
EVALUATING THE GAPS IN THE JUVENILE JUSTICE ACT, 2015 FOR HEINOUS CRIMES: ADULT PUNISHMENT V. JUVENILE JUSTICE

Viveka S, Christ (Deemed to be University), Bangalore

ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015, has had a major impact on India's child rights jurisprudence. It mainly focuses on the treatment of juveniles aged between 16 and 18 accused of heinous crimes. This change has been driven by the public demand for accountability after the 2012 Nirbhaya case. The act introduced Section 15¹, which empowers the Juvenile Justice Board to conduct a preliminary assessment of a child's physical and mental capacity, ability to understand the consequences and the circumstances of the offences, and to determine whether they may be tried as adults. The provision attempts to balance both rehabilitative ideals and retributive concerns. The paper evaluates on the developments in the tracing development from colonial legislation to the 2015 Act. It examines Articles 14, 20(3) and 21 in the Constitution of India, judicial interpretation, such as the Supreme Court and High Court judgements. A theoretical framework based on natural justice and procedural fairness has been applied while examining Section 15. It also focuses on the implementation challenges in the juvenile justice board and addresses the improper training of members. Comparative perspectives from international standards such as the UN Convention on the Rights of the Child (UNCRC) and the analysis from countries like the UK, US and Scandinavian countries have undermined the importance of the restorative approach. The study adopts a doctrinal research methodology. The research involves a review of statutory provisions, "An Analysis of Section 15 of the Juvenile Justice Act, 2015" by Deepak Singh, "Preliminary Assessment - Section 15 Juvenile Justice (Care and Protection) Act 2015: View Point of Legal Aid Counsel" by Jasdeep Kaur, "Analysis of Section 15 of the Juvenile Justice (CARA) Act, 2015 in the Context of the UN Convention on the Rights of the Child" by Shivani Samanta, The Juvenile Justice Act 2015 - Critical Understanding" by Ved Kumari, and "Juvenile Delinquency: A Critical Analysis of Juvenile Justice Act, 2015" by Ahana Majumder. Judicial pronouncements from the Supreme Court and

¹ Juvenile Justice (Care and Protection of Children) Act, § 15, No. 2, Acts of Parliament (India).

various High Courts, along with the UN Convention on the Rights of the Child (UNCRC). The paper focuses on the critical gaps in the preliminary assessment, such as limited expert availability, lack of proper guidelines and constrained timeframe. It also includes the policy recommendations to address the gaps in Section 15. It also highlighted the inconsistent outcomes across various states due to regional disparities. The study focuses on a more child-centric, transparent and accountable juvenile justice system that upholds both international standards and constitutional mandates. Therefore, it addresses the consequences of treating juveniles as adults, especially the prioritising of long-term rehabilitation over punitive measures.

Keywords: Juvenile Justice Act 2015, Section 15, Preliminary assessment, Heinous crimes, Child rights, Mental capacity.

1. INTRODUCTION

The Juvenile Justice (Care and Protection of Children) Act has undergone a significant transformation due to the evolving societal changes. The 2015 Act has introduced Section 15, which allows the Juvenile Justice Board (JJB) to conduct a preliminary assessment to determine whether juveniles aged between 16 and 18 accused of heinous crimes could be tried as adults. The act focuses on balancing public demand for accountability with child protection norms. The legislation has focused on establishing a proper approach towards juvenile offenders. The research focuses on the gaps in Section 15 and critiques the gaps that have to be reconsidered. The policy recommendation has been established after a multidimensional analysis to promote child welfare along with transparency and accountability.

2. EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA

2.1 Background and context of Juvenile Justice and Historical development of Juvenile Justice in India.

The concept of the Juvenile justice system was present before 1773 in regulating children's conduct through religious laws. The first legislative act regarding the rehabilitation of juvenile offenders was established in the Apprentices Act of 1850, where apprenticeship was imposed instead of imprisonment. Later, the Reformatory Schools Act of 1876 institutionalised care for juvenile offenders, offering reforming opportunities. The Acts such as the Bombay Children's Act, 1924 and the Madras Children Act, 1920, established juvenile courts for providing support to juvenile offenders. Post-independence, the Children Act of 1960 was a landmark legislation

that primarily focused on the Union Territories. This Act was later superseded by the Juvenile Justice Act, 1986, which was uniform across India. This legislation replaced earlier laws, which focused on child rights and international standards. The Juvenile Justice Act, 2015, was introduced following the public response to the Nirbhaya Case in 2012, which focused on a major shift in the trial of children aged 16-18 as adults in certain events of heinous crimes. The evolution of the Juvenile justice system is influenced by various growing factors such as ongoing tensions between rehabilitation, reforms and public demand. The act focuses on individualised rehabilitation over punishment. The system has now become more child-centric.

2.2 The Juvenile Justice (Care and Protection of Children) Act, 2015: key features and significance of evaluating Heinous crimes and Juveniles aged 16-18

The Juvenile Justice (Care and Protection of Children) Act, 2015, has brought significant changes to the existing act. The clear and explicit distinction between “juvenile” and “child” has been stated. It established two distinct categories, such as “child in conflict with law”, which is for a child accused of an offence, and “child in need of care and protection”, which is for a child who is neglected, exploited or abused. The offences have been classified as petty, serious, and heinous crimes, where the heinous crimes receive special attention. The district-level boards with two social workers and a judge have been established. Further, child welfare committees have been created in every district. Expanded the scope for adoption, foster care, special homes and institutions. The punishments have become stricter for offences committed against children. For the child offenders, it prohibited capital punishment and life imprisonment without parole.

The significant changes, such as the introduction of a preliminary assessment for the age group of 16-18 accused of heinous crimes by the juvenile justice Board. Improvement in the institutional mechanisms for the creation of fast-track courts and robust institutions for adoption, safety and rehabilitation while ensuring transparency and accountability. This act mandated stricter mandatory reporting and a clear procedure for lost or abandoned children. Enhanced due process for appeals from the juvenile justice board to the children’s court and to the high court.

2.3 Detailed analysis of Section 15

Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 mandates a

preliminary assessment by the Juvenile Justice Board. It determines whether a juvenile aged between 16 and 18, alleged to have committed a heinous offence, can be tried as an adult. The assessment and decision have to be conducted within the time frame of three months. The preliminary assessment is conducted to evaluate the mental and physical capacity, the juvenile's ability to understand the consequences, and the circumstances in which the alleged offence was committed. The preliminary assessment is conducted through psychologists, psycho-social workers and other experts. Based on this assessment, the board decides whether the juvenile should be dealt with under the juvenile justice system. If the board concludes that the juvenile lacks the capacity to be tried as an adult, the case follows in the juvenile system. If the board finds no evidence of the commission of the offence, then the board can exonerate the juvenile or send the case to the Child Welfare Committee for care and protection.

3. JUDICIAL INTERPRETATION IN INDIA: CASE LAW ANALYSIS AND THEORETICAL FRAMEWORK

3.1 Theoretical framework

The preliminary assessment is connected with both natural justice and the procedural justice theory. This theory makes the framework suitable for evaluating its accountability and reliability. The principle of natural justice ensures fairness by mandating the right to a fair hearing and impartial decision-making under the principle of *audi alteram partem*, which means hear the other side. This implies that the juvenile's right to be heard before any decision affecting their rights is made. This principle thus ensures the child's mental and physical capacity, often with assistance from the experts. However, it has been critiqued that concepts like "fair hearing" and "impartiality" remain vaguely defined. This may result in inconsistency or arbitrariness in application.

The procedural safeguard theory focuses on transparency and fair processes. It emphasises providing the child a voice, proper treatment, neutrality in decision-making and demonstrating trustworthiness by prioritising the child's welfare. This section reflects these values through evidence-based decision making, expert-guided assessments and by analysing the evolving maturity of the juveniles. There exist certain drawbacks, such as the expert assessment being resource-intensive and subjective notions of fairness, which may result in variability across different Juvenile Justice Boards (JJB). These two theories underline Section 15, which aims to strike a balance between protection and accountability by ensuring children are fairly treated,

meaningfully heard and through transparent procedures. However, there exist certain gaps in standardisation and resource disparities that hinder uniform reliability and accountability in conducting preliminary assessments all over India.

