the child has the mental ability to commit such a crime based on the preliminary assessment completed therein (3). This move is significant since a transfer of this kind involves a drawn-out procedure that culminates in a very contentious hearing. The procedure outlined in the Act refutes the Doli Incapax presumption.

Before the case is sent to the Children's Court, the Juvenile Justice Board must complete a preliminary evaluation within three months. The Act requires the Children's Court to include an individual care plan for the child's rehabilitation in the final order if the kid is tried as an adult. This plan must include follow-up visits by the probation officer, the District Child Protection Unit, or a social worker. The Children's Court will see to it that the child remains in a safe environment until he becomes twenty-one. The Children's court will determine whether he needs to be moved to jail or whether he has undergone reformatory adjustments and could avoid incarceration once he reaches the age and the term is still unresolved. The Act completely forbids the use of the death penalty or life in prison without the chance of release for juvenile offenders who are handled as adults by the juvenile justice system.

Children in need of care and protection

Within twenty-four hours, a child in need of care and protection must appear before the Child Welfare Committee. The Act mandates that any child who is discovered to be apart from their guardian must be reported. The act of not reporting has been made illegal. The District Magistrate shall conduct a quarterly review of the District Welfare Committee's performance. The Child Welfare Committees shall meet at least twenty days per month.

The Committee on Children's Welfare will send the child in need of care and protection to the appropriate Child Care Institution and shall direct a Social Worker, Case Worker, or the Child Welfare Officer to make the social investigation within fifteen days. A children's home provides care,

therapy, education, training, development, and rehabilitation for a child in need of protection and care. The Act makes provision for Open Shelters for Children in Need of Temporary Community Support to shield them from abuse or prevent them from ending up on the streets. A facility may be approved by the Child Welfare Committee to temporarily step in as a child's caretaker. The responsibility for the rehabilitation of orphans, abandoned children, and surrendered children falls on the Specialized Adoption Agency.

3. Important Judgements

1) *Salil Bali v/s Union of India (2013) 7 SCC 705*

The Supreme Court in this case discussed two issues:

- Whether a juvenile must be freed after he has attained majority even though his sentence has not been completed yet
- Whether the age of juveniles under Act should be reduced to 16 years from 18 years

Regarding the first issue, the Court determined that there is a misperception under the Act that a child who reaches majority must be released, even if their sentence is still in effect. It is important to remember that even if a juvenile reaches adulthood while serving out his sentence, he still needs to finish it because he will still be required to serve out his entire term. The Court noted that the latter issue was being discussed and that the Act's goal is to give minors access to mechanisms and assistance for restorative and rehabilitative practices. The age of eighteen has been set since, according to science and psychology, minors can still be rehabilitated and reintegrated into society up until this point.

2) *Sher Singh v/s State of U. P. (2016)*

In this case, the appellant was found guilty of kidnapping and entered a plea of juvenility, arguing that the offense was committed when he was less than eighteen years old based on his High School Examination (Matriculation) Record. As such, the Juvenile Justice (Care and Protection of Children) Act, 2015 is entitled to him. The Juvenile Justice Board received the said application and denied the plea on the basis of a medical report stating that the applicant was 19 years old at the time of the offense. Four years later, the appellant submitted a plea once more to be declared a minor in the Session trial. But this was also brushed aside and denied. This order then came to be final. In 2013, he filed a writ petition, which was once more rejected as untimely. It was noted, meanwhile, that the appellant's ability to assert the defense of juvenility would remain unaffected.

3) *Jitendra Singh[at]Babboo Singh v/s State of U. P (2013)*

This case is a dowry death in which three individuals—her husband and father-in-law among them—killed and burned a woman. Nevertheless, her father-in-law passed away while the court case was still pending, and one of the defendants stated, on appeal to the Supreme Court, that he was only 14 years old when the crime was committed. The minor Justice Act of 2000 classifies the accused as a minor, a fact that the Honorable Supreme Court noted while upholding the lower courts' judgment to find the accused guilty in this instance. The Juvenile Justice Board was

tasked under the Act with determining the appropriate penalty in this case. The Court further stated that, in this context, the goal of the criminal justice system is to give young people access to restorative and rehabilitative processes.

4) *Jarnail Singh v/s State of Haryana (2013)*

The accused in this instance was accused of removing the prosecutrix from her parents and engaging in coercive sexual relations with her. She was discovered in his home during the investigation, and as a result, the sessions court sentenced him to ten years of rigorous punishment and a fine. The accused, being the aggrieved party, appealed the decision and alleged that the prosecutrix allured him to do so and stayed with him with his consent. Moreover, he argued that it was proven that the accuser was a minor. The Supreme Court in this case held that the rules determining the age of a juvenile under the Juvenile Justice (Care and Protection of Children) Rules, 2007, can be applied in cases related to the Protection of Children from Sexual Offences Act, 2012, as well.