3.2 Supreme Court Judgements impacting Section 15

The Supreme Court in the case of *Barun Chandra Thakur v. Master Bholu*² set as a binding precedent requiring all Juvenile Justice Boards and Children's Courts to incorporate various multidisciplinary assessments. The case established that expert opinion in deciding the child's psychology is mandatory during the preliminary assessment under Section 15. The court established that the reliance on the IQ tests is insufficient. Thus, it promoted the accurate and expert-led evaluation of juveniles' mental and physical capacity to commit offences. Thus, addressing the accountability gap in Section 15.

In the case of *X (Juvenile) v. State of Karnataka* (2024)³, the Supreme Court clarifies that the three-month timeline for conducting the preliminary assessment is directory and not mandatory. This ensures flexibility in proceedings but underscores the need for procedural safeguards, proper reasoned documentation and appeal rights.

In *Shilpa Mittal v. State of NCT of Delhi*⁴, the ambiguity in the application of Section 15. The court held that the offences prescribed with a minimum sentence of seven years or more qualify as "heinous offences" for the purpose of conducting a preliminary assessment and transferring of juveniles aged 16-18 for adult trial. Offences with no minimum sentence are prescribed, even if the maximum sentence exceeds seven years, and should be treated as "serious offences" and not as "heinous offences".

3.3 High Court Judgements impacting Section 15

In *Mustafa Yunus Khan v. State of Maharashtra*⁵, the court ruling invalidated a Juvenile Justice Board's assessment for lacking the expert depth and remanded for a comprehensive reassessment. Thus, this reinforces the procedural fairness along with the expert participation.

² *Barun Chandra Thakur v. Master Bholu*, 2022 SCC OnLine SC 870.

³ *X (Juvenile) v. State of Karnataka*, (2024) SCC OnLine SC 798.

⁴ *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787.

⁵ *Mustafa Yunus Khan v. State of Maharashtra*, AIR ONLINE 2021 BOM 1568.

In *Ketan Sharad Badule v. State of Maharashtra*⁶, the systemic inconsistency was pointed out in preliminary assessments. This emphasises the urgent need for a standardised, scientific and proper multidisciplinary evaluation to ensure accountability and transparency.

4. CRITICAL ANALYSIS OF PRELIMINARY ASSESSMENT PROCESS

4.1 Judicial Oversight and Accountability in Preliminary Assessments

The preliminary assessment is conducted to determine whether the juveniles aged 16 to 18 years accused of heinous offences possess the physical and mental capacity to understand their actions and their consequences. Then, according to the decision from the preliminary assessment, it is determined whether a juvenile can be tried as an adult or not. Considering the gravity of these decisions, judicial scrutiny plays an essential role in safeguarding the constitutional and child rights of juveniles while also balancing the public interest and deterrence. The courts have the power to review the adequacy and fairness to ensure compliance with procedural justice principles. As the Judicial commentary addresses the issue in the preliminary assessments, such as over-reliance on subjective expert opinions without clear procedural frameworks. The timeframe of three months often pressures the Juvenile Justice board to move quickly, which undermines the depth of fair evaluation. The resource-intensive nature of multidisciplinary expert involvement further complicates and is inconsistent. Thus, the judicial oversight of systemic gaps by mandating transparency through reasoned orders, enabling appellate review by promoting the principle of natural justice, such as *Audi alteram partem*. Therefore, the judicial pronouncements advocate for clearer guidelines, expert qualifications with better training, scientific tools in assessments and an enhanced multidisciplinary involvement and revision in timelines.

4.2 Evaluating child-centric v. retributive approaches in heinous crime

There are two philosophical approaches: a rehabilitative approach and a retributive approach. The child-centric approach prioritises the rehabilitative model over the retributive approach, which focuses on punishment. The rehabilitation considers the mental maturity, emotional maturity and the best interest of the child. It emphasises the social support, educational opportunities, individualised intervention, psychological support and reintegration into society. This approach underpins the rationale for the preliminary assessment under Section 15.