4. Criticism and Loopholes

- The Juvenile Justice (Care and Protection) Act, 2015 does not specify in detail when a matter will be brought before the court and when a juvenile would be treated like an adult. Owing to the lack of clarity in the statute and regulations, the juvenile justice board exercises its prerogative to issue directives. There are two circumstances where the Juvenile Justice Board orders the case to be transferred to adult court, and there are other cases where the board chooses not to do so. In the second instance, the Juvenile Justice Board chooses not to consult an expert for a preliminary evaluation. Both times, if the victim reported the crime, the accused threatened to murder them. They are 17 - year - old first - time offenders. There are a number of parallels between the cases, so it makes sense to wonder why the two Juvenile Justice Board justices reach such disparate conclusions. For the remainder of his life, the juvenile must live with the consequences of the juvenile justice board's decision. Section 15 grants the Juvenile Justice Board the discretionary authority to carry out an initial investigation in order to decide whether to send a juvenile offender for rehabilitation or to try them as an adult.
- The fresh start doctrine has been broken. The youngsters are given a second opportunity for a fresh start by being sent to juvenile homes for reformation. Their illnesses are cured in juvenile homes, and they are given a fresh start so they can take advantage of all the same chances as other children. However, the 2015 Act infringes their right to equal opportunity and takes away their right to a fresh start by recognizing children as adults.
- The 2015 Act protects their right to privacy, which advances the Fresh Start Principle. It protected young offenders' right to privacy by expunging their records. However, there is a clause that permits the divergence under certain conditions. There is a vague component to the nature of these exceptional circumstances since they have not been defined. His right to privacy has been violated in this way, and it is worried that this

unrestricted clause may encourage "racial profiling" of criminals based on factors such as caste, color, religion, or background.

- Under the 2015 Act, juvenile offenders are excluded from being disqualified from any legal consequences for committing an offense. However, under this section, children who have committed the terrible offenses and are older than 16 are not protected and are not exempt.
- The welfare of society is the fundamental goal of all laws, and the wellbeing of children is the primary goal of the juvenile justice system. However, the 2015 Act goes against the notion of children's welfare. It makes them hard core criminals to treat minors over 16 as adults in horrible crimes. It totally undermines the juvenile justice system's foundation of rehabilitation. Legislators do not take into account the numerous new causes of adolescent delinquency. Help is needed to treat the disease of these young people who are in legal trouble. The 16–18 age range is particularly delicate and important, thus they require extra protection. We undermine the previous juvenile justice system's rehabilitative base by taking a retributive approach. They don't need to be handled like adults or go through a different legal system. By doing this, we transgress the Constitution's Articles 14 (3) and 15 (3) as well as any international agreements on child protection that India has ratified.

5. Conclusion

The government's 2015 Juvenile Justice (Care and Protection) Act is a commendable move. Given the NCRB report and the current circumstances, this is absolutely necessary. Many minors commit crimes at the age of 17 because they are aware that they are minors, and adults profit from this by hiring the minors even though they are no longer abusing the law. Our juvenile justice system is founded on the idea that, because to technological advancements, adolescents are now sufficiently competent to understand the repercussions of their actions by the time they are 16 years old. Many times, after being released from a reformatory home, young people commit crimes that are even more horrible than the ones they committed before. Since they are still young at the time, they take advantage of their juvenility once more. This Act is a very positive and proactive step to stop such misuse. However, I believe that there need to be a clause for repeat offenders that applies to all children, regardless of age. Following are the reasons: -

- It won't stop others from committing crimes against women to sentence a horrible crime victim to just three years in a correctional institution. That is the primary cause of the rise of juvenile offenders.
- The main goals of the legal system are to punish the guilty for their conduct and to bring justice to the victim. However, granting merely three years in prison, even for the most terrible and horrific crimes, contradicts the main goal and acts as a protection for offenders.
- The records do not at all times presents the actual age of Juvenile. Crime is basically related to the maturity not the age.
- There is need to change the law with the change of society

- At the age of 16, everyone is able to judge what is wrong and what is right.

In order to address the problem of juvenile delinquency in India, some recommendations can be made. Even though the Indian government has been working hard to address the issue and has made some daring and progressive moves in that area, more effective implementation strategies are still needed. For example, the Juvenile Justice Board members ought to have training in child psychology and be made aware of issues pertaining to children; unfortunately, they are frequently lacking in these areas.

Every police station has a Special Police squad specifically designed to deal with juveniles. These unique pieces aren't really working. Therefore, the police department is unable to handle situations of juvenile delinquency or neglected children that are brought to them in an expected manner. The police officers show little empathy for the problems that arise. In order to address the issue holistically, it is recommended that significant efforts be made to ensure that the laws relevant to juvenile delinquency be implemented effectively. To decide who will be treated as an adult, the Juvenile Justice Board should have specific established guidelines. Without these guidelines, their exercise of authority is arbitrary. The Juvenile Justice Board's ruling in comparable situations with identical circumstances is different, casting doubt on JJB.

It doesn't matter how old they are; repeat offenders should be handled like adult