⁶ *Ketan Sharad Badule v. State of Maharashtra*, 2025 SCC OnLine Bom 2090.

Proponents argue that a child-centric model is related to developmental science, which shows that adolescents' cognitive functions, moral reasoning and impulse control. Exposing juveniles to adult punishment would lead to negative outcomes, such as increased recidivism and social stigmatisation. Thus, the rehabilitation approach offers a sustainable response to juvenile offenders in the context of heinous offences. The retributive approach in India has become significant after the Nirbhaya case in 2012. This approach focuses on treating juveniles who committed heinous offences to trial and punishment in adult courts. This approach has been significant due to public outrage over the heinous crimes by juveniles. The preliminary assessment represents an attempt to incorporate this retributive approach without completely abandoning the child-centric ethos. The critics argue that this shift disrupts the rehabilitative model, is inconsistent and undermines child rights.

5. COMPARATIVE PERSPECTIVES AND INTERNATIONAL PRACTICES

5.1 Constitutional Safeguards and International Legal Instruments

India's juvenile justice system is deeply rooted in constitutional protections and international human rights commitments to safeguard the rights, welfare and dignity of children. Section 15 must be interpreted and implemented with the fundamental safeguards and global child rights standards to ensure accountability and fairness.

5.1.1 Constitutional provisions

- **Article 20(3)** – Protection against Self-incrimination⁷

Article 20 (3) of the Constitution of India protects every person from being compelled to be a witness against themselves. This right prohibits the extraction of confessions or statements from juveniles while conducting any inquiry or preliminary assessment without proper safeguards. This is considered due to the developmental immaturity of the juvenile.

- **Article 21** – Right to life and personal liberty⁸

Article 21 of the Constitution of India states that no person shall be deprived of their

⁷ INDIA CONST. art. 20(3).

⁸ INDIA CONST. art. 21.

life and their personal liberty except in certain cases where a procedure established by law. This article also includes the right to fair trial, the right to rehabilitation and the right to live with dignity. This means the process must be held in a fair, transparent and child-sensitive process. The juveniles should not be unnecessarily confined in adult prisons during adult convictions or during trial.

- **Article 14 – Equality Before the Law⁹**

Article 14 ensures equality before the law and equal protection of the law. This article recognises the principle of reasonable classification. The children constitute various categories such as age gap, immaturity and reformatory potential. This justifies separate mechanisms and specialised procedures in preliminary assessments. Article 14 imposes a duty on the state to ensure the classifications are not arbitrary. The inconsistency in conducting the preliminary assessment in different states risks the equality mandate of Article 14, demanding fair and scientifically guided processes. Therefore, Article 14 must be applied with standardised principles, stricter procedural safeguards and consistency.

5.1.2 International Standards

- **United Nations Convention on the Rights of the Child (UNCRC)**

The UNHRC articulates on child rights standards, emphasising the child's best interest, protection against inhumane treatment, and promoting rehabilitation. It focuses on how children accused of crimes should be treated in a manner consistent with their age and dignity. It focuses on restorative justice over punitive measures. It discourages children from being treated under the adult criminal justice system except in certain circumstances and only by following a fair assessment. Section 15 consists of mental capacity and expert involvement that aligns with the UNHRC. It aims to balance child protection with accountability. There exist certain critiques, such as a lack of uniform guidelines, subjective expert opinion and insufficient procedural safeguards that contravene international norms.

⁹ INDIA CONST. art. 14.

- **Other International standards**

Various instruments that support these principles include the Beijing Rules, the Riyadh guidelines on the prevention of juvenile delinquency and the Havana rules on the treatment of juvenile offenders. These standards focus on rehabilitation, due process and protection of juveniles' rights in conducting preliminary assessments and trials.

5.2 Juvenile Justice Approaches in Leading Jurisdictions (UK, US, Scandinavia)

The comparative jurisprudence from the UK, the US and Scandinavian countries reflects the importance of multidisciplinary assessments, individualised evaluations, and restorative approaches focusing mainly on time frameworks and legal safeguards. These practices enforce the need for India to improve in matters such as judicial oversight, institutional capacity and legislative review, also by upholding its obligations with international child laws while addressing the complexities of heinous crimes by juveniles.

United Kingdom

The UK's juvenile justice system focuses on a rehabilitative and restorative approach, with a main emphasis on the welfare and reintegration of the children rather than punitive measures. The Youth Justice System classifies offences according to severity, also by focusing on the community-based interventions, diversion and custodial sentences as a last resort for heinous crimes. The structured psychological assessments and expert evaluations are well structured to understand a juvenile's maturity. The frameworks, such as the Children and Young Persons Act, 1933 and the Youth Justice and Criminal Evidence Act, 1999, are focused on a child-centric process, also being consistent with UNHRC norms, mainly focused on care and protection of the juveniles.

United States

The US's juvenile justice system comprises a diverse state-level framework. It generally focuses on rehabilitative measures along with accountability measures. Psychological evaluations and risk assessments are considered for making decisions. Critics state that, for heinous crimes, despite being emphasised on rehabilitation, public safety concerns often lead to more punitive outcomes. The US system has also developed with increasing adolescent brain science, focusing on reforms that emphasise individualised risk.

Scandinavia

Countries such as Scandinavian have an advanced rehabilitative juvenile justice system mainly focused on human rights and welfare principles. These are focused on individualised care, educational interventions and restorative justice. Their approaches involve social service involvement, expert teams and focus on the community context and the child's family. Legal processes are non-adversarial and flexible, focusing on the child's development and reintegration. Scandinavian systems align closely with international practices by focusing on child welfare with societal protection.

6. POLICY RECOMMENDATIONS AND FUTURE DIRECTIONS

The development and implementation of uniform guidelines for Section 15 all over the nation on utilising scientific, evidence-based tools and structured psychological and social evaluation to reduce arbitrariness and subjectivity. Create a centralised set of best practices accessible to the Juvenile Justice Board for consistent practice. Mandate for trained and provide regular training sessions for psychologists, psychiatrists and social workers in preliminary assessment to ensure multidisciplinary expertise. Establish a panel of experts at the national level to assist Juvenile Justice Boards in districts where resources are in short supply. Provide detailed orders from the board to enhance transparency, also to promote the appellate courts, and independent audit bodies to review the decisions of the Juvenile Justice Board. Implementing proper timelines for assessments while also balancing justice with comprehensive evaluations. These measures serve as a check on arbitrariness and provide consistent practices. Ensuring the prohibition of detention for juveniles in adult prisons during assessment. Provide legal aid, guardian involvement or counselling for juveniles at the early stage of the process. Promote rehabilitative alternatives such as community service, mentorship and restorative justice mechanisms for certain offences. Expand capacity for fast-track rehabilitation institutions, such as offering educational support for psychologists and vocational training. This ensures the appropriate environment and due process for the juvenile.

The assessment and the process must be ensured with global practices and incorporate the best practices from various jurisprudences. Ensure regular legislative amendments to ensure the law is updated and in compliance with evolving international obligations. Increase the budget allocation for improving expert recruitment, multidisciplinary evaluations, after-care services, child welfare structure, and training for the Juvenile Justice Board. Introduce a technology-

driven solution for assessment. Implement public awareness programs to sensitize society on rehabilitative aims in the system and to reduce the stigma associated with juveniles accused of heinous offences. Foster state agencies to monitor the outcomes, gaps and check on evidence-based reforms. Provide clarity on the definitions of heinous” and “serious” offences under the act.

7. CONCLUSION

The implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly with regard to the juveniles aged between 16 and 18 accused of heinous offences. The research highlights the shift in permitting adult trials for minors that has raised debate between the rehabilitative approach and the retributive approach. The review of the existing scholarly research reveals gaps in implementation and interpretation in Section 15. The review from scholars has been analysed for this research. The gaps in certain existing writings have also been addressed. After the detailed research on these gaps in Section 15, the paper identified the need for reformation on uniform standards, expert opinion and procedural safeguards that align with constitutional safeguards and the international norms. The paper concludes with policy recommendations to enhance fairness and reliability in the outcomes of the preliminary assessments.